

(2019) 09 CAL CK 0070

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5995 (W) Of 2014

Jayashree Samanta

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Citation : (2019) 09 CAL CK 0070

Hon'ble Judges : Md. Nizamuddin, J

Bench : Single Bench

Advocate : Sudeep Sanyal, Snehasis Jana, Sanjib Das, K.K. Bandopadhyay

Final Decision : Disposed Of

Judgement

Md. Nizamuddin, J

Heard learned Advocates appearing for the Parties.

This Writ Petition has been filed challenging the action of the respondent authorities concerned not considering the petitioner's certificate of Diploma-in-Elementary Education in Session 2009-11 in the Primary Teacher's Training for appointment in the post of Assistant Teacher.

Facts involve in brief in this case are hereunder.

According to the petitioner, she obtained the degree of Bachelor of Arts (Honours) from the Vidyasagar University in the year 2006 and obtained the degree of Master of Arts in English in the year 2008 and Diploma-in-Elementary Education in Session 2009-11 in the Primary Teacher's Training under the West Bengal Board of Primary Education from Gopsai Abhinandan Sangha Primary Teachers' Training Institute approved by National Council for Teacher Education Eastern Regional Committee from the academic session 2008-09.

The Respondent Nos. 5 and 6 published an advertisement in the daily newspaper on 30th December, 2011, inviting applications from the eligible candidates for the

vacant posts of the Assistant Teacher's in different schools in Western Region, pursuant to which the petitioner obtained the booklet/Brochure which contained application form and information with regard to test, method of marking etc. and petitioner applied for the said post. The Chairman of the Western Region, School Service Commission issued Admit card to the petitioner for appearing in the said written test and she appeared in the written test which was held on 29.07.2012.

The Chairman Western Region School Service Commission published the result of the said test in the website. Thereafter, the respondent concerned issued letter in favour of the petitioner for appearing in the personality test to be held on 30th August, 2013, pursuant to which the petitioner appeared before the Interview Board for Personality test.

After completion of Personality Test the respondent nos. 5 and 6 prepared a panel of eligible candidates for the post of teachers in the Western Region, on 25th September, 2013 and displayed the same in the website and the said panel contained 1090 candidates and name of the petitioner was appearing under serial number 906 in the said panel.

It is the case of the petitioner that on 30th August, 2013 when the petitioner was appearing before the Interview Board for the Personality Test she was informed that the qualification of the petitioner in Diploma-in-Elementary Education in Session 2009-11 in the Primary Teacher's Training will not be considered in awarding her rank in the panel of successful candidates.

Aggrieved by the aforesaid action of the respondent, petitioner had earlier filed the Writ Petition being W.P. No. 38297 (W) of 2013 which was allowed to be withdrawn with liberty to file fresh writ application by order of this Court dated 7th February, 2014. Thereafter the petitioner filed the instant fresh writ application on the ground that due to non consideration of the qualification of the petitioner in the aforesaid Diploma Course which was equal to B.Ed according to the said brochure, the petitioner secured poor rank in the panel of successful candidate, though the petitioner passed the written test and called for Personality Test. At the time of moving this Writ Petition this Court has passed an interim order on 08.04.2014 to the following effect:

....."The respondent school Service Commission is restrained from filling up one post in respect of which the petitioner participated in the selection process till May 15, 2014 or until further orders, whichever is earlier, if all those posts have not already been filled up."

It is the case of the petitioner that while advertisement was issued for appointment to the post of Assistant Teacher in recognized Non-Government Aided Junior High School/ High Schools/ Higher Secondary Schools in West Bengal the respondent authority concerned had categorically mentioned in the aforesaid brochure that two year Diploma-in-Elementary Education would be considered as equal to B. Ed and on the basis of such advertisement large number of eligible candidates participated in the said examination and it was not

open to the respondent authorities to resile from their stand after two and half years and to contend that the said Diploma would not be considered equal to B.Ed. and no marks would be awarded on the same.

Petitioner has also filed a supplementary affidavit affirmed on 10th August, 2015, annexing an order Dated 04th August, 2008 issued by National Council for Teacher Education Eastern Regional Committee (a Statutory Body of the Govt. of India) granting recognition to the aforesaid Gopsai Abhinandan Sangha Primary Teachers' Training Institute for conducting Primary Teachers' Training (PTT), (D.ED) course of Elementary level of two years duration with an annual intake from the academic Session 2008-2009 under Clause 7(11) of NCTE (Recognition Norms & Procedure). Petitioner contends that the aforesaid brochure containing the information and instruction and application for the said course of Assistant Teacher and at Page 10 of the said Brochure (Page 47 of the Writ Petition) contained as follows:-

"Note 2: regarding B.Ed/B.T/PGBT/BPED/PGPT or Equivalent/Diploma course in teacher education recognized by the National Council for Teacher Education (NCTE) only shall be considered however, in case of Diploma in Education (special Education) and B.Ed. (Special Education), a Course recognized by the Rehabilitation Council of India (RCI) only shall be considered, A 2 -years Diploma in Elementary Education (by whatever name known) may be considered in place of B.Ed. A candidate applying for Work Education (pass) with Graduation and having correspondence Course recognized by any UGC recognized University/ from any UGC recognized University or, Bachelor's degree in General Stream in Arts/Science/Commerce as regular/external/Private candidate or through distance mode of education/correspondence Course with degree/diploma in work Education curriculum awarded by any University or any Department of the State Govt. may be eligible as hereunder follows".

It appears at page 10 of the said Brochure specifying the distribution of Marks specifically mentions 6 marks for B.Ed etc. or equivalent to the same. Petitioner contends that she has requisite qualification and was successful in written test and was placed in the combined merit lists at serial No. 906 and after the Personality Test she came to know that no marks has been awarded to her for the course of Diploma-in-Elementary Education under the West Bengal Board of Primary Education without intimating her being a candidate before the date of making application and written test and taking away such a valuable right of getting numbers for the said course and the petitioner came to know only from a document issued by the authority under West Bengal Central School Service Commission on a query under Right to Information Act, by another candidate by their letter dated 23.12.2013 being annexure 'P-10' at page 105 of the Writ Petition that by a Resolution of the 450th Meeting of the Central Commission held on 06.06.2013 it has resolved not to treat the aforesaid Diploma as equal to B. Ed. and not to award any mark to any candidate for such Diploma Certificate.

Respondents have filed affidavit-in-opposition opposing the writ petition by

contending that the aforesaid brochure at Page 47 of the Writ Petition does not explicitly speak of allotting marks for the said Diploma-in-Elementary Education though the said Diploma Course may be treated at par or with equal to the degree of B. Ed. etc. Respondents further contend that qualification requires for pursuing such courses do not match with the qualification required for Assistant Teacher in Honours/PG category vacancies in the State of West Bengal. Respondents further contend that the West Bengal School Service Commission exercising its power/authority under the provisions of relevant Rules 2007, in its 450th meeting held on 06.06.2013 took a resolution to the effect that to the candidates having Diploma-in-Elementary Education no score would be awarded for having such Diploma.

Respondents contend that the petitioner became successful in the written test and called for Personality Test (Interview) and she obtained total 51.5 marks whereas both the list of female and male candidates in the same category, subject, region as that of the petitioner who were called for counseling in the said 12th RLST obtained total 53.5 marks and were passed in combined merit list at Serial No, 835/34 respectively and as such the petitioner did not come under the Zone of consideration. Respondents contend that the Diploma Certificate submitted by the petitioner at page 37 of the Writ Petition does not match with the roll no. from the earlier one. Respondents contend that the institution from which petitioner has completed the said Diploma had no approval for the academic year in question. It seems that the respondents have taken contradictory stand; once doubting the genuineness of the aforesaid Diploma course while another stand is that the resolution has been taken by them that they would not treat the said Diploma equal to B. Ed. etc. and not to award on such Diploma as earlier stand taken by them in the said brochure.

I have considered the submission of the parties and on perusal of the records including the aforesaid Brochure being annexure P-6 to the writ petition with regard to details of the procedure of examination in question, awarding of marks, eligibility criteria of the post in question and it appears from the same that the respondent West Bengal School Service Commission has specifically mentioned the pattern of marks distribution in academic and experience of a candidate which includes 6 marks for B.Ed etc or equivalent/ Diploma Course in teacher education recognized by the National Council for Teacher Education (NCTE) according to which 2-year Diploma-in-Elementary Education (by whatever name known) may be considered in place of B.Ed. etc.

Respondents could not make out any case that the aforesaid certificate obtained by the petitioner for Diploma-in-Elementary-Education session 2009-11 as appears at page 37 of the writ petition is fake or the institution which has issued the said certificate to the petition had no approval of the appropriate authority being National Council for Teacher Education, Eastern Regional committee for the year 2009-11. Petitioner by way of a supplementary affidavit has filed a document dated 4th August, 2008 issued by Regional Director, National Council

for Teacher Education Eastern Regional Committee (Statutory Body of the Govt. of India) confirming the approval of institution Gopsai Abhinandan Sangha Primary Teachers' Training Institute for primary teachers training institute from academic session 2008-09, from where the petitioner has completed her Diploma-in-Elementary Education course. It is also indisputable fact that the said Diploma Course was of 2 years.

It appears from the said Brochure published for the examination held on 29th July, 2012 in which petitioner appeared in written test and selected for Personality Test/Interview has specifically mentioned that a 2-years Diploma-in-Elementary Education (by whatever name known) may be considered in place of B.Ed. etc. It is admitted position that petitioner has 2-years Diploma-in-Elementary Education and it has been indicated in the said Brochure that maximum 6 marks will be awarded for having the said Diploma which is equal to B.Ed. and as such she had got a legitimate expectation of consideration of the said Diploma Course for the purpose of score/marking as specified in the said Brochure.

Now the respondents in the midst of selection process after inviting candidate and holding the examination on 29.07.2012 and after selection in the written test and calling for Interview/Personality Test taking a decision and that also by a resolution on 6th of June, 2013, giving retrospective effect to its resolution by applying it to the candidates including the writ petitioner who have already appeared at the written examination held on 29th July, 2012 and after calling her for the interview on 8th August, 2013, without letting her know through any publication that they have taken such a resolution applying with retrospective effect of not to consider and allot marks on the aforesaid Diploma Course.

In my considered view the aforesaid resolution dated 06.06.2013 is unreasonable, unfair, unjust and arbitrary and is not sustainable in law to the extent of giving its effect retrospectively and on this ground alone petitioner being a candidate cannot be deprived of getting marks for the aforesaid Diploma course.

The respondent authority concerned should have informed a candidate at least at the time of applying for the said post or at least before holding the examination or before holding Personality Test/Interview about taking of the aforesaid adverse action causing serious effect to the right of a candidate. It appears that the said resolution was taken on 6th June, 2013 i.e. much after the written examination which was held on 29th July, 2012 and after completion of Personality Test was over and the panel of eligible candidates for appointment was prepared, the Petitioner came to know about such resolution depriving her of such valuable rights of getting marks on the aforesaid Diploma from the reply to the query made by another candidate under Right to Information Act.

The petitioner has relied upon paragraph 15 of an unreported judgment of the Hon'ble Supreme Court in the case of T. Nadu Computer SC B.Ed. G.T. Welf.

Society Vs. Higher Sec. Scl. Computer Tech. Assn. and Ors, dated 09.07.2009 being Civil Appeal No. 4178 of 2009 (Arising out of SIP (c) No. 25097 of 2008) petitioner has relied, relevant portion of which is as follows:

"15. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria t the verge of and towards the end of the game, as justified for we find the same as arbitrary and unjustified. This Court in Hemani Malhotra V. High Court of Delhi MANU/SC/1844/2008: AIR 2008SC2103 has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible."

In my considered view impugned action of the respondents on the basis of the said resolution dated 06.06.2013 giving its effect retrospectively in the midst of the recruitment/selection process after the examination is over, even if the Respondents may have such discretionary power of taking away the right of the petitioner of getting marks on the said Diploma, is arbitrary, unjust, unfair and not sustainable in law. The respondents will have to consider the aforesaid Diploma and award marks on it to the petitioner as indicated in the aforesaid Brochure (including application) published by the respondents. Of course respondents are entitled to enforce the said resolution against any candidate applying or appearing in the examination to be held in future after the date of passing of the said resolution in accordance with law.

Considering the facts and circumstances of the case and submission of the parties and the decision of the Hon'ble Supreme Court in the Case of T. Nadu Computer SC B.Ed. G.T. Welf. Society Vs. Higher Sec. Scl. Computer Tech. Assn. and Ors. (Supra) this writ petition is disposed of by directing the respondents concerned to take into consideration the aforesaid Diploma Course for the purpose of awarding marks to the petitioner as mentioned in the aforesaid brochure, however, for the purpose of giving appointment to the petitioner, respondents are entitled to consider all other eligibility criteria and suitability of the petitioner in accordance with law. Respondents are directed to consider the case of the petitioner in the light of the observation and direction made above within 3 months from the date of communication of this order.

Writ petition WP No. 5995 (W) of 2014 is disposed of.

There will be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, supplied to the parties upon compliance with all requisite formalities.