

01.02.2024
Item No.09
Court No.11
Avijit Mitra

**MAT 2441 of 2023
with
IA No. CAN 2 of 2024**

**West Bengal Board of Primary Education & ors.
- Versus -
Md. Rafique & anr.**

Mr. Amitava Chaudhuri,
Mr. N. Roy

...for the appellants

Mr. Biswabrata Basu Mallick,
Mr. Gaurav Das

...for the State

Mr. Tarunjyoti Tewari,
Mr. Aniruddha Tewari

... for the writ petitioner/respondent no.1

The present appeal has been preferred by West Bengal Board of Primary Education (in short, the said Board) and its functionaries challenging an order dated 26th September, 2023 passed by the learned single Judge in a writ petition being WPA 13347 of 2023. By the said order, the writ petitioner's prayer to direct the said Board to consider his candidature and to arrange for his personality test and aptitude test was allowed in consideration of the grounds that he hails from an under-privileged class and that due to his father's serious ailments he could not respond to the notifications in time.

Mr. Chaudhuri, learned advocate appearing for the appellants submits that the notification for recruitment of TET qualified trained candidates was published on 29th September, 2022. Pursuant to an order passed by the writ Court on 09th November, 2022 in a writ petition being

WPA 20745 of 2022 and other similar writ petitions, the reserved category candidates, who have obtained 82 as TET marks in TET-2014 was declared as TET qualified candidates and a list was published to that effect on 11th November, 2022 wherein the name of the respondent no.1 featured under OBC-A category. By a further notification dated 14th November, 2022 the candidates in the said list were directed to submit necessary documents within 21st November, 2022 and by a notification dated 20th March, 2023 the said candidates were invited to participate in the process of Recruitment-2022 on and from 20th March, 2023 to 24th March, 2023. All the said notifications were uploaded in the Board's *website* but the respondent no.1 failed to respond to the same.

He further submits that the *viva voce* and the aptitude test of the said TET qualified candidates securing 82 marks as well as the entire recruitment process have been concluded on 24th July, 2023 and in the backdrop of the said facts, any direction to conduct *viva voce* and the aptitude test for the respondent no.1 afresh would open a floodgate for litigations and on humanitarian ground the Court cannot grant relief contrary to law. Such arguments, as advanced were glossed over by the learned single Judge and no finding was returned on the same and such infirmity warrants interference of this Court. In support the arguments reliance has been placed upon the judgments delivered in the cases of *Maharashtra State Board of Secondary and*

Higher Secondary Education & anr. Vs. Paritosh Bhupesh Kurmarsheth etc., reported in AIR 1984 SC 1543, *The Central Board of Secondary Education & ors. Vs. Adarsh Kumar Sedhwarayar & ors* and an order passed in A.S.T. 492 of 2008 (unreported).

Per contra, Mr. Tewari, learned advocate appearing for the writ petitioner/respondent no.1 submits that the selection process has not yet been completed. The *viva voce* and the aptitude test are to be conducted by the officials of the said Board and that as such the Board cannot allege that grant of an opportunity to the respondent no.1 to appear in the *viva voce* and the aptitude test would create insurmountable inconvenience. In support of his arguments Mr. Tewari has drawn our attention to an order passed by the Hon'ble Supreme Court in the case of *Soumen Paul & ors. Vs. Shrabani Nayek & ors.* (unreported).

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, on 11th November, 2022 the candidates who have obtained 82 as TET marks in TET-2014 were declared qualified. By a notification dated 14th November, 2022 the said candidates were asked to submit the relevant documents within 21st November, 2022 and by a notification dated 20th March, 2023 the qualified candidates were invited to participate in the process of Recruitment-2022 on and from 20th March, 2022 to 24th March, 2022. The writ petition was, however,

filed about three months thereafter on 08th June, 2023 and the order impugned was passed on 26th September, 2023. In the writ petition the petitioner admitted that he could not respond to the notifications in view of his father's ailments.

In the said conspectus and on humanitarian ground the appellants cannot be asked to conduct *viva voce* and the aptitude test afresh for the respondent no.1. Such direction would open a floodgate and may also affect the right of the candidates, who had already completed the *viva voce* and the aptitude test.

We are of the opinion that the direction upon the Board to hold a arrange for *viva voce* and personality test/aptitude test afresh for the respondent no.1 would stand out to be an instance of misplaced sympathy.

For the reasons discussed above, the order dated 26th September, 2023 passed in the writ petition being WPA 13347 of 2023, is set aside and the writ petition is dismissed.

The appeal and the connected application are, accordingly, disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)