

29.02.2024.
Court No. 13
Item No. 490
ap

W.P.A. No. 16118 of 2023
With
I.A. No. CAN 1 of 2023
And
I.A. No. CAN 2 of 2024
And
I.A. No. CAN 3 of 2024
Md. Sabir Sk. & Ors.
Versus
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Id. Sr. Adv.
Mr. Dibyendu Chatterjee,
Mr. Pritam Majumdar,
Mr. Rahul Deb Goenka,
Mr. Mainak Singha Barma,
Ms. Satabdi Das.

...For the petitioners.

Mr. Saikat Banerjee,
Mr. Ratul Biswas,
Mr. Koushik Chowdhury.

...For the WBBPE.

Mr. Bhaskar Prasad Vaisya, AGP
Mr. Suman Dey.

...For the State.

Mr. Sudipta Dasgupta,
Ms. Dipa Acharyya.

...For the added respondent nos.12 to 40.

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Mr. Arijit Kar.

...For the applicant in CAN 2 of 2024.

1. NCTE and WBBPE have filed written notes of argument.

2. It appears in no uncertain terms that in the case of **Jaiveer Singh & Others - Vs. - The State of Uttarakhand & Others** reported in **2023 SCC OnLine (SC) 1584** particularly paragraphs 44, 45, 56 and 57 thereof, it has been clearly held that the Diploma in

Elementary Education, offered by NIOS having a course period of 18 months under ODL Mode is not recognized as a valid training qualification for recruitment to the post of Primary Teachers in India. For the sake of convenience the aforesaid paragraphs are set out hereunder:

“44. It is thus clear that the entire scheme was for the purpose of providing a window to the in-service teachers inasmuch as unless they would have acquired requisite qualifications prior to 1st April 2019, they could not have continued to remain in service and would have faced dismissal from service. As such, we find that the High Court has erred in holding that the 18 months Diploma conducted by NIOS through ODL mode is equivalent to 2 years Diploma as provided in the notifications of NCTE dated 23rd August 2010 and 29th July 2011.

45. In the impugned judgment and order, the High Court has relied on the judgments of the High Court of Patna in the case of *Sanjay Kumar Yadav* (supra) and High Court of Tripura in the case of *Sri Raju Nama* (supra). It is to be noted that, in the judgment of the High Court of Patna, though a reference has been made to the communication addressed by NCTE to the Additional Chief Secretary, Bihar, it brushed aside the said communication on the ground that it is nowhere mentioned that the said course cannot be treated at par with the 2 years training course. In the absence of a specific order of NCTE granting equivalence to the 18 months course with the 2 years course, in our view, the High Court has totally erred in finding that since the said communication does not mention non-equivalence, it would be deemed to be equivalent.

56. In view of what has been held by this Court hereinabove, we find that the High Court erred in holding that 18 months Diploma conducted by NIOS through ODL mode is equivalent to the 2 years regular Diploma, particularly so, when there was no material placed on record to even remotely hold that such a qualification was recommended by the Expert Body NCTE. On the contrary, the communication dated 6th September 2019 of NCTE, the directives of MHRD so also the recognition order dated 22nd September 2017 clearly go on to show that the 18 months Diploma was provided as a one

time window to the in-service teachers to acquire the minimum qualifications between the 2017 Amendment Act and the outer limit of 1st April 2019. In our considered view, the High Court has totally erred in holding that the 2 years Diploma is equivalent to 18 months Diploma.

57. That leaves us with the reliance placed by the learned counsel for NCTE on the judgment of this Court in the case of *Ram Sharan Maurya* (supra). There can be no doubt that NCTE, as an expert body, has a right to prescribe the minimum qualifications. In the present case itself, by notifications dated 23rd August 2010 and 29th July 2011, NCTE has done so. As already discussed hereinabove, recognition order dated 22nd September 2017 only provides a window for in-service teachers to complete their course prior to 1st April 2019. As such, the said judgment does not apply to the present case.”

3. NCTE and WBBPE are ad idem on the questions.

4. In that view of the matter, there shall be a writ of mandamus directing that the West Bengal Board of Primary Education shall not recruit any teachers holding Diploma in Elementary Education issued by NIOS under ODL Mode, comprising of 18 months course from the recruitment process of the year 2022 onwards.

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

6. In view of the disposal of the main writ petition, the connected applications being CAN 1 of 2023, CAN 2 of 2024 and CAN 3 of 2024 are also disposed of.

7. There will be no order as to costs.

8. 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.*)