

17.07.2023
BP
Court No. 17
Sl. 2

W.P.A. 29140 of 2022

Sayani Jana & Ors.
Vs.
The Union of India & Ors.

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Sampriti Saha
... for the petitioners

Mr. Saikat Banerjee
Mr. Ratul Biswas
Mr. Koushik Chowdhury
..for the Board

Mr. Anjan Chakraborty
..for the Union of India

This is a matter as has been submitted by the learned advocate for the petitioners which is similar to WPA 2062 of 2021. In that matter the following order was passed:-

“The petitioners’ grievance is that their candidatures have been cancelled for not having 50% in Graduation. But if it is taken up in totality that is for honours and pass course, they have got 50%.

In this respect they have relied upon one judgement delivered by me on 16.08.2022 in WPA 8773 of 2022. In this case, the petitioners also participated in 2020 selection process of primary teachers. Hence, this matter will also be guided by

the judgement delivered by me in WPA 8773 of 2022 which is reproduced below.

“The petitioner participated in 2020 selection process of Primary Teachers. After crossing all hurdles like verification of documents including educational qualification and the interview, he was empanelled and got appointment. Subsequently the Chairman of the District Primary School Council started further verification for preparing service book and releasing the monthly salary. At that stage the petitioner’s appointment was withdrawn and cancelled following one guideline issued by the West Bengal Board of Primary Education, which is an undated one (in my view a ghostly document as there is no date) where the Chairman of the DPSC followed paragraph 6 at page 5 of the report in the form of affidavit filed by the DPSC affirmed on 29th July, 2022.

The said guideline says that for the calculation of percentage of marks obtained in Honours subject only for Honours-graduates and marks obtained in Pass subjects shall be considered for Pass-graduates. The petitioner in his Honours

subject got less than 45% (the petitioner is a OBC-A candidate) but if his numbers in Pass subjects are taken together with Honours marks subject he has got more than 45%.

On this ground the appointment was cancelled and withdrawn. However, learned advocate for the NCTE submits that the NCTE's guideline is only 50% in graduation with training qualification.

Therefore, it is clear that the DPSC made a serious mistake in following the NCTE's guideline. By calculating the marks only of the Honours subjects is against the NCTE guidelines. The Board cannot lay down a further guideline which is against the NCTE guidelines. Therefore, the impugned order of withdrawal and cancellation dated 31st March, 2022 is set aside and quashed. The petitioner should be allowed to work in the school where he was recommended with his full back salary as he could not perform his duty for the illegality committed by the DPSC and the Board. He was not at fault for not performing his duties. All other benefits attached to his service for the period from

illegal termination to his joining again shall have to be given. The absence in service of the petitioner for the above withdrawal of and cancellation of appointment shall not be considered as break in service.

“With this observation and direction this writ application is allowed.”

The respondents concerned are directed to take appropriate steps after seeing the judgement so that no injustice is caused to the petitioners. The judgement relied upon in WPA 8773 of 2022 dated 16.08.2022 is kept on record.

The only difference between the judgement relied upon and the present judgement, however, in the said matter in WPA 8773 of 2022, the petitioners' candidatures were cancelled after they got appointment but in this present case, before getting appointment, the petitioners' candidatures have been cancelled. However, the principle which has been laid down in WPA 8773 of 2022 dated 16.08.2022 is to be followed.

The respondents are directed to call the petitioner in interview again after taking

note of the judgement as has been indicated above.”

The Board shall have the power to recommend the petitioners from any future vacancy if they do not have any vacancy in their hand now. This has to be done by four weeks from the date of communication of this order.

With the above observation and direction, this writ application is disposed of.

(Abhijit Gangopadhyay, J.)