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**(2019) 04 CAL CK 0034**

**In the Calcutta High Court**

**Case No :** Writ Petitions (WP) 15216, 25645, 27281, 28519, 28256, 31088, 30344, (W) Of 2017

Kowshik Bhowmik & Others

APPELLANT

Vs

State Of West Bengal & Others

RESPONDENT

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**Date of Decision :** 08-04-2019

**Acts Referred:**

Right Of Children To Free and Compulsory Education Act, 2009 — Section 2, 23(1), 23(2)

**Citation :** (2019) 04 CAL CK 0034

**Hon'ble Judges :** Samapti Chatterjee, J

**Bench :** Single Bench

**Advocate :** Bikash Ranjan Bhattacharya, Dibyendu Chatterjee, Jhuma Chakraborty, Madhuparna Kanrar, Siddhartha, L.K. Gupta, Subir Sanyal, Ratul Biswas, Sauvik Nandy, B.P, Gourav Das

**Final Decision :** Disposed Off

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## **Judgement**

Samapti Chatterjee, J

1. The following issue is to be determined in this case :-

Whether the Respondent authority particularly the West Bengal Board of Primary Education is duty bound to issue TET Pass Certificate to the petitioners in terms of Clause 11 read with Clause 14 of the guidelines dated 11th February, 2011 framed by the National Council for the Teacher Education?

Fact of the Case

2. The petitioners' case in a nutshell is as follows :-

The petitioners have participated in the Teacher Eligibility Test, 2014 (hereinafter referred to as "TET 2014") in terms of the notification issued by the West Bengal Board of Primary Education on 26th June, 2015 as well as the notification dated 12th October, 2016. Further the petitioners are eligible candidates for competing

the selection process for appointment to the post of primary teacher through TET, 2014. They also possess requisite qualifications to participate in the selection process of Teacher Eligibility Test' 2014 conducted by the West Bengal Board of Primary Education.

It is also the case of the petitioners that all the petitioners are B.Ed qualified candidates. Accordingly the petitioners appeared in the written examination for TET, 2014. On 26th June, 2015 a notification on application form for TET, 2014 was published by the West Bengal Board of Primary Education. In terms of the said notification the eligibility criteria for appearing in the selection process as well as for appointment to the post of primary teacher through "TET 2014" is quoted below :-

"A person who has passed the H.S or its equivalent examination with 50% marks (45% for reserved category) or has been a graduate irrespective of the percentage of marks in such gradation examination from a recognized university in 2014 or before 25th May, 2015 is only eligible as per the aforesaid notification to get the form."

Result of the said examination was published on 14th September, 2016 and petitioners got the result through the internet from the web site of Board according to their respective roll numbers. Despite being qualified in the "TET 2014" petitioners were not supplied with the "TET 2014" pass certificate from the West Bengal Board of Primary Education till date, all though the guidelines dated 11th February, 2011 issued by the National Council for Teachers Training clearly specified that the appropriate government conducting the TET shall issue certificate to all the successful candidates and the certificate should contain the names of the candidates, date of birth, registration number, year/month of award of certificate, marks obtained in each paper, class level of his validity (Classes I to V and Classes VI to VIII or both ).

Unfortunately the West Bengal Board of Primary Education has refused to follow the said guidelines and arbitrarily, illegally withheld issuance of certificates to the petitioners.

Hence the present writ petition.

Submissions of the learned Advocates

3. Mr. Bikash Ranjan Bhattacharya, learned senior Advocate appearing for the petitioners submitted that guidelines for conducting Teacher Eligibility Test under Clause 14 has specifically directed the appropriate government as follows :-

"Clause 14. The appropriate government conducting the Test shall award a TET Certificate to all successful candidates. The certificate should contain the name and address of the candidate, date of birth, registration number, year/month of award of certificate, marks obtained in each paper, class level of its validity (Classes I to V and Classes VI to VIII or both ) and in case of Classes VI to VIII the subject area (Science and Mathematics, Social Studies, etc). The certificate

may be electronically generated with adequate security features. Appropriate may consider utilizing the services of specialized agencies for issuing dematerialized (demat) TET certificates as a scrutiny feature to avoid any kind of malpractice."

Mr. Bhattacharya further contended that the petitioners appeared in the TET examination for the session 2014-15. He also contended that the notification dated 28th June, 2018 of the National Council for Teacher Education (hereinafter referred to as 'NCTE') prescribed that graduation with at least 50% marks and B.Ed candidates who has acquired the qualifications of Bachelor of Education from any NCTE organisation shall be considered for appointment as the teacher for classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education in any recognised institution within two years of such appointment as primary teacher. Therefore, Mr. Bhattacharya submitted that the petitioners being the B.Ed qualified candidates duly appeared in the TET examination in the year 2015 and the result was published on 14th September, 2016 but till date the TET pass certificate has not been issued in favour of the petitioners.

Curiously by the notification dated 2017 issued by the West Bengal Board of Primary Education the eligible candidates have been asked to take form and submit the same for appearing in the TET examination for 2017.

4. Mr. Bhattacharya further vehemently urged that the Board is duty bound and also under obligation to issue TET pass certificate as per the existing rule but unfortunately that has not been done by the Board.

5. It is also submitted that petitioners being the successful candidates are entitled to receive TET pass certificate. In support of his contention Mr. Bhattacharya relied on a Hon'ble Apex Court decision reported in (2018) 12 SCC Page-595 , Paragraphs-2,4,5,7,10,15,17 and 18 (State of Uttar Pradesh And Others vs Shiv Kumar Pathak And Others). He also relied on two Single Bench decision of this Hon'ble Court in (I) W.P. No.7388 (W) of 2014 (Shantanu Biswas vs The State of West Bengal & Others) and (II) W.P. No.25581 (W) of 2016 (Koyeli Chakraborty & Others vs State of West Bengal & Others).

Mr. Bhattacharya contended that in Shantanu Biswas case (supra) after expiry of the relaxation period result was published.

6. Before parting with his argument Mr. Bhattacharya submitted that the respondent authority is duty bound to issue TET pass certificate in favour of the petitioners therefore Court should direct West Bengal Board of Primary Education to issue TET pass certificate in favour of the petitioners forthwith.

7. Per contra, Mr. L.K. Gupta learned senior Counsel appearing for the Board submitted that neither the notification for "TET 2014" dated 25th May, 2015 nor the notification regarding scrutiny/verification of the testimony dated 12th October, 2016 which were prepared in terms of NCTE's guidelines, describes the

candidates/persons with B.Ed qualification as trained candidates. Therefore, all the petitioners having B.Ed qualification were considered as untrained candidates by the Board. Accordingly they were not offered any appointment.

It was also submitted by Mr. Gupta that sitting in or appearing in the "TET 2014" examination will not confer any right to the petitioners to be appointed as primary teacher unless and until they are trained with the qualifications of 2 years D.El.Ed. Course equivalent thereof Admittedly the petitioners are untrained do not possess the qualification of two years the D.El. Ed. Course or its equivalent. Therefore, the petitioners cannot claim appointment on the basis of the qualification of B.Ed as valid trained qualification in selection process of 2016 through "TET 2014".

8. It is also contended by Mr. Gupta that in as much as the petitioners are not eligible for being considered for appointment as primary teachers in State of West Bengal they are not entitled to get the TET Certificate for the following reasons :- (I) petitioners qualified the "TET 2014" as untrained candidates during relaxation period as there is no provision for consideration of untrained candidates in the rules;

(II) untrained TET qualified candidates are not given any employment as per the MHRD, GOI, D.O. No.11-15/2017-EE.10 dated 6th September, 2017

(III) NCTE notification being F.No.NCTE-Regl 012/16/2018 has substituted sub-para (a) of Para-3 allowing B.Ed. qualified candidate to be considered as trained candidates subject to the fact that within six months from their appointment they have to undergo on elementary education within two years from the date of appointment however, without having retrospective effect whatsoever.

Therefore, in any event the petitioners cannot be considered as trained TET qualified candidates.

9. Mr. Gupta further contended that since there was no sufficient training institution in West Bengal relaxation was made by the NCTE to the effect that the candidates who are not having training qualification because of lack of training institution also would be allowed to appear in the TET examination.

10. It is further contended by Mr. Gupta that passing TET is not an academic qualification to appear in the selection process. If the rule does not permit any candidate to appear in TET for lack of qualification then only taking advantage of relaxation one cannot claim to obtain the certificate as they appeared during relaxation period.

11. Mr. Gupta also vehemently urged that two notifications of NCTE dated 23rd August, 2010 as well as 29th July, 2011 never prescribed that the candidates who appeared during the relaxation period are also entitled to be considered as trained candidate in the selection process. On the contrary both the notifications are silent regarding the fate of the candidates who appeared during the relaxation period in TET examination without having training qualification..

In this context guidelines of NCTE dated 11th February, 2011 was also referred by Mr. Gupta. Guidelines for conducting TET under the Right of Children to Free and Compulsory Education RTE are quoted below :-

"National Council for Teachers Education

No.76-4/2010/NCTE/Acad

Dated 11th February, 2011

To

All Secretaries/Commissioners of Education of State Governments/subject; Guidelines for conducting Teacher Eligibility Test (TET) under the Right of Children for Free and Compulsory Education Act (RTE), 2009.

Sir/ Madam,

In accordance with the provisions of sub-section (1) of section 23 of the RTE Act, the National Council for Teachers Education (NCTE) had vide Notification dated 23rd August, 2010 laid down the minimum qualifications for a person to be eligible for appointment as a teacher in classes I to VIII. It has been interalia provided that one of the essential qualifications for a person to be eligible for appointment as a teacher in any of the schools referred to in clause... of section 2 of the RTE Act is that he/she should pass the Teacher Eligibility Test (TET) which will be conducted by the appropriate Government in accordance with the Guidelines formed by the NCTE.

In this regard, please find enclosed the Guidelines for conducting the Teacher Eligibility Test (TET) for necessary action at your end.

This may be brought to the knowledge of all concerned.

Yours faithfully,

Sd/Vikram Sahay

Member Secretary"

Mr. Gupta also referred to the Paragraphs-2,3,4 & 5 of the Guidelines for conducting TET which are quoted below :

"2. In accordance with the provisions of sub-section (1) of section 23 of the Right of Children to Free and Compulsory Education (RTE) Act, 2009, the National Council for Teacher Education (NCTE) has laid down the minimum qualifications for a person to be eligible for appointment as a teacher in Classes I to VII, vide its Notification dated August 23, 2010. A copy of the Notification is attached at Annexure-1. One of the essential qualifications for a person to be eligible for appointment as a teacher in any of the schools referred to in clause (n) of section 2 of the RTE Act is that he/she should pass the Teacher Eligibility Test (TET) which will be conducted by the appropriate Government.

3. The rationale for including the TET as a minimum qualification for a person to

be eligible for appointment as a teacher is as under :

- I. It would bring national standards and benchmark of teacher quality in the recruitment process;
  - II. It would induce teacher education institutions and students from these institutions to further improve their performance standards;
  - III. It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality.
4. The TET examination may be conducted by a suitable professional body designated by the appropriate Government for the purpose. It will be conducted in accordance with the Guidelines hereunder.

#### Eligibility

5. The following persons shall be eligible for appearing in the TET :

- I. A person who has acquired the academic and professional qualifications specified in the NCTE Notification dated 23rd
- II. A person who is pursuing any of the teacher education courses (recognized by the NCTE or the RCI, as the case may be) specified in the NCTE Notification dated 23rd August, 2010.

III. The eligibility condition for appearing in TET may be relaxed in respect of a state/UT which has been granted relaxation under sub-section (2) of section 23 of the RTE Act. The relaxation will be specified in the Notification issues by the Central Government under that sub-section."

12. It was also strongly submitted by Mr. Gupta that during the relaxation period trained and untrained candidates were allowed to appear in the TET examination and the selection process and thereafter they were given appointment also. Upto 2012 more than 42000/-(approximate) appointments were given and relaxation period was time to time extended. By the notification dated 1st June, 2011 first relaxation was valid up to 31st March, 2014 under Paragraph-6. By the notification dated 1st April, 2015 the relaxation was extended up to 31st March, 2016. Therefore, it was submitted by Mr. Gupta that the TET, 2014 examination was held on 11th October in the year 2015 and the result was published sometime in August, 2016 and the petitioners filed the present writ petition on 17th August, 2018 much after the relaxation period was over.

It is also vehemently urged by Mr. Gupta that all appointments pertaining to the selection process of 2016 have been completed by the month of February, 2017; therefore petitioners cannot claim any benefit of relaxation period by filing the present writ petition sometime in August, 2018.

13. Mr. Gupta also referred to the 'minimum qualification' as mentioned in the

NCTE notification dated 23rd August, 2010 which is as follows :-

"NATIONAL COUNCIL FOR TEACHER EDUCATION

NOTIFICATION

New Delhi, the 23rd August, 2010

F.No.61-03/20/2010/NCTE (N & S). In exercise of the powers conferred by sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), and in pursuance of Notification No.S.O. 750 (E) dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby lays down the following minimum qualifications for a person to be eligible for appointment as a teacher in class-I to VIII in a school referred to in clause (n) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009, with effect from the date of this notification:

1. Minimum Qualifications:-

(i) Classes-I to V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (by whatever name known).

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.El. Ed.)

Senior Secondary (Or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education). AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) B.A./B.Sc and 2 year Diploma in Elementary Education (by whatever name known)

OR

B.A/B.Sc with at least 50% marks and 1 year Bachelor in Education (B.Ed.)

OR

B.A/B.Sc. with at least 45% marks and 1 year Bachelor in Education (B.Ed.) in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard. OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed) OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year B.A/ B.Sc.Ed or B.A.Ed/B.Sc. Ed. OR B.A/B.Sc. with at least 50% marks and 1 year B.Ed (Special Education)

AND

Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose."

14. It is also submitted by Mr. Gupta that as per NCTE Rule relaxation cannot be beyond five years; first relaxation was granted in the year 2011 by virtue of the notification dated 1st June, 2011 thereafter relaxation was extended on the basis of the NCTE's notification dated 1st April, 2015 till 31st March, 2016.

Mr. Gupta further contended that since the relaxation period was already over after 31st March, 2016 as is evident on record and the petitioners filed the present writ petition on 17th August, 2018, therefore awarding TET certificate in favour of the petitioners will be a futile exercise as they cannot participate in future selection process.

15. Mr. Gupta distinguished the decision relied on by Mr. Bhattacharya and contended that decision rendered in Koyeli Chakraborty case and Shantanu Biswas case (supra) have no manner of application in the case in hand as no issue has been decided therein, therefore, those are not binding precedent.

Mr. Gupta also contended that in the present case petitioners obtained B.Ed qualification but in the case of Koyeli Chakraborty (supra) the petitioners obtained D.El.Ed (Diploma in Education) . Therefore, by obtaining B.Ed. qualification petitioners are still not eligible to appear in the selection process as they failed to fulfil the minimum qualification as laid down in the NCTE notification.

Regarding Shantanu Biswas case (supra) Mr. Gupta pointed out that the order therein was passed when the relaxation period was in force, but petitioners filed the present writ petition in August, 2018 when the relaxation already expired on. 31st March, 2016.

In the State of Uttar Pradesh case (supra) Mr. Gupta submitted that in the said decision it was categorically held by the Hon'ble Supreme Court that qualifying marks should be given weightage.

16. Mr. Gupta relied on Hon'ble Apex Court decisions reported in 1991 (4) SCC

Page-139 Paragraph-41 (State Of U.P. And Another vs Synthetics And Chemicals Ltd. And Another) and in 2007 (6) SCC Page- 589, Paragraphs-18, 19 (State Of U.P And Others vs Jeet S. Bisht And Another).

17. In conclusion Mr. Gupta contended that since the petitioners approached this Hon'ble Court in the month of August, 2018 much after the expiry date of relaxation the Court should not entertain this writ petition and awarding of certificates in favour of the petitioners would be nothing but a futile exercise on part of the Board as the recruitment process has already been completed sometime in February, 2017.

Accordingly, Mr. Gupta submitted that this writ petition should be dismissed with costs .

#### Decisions with Reasons

18. Considering the submissions advanced by the learned Advocates appearing for the respective parties and also perusing the records and the decisions cited above I find that the petitioners are all B.Ed passed candidates. They also appeared in TET examination for the session 2014 during the relaxation period granted by the NCTE i.e. till 31st March, 2016. TET examination was held on 11th October, 2015 but result was published on 14th August, 2016 after expiry of the relaxation period.

Therefore, the contention of the Board that issuance of certificate to TET Qualified candidates will be a futile exercise because the candidates cannot get the benefit of that TET Pass Certificate in the year 2019 by filing the writ petition on 8th August, 2018, can not be accepted.

The contention of the Board that admittedly by February, 2017 the appointment arising out of recruitment process on 26th September, 2016 has been completed so issuance of TET Pass Certificate would a futile exercise is devoid of merit as this Court cannot ignore the fact that under Clause 14 of the guidelines for conducting TET it is mandatory that appropriate Government conducting TET examination shall award the Certificate to all the successful candidates.

It is also apposite to mention here be qualified with that as per NCTE guideline notification dated 23rd August, 2010 minimum qualification for Classes-I to V (supra) one has to possess TET Pass Certificate therefore, unless the TET Certificate is awarded to the successful candidates those candidates cannot be treated as TET Pass candidates. May be it is projected by the counsel appearing for the Board that the passing TET is not an academic qualification but a requisite minimum qualification to appear in selection process one has to possess TET Pass Certificate.

I cannot overrule the submissions of Mr. Bhattacharya that when order was passed in Shantanu Biswas' case (supra) relaxation period expired but in view of the Hon'ble Court's order TET certificate was issued in favour of the successful candidates.

There is formidable substance in the argument of Mr. Bhattacharya that when it is mandatory under the Clause 14 of the guidelines of NCTE (supra) then the appropriate Government and the authority is duty bound to award certificate to the successful candidates.

Mr. Gupta's contention that since the relaxation period has already expired after 31st March, 2016 therefore the respondents are not under any obligation to award TET Pass Certificate to the successful candidates and more so when admittedly result was published on August, 2016 much after expiry of the relaxation period, is, in my opinion, wholly meritless.

In my opinion the examination having been conducted during the relaxation period on 11th October, 2015 the respondent authorities were under obligation to award the TET Pass Certificate to the successful candidates and thus non-issuance of such certificate is clearly contrary to the above guideline.

19. In the upshot of the discussions above I direct the respondent authorities to issue TET Pass Certificates in favour of the successful candidates who have qualified in TET examination, 2014 with endorsement therein that its validity would be for a period of two years from the date of issue of the Certificate and not from the date of publication of the result and such certificate shall be issued without any further delay and in any event positively within two months from the date of communication of this order.

20. I make it clear that the successful candidates who would be awarded with TET Certificates shall not take any advantage of the same in the recruitment process held on 26th September, 2016 out of which appointments have been completed by February, 2017.

21. With these aforesaid directions this writ petition is disposed of without any order as to costs.

22. Urgent photostat certified copy of this judgement if applied for, be supplied to the parties on priority basis.