

S/L 18  
24.4.2024  
Court No.11  
*Avijit Mitra*

WPA 20897 of 2013

Animesh Singha Mahapatra & Ors.  
Vs.  
State of West Bengal & Ors.

*Mr. Sukanta Chakraborty*  
*Mr. Sakabda Roy,*  
*Mr. Roumyadip Saha*

*... for the Petitioners.*

*Mr. Biswabrata Basu Mallick,*  
*Mr. Sayak Chakraborty.*

*..... for the State.*

*Mr. Kanak Kiran Bandyapadhyay*

*... for the SSC.*

Throwing challenge to justifiability 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 21.12. 2011 and the candidates having degree from PTTI 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)".*

The essential facts, as unfurled in the writ petition and supplementary affidavit filed by the petitioners, are that 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.

All the petitioners except the petitioner nos. 7 and 20 to this writ petition 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.7 and 20 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.

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 23.12.2011 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 a Mark sheet of one of the petitioners, 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. In aid of his such contention, he relies on another unreported decision rendered by a coordinate Bench of this Court in WPA 29699 of 2013(Maniraj Ghosh & Ors. vs. State of West Bengal & Ors.).

He contends that the petitioners secured higher marks in written examination, subject test and even in evaluation of their academic qualifications but no marks were awarded in favour of the petitioners against their training qualifications. He seeks to contend that had 6 (six) marks been awarded to the petitioners against their training qualifications, the petitioner could have secured more 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. 7 and 20, 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. 7 and 20, who were the candidates under Honours/PG category can be referred if the necessity of such reference is felt to be inevitable.

Mr. Biswabrata Basu Mallick, learned advocate and Mr. Sayak Chakraborty entered their appearance on behalf of the State and opposes the submissions advanced by Mr. Chakraborty.

Normally, the 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 all the petitioners except the petitioner nos. 7 and 20, 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 450<sup>th</sup> 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 all the except the petitioner nos. 7 and 20, 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 to 6, 8 to 19 and 21 to 29 to this writ petition provided they have secured 55% and above marks in their training courses. If it is found that petitioner nos. 1 to 6, 8 to 19 and 21 to 29 have secured higher marks than the last

selected candidate in their category, the Commission shall take next follow up action in accordance with law within a period of three months from the date of receipt of a copy of this order.

From the order passed in Maniraj Ghosh & Ors. (supra), it would be explicit that the issue towards the entitlement of candidates who offered their candidature under Honours Category to get the marks against training qualifications has been relegated to the Principal Secretary, School Education Department, Government of West Bengal for its resolution. As such, this Court is not inclined to relegate this issue again to the Principal Secretary. The Commission shall act on the basis of the decision taken by the Principal Secretary on the issue relegated to him. It is made clear that if issue is decided by the Principal Secretary declaring the candidates under Honours Category to be entitled to get marks against their training qualification, the Commission shall take next follow up action within a period of one month from the date on which such decision of the Principal Secretary would be brought to its notice.

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.)**