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26.07.2024
d.p.

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

W.P.A. 18324 of 2024

**Shibaji Naskar & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Sudipta Dasgupta,
Mr. Ali Ahsan Alamgir,
Ms. Rabia Khatoon,
Ms. Soma Mal,
Ms. June Modak.
...For the Petitioners.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Sagnik Chatterjee.
...For the State.**

**Mr. Avishek Prasad.
...For DPSC, Malda.**

Perused the report filed by the Commissioner of School Education, West Bengal signed on 22nd July, 2024. The report mentions that as per the notification of NCTE dated 29th July, 2011 and the judgment of the Hon'ble Supreme Court passed on 28th November, 2023 in SLP(C) No. 23583-84 of 2022 in the matter of Jaiveer Singh & Ors. -vs- The State of Uttarkhand & Ors., the petitioners cannot be treated as trained candidates and ought to undergo two years' Diploma in Elementary Education from a NCTE recognized institution.

Learned advocate appearing on behalf of the petitioners relies upon a departmental order dated 3rd August, 2017 by the Ministry of Human Resource Development, Department of School Education and Literacy communicated to the Secretaries of all the States regarding obtaining training by the in-service elementary teachers in Government/Government

Aided/Unaided private schools. The training was required to be obtained in accordance with the provisions of the Right to Education Act, 2009.

The petitioners were in-service primary school teachers in unaided private schools. They obtained the training in terms of the aforesaid departmental order of the Ministry of Human Resource Development. Currently, the petitioners are teachers of the aided primary schools in the State. They have been directed to undergo further training.

Submission has been made that as the petitioners already obtained the D.El.Ed. training from NIOS in terms of the direction passed by MHRD, accordingly, they ought not to be directed to undergo further training of two years.

It has been submitted that similarly placed teachers who obtained two years' D.El.Ed. training from NIOS are being treated as trained teachers by the DPSC, Malda and they are given 'A' category scale of pay.

It appears from the submissions made on behalf of the parties that different DPSCs in the State are adopting diverse stands. Some of the Councils are accepting the D.El.Ed. diploma by the NIOS as sufficient training for teaching in the primary schools and are given consequent benefit of 'A' category scale of pay whereas, there are other DPSCs who are not recognizing the training qualification obtained from NIOS in the 18 months' course. The aforesaid stand by the Councils in the State is discriminatory.

It is for this reason that the Court required the Commissioner to take a call as to whether further training will be required for the in-service teachers who already obtained 18 months' D.El.Ed. training under instructions of MHRD.

The Commissioner has relied upon the order passed by the Hon'ble Supreme Court in the matter of Jaiveer Singh (supra).

In Jaiveer Singh (supra), the Court held that 18 months' diploma conducted by NIOS through ODL mode is not equivalent to the two years regular diploma. The same is not an issue in the instant writ petition.

The Hon'ble Supreme Court in the judgment of Jaiveer Singh (supra) clearly held that there can be no doubt that NCTE, as an expert body, has a right to prescribe the minimum qualifications. The Court recorded that recognition order dated 22nd September, 2017 provides a window for in-service teachers to complete their course prior to 1st April, 2019.

In the instant case, the petitioners completed their course prior to 1st April, 2019 in terms of the order passed by MHRD.

There are several teachers in the primary schools who are yet to obtain the training. The authority ought to ensure that all primary school teachers obtain the training in terms of the guidelines that have been framed by NCTE.

In the instant case, the petitioners have obtained the D.El.Ed. training from NIOS within 1st April, 2019,

accordingly, they may not be directed to obtain further training. The training of the petitioners should be considered enough for teaching in the primary schools more so because some of the Councils have already accepted such training and treated such candidates as trained ones.

It is made clear that whether or not the petitioners will be entitled to 'A' category scale of pay with the 18 months NIOS D.El.Ed. ODL mode training is not being adjudicated in the instant writ petition. It will be open for the petitioners to approach the appropriate forum for further relief, if so advised.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)