

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice (Shampa Dutt (Paul), J.)

**MAT 817 of 2024
With
CAN 1 of 2024, CAN 2 of 2024**

***Pintu Mallick & ors.
Vs.
The State of West Bengal & ors.***

For the appellants	:	Mr. Ekramul Bari Mr. Debasish Banerjee Mr. Amit Kumar Chaturvedi Mr. Sk. Imtiyazuddin
For the State	:	Mr. Bhaskar Prasad Vaisya Mr. Suman De
For the Board		Mr. Subir Sanyal Mr. Dwarika Nath Mukherjee Mr. Ratul Biswas Mr. Kaushik Chowdhury
For the proforma Respondents	:	Mr. Dibyendu Chatterjee Mr. Pritam Majumdar Mr. Rahul Deb Goenka Ms. Satabdi Das Mr. Mainak Singha Barua
Heard on	:	24th July, 2024
Judgment on	:	24th July, 2024.

Harish Tandon , J:

The writ petition filed by the appellants before the Single Bench was disposed of on the basis of the law declared by the Supreme Court in **Jaiveer Singh & ors. vs. State of Uttarakhand & ors.** reported in **2023 SCC Online (SC) 1584**. The Apex Court was considering a point whether the Diploma in Elementary Education offered by the NIOS with the course period of 18 months under ODL model is equivalent to two years diploma in terms of the Regulation framed for NCTE. The Apex Court held that the 18 months diploma conducted through the said model cannot be equivalent to two years diploma in term of the Notification of the NCTE dated 23rd August, 2010 and 29th July, 2011.

The Apex Court was also considering the case where several teachers have been appointed having a qualification through such model and their services were put to a stake or endanger for which it was found that the NCTE shall take the pragmatic approach in issuing a notification permitting the in-service teachers to acquire the minimum qualifications on or before 1st April, 2019. It was, in fact, a respite given to in-service teachers who were appointed at a relevant point of time having a less eligible qualification so that upon acquiring minimum eligible qualification, their services can be saved.

The Single Bench in unequivocal term held that the West Bengal Board of Primary Education cannot act contrary to the statutory provisions and the notification issued in exercise of the powers conferred therein to recruit the teacher having a diploma in Elementary Education issued by the NIOS under

ODL model; duration whereof is 18 months in the recruitment process for the year 2022 onwards.

Mr. Bari, learned advocate appearing for the appellants submits that the Judgment rendered in **Jaiveer Singh & ors.** (supra) was in relation to the Rules and Regulations framed by the Uttareakhand Government and, therefore, has no manner of application in relation to a recruitment of the teachers within the State of West Bengal. It is further submitted that the National Council for Teachers Education (Recognition Norms and Procedure) Regulations, 2014 provides the duration of D.El.Ed program comprised of two academic years with the rider that the student must complete such course within the maximum period of three years from the date of the admission to the said program. Mr. Bari submits that the academic years have to be construed in a pragmatic manner and should not mean full year as contemplated in the said Judgment of the Apex Court. To buttress the aforesaid point, Mr. Bari further took us to the broad head “working days” wherein it is indicated that there shall be at least 200 working days each year exclusive of the period of examination and admission and, therefore, the academic year has to be understood in such perspective and in fact the appellants who have undergone the 18 months course through such model have adhered the working hrs. and, therefore, they cannot be deprived of the right to participate in the said selection process. According to Mr. Bari, the norms and standards for Diploma in Elementary Education Program through open and distance learning system leading to diploma in Elementary Education (D. El. Ed.) indicates duration of the program to be a two academic

sessions/years and, therefore, the academic session has assumed importance and in the event the 18 months course through such model includes two academic session, the diploma shall be in conformity with the said Rules.

On the other hand, it is submitted by the appearing respondents that in view of the Regulations and the Notifications issued by NCTE which came for interpretation before the Apex Court in **Jaiveer Singh & ors.** (Supra), there is no scope or room for any further discussion as the case squarely comes within the ambit thereof. It is further submitted that the Single Bench has rejected the said writ petition on the basis of the ratio of law laid down in **Jaiveer Singh & ors.** (supra) which cannot be said to be infirmed and/or illegal.

We had a occasion to peruse the Judgment of the Apex Court in **Jaiveer Singh & ors.** (surpa) and as indicated above, it has been held in unequivocal terms that the 18 months diploma course cannot be equated with the two years diploma course as required under the aforesaid Regulation. Two academic years cannot be equated with the two academic sessions both are distinct and separate. Even if, the working days of the academic year is incorporated in the said Regulation but it does not wipe out the duration of an academic year and, therefore, the two years diploma program being a requisite eligible qualification cannot therefore be equated with the 18 months course through the said model. The High Court cannot interpret the provision which runs counter to the decision of the Apex Court declaring the law in view of Article 141 of the Constitution of India. The executive instruction with the nomenclature “norms and standards for diploma (D. El. Ed.)” is to facilitate

the authorities to further the purpose and object of the statutory provisions but does not confer any legally enforceable right into a third party. Even if, we consider the stand of the appellants that such executive instruction should have been strictly adhered to yet we do not find the manner in which the language employed therein as sought to be interpreted, actually conveys the legislative intent. Though the expression “two academic sessions/years” were used in the said executive instruction but the clarification has further been made with the expression (four semesters) with further clarificatory word that the commencement and completion of the program should be devised and regulated in such manner that it must have two long spells of vacations (summer/winter/staggered). The word semester means a half year course which we also find in other specialized technical courses. Even apart, the expression two academic sessions used in the executive instruction may be regarded as surplus age if it runs counter to the provisions contained in the statutory Regulations. It is no longer *res integra* that the executive instruction cannot run counter to the statutory provision. The purpose of issuing the executive instruction is to supplement the statutory provision and never intended to supplant it. The Apex Court has held that the diploma of two years is mandatory in view of the NCTE Regulations and the Notifications having a statutory flavour, any departure therefrom through an interpretative process should be avoided. Furthermore, the Apex Court has interpreted the various provisions of the NCTE Regulations and the Notifications in a particular manner and, therefore, the High Court cannot depart therefrom and interpret the said provisions otherwise.

We thus do not find any infirmity and/or illegality in the order.

Accordingly, the appeal is dismissed without any order as to costs.

The connected applications being CAN 1 of 2024 and CAN 2 of 2024 are also dismissed.

All parties shall act in terms of the copy of this order downloaded from the official website of High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)