

S/L 86
22.06.2023
Court. No. 29
Sourav

WPA 7969 of 2020

Biswajit Bose & Anr.
Vs.
The State of West Bengal & Ors.

Mr. K. M. Hossain

...for the petitioners.

Mr. Alak Kr. Ghosh
Mr. Swaapan Kr. Debnath

...for K.M.C.

Ms. Koyeli Bhattacharyya

...for W.B.M.S.C.

1. The petitioners, the respondent nos. 2 and 3/West Bengal Municipal Service Commission and its officials and respondent nos. 4 and 5/Kolkata Municipal Corporation and its officials are represented by their respective learned advocates.
2. The instant writ petition is now taken up for hearing.
3. At the very outset, Mr. Hossain, learned advocate for the petitioners submits before this Court that he is not pressing the instant writ petition for petitioner no. 1 (**Biswajit Bose**).
4. In view of such, the instant writ petition on behalf of the petitioner no. 1 (**Biswajit Bose**) stands hereby dismissed for non-prosecution.
5. On behalf of the petitioner no. 2, learned advocate for the writ petitioner at the very outset draws attention of this Court to the order dated August 16, 2022 as passed by a co-ordinate Bench of this Hon'ble Court in this case

whereby and whereunder direction was passed by the respondents to obtain instructions particulars of which are mentioned in the said order dated 16.08.2022. Drawing attention to Annexure P-2 of the writ petition i.e., the photocopy of the advertisement dated March 4, 2020 as published by respondent nos. 2 and 3, it is contended that in spite of having due qualification as per the said advertisement, the present petitioner no. 2 was not permitted to participate in the interview though he got more than cut off marks in his written examination and the ground of refusal to participate in the interview was that the present petitioner no. 2 was found to be having no requisite qualification as per the said advertisement dated March 4, 2020.

6. Drawing attention to Page 19 of the writ petition, it is contended that the present writ petitioner no. 2 has passed B.Ed. final year examination in 2018 and according to the writ petitioner no. 2, the writ petitioner no. 2 was prevented from participating in the interview on the ground that he does not possess the following qualification namely; *'graduation and two years diploma in elementary education by whatever name known'* as mentioned in Clause IV under the heading 'Essential' at the first page of the said advertisement. It is contended on behalf of the present writ petitioner no. 2 that the 'B.Ed. degree' is a higher qualification than 'two years diploma in elementary education' and that from the notification dated 28.06.2018 as issued by National Council for Teacher Education which has been annexed

with the mark P-3 to the instant writ petition, it would reveal that an amendment to that effect has taken place by the said notification and the same is reproduced hereinunder in verbatim:

“(1) In the said notification, in para 1 in sub-para (i), in clause (a) after the words and brackets “Graduation and two year Diploma in Elementary Education (by whatever name known), the following shall be inserted, namely:-

Or

“Graduation with at least 50% marks and Bachelor of Education (B.Ed.)”

7. On perusal of the aforementioned amendment, it thus reveals to this Court that a graduate with at least 50 per cent marks having B.Ed. degree comes under the purview of the eligible candidate as per the said advertisement dated March 4, 2020.
8. In course of her submission, Ms. Koyeli Bhattacharyya, learned advocate for the respondent nos. 2 and 3 submits before this Court that the present writ petitioner no. 2 has obtained 110 marks in his written examination as per the said advertisement while the cut off marks of the present writ petitioner no. 2's category was fixed at 105 for appearing before the interview board. Ms. Bhattacharyya, learned advocate for the respondent nos. 2 and 3 further submits that the present writ petitioner no. 2 was debarred from participating in the recruitment process, more specifically, in the interview process since the

present writ petitioner no. 2 did not possess two years diploma in elementary education.

9. In considered view of this Court, the reason for not allowing the present writ petitioner no. 2 in the interview process is highly unjustified in view of the notification dated June 28, 2018 as published by the aforementioned Council wherein by way of amendment a candidate having graduation with at least 50 per cent marks and Bachelor of Education is entitled to be selected for the post of primary teacher as per NCTE Rules.
10. In view of the discussions hereinabove, this Court is every reason to believe that the present writ petitioner no. 2 has been deprived of participating in the interview process without any cogent reason.
11. At this stage, learned advocate for the respondent nos. 4 and 5/Kolkata Municipal Corporation submits before this Court that the recruitment process as per the said advertisement is already over and, even if, a favourable direction is passed in favour of the present writ petitioner no. 2, it would be difficult for Kolkata Municipal Corporation to give appointment to the present writ petitioner no. 2.
12. In further considered view of this Court, the submission as made on behalf of the KMC has no force at all.
13. In view of the circumstances as discussed hereinabove, this Court while allowing the instant writ petition in respect of the writ petitioner no. 2 directs the respondent

nos. 2 and 3 to take interview of the present writ petitioner no. 2 (**Saptarshi Kar**) for the post of Teacher (English) as per advertisement no. 10 of 2020 dated March 4, 2020 within two months from the date of communication of this order and in the event, the present writ petitioner no. 2 is found to be successful in the interview, the respondent nos. 4 and 5 are hereby directed to recruit him against the present existing vacancy in any school under the control of the respondent no. 4 positively within two months from the date of communication of the result of interview by the respondent nos. 2 and 3 to respondent nos. 4 and 5 upon fulfilling requisite criteria for appointment for the said post by the respondent no. 2.

14. With the aforementioned observation, the instant writ petition being **WPA 7969 of 2020** is thus allowed and disposed of.
15. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.
16. All parties to act on the server copy of this order duly downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)