

28.06.2023
Item No.142
Ct. No.7
RP

WPA 15638 of 2021
With
IA No.CAN 1 of 2021
CAN 2 of 2022 (application not found)
Indranil Mahali & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Goutam Dey
Mr. Dipendu Sarkar
Mr. Kushal Kumar
Mr. A. Ghosh

... for the petitioners

Mr. Ranjan Saha
Mr. Arindam Mitra

... for State

1. Learned advocate representing the petitioners submits that an identical issue was raised in WPA 13924 of 2021, which was decided by this Court by an order dated 08.09.2022.
2. Mr. Saha, learned advocate representing the State submits that the writ petitioners in WPA 13924 of 2021 preferred an appeal before the Hon'ble Division Bench in an intra-Court mandamus appeal, which was registered as FMA 1441 of 2022, which stood dismissed by an order dated April 11, 2023. He, thus, submits that the instant writ petition is liable to be dismissed accordingly.
3. The issue involved in this writ petition is whether the primary teachers, who obtained their certificates from the institutes recognized by the State Government, can be denied the weightage under Rule 9(2)(d) of the Recruitment Rules 2001 only on the ground that they did not institute the proceedings on or before December 31, 2010.
4. The instant writ petition was filed on 23.09.2021.

5. This Court decided an identical issue by passing an order dated 08.09.2022 in WPA 13924 of 2021. The relevant portion of the said order is quoted hereinafter.

“The portion of the order passed by the Hon’ble Supreme Court which would be relevant for the purpose of deciding the aforesaid issues are extracted hereinbelow:-

“We are, however, conscious of the fact that the teachers who obtained the certificates from the institutes recognised by the State Government are not to blame. They have been part of the recruitment process which began in the year 2006 and carried on for four years. Not only that, some of these persons immediately approached the Court in the years 2009 and 2010 to assail the denial of weightage to be given to them for having obtained the certificates and even though they succeeded in those proceedings, a second round of proceedings have been initiated on account of certain subsequent developments.

In order to do complete justice inter se the parties, while not interfering with the impugned judgement/s passed by the High Court on a principle of law, we consider it appropriate to exercise our power under Article 142 of the Constitution of India to issue the following directions:

- (1) *The primary teachers who obtained their certificates from the institutes*

recognized by the State Government, will also be entitled to the weightage under Rule 9(2)(d) of the Recruitment Rules, 2001 so long as they have filed the legal proceedings in the High Court on or before 31st December, 2010. This would include such of the parties who are the original petitioners or interventionists in their individual names so long as the petitions or the applications for intervention have been filed on or before 31st December, 2010. We make it clear that this relief will be available to only such persons and no others.

- (2) On the basis of the aforesaid additional marks, the selection process undertaken in the year 2009-10 in pursuance to what was begun in the year 2006, will be revisited and a panel for appointment of primary teachers will be again made. Such of the beneficiaries by this order which figure in the merit list keeping in mind the posts advertised and filled up would get the benefit of appointment with all benefits flowing prospectively only.*
- (3) The aforesaid exercise will however not disturb the persons in any manner who have already been appointed and the preparation of the list is only to determine such of the beneficiaries who would have been benefited if the additional marks have been granted to them.*
- (4) The entire exercise shall be completed and letters of appointment be issued within a maximum period of three months from today.”*

The Hon'ble Supreme Court of India by the order dated January 24, 2019 passed in Amina Khatun (supra) directed that only the primary teachers who obtained their certificates from the institutes recognised by the State Government will be entitled to the weightage under Rule 9(2)(d) of the Recruitment Rules, 2001 provided they have filed the legal proceedings in the High Court either by filing writ petitions or applications for intervention on or before December 31, 2010.

The Hon'ble Supreme Court after taking into consideration that the recruitment process began in the year 2006 and the same carried on for four years and after taking note of the fact that some of the persons have immediately approached the court in the years 2009 and 2010 to assail the denial of weightage, fixed the cut off date at December 31, 2010 thereby restricting the scope of challenge to the selection process on such issue only to such candidates who assailed the denial of weightage on or before the cut off date.

This writ petition has been filed on September 1, 2021 and it is sought to be argued that the cause of action of this writ petition accrued upon the order passed in Amina Khatun (supra). The right to assail denial of weightage accrued immediately upon such weightage being denied to the petitioner and the same cannot be dependant upon an order passed by the Hon'ble

Supreme Court when several candidates approached the court in the years 2009 and 2010.

The right to enforce the claim for weightage has been restricted by the Hon'ble Supreme Court in the decision of Amina Khatun (supra) only to the candidates who approached the court promptly to enforce such claim i.e. till December 31, 2010 while passing the judgement on January 24, 2019. Therefore, this court is of the view that cause of action to file the writ petition arose in 2009-2010 when other candidates approached the court assailing denial of weightage. This court, therefore, holds that the writ petitioners are guilty of delay and laches and the explanation for the delay is not acceptable.

Furthermore, the High Court cannot modify and/or extend the cut off date fixed by the Hon'ble Supreme Court of India."

6. The said order dated 08.09.2022 was challenged by the writ petitioners in FMA 1441 of 2022 and the Hon'ble Division Bench was pleased to dismiss the said appeal by an order dated 11.04.2023. After going through the materials on record and after hearing the submissions of the learned advocates for the parties, this Court is of the considered view that the order passed in WPA 13924 of 2021 dated 08.09.2022 which was subsequently confirmed by the Hon'ble Division Bench by an order dated 11.04.2023 in FMA 1141 of 2022 shall squarely apply to the facts of

the case on hand. In view thereof, the instant writ petition is dismissed without, however, any order as to costs. The connected applications also stand dismissed.

- 7.** Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of usual formalities.

(HIRANMAY BHATTACHARYYA, J.)