

WPA 24074 of 2022

With

CAN 1 of 2023

Swagata Ghosh & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Subir Sanyal,
Mr. Chittapriya Ghose,
Ms. Priyanka Saha

... for the Petitioners

Mr. Sauvik Nandy,
...for NCTE

Mr. Ratul Biswas,
Mr. Kaushik Chowdhury.
..... for the WBBPE

The process of recruitment of TET qualified trained candidates to the posts of 'Assistant Teacher' in Government Aided/Government Sponsored/Junior Basic Primary Schools is under challenge in this writ petition. The writ petitioners have, in particular, challenged the advertisement notification issued by the West Bengal Board of Primary Education dated 28.10.2022.

Mr. Chittapriya Ghose, appearing for the writ petitioners have submitted that the impugned notification dated 28.10.2022, which is a continuation of the original notification dated 29.09.2022, is de hors the provisions under Section 23 of the Right of Child to Free and Compulsory Education Act, 2009 and also violative of the provisions under section 32(1) and 12(E) of the National Council Of Teachers Education Act, 1993. It has been submitted that the West Bengal Board of Primary Education does not possess any power or

authority under the said provisions of law, to improvise in any manner the eligibility criteria for appointment as a teacher, than what has been provided by the National Council for Teacher Education. He clarifies that the National Council for Teacher Education is the statutory academic authority, authorized by the Central Government, for such a purpose.

Learned Advocate appearing for the petitions has taken this Court through the Regulation of the National Council for Teacher Education dated 28.10.2014, to show that various “*norms and standards*” have been provided under the said Regulation of 2014 to be followed by an institution to carry on any teacher education programme. It has been submitted that separate “*norms and standards*” have been provided for “*Diploma in early childhood education programme leading to Diploma in Preschool Education (DPSE)*”, “*Elementary teacher education programme leading to Diploma in Elementary Education (D.El.Ed.)*”, “*Bachelor of elementary teacher education programme leading to Bachelor of Elementary Education (B.El.Ed) degree*”, “*Diploma in physical education programme leading to Diploma in Physical Education (D.P.Ed.)*”, “*Bachelor of physical education programme leading to Bachelor of Physical Education (B.P.Ed.) Degree*”, so on and so forth. He has pointed out that by providing various appendices, the details of “*norms and standards*” for each teacher education programme, have been enumerated in the said Regulation of 2014.

So far as the impugned notification dated 28.10.2022 is concerned, the petitioners have contended that the same is not in compliance with the said “*norms and standards*” provided in 2014 Regulation, and as such the advertisement notification as above is not maintainable in the eye of law.

The petitioner’s specific contention is that the advertisement having been published

initially vide notification dated 29.09.2022 seeking applications from qualified TET candidates to the posts of “*Assistant Teacher*” for Junior Basis Primary Schools, the subsequent notification, i.e, dated 28.10.2022, to add therein, to the required eligibility educational criterion, an additional training qualification of possessing Certificates /Diploma/Bachelor in physical education of duration not less than two years from any NCTE recognized institution, is not sustainable in terms of 2014 Regulations. The petitioner says that the 2014 Regulations have provided for separate “*norms and standards*” for teachers in general and physical education teachers. According to Mr. Ghose, who is representing the petitioners, the advertisement so published by the West Bengal Board of Primary Education is for filling up of the posts of “*Assistant Teacher*” and there is not any mention of vacancy, to be available, for teachers of physical education. He submits that, firstly, the Board was not empowered under the law to suggest any criteria for eligibility of the candidates who apply for the posts of “*Assistant Teacher*”, to be qualified with physical education credentials. Secondly, he says that the original notification, i.e, dated 29.09.2022 did not disclose any vacancy or requirement for teachers for physical education, excepting only for posts of “*Assistant Teacher*”. He points out that in accordance with the Regulation of 2014, physical education qualification would not be an essential part of qualification or eligibility for an “*Assistant Teacher*”.

He has prayed for setting aside of the notification of the West Bengal Board of Primary Education dated 28.10.2022.

Mr. Biswas, appears on behalf of the State, has however strongly contested as to what has been submitted on behalf of the petitioners. It is the contention of the State that both the teachers in general and qualified in physical education are covered within the category of “*Assistant Teachers*”. Therefore the notification

which was published seeking candidature for the post of primary school teacher and in the cadre of “Assistant Teacher” may include necessary qualification regarding physical training, which cannot be said to be de hors the law, as alleged. According to the ld. counsel for the State, the West Bengal Board of Primary Education has not exercised any power, not vested in it by law, by issuance of the notification dated 28.10.2022, as alleged and also that the same cannot be termed as beyond scope of the Regulation of 2014. He says that the writ petition is meritless and should be dismissed.

The West Bengal Board of Primary Education published an advertisement vide notification dated 29.09.2022. The said publication was for recruitment of TET qualified trained candidates to the posts of “Assistant Teacher” in Government Aided/Government sponsored/Junior Basic Primary Schools. The appointment was sought to be made against the State wise vacancy, which the advertiser decided to declare later on. The educational qualification as was stipulated, is being extracted, as herein below:-

“3. Qualification:-

(a) *****

(b) *The candidate shall possess the minimum educational and training qualifications as prescribed by the National Council for Teacher Education prevailing as on date of publication of recruitment notification.”*

AND

TET qualified candidates who are undergoing D.El.Ed./D.Ed. (Special Education) B.Ed. Training (session 2020-2022) and who have qualified in D.El.Ed./D.Ed. (Special Education)/B.Ed. Training Part-I examination (session- 2020-2022) will be given opportunity to participate in the recruitment process to be initiated by the Board.

AND

(c) *Passed in the Teacher Eligibility Test (TET), conducted by the West Bengal Board of Primary*

Education, in accordance with the guidelines framed by the NCTE for the purpose.

Relaxation: Candidates belonging to reserved categories viz. candidates belonging to the Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC-A and OBC-B), Exempted Categories (EC), Ex-Servicemen and for physically Handicapped (PH) candidates, shall be allowed relaxation up to 5% in the qualifying marks.

AND

(d) Ability is read, write and speak in the language relating to the medium of schools for which the candidate wishes to apply.”

Later on with reference to the said earlier notification dated 29.09.2022, further notification was published, i.e, dated 28.10.2022. The Board has added to the education qualification as mentioned above, an additional training qualification “*that the candidates who are TET qualified and have Certificate/Diploma/Bachelor in Physical Education of duration not less than two years (or its equivalent/Bachelor in Physical Education having the duration of one year, who have passed on or before 2014) from any NCTE recognized institution*”.

The moot question in dispute is whether for the post of “Assistant Teacher” the West Bengal Board of Primary Education is eligible to seek candidature of persons qualified with physical education or not.

In exercise of the power conferred under Section 23 (1) of the Right of Children to Free and Compulsory Education Act, 2009, department of School Education and Literacy, Ministry of Human Resources Development, Government of India, the National Council for Teacher Education (NCTE) had laid down the qualification for induction as primary teachers, vide its notification dated 23.08.2010, as follows:-

“Minimum Qualifications:-

(I) CLASES I-V

(a) *Senior Secondary (or its equivalent) with at least 50 % marks and 2 year Diploma in Elementary Education (by whatever name known)*

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

Senior Secondary (or its equivalent) with at least 50 % marks and 4 year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education)”.

The said notification was subsequently superseded by another dated 29.07.2011, to provide as follows:-

“1. Minimum Qualifications:-

(i) *Clases I-V*

(a) *Senior Secondary (or its equivalent) with at least 50 % marks and 2 year Diploma in Elementary Education (by whatever name known)*

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name know), in accordance with the NCTE (Recognition Norms and Procedure), Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50 % marks and 4 year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50 % marks and 2 year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.”

At present the applicable Regulation is the Regulation dated 28.11.2014 as mentioned above. The scheme of the Regulation has provided for the “*norms and standards*” of teacher education programmes in Regulation no.9 and appendices 1 to 15.

Relevant would be to discuss appendix 2 first, which has provided for “*norms and standards*” for “*Elementary teacher education programme leading to Diploma in Elementary Education (D.El.Ed)*”. It is important that preamble 1.1 of the appendix 2 be noted as hereinbelow:-

“1.Preamble

1.1 The Diploma in Elementary (D.El.Ed) is a two year professional programme of teacher education. It aims to prepare teachers for the elementary stage of education, i.e, classes I to VIII. The aim of elementary education is to fulfill the basic learning needs of all children in an inclusive school environment bridging social and gender gaps with the active participation of the community.”

Next, it is required that appendix 6 be discussed, which has provided for “*norms and standards*” for “*Diploma in physical education programme leading to Diploma in Physical Education (D.P.Ed)*”. It is important that preamble 1 of the appendix 6 to be noted as hereinbelow:-

“1. Preamble

The Diploma in Physical Education (D.P.Ed) programme is a professional programme meant for preparing physical education teachers for elementary stage of school education (Class I to VIII)".

The scheme of the Regulation of 2014 as mentioned above is very categorical and unambiguous to project that the teachers performing duty of imparting education to the child have been categorized differently therein, from the teachers who are to impart the child, any physical education. National Council for Teacher Education (NCTE) has considered the necessity of having specialized persons separately in the fields of providing education in general and physical education. Therefore two separate teacher education programmes have been laid down by providing "*norms and standards*" thereof, separately. This makes it incumbent while advertising for filling up the posts, that separate and distinct vacancies be declared for the distinct posts of teachers in general and teachers of physical education.

Admittedly the West Bengal Board of Primary Education has published notification for the post of "*Assistant Teacher*" in Primary Schools. Neither of the notifications dated 29.09.2022 or 28.10.2022 has specified about the number of vacancies for the candidates with "*Diploma in Elementary Education (D.El.Ed.)*" and candidates with "*Diploma in Physical Education (D.P.Ed)*". Therefore it cannot be construed that the advertiser had any intention of advertising regarding the post of teachers for physical education. Under such circumstances, addition of physical education qualification for the post of "*Assistant Teacher*", vide notification dated 28.10.2022, is contrary to the Regulation of 2014 and thus de hors law, illegal and not maintainable in the eyes of law.

As it has been submitted on behalf of the petitioners and also an admitted stand of the respondents that the National Council for

Teacher Education (NCTE) is the statutory body to provide for eligibility criteria of a candidate, for the purpose of being appointed as a teacher, the fact that different “*norms and standards*” have been provided for appointment of “*D.El.Ed.*” qualified candidates and “*D.P.Ed.*” qualified candidates, cannot be disputed in this case in any manner. Therefore, without mention of any requirement of teachers for physical education, in the advertisement, and only seeking for candidates for appointment as “*Assistant Teachers*”, the Board was not empowered under the law to incorporate at a subsequent date, any further required qualification of physical education. That would firstly defy the Regulations of 2014, as the same has not provided for any qualification in physical education, for appointment as a teacher in general. Also, that the Board, by itself, is not empowered under the law, to provide for any criterion for appointment as regards the qualification of a candidate, beyond scope of the Regulations of 2014. Record would show that the Board though has initially provided for *D.El.Ed.* qualified candidates as eligible to apply but has not mentioned in the initial advertising regarding any qualification of physical education. The Board not having advertised for physical education qualified candidates but only for “Assistant Teacher”, the impugned action of the Board as discussed above cannot be said to commensurate with the Regulation of 2014.

On the discussion as above this Court finds that the prayers of the writ petitioners are legible to be allowed.

Writ Petition being WPA 24074 OF 2022 is allowed with the direction that the impugned notification dated 28.10.2022 be set aside with no effect/further effect to the same. Connected application being CAN 1 of 2023 is disposed of.

(Rai Chattopadhyay, J.)