

28.07.2023
SL No.18
Court No.8
(gc)

**MAT 1362 of 2023
CAN 1 of 2023**

**West Bengal Board of Primary Education
Vs.
Dulal Sk. & Ors.**

Mr. L.K. Gupta, Sr. Adv.,
Mr. Saikat Banerjee,
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury,
...for the Appellant/W.B.B.P.E.
Mr. Samim Ahammed,
Mr. Sudipta Dasgupta,
Mr. Bikram Banerjee,
Ms. Ambiya Khatun,
Ms. Gulsanwara Pervin,
Mr. Sagar Dey,
Ms. Shalini Ghosh,
...for the Respondent No.1/
Writ petitioner.
Mr. Supriyo Chattopadhyay, A.G.P.,
Mr. Gaourav Das,
...for the State.

We have heard Mr. L.K. Gupta, learned Senior Advocate on behalf of the appellant and Mr. Bikram Banerjee, learned Advocate for the writ petitioner/respondent No.1.

The appeal is arising out of an order dated 30th June, 2023 in which the learned Single Judge considering the report filed by the Deputy Secretary of the Board dated 28th June, 2023 directed the Board not to close the 2022 recruitment process. It appears that the writ petitioner was declared unsuccessful because of the wrong key answer. If he were awarded six marks at the relevant time, he

could have qualified for the recruitment process, 2016 and would have been in the panel as a trained candidate. The writ petition was pending from 2017 and came up for consideration amongst other dates on 18th May, 2023. On 18th May, 2023, the learned Single Judge recorded that after the judgment and order passed in MAT 1594 of 2018, he would be entitled to get six marks further and, therefore, he would be a qualified candidate for getting the job. On such consideration, the Deputy Secretary of the West Bengal Board of Primary Education was directed to give a hearing to the writ petitioner and pass a reasoned order. The reasoned order was placed before the learned Single Judge on 30th June, 2023. On consideration of the said order the learned Single Judge has passed an order directing the Board not to close the 2022 recruitment process.

We, *prima facie*, accept the submission made on behalf of the Board that the order passed by the Coordinate Bench on 13th April, 2023 shall not, however, affect the steps taken so far by the Board or already in the process of being taken by the Board in respect of TET, 2014. Insofar as the TET, 2014 is concerned, the immediate recruitment process commenced in the year 2016 and within few years, the said panel was exhausted. Thereafter,

the recruitment process for 2020 and 2022 had commenced.

We do not find any clear indication from the impugned order as to what steps were taken by the Board till the date of pronouncement of the judgment or already in the process of being taken by the Board in respect of TET, 2014. The Board is required to file an affidavit before the learned Single Judge within two weeks from date indicating the aforesaid aspect of the matter as it appears, prima facie, that the action of the Board has been protected in the aforesaid two situations although it might adversely affect a candidate.

We are of the view that the learned Single Judge before passing any order with regard to restraining the Board from closing the 2022 recruitment process shall take into consideration the affidavit to be filed by the Board and decide the matter in the light of the observations made by the Hon'ble Division Bench on April 13, 2023.

The claim for appointment against the recruitment process of 2016 or for the subsequent period would be dependent upon the situation to be disclosed by the Board in the affidavit to be filed and only thereafter a decision to that effect could be taken upon taking into consideration the order passed by the Hon'ble Division Bench on April 13, 2023. However, for the time being the candidature

may be processed. Any direction to the writ petitioner to get an appointment would be premature as we are not aware whether he was successful in the process of selection. This also depends upon the steps already taken by the Board so far or already in the process of being taken by the Board in respect of TET, 2014 as on 13th April, 2023 which is a matter to be taken into consideration by the learned Single Judge in deciding the claim of the writ petitioner.

The learned Counsel for the parties have jointly submitted that the learned Single Judge has orally clarified yesterday in another identical writ petition that the Board can publish the panel of 11,000 vacancies.

In view of such submission, the Board shall be at liberty to publish the panel of 11,000 candidates and any further steps in the matter beyond the aforesaid vacancies, shall abide by the result of the writ petition.

The affidavit before the learned Single Judge shall be filed within two weeks from date.

It is needless to mention that if the writ petitioner applied and had been declared successful he may be accommodated within these 11,000 vacancies.

Since no affidavits are called for, all allegations are deemed to have been denied.

The order of the learned Single Judge is modified to the aforesaid extent.

With the aforesaid observation, the appeal and the application stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)