

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT No. 87 Of 2024

With

CAN 2 of 2024

The Secretary, West Bengal Board of Primary Education & Anr.

-Versus-

Soma Saha Biswas & Ors.

For the Appellant/Board : **Mr. Subir Sanyal,**
Mr. Saikat Banerjee,
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury.

For the State : **Mr. Bhasakar Prasad Vaisya,**
Mr. Ranjan Saha,

For the Respondent/Writ-Petitioner : **Mr. Saurav Mondal,**
Mr. Mouramjit Sarkar,
Mr. Rony Mondal.

Hearing concluded on : **19.06.2024**

Judgment on : **12.07.2024**

Prasenjit Biswas, J:-

1. The order dated 09.10.2023 passed by the Learned Single Bench of this Court in connection with WPA 12690 of 2023 is assailed in this appeal.
2. By passing the impugned order learned Single Judge directed the Deputy Secretary of the West Bengal Board of Primary Education to consider the respondent/writ petitioner as an OBC-B category candidate and declare her as a pass candidate in TET 2022 examination since her score is 84 which are sufficient for the reserved category candidates.
3. Being aggrieved and dissatisfied with the said impugned order passed by the learned Single Bench the present appellant has preferred this instant appeal.
4. In pursuance of a notification being no. 1572/WBBPE/2022 dated 29th September, 2022 for TET-2022 the respondent no. 1/writ petitioner filled in the form as a General Category candidate and obtained admit card with roll number. The private respondent applied for getting OBC certificate on 26th August, 2021 and the same was issued by the Sub-Divisional Officer, Ranaghat Sub-Division on 15th September, 2022 and she got the hard copy of the certificate on 29th November, 2023 which obviously after filling up the form of TET examination. As the petitioner did not get the OBC Certificate she had to put herself in the General Category instead of OBC-B category. The petitioner/private respondent participated in the written examination and

obtained 84 marks out of 150 marks. As per NCTE guidelines and notification dated 29.09.2022 the qualifying marks for the general category is 60% and OBC is 55% and accordingly this petitioner did not succeed in the said examination. The matter was taken to this Court at the behest of the private respondent/petitioner by filing a writ petition being no. WPA 12690 of 2023 which was disposed of by the learned Single Bench of this Court by passing the impugned order. The prayer of the writ petitioner was that she should be declared as a pass candidate in TET-2022 examination since her score is 84 which are sufficient for the reserved category candidates.

5. Mr. Subir Sanyal, learned Senior Counsel appearing on behalf of the appellant/board submits that the petitioner/private respondent is a B.Ed qualified candidate and not a D.EL.Ed qualified candidate. The notification dated 22nd September, 2022 issued by the West Bengal Board of Primary Education says that B.Ed qualified candidate was also eligible to apply and sit for TET-2022 examination but subsequently vide notification dated 7th November, 2022 in continuation of the notification dated 29th September, 2022 and in compliance with the order passed by this Court dated 18th October, 2022 in WPA No. 23202 of 2022 it was notified that the steps to be taken in terms of notification dated 29th September, 2022 and shall abide by the result of SLP(C) 20743 of 2021. Subsequently the Apex Court held that B.Ed qualification is not the required qualification for recruitment of primary teachers. It is submitted by the learned Counsel that in view of the direction

passed by the Hon'ble Apex Court the private respondent/writ petitioner is not eligible to sit for TET-2022 examination for not having D.EL.Ed qualification.

6. Mr. Sanyal further submits that the writ petitioner/respondent no. 1 applied for TET-2022 as a General Category candidate and she obtained her OBC-B certificate after submission of the application form and declaration of result. The candidate could not secure pass marks of 60% as a General Category candidate and therefore, on the basis of subsequent OBC-B caste certificate she cannot pray for declaration for TET qualified as OBC-B candidate having secured 55% marks.

7. Mr. Sanyal further assailed that the learned Single Bench of this Court erred in fact as well as law in passing the impugned order wherein he directed the authority to consider the respondent/writ petitioner as an OBC-B category candidate. So, as per submission of the learned Counsel that the respondent no. 1/ writ petitioner cannot subsequently ask for consideration of her candidature as an OBC-B category candidate on the basis of her OBC-B certificate issued subsequently on 29th November, 2022. Learned Counsel further submits that the learned Single Bench did not at all consider the judgment dated 11.08.2023 passed by the Hon'ble Apex Court in connection with SLP(C) 20743 of 2021 whereby Hon'ble Apex Court declared B.Ed qualification is not required qualification for recruitment to the post of primary teachers and as such B.Ed qualified candidates are not eligible to be considered for the primary teachers. As per submission of the learned Counsel the learned Single Bench hopelessly failed to consider the said aspect that in

view of the order passed by the Hon'ble Apex Court the present writ petitioner was not even entitled to sit for TET-2022 examination.

8. As per submission of the learned Counsel as the respondent/writ petitioner do not have due D.El.Ed. qualification she cannot be considered neither in the TET meant for recruitment of primary teachers nor can she be considered any recruitment process for primary teachers initiated by the present appellant/board. To buttress his submission learned Counsel appearing for the board referred a decision rendered by the Hon'ble Apex Court in case of **J & K Public Service Commission Vs. Israr Ahmad And Others** reported in **(2005) 12 SCC 498** wherein Hon'ble Apex Court held that after participating in a competitive examination as a General Category Candidate subsequently, the candidate cannot claim benefit of reservation on the ground that he could get the certificate only at a later stage and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim of reservation.

9. It is profitable to quote the observations of the Hon'ble Apex Court in the above referred case which interalia held that :-

"5. We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent

stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs."

10. So, the learned Counsel submits that the impugned order is not sustainable in view of the judgment rendered by the Hon'ble Apex Court as stated hereinabove and the said impugned order may be set aside outright.

11. Mr. Saurav Mondal, learned Advocate appearing on behalf of the respondent no. 1/writ petitioner submits that as the petitioner possesses with eligible qualification she applied in TET-2022 examination as per notification issued by the present appellant. The petitioner being an eligible candidate filled up the form as a General Category candidate and obtained admit card with roll number. It is further submitted on behalf of the private respondent that the petitioner applied for getting OBC certificate on 26.08.2021 before the appropriate authority and the same was issued on 15.09.2022 by the Sub-Divisional Officer, Ranaghat but unfortunately she obtained hard copy of the said certificate on 29.11.2023 which was after filling up the form as a General Candidate for the TET-2022 examination. As the OBC-B certificate was not in her possession she had to put herself in General Category instead of OBC-B

category. Learned Counsel further submitted that present petitioner participated in the written examination and secured 84 marks out of 150 marks. It is stated that due to fault and negligence of the respondent no. 4 the private respondent/petitioner obtained the OBC-B certificate after filling up the form for examination as a General Category and if the petitioner would have received the OBC certificate before filling up the examination form she would have secured her under the category of OBC.

12. Mr. Mondal, learned Counsel appearing on behalf of the private respondent/petitioner further submitted that under the category of OBC the petitioner is eligible for interview but since she had to categorize herself under the General Category instead of OBC-B category she is unable to sit for the subsequent interview held for Primary Teachers' appointment. Finding no other way she took the matter to this Court by filing a writ petition which was decided in her favour by passing the impugned order by a learned Single Bench of this Court.

13. Mr. Mondal, learned Counsel appearing on behalf of the respondent submitted that the learned Single Judge had rightly considered the present private respondent/writ petitioner as an OBC candidate and declared her TET passed. The contentions of the present appellant whether this petitioner holds a D.El.Ed degree was never assailed before the learned Single Judge at the time of hearing and the said contentions and the judgment passed by the Hon'ble Apex Court in connection with SLP (C) 20743 of 2021 is not at all relevant in respect of the writ petition filed by the petitioner. As per submission

of the learned Counsel the matter is strictly restricted on the contention to consider the respondent as an OBC candidate and declare her as TET-2022 passed candidate. As per submission of the learned Counsel that the present appeal is utterly misconceived and misrepresented and is not maintainable under the eye of law and there is no illegality or irregularity in the impugned order passed by the learned Single Bench. Admittedly the private respondent no. 1/petitioner filled up the form of TET-2022 examination as a General Category candidate and she participated in the said examination and secured 84 marks out of 150 marks. The respondent/writ petitioner applied for getting OBC certificate on 26th August, 2021 and he obtained the copy of the said certificate on 29th November, 2023 which obviously after filling up of the form of the TET examination. The qualifying marks as per NCTE guidelines and notification dated 29th November, 2022 for the general category is 60% and OBC is 55%. The petitioner could not secure pass marks of 60% as General Category candidate. She prayed in the writ application that she may be declared for TET qualified as OBC-B candidate.

14. Where applications are called for prescribing a particular date as the last date for filling the application the eligibility of the candidates shall have to be charged with reference to that date and that date alone. In **J & K Public Service Commission (supra)** the Hon'ble Apex Court observed when a candidate participated in an examination as a General Category candidate and at the subsequent stage of the examination he cannot avail of reservation on the ground that he was unsuccessful in getting the required certificate and he

obtained only at a later stage. It has further been observed by the Apex Court that the nature and status of the candidates who was applying for the selection could only be treated alike and once a candidate chosen to opt for category to which he is entitled he cannot later change the status and make fresh claim. There can be no dispute with the proposition that the candidate must possess requisite certificate/qualification on the cutoff date as indicated in the advertisement notice inviting application. If the applicant possesses any qualification such as member of being a scheduled cast or scheduled tribe category or resident of a backward area which is already possessed must be demonstrate by producing the relevant document with the application.

15. In the present case it is admitted position that the writ petitioner filled up the form for examination as a General Category and the OBC-B category certificate was not filed by her along with her application before the cutoff date. Could her candidature be considered in OBC-B category despite of her non-filing of category certificate before the cutoff date if the case of the present petitioner is to be charged in the light of the observations made by the Hon'ble Apex Court? In case of **J & K Public Service Commission** the answer would be a negative. At the time of filling up the form for examination the private respondent did not produce the certificate claiming reservation nor did she indicate in the application that she belonged to that category. As such the submission advanced by the learned Counsel on behalf of the private respondent/writ petitioner cannot be accepted as the petitioner has not applied for the selection as a candidate entitled to get reservation. The

petitioner did not produce any OBC-B certificate along with her application and she participated the examination as a General Category. The petitioner became unsuccessful in the examination in the General Category and so at the subsequent stage of the examination she cannot avail the reservation on the ground that she was unsuccessful in getting the required certificate which she got only at a later stage. The nature and status of the candidate who was applying for selection could only be treated alike and once a candidate chosen to opt for the category which he/she entitled, he/she cannot later change status and make fresh claim. The Hon'ble Apex Court in case of **J & K Public Service Commission** did not find the respondent in that case entitled to the benefit of reservation and one of the reasons was that he had not claimed the reservation within the cutoff date though he had acquired such qualification later. The present case is fully covered by the ratio of **J & K Public Service Commission (supra)**.

16. In the present case the private respondent/petitioner has not filed the category of certificate before the cutoff date which means that she had not claimed reservation which could be by filing the category of certificate. Production of certificate by the writ petitioner at the later stage could not make her entitled to seek reservation. Therefore, on the said date she could not be considered eligible to apply under the OBC-B category especially when the advertisement notice issued by the appellant/board stipulated that last date for receipt of applications shall for all purpose be cutoff date for determining the eligibility.

17. In view of above the learned Single Bench is not correct in holding that the private respondent/petitioner can be considered an OBC-B candidate and she should be declared as a pass candidate in TET-2022 examination. Therefore, there is illegality and material irregularity in the impugned order dated 09.10.2023 passed by the learned Single Bench in connection with WPA 12690 of 2023 and as such it is liable to be set aside.

18. The impugned order passed by the learned Single Bench dated 09.10.2023 in connection with WPA 12690 of 2023 is hereby set aside. The appeal being no. MAT 87 of 2024 is hereby allowed and disposed of.

19. Connected application if any are hereby also disposed of accordingly.

20. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)