

11.04.2023

**FMA 1441 of 2022
With
CAN 1 of 2022**

**Swarnali Maiti Bhunia & Ors.
-Vs-
State of West Bengal & Ors.**

Mr. Tushar Sinha Mahapatra
Mr. Pranab Kr. Das

... for the appellants

Mr. Swapan Kr. Datta
Ms. Sujata Mukherjee

... for the Respondents

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

The appeal is directed against the Judgment and Final Order dated 8.09.2022, in the writ petition being WPA 13924 of 2021.

The appellants were the writ petitioners before the Hon'ble Single Bench. The appellants claims to have obtained training certificates from the institutes recognised by the West Bengal Board of Primary Education (for short, the Board). The appellants claim to be entitled to additional marks on the basis of their training qualifications. Since such institutes were approved by the Board, pursuant to the adjudication by the Hon'ble Apex Court, the appellants/the writ petitioners approached the Hon'ble Single Bench for conferment of the said additional marks.

Before the Hon'ble Single Bench an Order dated 24th

January, 2019 passed by the Hon'ble Apex Court in Civil Appeal No. 1071 of 2019 arising out of SLP (Civil) No. 29518 of 2016 in the case of *Amina Khatun & Ors. –vs- Birbhum District Primary School Council & Ors* was produced for consideration by the Hon'ble Single Bench.

The Hon'ble Supreme Court was pleased, *inter alia*, to hold as follows:

“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 recognised 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 Single Bench therefore came to the conclusion that the right to enforce a claim for weightage has been restricted by the Hon’ble Apex Court in *Amina Khatun (supra)* only to those candidates, who enforced their claim by and within the 31st of December, 2010.

The Hon’ble Single Bench further came to the conclusion that the cause-of-action of the appellants/the writ petitioners arose in 2009-2010, whereas this writ petition has been filed in 2021. Accordingly, the writ petition stood dismissed for delay and laches.

Having heard the parties and considering the materials placed, this Court finds no reason to take a view different from the view as expressed by the Hon’ble Single Bench.

Accordingly, **FMA 1441 of 2022** along with **CAN 1 of 2022** stands **dismissed**.

Since Affidavits are not invited, other allegations made are deemed not to have been admitted by the parties.

Copies of the writ petition filed today by the appellants

be retained with the record.

Affidavit-of-service filed today be also retained with the record.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)