

01 11.04.2023
Ct. No.11
(Subhankar)

MAT 1725 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022

Shrabani Nayek & Ors.

-Vs.-

Soumen Paul & Ors.

With
MAT 1761 of 2022
With
IA No. CAN 1 of 2022

Bamapada Pan & Ors.

-Vs.-

The State of West Bengal & Ors.

With
MAT 1837 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022

Sadek Biswas & Ors.

-Vs.-

Souman Paul & Ors.

Mr. Subir Sanyal,
Mr. Chittapriya Ghosh,
Mr. Somesh Kumar Ghosh

.... For the Appellants
in MAT 1725 of 2022.

Mr. Sabyasachi Chatterjee,
Mr. Badrul Karim,
Mr. Dipankar Das

.... For the Appellants
in MAT 1761 of 2022

Mr. Biswaroop Bhattacharya,
Mr. Golam Mohiuddin,
Ms. Puja Mondal

....For the Appellants in
MAT 1837 of 2022

Mr. Sudipta Dasgupta,
Ms. Dipa Acharyya,
Ms. Shalini Ghosh
Mr. Sutirtha Nayek

.... For the Respondents/
Writ Petitioners in
MAT 1725 of 2022.

Mr. Bikram Banerjee,
Mr. Arka Nandi,
Mr. Sondwip Sutradhar,
Mr. Saikat Sutradhar

.....For the Respondents/
Writ Petitioners in MAT
1837 of 2022.

Mr. Tapan Kumar Mukherjee,
Mr. Kapil Guha,
Mr. Rakesh Singh

..... For the State in
MAT 1725 of 2022.

Mr. Bhaskar Prasad Vaisya,
Mr. Ranjan Saha

..... For the State in
MAT 1761 of 2022 &
MAT 1837 of 2022.

Mr. Saikat Banerjee,
Mr. Kaushik Chowdhury

..... For the WBBPE
in all the appeals.

Mr. Sauvik Nandy

..... For the NCTE
in all the appeals.

The three above stated appeals are taken up for
analogous consideration since they involve common
factual and legal issues.

In MAT 1725 of 2022, the Order dated 29th of September, 2022 passed by the Hon'ble Single Bench in WPA 20031 of 2022 is under challenge. Similar challenge is thrown to the said Order dated 29th of September, 2022 of the same Hon'ble Single Bench in MAT 1837 of 2022, also passed in the same writ petition, being WPA 20031 of 2022.

The appellants in MAT 1837 of 2022 and MAT 1725 of 2022 were not parties to the writ petition being WPA 20031 of 2022. Hence, the appellants in MAT 1837 of 2022 and MAT 1725 of 2022 have each filed CAN 1 of 2022 praying for Leave to Appeal.

In MAT 1761 of 2022, the appellants claim to be aggrieved by the Order of the Hon'ble Single Bench dated 18th of October, 2022 in the writ petition being WPA 23210 of 2022. Having lost before the Hon'ble Single Bench as the writ petitioners in WPA 23210 of 2022, the writ petitioners have now filed this intra-court mandamus appeal being MAT 1761 of 2022.

At issue in the above mentioned appeals is the direction passed by the Hon'ble Single Bench by the Order dated 29th of September, 2022 (*supra*) allowing the writ petitioners therein, who are respondents to MAT 1837 of 2022 and MAT 1725 of 2022, to appear for recruitment to the post of Assistant Teachers in Government aided/Government Sponsored/Junior Basic Primary Schools' *vide* the Recruitment Notification

published on 29th of September, 2022 of the West Bengal Board of Primary Education (for short the Board). The appellants in MAT 1761 of 2022 also challenge the denial of reliefs on similar grounds by the Hon'ble Single Bench *vide* its Order dated 18th of October, 2022.

The appellants submit that they are all Teacher Eligibility Test (for short *TET*) qualified and trained candidates. The appellants possess the minimum educational training prescribed by the National Council for Teacher Education (for short the *NCTE*). The appellants are aggrieved that the writ petitioners who are *TET* qualified but did not possess training qualifications at the stage when the Recruitment Notification dated 29th of September, 2022 was published, could not have been permitted by the Hon'ble Single Bench to participate in the recruitment process.

Mr. Sanyal, Learned Counsel appearing for the appellants, draws the attention of this Court to the Notification of the School Education Department, Elementary Education Branch, Government of West Bengal dated 22nd of December, 2020. The said Notification amends the West Bengal Primary School Teachers' Recruitment Rules, 2016 (for short the 2016 Rules).

Particular emphasis is placed by Learned Counsel to Chapter - III Rule 6 which provides for the

qualifications to be appointed. Rule 6 (1) and (2) read as follows:-

“6.(1) No person shall be appointed by the Council as a teacher unless he is a citizen of India and has completed the age of 18 years as on 1st day of January of the year of advertisement and has not completed the age of 40 years on the 1st day of January of the year of advertisement as specified in sub-rule (3).

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

Learned Counsel submits that the minimum educational and training qualifications as prescribed by the *NCTE* must be therefore held by the candidates at the stage when the recruitment process begins with the publication of the Recruitment Notification. In other words, with the publication of the Notification dated 29th of September, 2022 (*supra*), it must be understood in law that an intending candidate must possess the educational training qualification as on the date of such Notification.

Next, referring to the *NCTE* Notification dated the 23th of August, 2010, Learned Counsel submits that the minimum qualification for participating in the recruitment of Assistant Teachers in Primary Schools stands as follows:-

“Rule 1 (i)(a) Senior Secondary or its equivalent with at least 50% maximum and two years diploma in Elementary Education (by whatever name none).”

The appellants take the position that as on the date of the Recruitment Notification dated 29th of September, 2022, none of the writ petitioners had completed their training qualification. This fact stands recognized by the Order of the Hon'ble Single Bench dated 29th of September, 2022. The Hon'ble Single Bench has considered a concessional offer by the Board to the effect that those candidates who had not completed their training qualifications namely, D.El.Ed., as on the date of publication of the Recruitment Notification, shall still be treated to be within the zone of consideration on the ground that as on the date of the interview, i.e. in December, 2022, the candidates would have received their final certificates for the two-year D.El.Ed. Course pertaining to 2020 - 2022.

Mr. Sanyal submits that the Board had been unable to complete its D.El.Ed. Course by June, 2022, i.e. upon the expiry of two years between June, 2020 and June, 2022. The Board had then hurriedly completed the two year D.El.Ed course on and by the 29th of November, 2022 by issuing Certificates on and by the said date, i.e. 29th of November, 2022.

It is pointed out that therefore it is an admitted position that as on 29th of September, 2022, which is the date of publication of the Recruitment Notification, none of the writ petitioners were qualified trained candidates. It is argued that the Board therefore incorporated a

provision in the Recruitment Notification dated 29th of September, 2022 *vide* Clause 3 (b) thereof which reads as follows:-

“3.(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 Part-I examination (session-2020-2022) will be given opportunity to participate in the recruitment process to be initiated by the Board.”

It is therefore argued that the provision of the Recruitment Notification dated 29th of September, 2022 namely, Clause 3(b) (*supra*) which gives a prospective relaxation to 2020-2022 D.El.Ed. candidates whose courses could not be completed, requires to be struck down.

It is emphasized that Rule 6 of Chapter 3 of the 2016 Rules of the Board is specific in as much as candidates intending to apply are mandatorily required to possess the minimum educational and training qualification as prescribed by the NCTE. The NCTE Notification of 2010 also provides for a two year Diploma in Elementary Education or, in other words the D.El.Ed. It is the NCTE Notification of 2010 which carries statutory flavor in as much as it has been published in terms of Sub-Section 1 of Section 23(2) of the Right of Children to

Free and Compulsory Education Act, 2009 (for short the 2009 Act).

It is therefore reiterated by Mr. Sanyal that the Board cannot create room for the writ petitioners to apply for recruitment without possessing the minimum educational qualification as on the date of publication of the Recruitment Notification, which is 29th September, 2022. In support of his arguments, Mr. Sanyal relies upon the authorities reported in *(2011) 9 SCC 438 (at Paragraph 15)*, *(2013) 11 SCC 58 (at Paragraphs 19, 20 and 21)* and *(2000) 5 SCC 262 (at Paragraph 13)*.

It is thus argued that the cut-off date for recruitment must follow the Statutory Rules and, in the event the Statutory Rule is silent, then such cut-off date must follow the date on which the Recruitment Notification/advertisement is published. Finally, in the event no such dates are available as stated above, the last date specified for receipt of an application by the competent authority shall be the last date for considering the eligibility criteria of the intending candidates.

It is submitted that none of the legal tests laid down in *(2000) 5 SCC 263 (supra)* have been applied in the case of the writ petitioners. It is argued that there can be no infraction of the statutory tests. The Hon'ble Single Bench had fallen into error by permitting the writ petitioners to be considered for recruitment as Assistant Teachers in Government-aided Schools under the

Recruitment Notification dated 29th of September, 2022 (*supra*).

Mr. Biswaroop Bhattacharya, Learned Counsel appearing for the appellants in MAT 1837 of 2022 in addition to adopting the submissions of Mr. Sanyal, relying upon the authority reported in (1997) 4 SCC 18 (*at Paragraph 6*) submits that the law laid down in (2000) 5 SCC 262 was earlier noticed in (1997) 4 SCC 18 (*supra*) to the effect that there can be no deviation from the last date prescribed for filing applications.

Mr. Sudipta Dasgupta, Learned Counsel appearing for the respondents/writ petitioners in all the three appeals with Mr. Bikram Banerjee, Learned Counsel, submits that the writ petitioners were enrolled for the D.El.Ed. training course from June, 2020 to be completed by June, 2022. Therefore, the writ petitioners had technically completed their D.El.Ed. training course in June, 2022 with the close of their final semester.

However, the Board, for reasons of its own, could not complete the D.El.Ed. Examination within June, 2022, i.e. within two years. The Board was going through a crisis in the face of a series of issues connected to recruitment of both teaching and non-teaching staff. The *ad hoc* committee of the Board then took charge in August, 2022.

As the first step towards putting back on the rails the academic careers of the writ petitioners, the Board

stepped up its efforts to complete the final Part II of the D.El.Ed. course in a few months on and from August, 2022. Accordingly, examinations were held and the Part II D.El.Ed. Certificates with Mark Sheets were ready to be handed over as on 29th of November, 2022.

In the meantime sensing that the Board may proceed by publishing the Recruitment Notification during the extended period of completion of their D.El.Ed. course, the writ petitioners approached the Hon'ble Single Bench with the plea that since they could not be faulted for any action of the Board, their candidatures should be considered by the Board while holding any recruitment exercise.

Learned Counsel points out that the Board therefore published the Recruitment Notification dated 29th of September, 2022 with the provision that the D.El.Ed. candidates, such as the writ petitioners, shall be eligible to participate in terms of Clause 3(b) of the said Recruitment Notification. It is submitted that as on the date of interview, each of the writ petitioners possessed the final D.El.Ed. training certificate.

It is brought to the notice of this Court by Mr. Dasgupta that although the writ petitioners had obtained the TET training qualification long back, they could not be successful in obtaining an admission to a D.El.Ed. Course since each of the D.El.Ed. Colleges had a maximum intake capacity of students. It is pointed out

that the training qualifications for recruitment were mandatory on and from 2017. Earlier, the recruitment for Assistant Teachers did not require training qualification as a mandatory condition to be eligible for recruitment. Upon the training condition being made mandatory, the D.El.Ed. Colleges started to be established on and from 2017 and, inspite of the best efforts of the writ petitioners, they could get admission only in 2020.

Mr. Dasgupta submits that the D.El.Ed. course ought to have been completed by the Board by June, 2022. It is due to no fault of the writ petitioners that the course could not be completed in June, 2022. Referring to Clause 3(a) of the Recruitment Notification dated 29th of September, 2022, Mr. Dasgupta submits that the age for being eligible to apply is a minimum of 18 years and a maximum of 40 years on the first day of January of the year of publication of the advertisement. In such view of the matter the writ petitioners stand the risk of being declared overage in the event they are not allowed to participate in the instant recruitment process as advertised on the 29th of September, 2022.

It is submitted that the writ petitioners had therefore approached the Hon'ble Single Bench with the prayer that in the event the Board decides to publish a Recruitment Notification in 2022, such Recruitment Notification should include within its scope and ambit the 2020-2022 D.El.Ed. candidates. Accordingly, Learned

Counsel supports the terms of the Recruitment Notification dated 29th of September, 2022 which creates a provision for granting opportunity of participation to the TET qualified candidates of the 2020-2022 D.El.Ed. course. It is further pointed out that the D.El.Ed. candidates of 2020-2022 course had completed their Part II Examinations and obtained their training certificates by and within 29th of November, 2022 and, as on the date of interview, were qualified for selection as trained candidates.

On behalf of the Board, Mr. Saikat Banerjee, Learned Counsel, appears and relies on the affidavit of the Board as directed to be filed by an order of this Court dated the 27th of February, 2023 in MAT 1725 of 2022. The affidavit, *inter alia*, at Paragraph 4 reads as follows:-

“4. Before I proceed to deal with the different paragraphs of the ‘said application’, I consider it necessary to plead as follows:

A] The core controversy in the present lis is as to whether the West Bengal Board of Primary Education [hereafter WBBPE] by permitting candidates {who were yet to clear their Part II examination conducted by WBBPE} to participate in the 2022 recruitment process committed any illegality.

B] Notification dated 29/07/2011 [Page 84 of the ‘said application’] issued by NCTE, considered by the answering respondents to be relevant is inter alia extracted infra:

1. Minimum Qualifications:-

(i) Classes I-V

a) Senior Secondary (or its equivalent) with at least 50% marks and 2 years 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)

OR

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

C] The aforesaid notification dated 29/07/2011 lays down the minimum qualifications for a person to be eligible for appointment as a teacher. The notification never stipulates any date of eligibility. In other words, on and from which date such eligibility is to be counted and/or assessed is not specified in the notification. It can be the first day of January of the year of recruitment; it can be on the date of recruitment notification or it can be the date on which the candidate is evaluated. At the cost of prolixity it is stated that no fixed date of considering the eligibility is evident from the aforesaid notification of NCTE.

D] An intending candidate upon clearing his 10+2 Board Examination is eligible for being admitted in D.El.Ed course. Since the +2 Board Exam results are normally published within 15th June of each calendar year, the two year D.El.Ed course has its session from 1st July to 30th June for the two successive years thereafter. The examining body in West Bengal for such D.El.Ed course is WBBPE. The present ad hoc committee of WBBPE headed by the President of the Board took charge on 24/08/2022. This deponent took

charge as the Deputy Secretary of WBBPE on 26/08/2022. The office bearers of WBBPE noticed that for the session 2020-2022, the Part I examination was held by WBBPE after the Part II session ended on 30/06/2022, between 15/07/2022 and 18/08/2022. WBBPE published the results of Part I D.El.Ed course vide notification no. 233/WBBPE/D.El.Ed./2022 dated 29.09/2022. A copy of such notification is annexed hereto and marked with the letter 'R-1'.

E] WBBPE immediately thereafter in November, 2022 conducted the Part II examination for the 2020-2022 session; results whereof were published vide notification no. 325/WBBPE/D.El.Ed./2022 dated 30/12/2022. A copy of such notification is annexed hereto and marked with the letter 'R-2'.

F] At Page 73 of the 'said application' is a notification dated 29/09/2022 issued by WBBPE. Clause 5 of such notification reads thus: "The Recruitment Notification and the Application Form will be available in the websites: www.wbbpe.org, <https://wbbprimaryeducation.org> on or after 21.10.2022."

G] In view of the above, the notification dated 29/09/2022 cannot at all be termed as the 2022 recruitment notification. It is rather an introduction to the recruitment notification which was published 21/10/2022. A recruitment notification must contain the number of vacancies which are intended to be filled up by the examining/recommending body. The notification appearing at Page 73 of the 'said application' do not contain the number of vacancies.

H] Rule 8(3) Table A of the West Bengal Primary School Teachers Recruitment Rules, 2016 is extracted infra:

Table A

Sl. No.	Item for evaluation	Maximum Marks
(i)	Madhyamik pass under	05

	<i>the West Bengal Board of Secondary Education or its equivalent</i>	
<i>(ii)</i>	<i>Higher Secondary pass under the West Bengal Council of Higher Secondary Education or its equivalent</i>	<i>10</i>
<i>(iii)</i>	<i>Training as specified by NCTE</i>	<i>15</i>
<i>(iv)</i>	<i>Teacher Eligibility Test (TET)</i>	<i>05</i>
<i>(v)</i>	<i>Extra Curricular Activities</i>	<i>05</i>
<i>(vi)</i>	<i>Viva Voce or interview</i>	<i>05</i>
<i>(vii)</i>	<i>Aptitude Test</i>	<i>05</i>
	<i>Total</i>	<i>50</i>

I] Vide memo no. 2235/WBBPE/2022 dated 21/12/2022, the Board notified that it is going to conduct the first phase of interview/viva voce and aptitude test centrally under its direct supervision and monitoring. A copy of such notification without its enclosure is annexed hereto and marked with the letter 'R-3'

J] The concluding paragraph of the said notification reads thus:

"In order to dissipate any confusion/ambiguity, the examining/recommending body, being the Board makes it abundantly clear that the State Wide Merit List, for the 2022 Recruitment process will only be published after assessing/evaluating every benchmark contained in the recruitment rules."

K] Thus the Board at present is only conducting the viva voce or interview and the aptitude test of the applicant/candidates for the 2022 recruitment process. It is yet to allot marks for the remaining six benchmarks, which includes marks for training. In other words, the time to allot marks for D.El.Ed. (Training qualification) is yet to arrive. Marks for Madhyamik and Higher Secondary cannot be given at this juncture in view of pendency of the Maitra Committee's

report which is to be submitted before this Hon'ble Court in WPA 23585/2022 [Saikat Nandi & Ors. Vs. State of West Bengal & Ors]."

The Board submits that subsequently Recruitment Notification dated 29th of September, 2022 was followed by another Notification on the 21st of October, 2022 in continuation of the recruitment procedure. It is submitted that the Board is presently in the process of holding interviews of all candidates who are D.El.Ed qualified as on the date of holding interviews in December, 2022.

Next, in MAT 1761 of 2022, the appellants have challenged the Order dated 18th October, 2022 passed by the Hon'ble Single Bench in WPA 23210 of 2022. By the said impugned Order dated 18th of October, 2022, the Hon'ble Single Bench was pleased to deny any interim relief to the writ petitioners in WPA 23210 of 2022 being the appellants in MAT 1761 of 2022. The appellants claim to be similarly circumstanced as the appellants in MAT 1725 of 2022 and MAT 1837 of 2022 being the trained candidates as on the date of the Recruitment Notification dated 29th September, 2022.

The appellants claim to be prejudiced by the Order dated 18th of October, 2022 which extends the benefit of participation to candidates who did not possess the training qualification as on the date of publication of the Recruitment Notification dated 29th September, 2022. The appellants in MAT 1761 of 2022 are aggrieved by that part of the Recruitment Notification dated 29th

September, 2022 which allows participation in favour of non-trained candidates *vide* Clause 3(b) (*supra*), in respect of which interim relief has been denied by the Hon'ble Single Bench.

Having heard the parties and considering the materials placed, this Court is of the clear view that the Board cannot travel beyond its own Recruitment Rules. *Apropos* the above discussion, the 2016 Recruitment Rules as amended by the Notification dated 22nd December, 2020 (*supra*) unambiguously specifies the eligibility qualification required as on the date of the advertisement. The nature of such qualification is also specified by the NCTE Notification dated 23rd August, 2010.

This Court further notices that the law is settled on the point, which stands also discussed above, that the eligibility qualifications must be possessed by any candidate on the date of the Recruitment Notification. It is undisputed that the private Respondents in MAT 1725 of 2022 and MAT 1837 of 2022 acquired the minimum eligibility condition of D.El.Ed on 29th November, 2022, i.e. much after the publication of the Recruitment Notification on 29th September, 2022. In view of such position the Board could not have created room for the Private Respondents/the Writ Petitioners to apply without possessing the eligibility qualification as on the date of the advertisement.

This Court also finds the argument of the Board in its affidavit (*supra*) that the Notification dated the 29th of September, 2022 is not the Recruitment Notification inasmuch as it did not contain the number of vacancies to be filled up, to be fallacious.

This Court finds the argument of the Board to be equally fallacious that the Notification dated 29th September, 2022 was a preparatory exercise to the actual Recruitment Notification dated 21st October, 2022 which carried the number of vacancies to be filled up.

The above arguments of the Board are self-defeating inasmuch as this Court finds that the Board always intended to act upon the Notification dated 29th September, 2022 which carried the eligibility for the writ petitioners who were not D.El.Ed qualified to apply. The argument of the Board cannot be also sustained since, even as on 21st October, 2022 described by the Board as the *proper* Recruitment Notification, the writ petitioners were not D.El.Ed qualified candidates.

Accordingly, the appeals succeed.

The Orders impugned of the Hon'ble Single Bench stand set aside.

Clause 3(b) of the Recruitment Notification dated 29th September, 2022 followed by the further Notification dated 21st October, 2022 to the extent of permitting candidates who did not have the minimum training

qualification on the date of the Notification dated 29th September, 2022 to apply stands quashed.

MAT 1725 of 2022 with **IA No. CAN 1 of 2022** with **IA No. CAN 2 of 2022** and **MAT 1761 of 2022** with **IA No. CAN 1 of 2022** and **MAT 1837 of 2022** with **IA No. CAN 1 of 2022** with **IA No. CAN 2 of 2022** stand accordingly **disposed of**.

Since affidavits are not invited, all allegations to the contrary stand denied and disputed.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)