

WPA 30911 of 2013

Shantanu Sarkar

vs.

The State of West Bengal & Ors.

14.07.23
Sl-04
Ct.12
(S.R.)

Mr. S.N. Biswas ... for the petitioner.

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee ... for the State.

Mr. Kanak Kiran Bandyopadhyay ... for the SSC.

In invocation of the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the writ petitioner has prayed for issue of writ of *Mandamus* commanding the respondents, particularly the respondent no.4 to allow and/or permit the petitioner to appear in the personality test by forming an interview board and not to act upon the interview held on 31.8. 2013 for filling up the post of Assistant Teacher in Bio-Science (pass) in Eastern Region of the State of the West Bengal.

Facts as unfurled in the writ petition are that West Bengal School Service Commission, Eastern Region issued an advertisement on 29.12.2011 inviting application from eligible and intending candidates for filling up the posts of Assistant Teachers in various subjects in Non-Govt. aided Schools under 12th Regional Level Selection Test, 2011. The writ petitioner who graduated from the University of Burdwan in Bio-technology responded to that advertisement and by

making an application offered his candidature for the post of Assistant teacher in Bio-Science(pass). The writ petitioner appeared in Teachers Eligibility Test (TET) Examination (written test) held on 29.7.2012 and emerged as a successful candidate and consequently, by issuing one letter *vide.* dated 8.8.2013, he was asked to appear in personality test scheduled to be held on 31.8.2013. As per the instructions contained in that letter dated 8.8.2013, he went to venue of personality test but was not allowed to appear in the personality test on the plea that as he graduated in Biotechnology, he was not eligible for the post of Assistant teacher in Bio-Science(pass). Grieved by, he has been constrained to approach the court.

Record reveals that pursuant to the direction of a coordinate bench of this court, writ petitioner filed one supplementary affidavit wherein writ petitioner mainly claimed that the University of Burdwan has changed the nomenclature of some course contents of Bio-technology as Zoology –I , II ,III , Botany –I ,II and III etc.

Though the respondents were asked to file exception to the writ petition and they were also asked to respond to supplementary affidavit, as filed by the petitioner but no such exception and/or response has been filed.

Mr. Biswas, learned advocate appearing for the petitioner argues the matter on merits and contentions canvassed by Mr. Biswas are that the petitioner is eligible for the post of Assistant Teacher in Bio-Science (pass) and

drawing the attention of this Court to the mark-sheet and to the certificate issued by one Registrar of the University of Burdwan, he strives to convince me that the papers being BT- 206, BT-208 and BT-302 are equivalent to the course contents of three years B.Sc. General Course of studies in Botany and the papers being BT-102, BT-103 & BT-305 are equivalent to the course contents of three-years of B.Sc. General Course of studies in Zoology. He argues that the petitioner is eligible for being appointed in the subject post and the respondent no.4 has illegally cancelled the candidature of the writ petitioner. He further argues that considering the fact that the writ petitioner made out a good arguable case, a Coordinate Bench of this Court has given a direction to the respondent no.4 to keep one post vacant for the writ petitioner till the disposal of the writ petition.

Mr. Bandyopadhyay, learned advocate appearing for the School Service Commission (in short, SSC) submits that a candidate who has graduated in Biotechnology is not eligible for being appointed in that post unless he had Zoology or Botany or Physiology as a combination subject which would be explicit from the advertisement itself. He submits that the candidatures of umpteen number of identically circumstanced candidates have been cancelled on this ground. He further submits that the panel prepared after completion of 12th Regional Level Section Test (AT) has already been expired and at this stage, there

is no scope to afford any opportunity to the petitioner to appear in the personality test.

Mr. Chattopadhyay, learned advocate appearing for the State submits that the SSC is the authority to recruit Assistant Teachers in Secondary and Higher Secondary Schools and SSC is very much entitled to prescribe the academic qualification for any particular post. He submits that the petitioner offered his candidature in the Regional Level Section Test and now system of holding Regional Level School Test has been discontinued and presently, the Assistant Teachers are being appointed through State Level Selection Test. He submits that the SSC has not committed any error in cancelling the candidature of the writ petitioner.

Heard the learned advocates. Perused the materials on record placed before me.

The notification *vide*. dated 21st December, 2011, which was duly published in the Kolkata Gazette on 23rd December, 2011 (Annexure-P/8, page -9 of supplementary affidavit), postulates that the West Bengal School Service Commission (Selection of Persons for Appointment to the post of Teachers) Rules, 2007 was amended by the legislature in exercise of the power conferred by the provisions of Section 17 of West Bengal School Service Commission Act, 1977 (in short, Act of 1977) and in serial no. 4 of Schedule-I, Note -2 was substituted and eligibility criterion for the post of

Assistant Teacher in Bio-Science was prescribed as follows :

“For the post of Assistant Teacher in Bio-Science, a candidate shall have at least any two of the following subjects, namely Zoology, Botany, and Physiology, as combination subjects or any one of the above mentioned subjects, namely Zoology, Botany and Physiology and any one of subjects, namely Microbiology, Anthropology and Biotechnology.”

Hence, notification mandates that the essential criterion for the post of Assistant Teachers in Bio-Science is as follows:

- i) a candidate shall have at least any two of the following subjects, namely, Zoology , Botany and Physiology , as combination subjects , or
- ii) any one of above mentioned subjects , namely, Zoology, Botany and Physiology and any one of the subjects , namely, Microbiology , Anthropology and Biotechnology.

So, it is clear as day that to be eligible for the post of Assistant Teacher in Bio-Science, one candidate who has graduated in Bio-technology must have one of the three subjects, namely, Zoology, Botany and Physiology as a combination subject.

Admittedly, the writ petitioner graduated in Biotechnology but no testimonial and/or document has been placed before me to show that the petitioner has at least any of the subjects, namely, Zoology, Botany, and

Physiology as a combination subject. Mr. Biswas laid immense emphasis on a certificate whereby the Registrar of the University of Burdwan has certified that some subjects of the course contents of Biotechnology are equivalent to course contents of three-years B.Sc. General Course of Studies in Botany and Zoology.

It is prerogative of the State to prescribe eligibility criteria for any post in its educational institution including non-govt. aided schools and the legislature lying in its domain and following the prescribed procedure has framed the rule prescribing academic qualification for the post of Assistant Teacher in Bio-Science. Judiciary cannot sit in appeal over such decision of the State.

The writ petitioner did not challenge the advertisement and the notification dated 21st December, 2011 rather he had offered his candidature agreeing to the terms and conditions of advertisement and participated in the selection process and now, he is estopped from challenging any of the terms and conditions contained in the advertisement and the notification. In the letter dated 8.8.2013, whereby the petitioner was asked to appear in the personality test, it was noted that candidature of the petitioner was liable to be rejected at any stage if it was found that petitioner was not eligible as per the terms of the advertisement and as per the Act of 1997 and rules framed thereunder, as amended up to that date.

The writ petitioner has heavily relied upon the certificate issued by the Registrar of the University of Burdwan and change of nomenclature of course contents by the University of Burdwan but unless the equivalence of the course contents of Biotechnology with the course contents of Zoology or Botany is recognized by the State and such equivalence is incorporated in the recruitment rules or in any Government Order existing on the date of or before initiation of selection process, compass of judicial review cannot be stretched to such extent to direct the respondents to accept such equivalence or to direct the respondents to relax the eligibility criterion and/or to direct the respondents to allow the writ petitioner appear in the personality test and to consider the case of his appointment in the subject post.

In the ultimate analysis, I perceive no merit in the writ petition. Consequently, the writ petition is dismissed, however, without any order as to costs. Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.)