

**IN THE HIGH COURT AT CALCUTTA  
(CONSTITUTIONAL WRIT JURISDICTION)  
APPELLATE SIDE**

**Present :**

**The Hon'ble Justice Partha Sarathi Chatterjee**

**WPA 2682 of 2022**

**Subhas Chandra Mandal**

**Vs.**

**State of West Bengal & Ors.**

|                    |                                                                                |
|--------------------|--------------------------------------------------------------------------------|
| For the petitioner | : Mr. Kamalesh Bhattacharya,<br>Mr. Aninda Bhattacharya.                       |
| For the State      | : Mr. Biswabrata Basu Mallick, Ld. AGP<br>(virtual mode)<br>Mr. Sayan Ganguly. |
| For the NCTE       | : Mrs. Asha G. Gutgutia.                                                       |
| Heard on           | : 01.05.2025                                                                   |
| <b>Judgment on</b> | <b>: 14.05.2025</b>                                                            |

**Partha Sarathi Chatterjee, J.:-**

**Prelude:**

1. The present writ petition has been filed questioning the legality and propriety of the order dated 10.08.2020 issued by the District Inspector of Schools (Secondary Education), Kolkata, whereby the approval of the petitioner's appointment was refused. The petitioner further prays for the issuance of a writ of mandamus directing the concerned respondent authority to approve the petitioner's appointment in accordance with law.

2. Before entering into the merits of the controversy involved in the present writ petition, it would be appropriate to set out the relevant facts as reflected in the pleadings of the petitioner.
3. A selection process was initiated by Keorapukur C.N.I. Boys' High School (hereinafter referred to as 'the School'), a recognized Christian Minority Institution established and administered by the minority community in accordance with Article 30 of the Constitution of India, and duly approved by the West Bengal Board of Secondary Education, for the purpose of filling up six (6) permanent posts of Assistant Teachers in various subjects, including Physical Education. The present writ petition pertains to the approval of the appointment to the post of Assistant Teacher in Physical Education.
4. Pursuant to the said selection process, an advertisement was issued inviting applications from eligible candidates for the aforementioned posts on 12.07.2019. The advertisement clearly stipulated that the essential qualifications for the posts would be in accordance with the criteria prescribed under the relevant recruitment rules followed by the West Bengal School Service Commission. In the advertisement, the prescribed qualification for the post of Assistant Teacher in Physical Education was a 'Pass Graduate with B.P.Ed. in Physical Education'.
5. In response to the said advertisement, the petitioner, possessing the qualification of B.A. (Pass) along with a B.P.Ed. degree in Physical Education, submitted his candidature for the post of Assistant Teacher in Physical Education. The petitioner had pursued the one-year B.P.Ed.

course from an institute duly recognized by the National Council for Teacher Education (in short, NCTE).

6. The petitioner participated in the selection process and secured the top position in the panel prepared for the post of Assistant Teacher in Physical Education. The said panel was subsequently forwarded to the District Inspector of Schools for his approval. However, by an order dated 10.08.2020, the District Inspector of Schools refused to accord approval to the panel. Upon enquiry, it was revealed that the refusal was based on the grounds that the petitioner had pursued a one-year B.P.Ed. course and had secured 41.7% marks in the Higher Secondary Examination, which, according to the District Inspector, rendered him ineligible for the post.
7. The petitioner claimed that he pursued the one-year B.P.Ed. Course in 2012 and till 2016, one-year B.P.Ed. Course was valid. Citing an instance that one Shampa Saiba, who also pursued a one-year B.P.Ed. Course in 2013, was appointed in the post of Assistant Teacher in Physical Education.
8. In response to the order dated 10.08.2020, the school authority by sending e-mail to the D.I. of Schools informed that-i) it had submitted the first approval of External Expert (Mr. Monohar Mondal) vide. Memo. no. 1104-SE/S/1S-26/2010 (Pt/-III) dated 20.09.2016 and his service experience was about 11(eleven) years and ii) as per SCC Rules, one year B.P.Ed. allowed those candidates who got degree before 2015. Such candidate can also apply to participate in the examination conducted the School Service Commission in accordance with the Memo. no. 1104-SE/S/1S-26/2010 (Pt/-III) dated 20.09.2016.

**Respondents' case:**

9. The crux of the defence taken in the affidavit-in-opposition, duly affirmed by the District Inspector of Schools on behalf of respondent nos. 1 to 3, is that in exercise of the powers conferred by Sub-Section (1) and clause (d) of Sub-Section (2) of Section 17, read with Section 8 of the West Bengal School Service Commission Act, 1997 (hereinafter referred to as the '1997 Act'), and in supersession of the previous Recruitment Rules of 2015, the West Bengal School Service Commission (Selection of Persons for Appointment to the Posts of Teachers in Upper Primary Level) Rules, 2016 (hereinafter referred to as the '2016 Rules') were promulgated and notified vide Notification No. 1104-SE/S/1S-26/2010(Pt.-III) dated 20.09.2016.
10. The present selection process, which was initiated in 2019, is governed and regulated by the provisions of the 2016 Rules. To determine the essential qualifications for the post of Assistant Teacher in Physical Education, reference must be made to Part-B of Schedule-I of the 2016 Rules. This provision specifies that, except for candidates who have participated in sports or games at the school, college, or district level in accordance with the NCTE (Recognised Norms and Procedure) Regulations, 2007 dated 10.12.2007, the minimum required marks in the Senior Secondary examination (Class XII or its equivalent) shall be 45%. Additionally, candidates must possess a certificate or diploma in Physical Education, of not less than two years' duration (or its equivalent), from any institution recognized by the NCTE.
11. The petitioner who secured 41.7% in Senior Secondary Examination and pursued one year B.P.Ed. Course from a NCTE recognised Institution

was not eligible for the post. The sports-certificate (Annexure-P/13 to the writ petition) was issued in favour of the petitioner on 28.12.2020 for relaxation of marks. This certificate indicates the petitioner's participation in an inter-club level competition and as such, it does not affirm his participation in sports and games at least in school/college/district level. Therefore, the petitioner was not eligible for the post. Accordingly, approval to the petitioner's appointment to the post could not be granted.

**Submissions:**

12. Mr. Bhattacharya, learned Senior Advocate appearing for the petitioner, submitted that the respondents have sought to improve their case through the affidavit-in-opposition, which, according to him, is impermissible in law. In support of this contention, he relied on the decision of the Hon'ble Supreme Court reported in *AIR 1978 SC 851 (Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.)*
13. His next submission was that the petitioner had participated in a State-level 'Karate' competition, as demonstrated by the certificate produced, and was therefore entitled to a relaxation of the minimum marks' requirement. He further contended that the petitioner had pursued a one-year B.P.Ed. course from an NCTE-recognized institution in 2012, i.e., prior to the coming into force of the 2016 Rules, and as such, ought to have been treated as an eligible candidate for the post.
14. In rebuttal, Mr. Basu Mallick, learned Additional Government Pleader appearing for the State, contended that the certificate produced by the petitioner does not establish that the 'Karate' competition was at the State

level. Accordingly, the petitioner cannot claim the benefit of relaxation of the minimum marks requirement. He further submitted that, since the present selection process is governed by the 2016 Recruitment Rules, a candidate who had pursued only a one-year B.P.Ed. course cannot be considered eligible for the post, in terms of the requirements prescribed under the said Rules. He asserted that the District Inspector of Schools has, therefore, rightly refused to approve the petitioner's appointment.

15. Mrs. Gutgutia, learned advocate, entered appearance on behalf of NCTE and adopted the submissions advanced by Mr. Basu Mallick.

**Analysis:**

16. If the facts that have led to filing this writ petition are succinctly summarised, it would be evident that the selection process was initiated in 2019 for filling the posts. In the advertisement, it was specified that essential qualification for the post would be determined as per the '*SSC (WB) rules*'.
17. The 2016 Rules came into force on the date of their publication in the Official Gazette. This Rules vide. notification no. 1104-SE/S/1S-26/2010 (Pt/-III) dated September, 20, 2016 was published on that date i.e. on 20.09.2016. Therefore, in respect of the present selection process, the 2016 Rules would be the applicable Rules. The petitioner secured 41.7% in Higher Secondary Examination and pursued a one-year B.P.Ed. Course from a NCTE-recognised institution.
18. Part-B of the 2016 Rules prescribes the essential educational and professional qualifications required for the selection of Assistant Teachers

in Physical Education and Work Education at the Upper Primary level in schools, as detailed below:

“(a) Senior Secondary (Class XII or its equivalent) with at least 50% marks from recognized Board:

OR

Candidates who have passed the Senior Secondary Examination(+2) or its equivalent and have participated in sports/games at least school/college/district level in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations 2007 notified on 10.12.2007;

OR

Senior Secondary (Class XII or its equivalent) with at least 45% marks from recognized Board in accordance with the National Council for Teacher Education (Form of application for recognition, the limit of submission of application, determination of norms and standards for recognition of Teacher Education Programmes and permission to start new course or training) Regulations 2002 notified on 13.11.2002;

AND

(b) Certificate/Diploma in Physical Education of duration not less than 2 years (or its equivalent) from any National Council for Teacher Education recognized Institution.

Note.- The minimum qualification as prescribed by the NCTE and relaxation of qualifications if any extended by Central Government or NCTE from time to time on the date of publication of advertisement shall also be considered.”

19. As previously noted, the District Inspector of Schools, by an order dated 10.08.2020, refused to approve the panel on the grounds that the petitioner, the first empanelled candidate, had secured 41.7% marks in the Higher Secondary Examination and had completed a one-year B.P.Ed. course from an NCTE-recognized institution. The second and third empanelled candidates had also completed one-year training courses. Consequently, the District Inspector concluded that the panel had been prepared in violation of the applicable rules.
20. Following the issuance of the order dated 10.08.2020, the school authority, by an email dated 17.08.2020, the school authority attempted to defend the petitioner's appointment and forwarded to the District Inspector of Schools the letter of approval regarding the appointment of Mr. Monohar Mondal, originally dated 16.02.2009. The authority noted that Mr. Mondal had been rendering his services for the past 11 years. Additionally, the school stated that since the petitioner had obtained his B.P.Ed. degree prior to 2015, he was eligible to appear in the examination conducted by the West Bengal School Service Commission for a similar post.
21. Therefore, the sending of the email dated 17.08.2020 constitutes an event that occurred subsequent to the issuance of the order dated 10.08.2020. Accordingly, the issues raised by the school authority were addressed in the affidavit-in-opposition. As such, the principles laid down in *Mohinder Singh Gill* (supra) have no application in the present case.
22. In the affidavit-in-reply, the petitioner annexed a certificate issued by an organization named 'Tenshi Goju-Ryu Karate-Do', West Bengal,

which claimed to be affiliated with the Asian Martial Arts Federation. On the basis of his participation in state-level sports, the petitioner asserted that he was entitled to the benefit of relaxation in marks.

23. The District Inspector of Schools, by issuing two successive letters dated 08.10.2021 and 04.04.2023 to the Director and Chairman of the organization 'Tenshi Goju-Ryu Karate-Do', requested specific information and documents, namely: (i) whether the certificate of merit issued in favour of the petitioner was in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2007, notified on 10.12.2007; (ii) a photocopy of the recognition or approval memorandum of 'Tenshi Goju-Ryu Karate-Do'; and (iii) whether the organization is affiliated with the Sports Federation of India. However, no response was received from 'Tenshi Goju-Ryu Karate-Do' to either of the letters.
24. Therefore, the petitioner failed to establish that the 'Kumi' competition constitutes a game or sport approved or recognized by the Sports Federation of India or by the Sports Authority of the State of West Bengal. He also could not demonstrate that this game or sport, namely 'Kumi', is organized by the State Government of West Bengal or the Central Government at the district, state, or national level. Accordingly, the petitioner has failed to substantiate his entitlement to the benefit of relaxation in the minimum marks requirement.
25. As previously noted, the petitioner pursued a one-year B.P.Ed. course from an institution recognized by the NCTE. The school authority contended that, since he undertook the course in 2015, the petitioner was eligible for the post and would also be entitled to appear in the

examination conducted by the Commission for a similar position in accordance with the relevant provisions of the 2016 Rules.

26. It is undisputed that Annexure-8 of the NCTE (Recognition Norms & Procedure) Regulations, 2007 (hereinafter referred to as the 2007 Regulations), notified on 27th November 2007, specified that the B.P.Ed. programme shall be of one academic year or two semesters in duration. However, the 2007 Regulations were repealed by Clause 13 of the NCTE (Recognition Norms & Procedure) Regulations, 2009 (hereinafter referred to as the 2009 Regulations). Notably, Clause 2 of Appendix-2 of the 2009 Regulations similarly prescribed that the duration of the B.P.Ed. programme would be one year or two semesters.
27. Although the NCTE, in its 2007 and 2009 Regulations, specified that the duration of the B.P.Ed. course would be one year, the Bench may take judicial notice of the fact that the Second Schedule of the NCTE (Determination of Minimum Qualifications for Persons to be Recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014, prescribed the minimum academic and professional qualifications required for such posts. These qualifications have been incorporated verbatim into the 2016 Rules.
28. As previously noted, the advertisement specified that the essential qualifications for the post would be determined in accordance with the 'SSC (WB) Rules'. The 2016 Rules, as outlined in paragraph no. 18 above, prescribe the minimum academic and professional qualifications required for the post. In the present case, neither the petitioner nor the school

authority could justify the claim that as the petitioner had completed one year B.P.Ed. Course prior to 2015, he would be treated as an eligible candidate for the post.

29. The school authority cited the instance of Mr. Monohar Mandal, whose appointment was approved in 2009, i.e., prior to the coming into force of the 2014 Regulations and the 2016 Rules. Therefore, it can be safely concluded that the approval of Mr. Mandal's appointment cannot be relied upon to support the petitioner's case.

**Conclusion:**

30. Therefore, based on the discussions and reasons set out in the preceding paragraphs, the only conclusion that can be drawn is that the District Inspector of Schools did not misdirect himself in refusing to approve the petitioner's appointment to the post, as well as in declining to approve the panel prepared for the said post pursuant to the advertisement published by the school authority on 12.07.2019. Accordingly, I find no infirmity or perversity in the order dated 10.08.2020 issued by the District Inspector of Schools (Secondary Education), Kolkata.

**Order:**

31. Consequently, the writ petition is, thus, dismissed. However, there shall be no order as to the costs.

**(Partha Sarathi Chatterjee, J.)**