

(2023) 08 GAU CK 0037

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7600 Of 2022

Binod Karmakar And 193 Ors

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 08 GAU CK 0037

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : K.K. Mahanta, K.M. Mahanta, N. Begum, R. Mazumdar, M.H. Laskar

Final Decision : Allowed

Judgement

1. The extraordinary powers under Article 226 of the Constitution of India is being sought to be invoked by means of this petition which has been filed in connection with a recruitment process for Assistant Teachers of various LP/UP Schools in the State of Assam.
2. Before going to the issue which has arisen for determination, the facts of the case may be stated in brief in the following manner.
3. The case has a chequered history as there were a number of litigations which had gone up to the Hon'ble Supreme Court and the present writ petition is an offshoot of the earlier proceedings.
4. On 11.09.2020, an advertisement was issued for filling up 3,941 (Three Thousand Nine Hundred Forty One) vacancies of Assistant Teachers of LP / UP Schools in the State of Assam. The said advertisement however contained a condition that candidates who were Assam State TET qualified would only be allowed to participate and Central TET qualified candidates were excluded from the purview of the recruitment process. It is the case of the petitioners that in all prior recruitment process, there was no such distinction between State TET qualification and Central TET qualification.

5. Being aggrieved by the said condition, writ petitions were filed by the petitioners along with others which was registered as WP(C)/3720/2020. This Court vide an order dated 24.09.2020 had allowed offline participation of the petitioners and it is submitted that in pursuance with such permission, the petitioners had submitted their applications offline. The said writ petitions were however dismissed vide an order dated 18.12.2020, the lead case being WP(C)/4174/2020.

6. The said order was the subject matter of challenge in Writ Appeal 24/2021 which was filed on 25.01.2021. It is submitted that the Hon'ble Division Bench had made an observation that no interim order was required as a statement was made by the learned counsel representing the Department that due consideration would be made. Subsequently, vide order dated 03.02.2021, the Writ Appeal was allowed. It is however clarified that amongst the 916 numbers of writ petitioners, the same included 581 candidates who had applied under the Director of Elementary Education and 335 candidates had applied under the SSA. Since there was a requirement of some clarification, on the very next date of passing the judgment, the petitioners had filed I.A. No. 258/2021 on 04.02.2021 in which time was taken to file objection by the Department which was ultimately done on 11.02.2021. On 12.02.2021, the matter was taken up for consideration and the last paragraph of the judgment dated 03.02.2021 was clarified to mean that there would be no ambiguity in the direction that the petitioners who are Central TET qualified were directed to be considered. The order of the Hon'ble Division Bench was unsuccessfully challenged by the Department in the Hon'ble Supreme Court in SLP(C) No. 9032-9033 / 2021 and the SLP was dismissed on 03.09.2021.

7. In the meantime, the petitioners after waiting for a long period of time had instituted Contempt Case No. 296/2021 in which notices were issued. Thereafter, on 04.05.2022, an advertisement was issued specifically mentioning that it was meant for the writ petitioners in the petitions which were filed in connection with the advertisement dated 11.09.2020. The advertisement / notice dated 04.05.2022 had directed submission of application online which the petitioners had accordingly done. There is a further notification dated 25.05.2022 whereby the Department has verified that the process was to verify / assess the position of the candidates in the select list.

8. However, on 28.10.2022, a notification has been published giving the break-up of vacancies. From the said break-up which are given in a tabular form, vacancies were mainly existing in ST (H) and ST (P) categories and the petitioners were mainly in the categories of OBC, MOBC, SC and unreserved. As a result, the scope of a due consideration has been extinguished resulting filing of the present petition.

9. I have heard Shri K.K. Mahanta, learned Senior Counsel assisted by Shri K. M. Mahanta and Ms. N. Begum, learned counsel. I have also heard Shri R. Mazumdar, learned Standing Counsel for the Elementary Education Department.

Shri M.H. Laskar, learned counsel is present for the respondent nos. 3 to 7 who were subsequently impleaded in this writ petition.

10. Shri Mahanta, the learned Senior Counsel has submitted that the initial writ petition was instituted in the year 2020 and in the long proceeding which had even gone to the Hon'ble Supreme Court, the issue of vacancies in the categories in which the petitioners belong was never taken up. Rather, it was always the stand of the Department in the Court that the cases of the petitioners would be considered. It is further submitted that ambiguity, if any, in the judgment dated 03.02.2021 of the Hon'ble Division Bench was clarified vide the subsequent order dated 12.02.2021 of the Hon'ble Division Bench which was passed after filing of the objection by the Department.

11. It is submitted that the present issue not being raised at any prior point of time cannot stand in the way for proper implementation by giving a logical interpretation to the order and direction of this Court.

12. The learned Senior Counsel by referring to the affidavit-in-opposition of the Director of Elementary Education, Assam filed on 24.07.2023 has submitted that a statement has been made that on 05.02.2021, the recruitment was completed and therefore, the Department could not be faulted with taking up the present stand. He submits that such statement would not have been made in view of the ongoing proceedings and also in view of the notice dated 25.05.2022 whereby it was notified that the position of the petitioners would be verified / assessed in the select list. The learned Senior Counsel accordingly submits that a consequential direction is required to be given for offering the appointments to the petitioners depending on their position in the select list.

13. Shri R. Mazumdar, learned Standing Counsel of the Department opposing the stand of the petitioners has drawn the attention of this Court to the judgment and order dated 03.02.2021 passed by the Hon'ble Division Bench in which there was a direction to make the recruitment in two phases and in the

1st phase, 3025 numbers of State TET Qualified candidates were to be offered appointment. He submits that pursuant to the said process of appointment, the remaining 916 vacancies had remained and those are mainly in the category of ST (H) and ST (P) and for that, the Department cannot be faulted upon. He submits that a candidate could give preference for 3 districts and by following the said procedure, the vacancies in the categories in which the petitioners belong have been filled up. He accordingly submits that there may not be any cause of action in this writ petition.

14. Shri M.H. Laskar, learned counsel for the respondent nos. 3 to 7 has submitted that the said respondents are also Central TET Qualified candidates whose documents were verified in the meantime and only because of the interim order passed by this Court in the present case, their appointments are held up. He accordingly submits that the cases of the said respondent nos. 3 to 7 may also be considered by this Court.

15. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

16. The principal challenge with regard to eligibility of Central TET Qualified candidates have already been resolved by this Court and also affirmed by the Hon'ble Supreme court vide the order dated 03.09.2021 whereby the SLP preferred by the State against the judgment and order dated 03.02.2021 of the Hon'ble Division Bench in the writ appeal has been dismissed. Therefore, as on date, there cannot be any distinction between a Central TET Qualified candidate and a State TET qualified candidate qua the recruitment process initiated vide the advertisement dated 11.09.2020 and all such candidates are to be treated at par.

17. This Court had also taken note of the fact that the Department cannot even take the stand that the applications of the present petitioners were not submitted within the prescribed date as this Court vide the interim order dated 24.09.2020 had allowed such participation off-line by the present petitioners.

18. Shri Mazumdar, the learned counsel has taken the point that the Division Bench in the judgment and order dated 03.02.2021 had however made an observation that the recruitment is to be done in two phases and in the first phase, 3025 numbers of State TET Qualified candidates were to be considered and thereafter, the remaining 916 vacancies are to be filled up by the petitioners. Though it is submitted that while making the said recruitment, the remaining vacancies are of categories in which the petitioners do not qualify, such submission made on the behalf of the Department cannot be sustained for more than one reason. Since in the earlier proceedings, it has been held that there cannot be any distinction between Central TET Qualified candidates and State TET Qualified candidates, the said observation to make appointment of 3025 State TET Qualified candidates in the first phase was given only because of the urgency to fill up the posts and the remaining part of the observation to consider the appointment of the petitioners for the 916 numbers of vacancies cannot be made otiose by the present stand of the Department that vacancies are only available in such categories, mainly of ST (H) and ST (P) in which the petitioners cannot be considered. In any case, the appointments are to be made strictly in accordance with merits on the basis of their position in the merit list. Though Shri Mazumdar, the learned Department Counsel may be correct in contending that there was a stipulation in the Advertisement for the candidates to give preference to 3 districts, this Court is of the view that the same would not mean that a candidate who is willing to serve in any other districts can be denied of such appointments. In any case, Shri Mahanta, the learned Senior Counsel has clarified that the petitioners are ready and willing to serve in any district of the State.

19. In view of the aforesaid discussions and the background facts and circumstances, this Court is of the opinion that a case for interference is made

out. This Court therefore issues the following directions which would serve the interest of justice and also the equities can be balanced.

20. The State would have the option to carry out an exercise for de-reserving the numbers of post in which the present petitioners and the respondent nos. 3 to 7 are required to be considered in accordance with the earlier direction of the Hon'ble Division Bench in the judgment and order dated 03.02.2021 with a stipulation that such de-reservation would be later on adjusted in subsequent recruitment processes. The said exercise, if decided to be undertaken, is to be completed within a period of 3 (three) months from today. If the aforesaid option is unviable, or not able to be complied with by the State, the respondent authorities are directed to offer appointments to the petitioners after consideration of their position in the select list and for those petitioners including the respondent nos. 3 to 7 whose positions are above any candidates who have been offered the appointment, the last of such candidates should make way for the appointment of the petitioners. The aforesaid exercise however is to be done by issuing a notice to the affected candidate and appointments have to be offered to the petitioners strictly based on their position in the select list prepared in pursuance to the initial advertisement dated 11.09.2020. The entire process is to be completed within a period of 3 months as the recruitment process was initiated in the year 2020 itself.

21. Writ petition accordingly stands allowed.

22. No order as to cost.