

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 27428 of 2023

Debabrata Gayen & Anr.
Vs.
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Samiran Mondal Mr. Abhinaba Dan Mr. Nitish Samanta Ms. Sreemoyee Datta
For the State	:-	Mr. B.P. Vaisya Mr. Gourav Das
For WBBPE	:-	Mr. Ratul Biswas Mr. Kaushik Chowdhury
For DPSC 24 Parganas (S)	:-	Mr. Ranjan Saha
Heard on	:-	11.09.2024
Judgment on	:-	11.09.2024

Amrita Sinha, J.:-

The petitioners are primary school teachers. They seek promotion in the post of Head Teacher. The petitioner no.1 and the petitioner no.2 were transferred to their current school in the district of South 24 Parganas on 20th July, 2021 and 10th October, 2020 respectively.

A notification for preparation of panel of Head Teacher in accordance with the West Bengal Primary School Teacher Recruitment Rules, 2016 was published by the South 24 Parganas District Primary School Council on 4th September, 2023. Applications were invited from

eligible in-service Assistant Teachers of the district within 4th September, 2023 and 22nd September, 2023.

The notification mentions that at least five years experience will be required as Assistant Teacher as on 31st July, 2023 for enlistment of the name in the Head Teacher promotion panel.

The notification specified that seniority of the teachers will be determined on the basis of first joining in the district. The Head Teacher panel was to remain valid for a period of one year from the date of approval.

The petitioners submit that as they did not complete five years service in the district of South 24 Parganas, they were not permitted to apply in terms of the notification dated 4th September, 2023.

The petitioners submit that they are in service since 2014 and they ought to have been permitted to file their application forms in response to the subject notification.

In the writ petition the petitioners have averred that because of the restriction imposed in serial no.2 of the notification dated 4th September, 2023 requiring five years experience as on 31st July, 2023 for enlistment of the name in the Head Teacher promotion panel, they were denied the opportunity to apply in terms of the said notification. The petitioners contend that their seniority since 2014 ought to have been counted.

The petitioners challenge the notification dated 4th September, 2023 and submit that the same is totally illegal and in violation of the provision of law.

Prayer has been made not to give any effect and/or further effect to the purported selection of Head Teacher in furtherance to the notification dated 4th September, 2023 without considering the seniority of the petitioners.

The submission of the petitioners has been opposed by the learned advocate representing the Council. The Council relies on the notification of the West Bengal Board of Primary Education being memo no. 230/1991-92 dated 2nd November, 1991 which mentions that in case of inter district transfer the seniority of the teacher will be counted from the date of his/her joining the new post in the later district.

It has been submitted that as the petitioners did not complete five years of service in the district, accordingly, they cannot be considered for promotion as Head Teacher.

In a report signed by the Chairman of the District Primary School Council on 2nd July, 2024 it has been disclosed that in case of the Head Teacher panel of the Sonarpur West Circle, the date of joining of the last empanelled Assistant Teacher was 1st March, 2006 and in case of Bhangore Circle, the date of joining of the last empanelled Assistant Teacher was 13th February, 2017.

Prayer has been made to dismiss the writ petition.

I have heard the submissions made on behalf of both the parties. The submission of the petitioners that they were restricted from applying in terms of the notification dated 4th September, 2023 does not appear to be a proper one.

The writ petition itself was filed on 6th December, 2023 that is long after expiry of the time period within which the applications ought to have been filed. Had the petitioners been restricted from filing the application within the prescribed time period, the petitioners ought to have approached the Court within the validity period of the notification and not wait more than two months to approach the Court.

The notification required an Assistant Teacher to have at least five years experience as on 31st July, 2023 for enlistment of the name in the Head Teacher promotion panel. The notification did not mention that the experience as Head Teacher has to be gained only in the district of South 24 Parganas.

The notification clearly mentions that seniority will be determined on the basis of first joining in the district. The same does not restrict application to be filed for enlistment.

It could have been that if the application was made by the petitioners in proper time, their names would have been included in the bottom of the list because of the seniority clause.

The understanding of the Court is that the notification never restricted applications to be filed. The petitioners have not averred in the

writ petition that the Council prevented them from filing any application. Applying for promotion and maintaining seniority for promotion are two different aspects. They are not dependent upon each other. It is only when the list of teachers eligible for promotion is prepared that the seniority clause comes into play. Application for empanelment is sought only to obtain the willingness of the concerned teacher for seeking promotion. On promotion as Head Teacher it may be that a teacher is posted at a different school but not in the same school where he is currently teaching and this is precisely the reason for obtaining willingness of the teacher.

As the petitioners already had the experience in the post of Assistant Teacher for more than five years they could have applied in terms of the said notification. There was no expressed bar on the petitioners for applying in response to the same. It hardly matters as to whether the experience of five years in the post of Assistant Teacher is in a particular district or in more than one district. As long as the teacher had the experience of serving as Assistant Teacher for five years, he/she was entitled to apply for promotion as Head Teacher in terms of the notification dated 4th September, 2023.

It appears that the petitioners misread and misconstrued the terms and conditions of the notification dated 4th September, 2023 and did not file the application for consideration of their case for empanelment as Head Teacher.

In view of the above, no relief can be granted to the petitioners in the instant case. The writ petition fails and is hereby dismissed.

It goes without saying that it will be open for the petitioners to apply for promotion as Head Teacher as and when notification is published by the Council in future.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)