

01.03.2024
Item Nos. 10-11
Supple. 1
Crt.No.22
b.r.

WPA 5824 of 2024

Jashimuddin Mondal & Ors.
-vs-
The State of West Bengal & Ors.
With
WPA 6062 of 2024
Santu Maity & Ors.
vs-
The State of West Bengal & Ors.
With
WPA 6088 of 2024
Sukchand Shit & Ors.
vs-
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Shamim Ahmmed
Mr. Arka Maiti
Mr. Dibyendu Chatterjee
Mr. Pritam Majumdar
Mr. Rahul Deb Goenka
Mr. Mainak Singha Barma
Ms. Satabdi Das
..... for the petitioners in WPA 6088 of 2024.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Shamim Ahmmed
Mr. Arka Maiti
Ms. Saloni Bhattacharjee
Ms. Gulsanwara Pervin
Mr. Arka Ranjan Bhattacharyya
Md. Nazimuddin Siddique
Mr. Enamul Islam
... for the petitioners in WPA 5824 of
2024 and WPA 6062 of 2024.

Mr. Kamalesh Bhattacharya
Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
.... For the Madrasah Service
Commission.

Mr. Bhaskar Prasad Vaisya, Ld. AGP
Mr. Ranjan Saha
... for the State-Resp. no.1.

Mr. Sk. Md. Galib, Sr. Govt. Adv.
Ms. Sujata Mukherjee
.. for the State in WPA 6088 of 2024.

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
... for the State in WPA 6062 of 2024.

On the plea of the extreme urgency pleaded on behalf of the petitioners that the writ petitions will become infructuous after March 3, 2024 and since the regular Bench is not available and the determination of the regular Bench has been assigned to this Court, unless these writ petitions are taken up for consideration today, the right of the petitioners will be jeopardised irreparably, these writ petitions are taken up by this Court for consideration,

In Re: WPA 6088 of 2024

Today morning at the first sitting of the Court, Mr. Dibyendu Chatterjee, learned counsel appearing for the petitioner has mentioned with a plea that this writ petition shall become infructuous if it is not taken up for consideration by this Court where the determination of the regular Bench has been assigned for today. This writ petition was running in the list of regular Bench (Biswajit Basu, J.) as serial no.4 in the daily cause list,

as this Court has been informed by the learned counsel for the petitioners.

Considering the plea of urgency and considering that the issue involved in this writ petition are identical with those of the rest two and such position being confirmed by Mr. Dibyendu Chatterjee, learned counsel for the petitioners, a Supplementary List has been published to include this writ petition in the cause list of this Court today.

In all the three writ petitions, the learned counsel appearing for the petitions have confirmed that the issues involved therein are same and if the writ petition being **WPA 5824 of 2024** is taken up for consideration, the decision shall govern the other two writ petitions.

Accordingly, this Court proceeds to consider **WPA 5824 of 2024**.

Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel, appears for the petitioners in **WPA 5824 of 2024**.

Learned Senior Counsel submits that the **West Bengal Madrasah Service Commission** (for short, the said Commission) had published the information guidelines for the **7th State Level Selection Test (Assistant Teacher), 2023** (for short, the 7th SLST) dated 4th May, 2023. The publication was made in the

official web site of the Commission, **annexure p-2 at page 19** to the writ petition.

Referring to **Clause-3(a) at page 20** to the writ petition, Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel submits that on the basis of the said eligibility criteria, the petitioners duly applied through online application. All the applications submitted by the petitioners are identical in nature. He refers to the application of the first petitioner, **annexure p-3 at page-22** to the writ petition and submits that all the required information mentioned therein were duly filled up by the first petitioner. The petitioners are **Honours Graduate**. In the case of the first petitioner who being an Honours graduate in **History** was an aspirant for the post of Assistant Teacher for the subject **History**. The first petitioner disclosed all his required information including the marks in the **Honours** papers through the said online application. He mentioned full **marks as 800, obtained marks as 428 and percentage of marks as 53.50** along with the marks obtained in B.Ed.Examination. Then he refers to a rejection list published by the Commission, **annexure p-6 at page-37** to the writ petition which runs till **page 43** to the writ petition. At **page-42** to the writ petition against **Sl. No. 8042**, he drew attention of this Court where the name of the first petitioner appeared and his online

application was rejected on the plea with the remark **“total marks of graduation not given”**.

Learned Senior Counsel for the petitioners referring to the eligibility criteria from the information guidelines at **page-20** to the writ petition submits that, the expression **“graduate”** itself creates two separate classes, the first being **Honours Graduate** and the second being **Pass Graduate**. He submits that since the first petitioner is an honours graduate the eligibility criteria denotes that his marks in respect of **only honours papers** are required to be considered and as such he filled up the online application form **at page 22** to the writ petition in the like manner. Mr. Bhattacharyya submits that the Honours Graduation course is a three years complete course whereas the pass graduation course consists of two years graduation. He submits that the academic credibility of an **Honours Graduate** has to be understood and always shall be on a higher pedestal than a pass graduate candidate. For the betterment and efficacious running of the education system when an Assistant Teacher is sought to be appointed for the subject **History** it is desirable always that a candidate Honours in history shall always have to be treated as a separate class and accordingly his numbers secured in the Honours papers

are to be taken into consideration at the threshold when the online applications are screened.

Mr. Bhattacharyya, learned Senior Counsel referring to the certificates of the first petitioner at **pages 28 and 34** to the petition, submits that the merit of the first petitioner being an honours graduate during his graduation level was always assessed on the basis of his Honours subject. Accordingly, he submits that the online application at **page 22** to the writ petition disclosing his graduation marks were correct and he has no fault on it, hence the rejection of his candidature on the plea as narrated above and shown at **page 42** to the writ petition is totally wrong, arbitrary, illegal and contrary to the true and proper perspective and interpretation of the expression **“graduation”** as expressed in the eligibility criteria mentioned in the information guidelines. Since the online application stands rejected, the petitioner no.1 cannot move any further in the selection process and his aspiring teaching career is shut at the threshold.

Mr. Bhattacharyya, learned Senior Counsel further submits that this Court in exercise of its writ jurisdiction shall also interpret the expression **“graduate”** in a manner so that the Honours graduate applicants with their standing on a higher pedestal of

the graduation can be appreciated properly on their merits.

Mr. Kamalesh Bhattacharyya, learned counsel appearing for the Commission being ably assisted by Mr. Prosenjit Mukherjee, learned counsel referring to **the National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited at Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014 (for short, 2014 Regulation)** submits that this eligibility criteria mentioned in the said information guidelines was fixed in sync with the provision laid down in the first schedule under sub-regulation (2) to the Regulation 4 of the said 2014 Regulation. Clause-4 of the said first schedule under the said 2014 regulation mentions, inter alia, the qualification of a teacher for secondary/high school (for clauses IX-X) shall be graduate/post graduate from recognised university with at least 50 per cent marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (for B.Ed.) from a National Council for Teacher Education Recognised Institution. There was no bifurcation in the definition of the expression **“Graduate”**.

Mr. Bhattacharyya submits that similarly there has been no bifurcation in the expression “**Graduate**” used in the eligibility criteria under the said information guidelines. He submits that if an aspirant is an Honours graduate for the said 7th SLST, following the eligibility criteria as defined, he has to give the total marks of his Honours graduation course and not of honours papers only. As an example he submits that for the Calcutta University full/total marks for honours graduation against which a honours graduate student is assessed is **1350**. The candidate being an honours graduate, then shall have to disclose the total marks as **1350** and the total marks obtained by such candidate against **1350** and then the calculation of percentage. Similarly, a pass graduate candidate from Calcutta University is assessed against a total marks of **900**. So a pass graduate candidate shall have to disclose the total marks as 900 and the total marks obtained by such candidate against it and the calculation of percentage.

Mr. Kamallesh Bhattacharyya, learned counsel for the Commission submits that in the instant case, the petitioners did not disclose the total marks for their honours graduation course and the total marks obtained against it by them and the calculation of percentage. The petitioners have only disclosed the

marks and its allied calculation on the basis of their **honours papers only.**

Referring to a notice dated **August 26, 2023**, which is **annexure p-3 at page 31 to WPA 6088 of 2024**, Mr. Bhattacharyya submits that an opportunity was granted to all the applicants for correction of their online applications during the period **June 27, 2023** and **July 4, 2023** but these petitioners did not opt for such opportunity to correct their online applications.

Mr. Bhattacharyya then submits that the recruitment process in respect of the 7th SLST shall commence on **March 3, 2024** which involves the selection amongst about **1,74,000** aspirants. Mr. Bhattacharyya further submits that the scope of correction was granted to the applicants way back on **June 26, 2023** as referred to above. Hence, two days before the commencement of the recruitment process if any order is granted in favour of the petitioners who had failed to apply following the eligibility criteria, will severely prejudice the selection process. Referring to a decision of a co-ordinate Bench dated **June 12, 2023**, ***In the matter of Suddam Hussain & Ors. -vs- State of West Bengal & Ors. rendered in WPA 13363 of 2023***, Mr. Bhattacharyya submits that it has already been held and decided by the co-ordinate Bench that graduate degree means Honours plus pass subjects.

Mr. Dibyendu Chatterjee, learned counsel appearing for the petitioner in **WPA 6088 of 2024** submits that this **rejection result was published on Februariary 26, 2024** in the evening. He further submits that the petitioners in strict adherence to the eligibility criteria laid down in the information guideline submitted the online applications at **page 21** to the writ petition. There was no fault on the part of the petitioners in disclosing the material particulars as would be evident from the certificate of the petitioners at **pages 44** onwards to the writ petition. The rejection is totally bad and illegal. He further submits that the correction notice dated June 26, 2023 did not specify the nature of corrections to be carried out by the candidates.

Mr. Dibyendu Chatterjee, learned counsel further submits that in so far third petitioner in his writ petition is concerned, his rejection was on the plea of multiple application as would be evident from **page 43** to his writ petition. He submits that the eligibility criteria does not prohibit such multiple applications.

Mr. Prosenjit Mukherjee, learned counsel for the Commission submits that MD. Atiar Rahman Baidya being the third petitioner in **WPA 6088 of 2024** applied for both categories, namely, **IX-X** and **XI-XII** classes. The Commission has issued admit card to participate in

the selection process for post graduate- **XI-XII** subject **Education (PG)** to him. In support of his contention Mr. Mukherjee has referred to Clause -12 from the information guidelines appearing at **page 19 to WPA 6088 of 2024**, which specifies that **a candidate can apply for one category in one subject only.**

Hence, Mr. Mukherjee submits that there is no merit in the case of Md. Atiar Rahman Baidya, the third petitioner in **WPA 6088 of 2024.**

After considering the rival contentions of the parties and upon perusal of the materials of the record, at the threshold it appears to this Court that, the eligibility criteria formulated in the information guidelines for the 7th SLST is in sync with Clause – 4 to the First Schedule of the said 2014 Regulation.

The issue being common in all these writ petitions, depends on the meaning of the expression **“Graduate”** as used in the eligibility criteria being **Clause – 3(a)** at **page 20** to the Information Guidelines for the 7th SLST. The only expression used is “Graduate” without any further or other qualifying terms. In the Graduation system prevailing in the educational field is divided into two categories, **Pass** and **Honours.** The expression used “Graduate” in the eligibility criteria, since is not bifurcated, in the considered view of this Court, is to be considered and

taken for understanding as a whole. Therefore, both Pass and Honours Graduate categories are eligible to apply for the said 7th SLST selection process. The natural corollary will be when an Honours Graduate applies, the candidate must disclose his/her Graduation marks taking into of both Pass and Honours subjects and the aggregate and/or total marks shall have to be disclosed accordingly. For example taking the queue from submissions made by Mr. Kamallesh Bhattacharyya, learned counsel for the Commission, an Honours Graduate who is graduated from Calcutta University must disclose his full marks as 1350 and out of such 1350, the total marks which the candidate has obtained must be disclosed and on the basis thereof the percentage of marks to be calculated and disclosed. Similarly in case of a pass graduate candidate from Calcutta University, the candidate must disclose the full marks as 900 and the total marks obtained by the candidate out of that 900 and thereafter the calculation of percentage shall have to be disclosed.

This contention of the Commission, in the considered view of this Court, is correct in the fact situation of this case while interpreting the expression **“Graduate”** used in the eligibility criteria.

The eligibility criteria as defined in the information guidelines is the rule of the game for

participating in the recruitment process of the **7th SLST**. Such rule of the game cannot be changed or altered by anybody including the Court in exercise of its high prerogative writ jurisdiction. This Court in exercise of its high prerogative writ jurisdiction may interfere with such rule of the game, if it is found to be *ex facie* illegal or a result of *mala fide* or tainted with arbitrariness. This is not the case here.

Therefore, when the expression “**graduate**” has to be taken into consideration as defined in the information guidelines, it must be taken into consideration that for an honours graduate candidate his/her performance shall be considered on the aggregate of total marks comprising of honours papers and pass papers whereas for a pass graduate candidate the total marks shall have to be on the basis of the pass papers only. Accordingly, the candidates shall have to give declaration by filling up the online application form.

In so far as Md. Atiar Rahman Baidya is concerned being the third petitioner in **WPA 6088 of 2024, Clause 12** of the information guideline is absolutely clear that **one candidate can apply in one subject that is either in the category of IX-X or for XI-XII and not for both**. By applying for both the categories, Md. Atiar Rahman Baidya has violated the

fundamental criteria as laid down in **Clause 12** to the information guidelines. The copy of the admit card issued to Md. Atiar Rahman Baidya to participate in the **XI-XII** category submitted by Mr. Prosenjit Mukherjee in Court today, is taken on record. A copy has also been submitted to Mr. Dibyendu Chatterjee, learned counsel appearing for Md. Atiar Rahman Baidya in **WPA 6088 of 2024**

In view of the forgoing reasons and discussions and considering the fact that the selection process shall commence on and from March 3, 2024, which would involve about 1,74,000 aspiring candidates for the 7th SLST, there is no reason for keeping these writ petitions pending any further.

In view of the forgoing reasons and discussions, this Court is of the firm view that there is no merit in these writ petitions. The decision for rejection of candidatures of the petitioners are not interfered with.

Accordingly, all these writ petitions, **WPA 5824 of 2024, WPA 6062 of 2024** and **WPA 6088 of 2024** stand **dismissed**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)