

02.03.2024
Item Nos.1&2
Court No.11
Avijit Mitra/rrc

MAT 447 of 2024
with
IA No. CAN 1 of 2024

Jashimuddin Mondal & Ors.

- Versus -

The State of West Bengal & Ors.

with

MAT 448 of 2024

Santu Maity & Ors.

- Versus -

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Mr. Samim Ahammed,
Mr. Arka Maity,
Ms. Solani Bhattacharyya,
Ms. Gulsanwara Pervin,
Ms. Ambiya Khatoon,
Mr. Najimuddin Siddiqui
...for the appellants
Mr. Bhaskar Prasad Vaisya,
Mr. Ranjan Saha
...for the State respondents
Mr. Kamalesh Bhattacharya,
Mr. Prosenjit Mukherjee,
Ms. Madhurima Sarkar
...for the Madrasah Commission

The present appeals being MAT 447 of 2024 and
MAT 448 of 2024 have been preferred challenging the
order dated 1st March, 2013 passed by the learned single
Judge in the writ petitions being WPA 5824 of 2024 and

WPA 6062 of 2024. By the said order the learned single Judge refused to interfere with the decision of the West Bengal Madrasah Service Commission (hereinafter referred to as the Commission) towards rejection of the candidature of the writ petitioners/appellants herein.

Shorn of unnecessary details, the facts are that the said Commission notified the 7th State Level Selection Test (Assistant Teacher), 2023 (hereinafter referred to as the 7th SLST) to recruit Assistant Teachers to classes IX-X and classes XI and XII in non-government aided madrasah. Pursuant to the said notification, the appellants applied for participation in the said selection process upon uploading necessary documents within the time frame as specified. On 26th June, 2023 a notice was published by the Secretary of the said Commission intimating *inter alia* that all candidates would be given an opportunity for correction of their applications from 6.00 p.m. onwards on and from 27th June, 2023 to 4th July, 2023. Subsequent thereto, by a notice dated 24th February, 2024, the date for main examination was declared to be on 3rd March, 2024. In the midst thereof, on 26th February, 2024 a portal was opened from where admit cards could be downloaded and a list of 12544 candidates was published in the web-portal, whose candidature had been rejected and the reason for rejection of the appellants' candidature was stated to be '*total marks of graduation not given*'. Aggrieved by the said

decision, the appellants preferred the writ petitions which were dismissed by the order impugned in the present appeals.

Mr. Bhattacharyya, learned senior advocate appearing for the appellants submits that a perusal of the eligibility condition towards selection of graduate teachers for classes IX and X was specified to be as follows :

- i) *Graduate or Post Graduate with 50% marks with B.Ed or Graduate or Post Graduate with 45% marks with B.Ed before 29.07.2011.*
- ii) *Studied 300 marks in concerned subject.*

All the appellants had passed the Honours Graduate course securing more than 50% marks. A composite reading of the eligibility condition would reveal that a candidate having specialization in the concerned subject and having studied 300 marks in the said subject would be considered for appointment. In consonance with such eligibility criteria the appellants uploaded the documents disclosing the marks of the papers in the Honours level. In view thereof, the respondents could not have rejected the candidature of the appellants on the basis of a purported reasoning that '*total marks of Graduation not given*'.

According to him, a Pass graduate who does not get Honours, upon passing the final examination is declared as a Pass Graduate and his aggregate marks is calculated on the basis of marks obtained in the Pass subjects. However, when a candidate upon passing his Pass

subjects, is allowed to pursue the Honours subjects and after he emerges to be successful in the said Honours subjects, the said candidate is declared as an Honours graduate and his aggregate marks is calculated on the basis of marks obtained in the Honours subjects.

Drawing our attention to the notice dated 26th June, 2023, he contends that the candidates were not pointed out the corrections that were necessary and such notices were even not individually addressed to the candidates. In fact, there was no error on the part of the appellants towards disclosure of their qualifications and as such there was no error in their applications. It is only at the time of declaration of the date of the examination the list of the applications cancelled was uploaded and the same came to the knowledge of the appellants only on 24th February, 2024 and immediately thereafter they approached this Court.

According to him, the learned single Judge erred in law in observing that when an Honours Graduate applies, he/she must disclose his/her graduation marks in both Pass and Honours subjects and that the aggregate and/or total marks shall be the total marks the candidate obtained in his entire course including the marks of Honours and Pass subjects. No such requirement, has been specified in the notification.

He contends that the principles of interpretation are to be applied on the basis of the facts of the case and

the nature of the law. The eligibility conditions specified in the notification should receive an interpretation that would not lead to any absurdity. By debarring the candidates, who have earned their Honours Graduate certificates with an aggregate of 50% marks, the Commission had acted arbitrarily causing grave injustice to the eligible candidates. In support of such contention reliance has been placed upon a judgment delivered in the case of *New Delhi Municipal Council Vs. Minosha India Limited* reported in (2022) 8 SCC 384.

Per contra, Mr. Kamalesh Bhattacharya, learned advocate appearing for the Commission submits that the examination has been fixed on 3rd March, 2024 at 10.00 a.m. inviting more than 1,74,000 candidates from all over the State of West Bengal. About 12,000 candidates, who did not disclose the marks they obtained in the subjects in Pass course have already been debarred from participating in the examination fixed tomorrow. Candidates claiming *inter alia* that there was no requirement towards disclosure of the marks of the subjects in the Pass course approached this Court earlier in the month of June, 2023. Their claim was considered and rejected by an order dated 12th June, 2023 passed in a writ petition being WPA 13363 of 2023 taking note of the specific argument as advanced on behalf of the learned advocates appearing for the said Commission and the NCTE stating that the requirement for participation

was that the candidates must secure ‘50% in graduation on aggregate marks of Honours + Pass subjects’. Upon contested hearing the said writ petition was dismissed by order dated 12th June, 2023 observing *inter alia* that

‘The eligibility criteria for the 7th SLST (AT), 2023 cannot be faulted as the Commission has fixed the said criteria as per the guidelines of the NCTE, the petitioners are admittedly lacking in such criteria, as such, are not entitled to participate in the said selection test’.

After the said writ petition was dismissed, the said Commission immediately published a notice on 26th June, 2023 granting further opportunity to all the candidates to correct their applications within the period from 27th June, 2023 to 4th July, 2023. In spite of such opportunity given the appellants they did not upload the marks that they have obtained in the subjects in the Pass course. No documents in support of the marks obtained by the appellants in the Pass course were uploaded. Such fact would be explicit from the averments made in paragraph 8 of the writ petition itself. In fact, the appellants did not secure 50% marks in aggregate taking into consideration the subjects in the Pass course and the Honours course.

He argues that the eligibility criteria specified in the notification was that the candidate must be ‘a Graduate or Post Graduate with 50% marks’. 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 appellants also did not submit any representation seeking any clarification even after a

window was opened granting opportunity to all to correct their applications. Having chosen not to correct their applications, the appellants cannot be granted the relief as prayed for after the process to hold the examination tomorrow stands completed. Any interference at this stage would stand out to be an instance of misplaced sympathy moreso when the candidature of about 12,000 candidates, similarly situated, had been rejected.

We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

The eligibility criterion for selection of Graduate teachers for classes IX and X was that he/she should be a Graduate or Post Graduate with 50%. The said eligibility criterion had been earmarked in consonance with the NCTE guidelines. A notification was issued way back on 23rd June, 2023 granting an opportunity to all the candidates to correct their applications. Prior thereto, the writ petition preferred by candidates similarly situated with the appellants claiming inter alia that there was no requirement towards disclosure of marks of the subjects in Pass course, was dismissed on 12th June, 2023. No document has also been produced before us to show that even after closure of the period mentioned in the notification dated 23rd June, 2023, the appellants submitted any representation to the Commission calling for any explanation as regards requirement of marks in

the subjects in Pass course. The candidature of about 12000 candidates, similarly situated with the appellants, have already been rejected by the Commission. In the said sequence of facts, the argument that the appellants were totally ignorant about the requirement to upload documents disclosing the marks obtained by them in the subjects in the Pass course till 24th February, 2024, when the list of ineligible candidates was published, is not acceptable to us. There is no absurdity in the eligibility criteria, as specified in the notification, since around 2,00,000 candidates participated in the selection process and about 1,75,000 candidates have been called for the examination.

For the reasons discussed above, we are not inclined to interfere with the order impugned in the present appeals.

Accordingly, the appeals and the connected applications are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)