

04.03.2024.
Court No. 13
Item No. 39
ap

W.P.A. No. 5967 of 2024

**Arunima Mallick & Ors.
Versus
The State of West Bengal & Ors.**

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Sampriiti Saha,
Ms. Mohona Das.

...For the petitioners.

Mr. Subir Sanyal,
Mr. Saikat Banerjee,
Mr. Ratul Biswas,
Mr. Kaushik Choudhury.

...For the WBBPE.

1. The petitioners were pursuing the D.El.Ed. Course in 2020-2022 at the time when the Notification for recruitment of Assistant Teachers dated 29th September, 2022 was published.
2. By a decision of the Division Bench of this Court dated 11th April, 2023 passed, inter alia, in M.A.T. No. 1725 of 2022 (Shrabani Nayek & Ors. – Vs. – Soumen Paul & Ors.) heard along with two other appeals (Bamapada Pan & Ors. – Vs. – The State of West Bengal & Ors.) and (Sadek Biswas & Ors. – Vs. – Souman Paul & Ors.), the candidates undergoing D.El.Ed. Course 2020-2022 as on the date of Notification for recruitment i.e. 29th September, 2022 were held ineligible to participate in the recruitment process.

3. Some of the writ petitioners herein thereafter moved a writ petition and subsequently were parties in M.A.T. No. 804 of 2023 (The West Bengal Board of Primary Education & Ors. – Vs. – Mrinmoy Sarkar & Ors.) whereby they were permitted to switch over their Primary Qualifications from “in course D.El.Ed.” to the B.Ed. qualification they already possessed. The switch over was permitted pursuant to a Notification issued by the West Bengal Board of Primary Education dated 5th June, 2023.

4. In the meantime, the order of the Division Bench dated 11th April, 2023 (supra) was carried in appeal to the Hon’ble Supreme Court of India by S.L.P. (Civil) No. 12660 of 2023 (Soumen Paul & Ors. – Vs. – Shrabani Nayek & Ors.).

5. By an order dated 29th January, 2024, the West Bengal Board of Primary Education was directed to allow the candidates like the petitioners, who are in course D.El.Ed. candidates for the year 2020-2022 to also participate in the recruitment process.

6. In the meantime, the Hon’ble Supreme Court of India had delivered the judgment in the case of Devesh Sharma –Vs. – Union of India & Ors. reported in 2023 SCC OnLine (SC) 985 whereby it was declared that the B.Ed. qualification is not a requisite or recognizable for the purpose of being recruited as an Assistant Teacher in the Primary Level in the country. The petitioners

were caught between the devil and the deep sea. They now wish to take the benefit of the decision of the Hon'ble Supreme Court of India dated 29th January, 2024 (supra).

7. Mr. Subir Sanyal, learned Counsel for the West Bengal Board of Primary Education submits that the petitioners have tested their candidature as in course 2020-2022 D.El.Ed. and being disqualified by reason of the decision of a Division Bench dated 11th April, 2023 (supra). Thereafter they took the benefit of the Notification dated 5th June, 2023 to switch over to B. Ed. as their Primary Qualification. They should not now be allowed the status of in course D.El.Ed. 2020-2022 and this would amount to approbation and reprobation and legalise opportunism.

8. Apart from this, it is argued that the Board is being constantly given divergent views by Single and Division Benches of this Court and the Hon'ble Supreme Court of India with regard to eligibility of the B.Ed. qualification, and in course D.El.Ed. 2020-2022 candidates.

9. There is urgent need for completing the recruitment process. The constant change in the validating of eligibility criteria by Courts is causing a serious impediment to the recruitment process. Teachers are desperately needed in the Primary Section in Schools across the State.

10. While this Court appreciates the agony of the West Bengal Board of Primary Education, one cannot ignore the anxiety of candidates like the petitioners.

11. If the West Bengal Board of Primary Education is facing views from different courts and consequently being put into the confusion, the petitioners and other similarly situated candidates are equally being chased from pillar to post. The validity of the qualifications they possess tantamount to be like a flickering light. They are not certain as to which of their qualifications is valid. All they want is to participate in the process of recruitment. Success or otherwise in the process, is a completely different matter.

12. In the backdrop of the above, given the fact that the direction for the Board as well as the fate of the candidates appear to be changing constantly with one decision after the other coming from Supreme Court of India and this High Court, it would be in the interest of justice that the petitioners be allowed to participate in the selection process commenced by the Board on 29th September, 2022 on the strength of the order of the Hon'ble Supreme Court of India dated 29th January, 2024.

13. The petitioners shall be accommodated in the interview process within 7th March, 2024 or any extended date that the Board may choose in light of the new zoo odd candidates for interview.

14. Needless to mention the right and interest of the petitioners for any appointment or participation in the recruitment process shall abide by the final decision of the Hon'ble Supreme Court of India in S.L.P. (Civil) No. 12660 of 2023.

15. With the aforesaid observations, the instant writ petition shall stand disposed of.

16. There will be no order as to costs.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)