

24.01.2024
Item No.18 & 19
Court No.18
AJ.

W.P.A. 14258 of 2023

Arif Ansary

-Vs-

The State of West Bengal & Ors.

with

R.V.W. 138 of 2023

I.A. No. CAN 1 of 2023

**The West Bengal Madrasah
Service Commission & Anr.**

-Vs-

Arif Ansary & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Prosenjit Mukherjee,
Ms. Madhurima Sarkar.

.....for respondents nos. 2
and 3 in the writ
petition /the
applicants in Review

Mr. Anindya Bose,
Mr. Santanu Maji,
Mr. Mridul Biswas.

.....for the writ petitioner
/respondent no. 1 in Review.

Mr. Sukanta Chakraborty.

.....for the Union of India.

Mr. Jaladhi Das,
Mr. Shamim-ul Bari.

.....for the State.

In Re: RVW 138 of 2023

The supplementary affidavit filed on behalf of the review applicant and reply to the affidavit of the respondent no.2 is filed on behalf of the writ petitioner are taken on record.

The West Bengal Madrasah Service Commission and its Secretary, the respondent nos. 2 and 3 respectively to the writ petition are seeking review of the order dated June 16, 2023 passed in the matter.

This Court by the order under review had directed relaxation of 5% in the qualifying marks in relation to the 7th State Level Selection Test, 2023 to the candidates belonging to reserved categories e.g. SC/ST/OBC/PH.

The notification of the NCTE dated August 23, 2010 read with the amended notification dated July 29, 2011 is the basis for the order under review.

Mr. Bhattacharyya, learned senior Counsel for the review applicants submits that the NCTE by the aforementioned notifications has framed the guidelines to implement the provisions of Right of Children to Free and Compulsory Education Act, 2009(hereinafter referred to as 'the said Act of 2009' in short), besides sub-section (5) of Section 1 thereof expressly excludes the application of the said Act in respect of Madrasahs, the applicability of the provision of the said Act of 2009 is restricted to the schools up to Class VIII but the selection Test is not so restricted, this is for appointment of teachers upto Class XII, therefore according to him, the Madrasahs are not obliged to follow the reservation policy framed by the NCTE.

Learned advocate for the petitioner on the other hand submits that in the employment advertisement, the Commission has expressly mentioned that it would follow the NCTE guidelines in the selection process but now it is taking a contradictory stand.

Mr. Chakraborty, learned Counsel for the Union of India submits that only those Madrasahs which are imparting religious instructions are excluded from the operation of the said Act of 2009 by virtue the Sub-section (5) of Section 1

thereof but other Madrasahs are required to follow the guidelines framed by the NCTE.

Heard learned counsel for the parties, perused the materials-on-record.

The Commission has initiated the selection process namely the 7th State Level Selection Test, 2023 [7th SLST(AT), 2023] to fill up the 1729 tentative vacancies in the post of Assistant Teachers of Classes –IX-X and Classes –XI-XII of non-Government, Aided Madrasahs of the State.

The writ petitioner being a member of other backward community, prayed relaxation of 5% in the qualifying marks to participate in the said selection Test since such relaxation is prescribed in the guidelines of the NCTE.

This Court, by the order under review, considering the guidelines framed by the NCTE vide Notification dated August 23, 2010 and the amended notification dated July 29, 2011 directed 5% relaxation in the post-graduate marks of the writ petitioner and to allow him to participate in the said selection Test.

The aforementioned Notifications of NCTE prescribes the minimum qualification for a person to be eligible for appointment as teacher in Class I to VIII in a school referred to in clause(n) of Section 2 of the said Act of 2009, section 2(n) thereof takes only those recognised schools within the definition of ‘school’ which are imparting elementary education.

Sub-section (5) of Section 1 of the said Act of 2009 expressly excludes application of the provisions of the said

Act of 2009 in respect of Madrasahs. The said provision of the said Act of 2009 is quoted below for ready reference:-

“Nothing contained in this Act shall apply to Madrasahs, Vedic Pathshalas and educational institutions primarily imparting religious instruction.”

Apart from the exclusion as aforesaid, the Act of 2009 has no manner of application in respect of a school imparting education above elementary level, the present selection process is for appointment of Assistant Teachers upto Class XII.

The aforementioned notifications of the NCTE are prescribing the minimum qualification for a person to be eligible for appointment in the post of Assistant Teacher of a school defined under the said Act of 2009. The said guidelines prescribing the minimum qualification is not applicable for appointment of Assistant Teacher in Madrasahs as the applicability of the provisions of the said Act of 2009 have been expressly excluded in respect of the Madrasahs.

For the reasons discussed above, **R.V.W. 138 of 2023** is allowed and the connected application for stay being **CAN 1 of 2023** is disposed of, in consequence the order dated June 16, 2023 is recalled. There shall however be no order as to costs.

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The other issues raised in the writ petition shall be decided after exchange of affidavits by the parties.

Let affidavit-in-opposition to the writ petition be affirmed within a period of three weeks from date; reply

thereto, if any, be affirmed by the petitioners within two weeks from the date of receipt of the copy of such affidavit.

Matter be included in the combined **Monthly List of April, 2024** for further consideration.

It is made clear that notwithstanding pendency of the writ petition, the Madrasah Service Commission is free to proceed with the selection process including the recruitment.

Parties to act on the server copy duly downloaded from the official website of the Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)