

S/L 1
02.4.2024
Court No.11
SD

WPA 29699 of 2013

Maniraj Ghosh & Ors.
Vs.
State of West Bengal & Ors.

Mr. Sukanta Chakraborty
Mr. Sakabda Roy

...for the Petitioners.

Mr. Arjun Ray Mukherjee
Mr. Subhendu Sengupta

...for the State.

Mr. Kanak Kiran Bandyopadhyay

...for the SSC.

Questioning the legality of the decision taken by the Central Commission in its 450th meeting held on June 6, 2013 as reflected from a communication made by the Secretary, West Bengal Central School Service Commission (in short, the Commission) to one Abhijit Jana under a Memo. no. 902/2197(X)/CSSE/ESTT/2013 dated 11th June, 2013 (Annexure- P/10 to the writ petition) and seeking a direction upon the concerned respondent to award 6(six) marks to the petitioners against their training qualifications, the present writ petition was instituted.

In its 450th meeting, the Central Commission adopted the following resolution:

“that the candidates having D.EL.Ed be not treated at par with B.Ed. and no academic score shall be added for having D.EL.Ed. degree under 12th RLST (AT), 2011 as per Rules/Regulation (No. 1585-SE(S)/ES/S/IS-26/2010(Part) dated 21 and 12. 2011 and the candidates having degree from PTI and certificates of one year’s “Bridge Course” be

not treated as par with B.Ed. and no academic score on this account shall be allowed to any such candidate and the aforesaid candidate be allowed only age relaxation for applying for the vacant post under 12th RLST (AT) 2011 as per advertisement (No. 01/AT/11 dated 29.12.2011)”.

A selection process under the name of the 12th Regional Level Selection Test (in short, RLST) was undertaken by the Commission to fill up the posts of Assistant Teacher in Junior High/High/Higher Secondary schools in West Bengal and accordingly, by an advertisement *vide.* no.01/AT/11 dated December 29, 2011, applications from the eligible and intending candidates for the posts were invited.

The petitioner nos.1, 4 and 5 claiming themselves to be eligible candidates for the posts of Assistant Teacher (in short, AT) under pass category offered their candidatures for the posts whereas the petitioner nos.2 and 3 having Honours Degrees in their combination subject applied for the posts under Honours/PG category in terms of the advertisement. According to the petitioners, they performed well in the selection process but they could not find berth in the final selection list. In course of their journey to unearth the reason of their failure to secure birth in the final merit list, they came across the communication of the Secretary to Mr. Jana (Annexure-P/10) and eventually, the petitioners came to learn that in view of the above-referred resolution, no marks were awarded to them against their training qualifications.

Hence, the petitioners were constrained to knock on the door of this Court by preferring this instant writ petition.

Despite direction, no affidavit-in-opposition has been used by either of the respondents. Supplementary affidavit, as filed by Mr. Chakraborty is taken on record.

Mr. Chakraborty, learned advocate representing the petitioners drawing my attention to the advertisement dated December 29, 2011 contends that the desirable qualification prescribed for the candidates under Honours/PG category was almost similar to the desirable qualification for the candidates under pass category and from the notification dated 23.12.2011 also, it would be explicit that the training qualifications for both the pass vacancy and Honours vacancy are the same.

He argues that the prescribed qualification for the post of Assistant Teacher for Junior High/High School/Higher Secondary School for pass vacancy, as would be reflected from the notification dated 23.12.2001 was *'B.A./B.Sc./B.Com degree from any UGC recognized University having concerned subject as combination subject of at least 300 marks and 2 year diploma in Elementary Education (by whatever name known)'*.

He submits that the notification dated 31.05.2010 issued by the Secretary, West Bengal Board of Primary Education postulates that after detailed interactions with the State Government both the Government of India as well as National Council for Teacher Education (in short, NCTE) vide. its order dated 08.05.2010 has approved of the

proposal for conduct of one year Bridge Course for the PTT ((Primary Teachers' Training) trainees, as referred in the notification through Open Distance Learning (ODL) Mode on the conditions enumerated therein.

Drawing my attention to the 2nd page of the Mark sheet of petitioner no.1 (page-65 to the writ petition), he claims that one year PTT/PPPTT pass certificate and one year Bridge course which is approved by the NCTE vide its order dated May 8, 2010 is equivalent to 2 years' D.El.Ed. Course. He further submits that all those notifications were issued prior to issuance of the advertisement for the post and as such, those notifications are applicable in the subject selection process.

He submits that having undergone the PTT training from recognized University, the petitioners completed one year's Bridge Course from NCTE recognized institutions through ODL mode and as such, the petitioners acquired desirable qualifications as prescribed in the advertisement. Laying immense emphasis on an unreported judgment delivered by a Hon'ble Division Bench of this Court in MAT 975 of 2022(Sova Rani Mondal alias Sova Rani Halder –vs- State of West Bengal & Ors.), he argues that PTT training along with one year Bridge course is equivalent to 2 years' D.El. Ed Course.

He contends that the petitioners secured 60% in the written examination and more than 40% in the subject test. In evaluation of their academic qualifications, according to marks obtained by the petitioners in Madhyamik, H.S.

examination and in graduation level, the petitioners secured 5 , 5 and 12 marks respectively but no marks were awarded in favour of the petitioners against their training qualifications. Drawing my attention to the Annexure-P/17 to the Supplementary affidavit (submitted on behalf of the petitioners taking leave from the court), he contends that had 6 marks been awarded to the petitioners against their training qualifications, the petitioner could have secured more than 66 marks which the last selected candidate in general category secured.

In response, Mr. Bandyopadhyay, learned advocate representing the Commission asserts that following the rules in vogue, the selection process was conducted.

He argues that for the candidates under Honours/PG category, essential training qualification is B.Ed. and the candidates like the petitioner nos. 2 and 3, who underwent PTT training and one year's Bridge Course were not entitled to have been treated at par with the candidates having B.Ed. degree. According to him, in Sova Rani Mondal's case(supra), it was ruled that in respect of candidates under pass category, D.El.Ed. degree is to be treated as equivalent in terms of clause 4 of Table-4 and such proposition cannot be applied to the candidates under Honours/PG category. He submits that in terms of the Rule 21 of the Rules of 2007, if any question arises regarding any decision of the Commission, a reference may be made to the State Government for resolution of that question. He submits that issue of entitlement of marks of the petitioners against their

training qualifications may be referred to Principal Secretary of the School Education Department for its final determination.

In reply, Mr. Chakraborty contends that issue of entitlement of such marks of the candidates under pass category has been determined in Sova Rani Mondal's case (supra) and the issue of such entitlement of the petitioner nos. 2 and 3, who were the candidates under Honours/PG category can be referred if the necessity of such reference is felt to be inevitable.

Mr. Ray Mukherjee, learned advocate entered appearance on behalf of the State.

Normally, policy decisions of the State/employer relating to essential and desirable qualifications for any particular category of posts are reflected in the advertisement. It is well settled proposition of law that when the advertisement expressly states that selection would be conducted in accordance with certain rules or in terms of extant rules, the selection must be made in strict consonance with those rules.

The clause (b) of the notification no. 1584-SE dated 28.12.2011 postulates that the State decided to fill up the posts mentioned in clause (a) thereof as per qualifications and procedure laid down in the relevant recruitment rules as amended from time to time. As per the serial no. 4 of the Rules, 2007, which was substituted by clause 4(a) of the notification no. 1585-SE dated 21.12.2011, prescribes qualification for the posts under pass category is

‘B.A./B.Sc./B.Com degree from any UGC-recognised University having concerned subject as combination subject of at least 300 marks at the Degree Level and 2 years Diploma in Elementary Education (by whatever name known)’ and as per the serial no.5 of the Schedule-I of the Rules, 2007, desirable qualification for the posts under Honours/PG category is B.T./B.Ed./P.G.B.T. from any recognized University or any training recognized by the State Government as equivalent to B.T./B.Ed./P.G.B.T. duly recognized by the NCTE/Rehabilitation Council of India(RCI) in the academic session.

In the notification vide. no. 61 dated 29.07.2011 issued by the NCTE, the degree being ‘*Graduation and two years’ Diploma in Elementary Education (by whatever name is known)*’ were prescribed as one of the minimum qualifications. A composite reading of the communication of NCTE dated 08.05.2010 and notification of West Bengal Board of Primary Education (in short, Board) dated 31.05.20210 indicates that NCTE approved the proposal for conduct of one year Bridge Course for PTT trainees of West Bengal through ODL mode subject to the conditions enumerated therein including a condition that such Bridge course must be conducted by the Board only through NCTE recognised training institutions.

The marks-sheets which were issued in favour of petitioners by the NCTE–recognised training institutions contained one declaration that combined one PTT/PPPTT pass certificate and one year Bridge Course pass certificate is

equivalent to two year D.El. Ed. Course and is approved by NCTE (vide. order dated 08.05.2010).

In the advertisement, desirable qualification for the posts under pass category was B.T./B.Ed./P.G.B.T. or any training recognised by the State Government as equivalent to B.T./B.Ed./P.G.B.T from a Teachers' Training Institution duly recognised by the NCTE/RCI in the relevant academic session.

In note-3 of the advertisement, it was declared that regarding *B.Ed./B.T./PGBT/BPED/PGBT* or *equivalent/Diploma course like Teacher Education/Elementary Education recognised by NCTE/RCI shall only be considered and a 2-years Diploma in Elementary Education (by whatever name known) may be considered in place of B.Ed.*

In Sova Rani Mondal's case (supra), a Hon'ble Division Bench of this Court ruled that for the post of teacher for classes VI to VIII (for upper primary), the D.El.Ed. degree is to be treated as equivalent in terms of clause-4 of Table-4 and once a candidate fulfils the requirement of clause-4 of Table-4 and has acquired 55% and above marks, he/she would be entitled to 6 marks.

The clause(serial) no. 4 of Table-4 of notification dated 23.12.2011 prescribes training qualification for pass vacancy which is Degree or Diploma in Training (B.T./B.Ed./P.G.B.T./P.G.T. or its equivalent) in regular course or through Distance Mode of

Education/Corresponding Course from a Teacher's Training Institution duly recognised by the NCTE/RCI in the relevant academic session.

Therefore, what follow from the discussion made hereinabove are that the petitioner nos. 1, 4 and 5, who offered their candidature for the posts under pass category, for having PTTI training (one year) and completion of one year Bridge Course from NCTE recognised training institution shall be treated as a candidate having degree of 2 years' D.El.Ed. and they are entitled to get 6 (six) marks provided they have fulfilled the clause(serial) no.4 of Table 4 of the notification dated 23.12.2011 by securing 55% and above marks.

In the case at hand, advertisement vide. no. 01/AT/11 dated 29.12.2011 expressly states that the selection process would be conducted in terms of the provisions of Rules of 2007 and subsequent amendment of the Rules in 2009 , 2011 *vide.* notification no. 1585-SE(S)/ES/S/1S-26/2010(Part-I) dated 21.12.2011.

It is well settled norms that once the game is started, none can change the rule of the game. Similarly, it is well-settled principles of service jurisprudence that once the process of recruitment commences on issuance of advertisement, no change in essential qualification or disqualification can be made during subsistence of the said recruitment unless such power is reserved in the advertisement itself or in any other rule or rules governing the field. In the given case, in the midst of the recruitment

process, the Commission in its 405th meeting resolved that the candidates having D.El.Ed. be not treated as par with B.Ed. and it was also resolved not to award any mark to the candidate having D.El.Ed. degree and it was further resolved in the meeting that the candidates having degree from PTTI and certificates of one year's 'Bridge Course' will not be treated at par with B.Ed. and no academic score on this account shall be allowed to any such candidate.

Needless to state such resolution runs counter to the terms and conditions of the advertisement (see, Note-3) and the extant rules and it is well settled proposition of law that an executive instruction cannot override the statutory rules and the advertisement. Needless to state that the clauses of the advertisement have the trappings of statutory prescriptions. Hence, for these reasons, the resolution adopted by the Commission in its 450th meeting, as reflected from the communication of its Secretary in so far as it relates to the candidates who having degree of PTTI and one bridge course offered their candidature for pass vacancy cannot be sustained.

In view of the foregoing analysis, it is held the petitioner nos. 1,4 and 5, who offered their candidatures for the posts under pass category is entitled to get 6 marks against training qualifications. Resultantly, the Commission is directed to award 6 marks in favour of petitioner nos. 1,4 and 5 provided they have secured 55% and above marks in their training courses. If it is found that petitioner nos. 1,4 and 5 have secured higher marks than the last selected

candidate in their category, the Commission shall take next follow up action in accordance with law.

As both Mr. Chakraborty and Mr. Banerjee have insisted the Court on relegating the issue towards the entitlement of petitioner nos. 2 and 3 to the writ petition of the marks against training qualifications, the issue is relegated to the Principal Secretary, School Education Department, Government of West Bengal for its resolution.

Accordingly, liberty is granted to the petitioner nos. 2 and 3 to submit a comprehensive representation to the Principal Secretary who upon receipt of such represented shall resolve the issue after affording an opportunity of hearing to the petitioner nos. 2 and 3 or their authorized representative and representative of the Commission. If the issue is resolved in favour of the petitioner nos. 2 and 3, next follow up action shall be taken in accordance with law but if the issue is resolved prejudicial to the interest of the petitioner nos. 2 and 3, a reasoned order shall be passed which must be communicated to them. The parties shall be at liberty to produce the documents, rules, notifications, judgments etc. in support of their respective contentions before the Principal Secretary. The Principal Secretary while deciding the issue shall take note of those documents and he shall also take note of the observations made in this order.

The entire exercise shall be completed within three months from the date of receipt of such representation.

With these observation and order, this writ petition stand disposed of, however, without any order as to the costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)