
(2017) 03 CAL CK 0132
In the Calcutta High Court
Case No : 25581 (W) of 2016

Koyeli Chakraborty & Ors.

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Citation : (2017) 03 CAL CK 0132

Hon'ble Judges : Arijit Banerjee

Bench : SINGLE BENCH

Advocate : Bikash Ranjan Bhattacharyya, Bikram Banerjee, ?Firdous Samim, ? Sudipta Dasgupta, ?L. K. Gupta, ?Subir Sanyal, ?Ratul Biswas, ?Tapan Mukherjee, ? Nilotpall Chatterjee, ?Rabindra Narayan Dutta, ?Sagarmoy Ghosh

Judgement

1. The facts and issues involved in these two writ petitions are similar. Hence, the two writ petitions are taken up together for hearing and disposal.

2. The petitioners are aggrieved by the fact that the Part II examination in respect of the Diploma in Elementary Education (in short D. El. Ed.) for the session 2014-16 has not yet been conducted by the West Bengal Board of Primary Education (in short the "Board") as a result whereof the petitioners have been compelled to apply as untrained candidates pursuant to the advertisement dated 26 September, 2016 for recruitment of primary school teachers. They contended that because of the wrongful failure on the part of the Board to conduct the Part II examination, the petitioners have been deprived of the advantage/benefit of applying as trained candidates and the petitioners should be treated as trained candidates. They also prayed for a direction on the Board to hold the Part II examination at an early date. They also stated that the result of the Part I examination is yet to be published and the same should be published expeditiously. Finally, the petitioners submitted that the TET certificates have not yet been issued by the Board and the same should be issued immediately.

3. Appearing for the petitioners Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate submitted that the petitioners have all been successful in TET 2014.

The petitioners took admission in various training institutions in the year 2014 enrolling themselves on the D. El. Ed. Course. Learned Senior Counsel contended that the academic session was to be completed by June, 2016 as per NCTE regulations. However, the Part II examination for the said course has not yet been held. Instead, by a notice dated 27 June, 2016, the Board directed the Heads of the D. El. Ed. Institutions to release the students of second year D. El. Ed. Course of session 2014-16 in the afternoon on 30 June, 2016.

4. Mr. Bhattacharyya pointed out from page 92 of the writ petition (WP No. 25581 (W) of 2016) that the duration of D. El. Ed. programme is of two academic years. However, the students are permitted to complete the programme within a maximum period of three years from the date of admission to the programme. He submitted that it is the duty and responsibility of the Board to conduct the examination in respect of the D. El. Ed. programme. The Board conducted the Part I examination but has not yet published the result thereof. The Part II examination has yet not been conducted. Had the Part II examination been conducted in due time and the results thereof published within a reasonable period thereafter, the petitioners would have had the benefit of the D. El. Ed. qualification and could have applied as trained candidates. By not conducting the Part II examination in due time or at all till date, the Board has deprived the petitioners of the benefit of applying as trained candidates thereby adversely affecting the rights of the petitioners. He submitted that the petitioners should not suffer for the laches or default on the part of the Board. In his usual fairness, Learned Senior Counsel did not seriously press for an order in terms of prayer (a) of the writ petition for a direction on the Board to treat the petitioners as trained candidates. However, learned Counsel submitted that the Board should be directed to hold the Part II examination at an early date and allow the petitioners to participate in the recruitment process after publication of the result of the Part II examination and until then, 32 posts should be kept vacant so that the petitioners can be granted appointment in the event they became entitled to appointment upon being treated as trained candidates. He also prayed for an order in terms of prayers (c) and (d) of the writ petition which are for early publication of the result of the Part I examination of the D. El. Ed. Course and for issuance of the TET pass certificates.

5. Mr. L. K. Gupta, Learned Sr. Counsel appearing for the Board submitted that prayer (a) cannot be allowed. Admittedly, the petitioners have not yet acquired the D. El. Ed. qualification. As a result, the question of treating them as trained candidate cannot arise. He submitted that even if the Part II examination was held in time, the petitioners would not have been able to apply as trained candidates if the recruitment/selection process had been initiated in time and not belatedly by the publication of the advertisement dated 26 September, 2016. He submitted that due to various factors beyond the control of the State and the statutory authorities including the Board, including holding of the General Election in the State, not only the holding of TET 2014 was delayed which was ultimately held in the year 2015 and result was published in November 2015, but

the initiation of the recruitment process was also delayed. Had the delay not occurred, the selection process would have been initiated prior to June, 2016 and in that event, there could be no question of the petitioners applying as trained candidates since the D. El. Ed. course that they were enrolled on was due to be completed only in June, 2016. He submitted that on the one hand the petitioners are complaining of delay on the part of the Board in holding the Part II examination in respect of the D. El. Ed. course and on the other hand, they are seeking to take advantage of the delay in the initiation of the recruitment process. This should not be permitted, submitted Mr. Gupta.

6. Learned Senior Counsel further submitted that admittedly the D. El. Ed. course for the academic session 2014-16 was to be completed in June, 2016. Even if the Part II examination was held shortly thereafter, there is no guarantee that the results would have been published prior to initiation of the selection process by publication of the advertisement dated 26 September, 2016. There are a huge number of candidates and it takes a reasonable period of time, e.g., at least three/four months for publication of the result. Assuming that the part II examination was held in July, 2016 the results were unlikely to be published before October/November, 2016. Giving the petitioners the benefit of doubt and assuming that they would have successful in the Part II examination, they would have obtained the D. El. Ed. qualification subsequent to the last date for applying which was 7 October, 2016. It is settled law that qualification of a candidate as on the date of applying has to be considered and a qualification acquired subsequently can not to be counted. In this connection Mr. Gupta, Senior Counsel, relied on two decisions of the Hon"ble Apex Court in the cases of State of Rajasthan-vs.-Hitendra Kumar Bhatt, JT 1997 (7) SC 287, and Municipal Corporation of Greater Bombay-vs.-Dr. Sushil V. Patkar, AIR 1991 SC 1733.

7. I have considered the rival contentions of the parties.

8. In so far prayers (b), (c) and (d) of the writ petitioners are concerned, I find no difficulty in allowing such prayers. In his usual fairness, Mr. Gupta did not oppose the said prayers. In fact, he submitted that steps are being taken to hold the Part II examination in respect of D. El. Ed. programme for the academic year 2014-16 at an early date.

9. As regards the submission made on behalf of the petitioners that adequate number of posts should be kept vacant so that the petitioners could be accommodated if they become entitled to appointment after holding of the Part II examination and depending on the results thereof, I am unable to pass such an order. Admittedly, there has been a delay on the part of the Board to conduct the Part II examination in respect of the D. El. Ed. course on which the petitioners were enrolled. Admittedly, the course was for two years ending on 30 June, 2016. Even assuming that the Part II examination was conducted soon thereafter sometime in July, 2016, it cannot be said with certainty that the results would have been published prior to 7 October, 2016 which was the last date for making application online pursuant to the advertisement dated 26 September, 2016. Any

qualification acquired by the petitioners after that date would have been irrelevant for the concerned recruitment process. Hence, I am unable to hold that there is any direct nexus between the Board not conducting the Part II examination in time and the petitioners not being able to apply as trained candidates. It cannot be said with any definitiveness that the former was the cause and the latter was the effect thereof.

10. Further, I am inclined to agree with Mr. Gupta that the petitioners while complaining of the delay on the part of the Board in holding the Part II examination is at the same breath trying to take advantage of the delay on the part of the Board in initiating the recruitment process in question. Had the recruitment process been initiated in June, 2016 or any time prior thereto, could the petitioners have complained that because of non-holding of the Part II examination in time, they were precluded from applying as trained candidates? The answer must be in the negative.

11. While I am surely inclined to direct the Board to hold the Part II examination in respect of the D. El. Ed. course on which the petitioners were enrolled at an early date, I am not minded to direct the respondents to keep any number of posts vacant. This would put a spanner in the wheel of the process of recruitment and appointment which should be completed unhindered in greater public interest. It is common knowledge and I can take judicial notice of the fact that there is a serious dearth of teachers in the primary schools in the State of West Bengal, particularly, in the suburbs and rural areas. Putting any kind of embargo on the process of selection and recruitment in question, in the facts and circumstances of this case, is not warranted in my opinion. In my view, the detriment likely to be caused to the greater public interest by passing any such order would heavily outweigh the benefit of protecting the private interest of the petitioners. It is settled law that private interest must give way to larger public interest.

12. I also cannot be unmindful of the fact that although the Part II examination became due upon the completion of the two years course on 30 June, 2016, the petitioners did not make any grievance contemporaneously regarding non-holding of the Part II examination. They ought to have approached the Court with much more diligence and alacrity upon the failure of the Board to conduct the Part II examination in time rather than wait till the publication of advertisement inviting applications for appointment to the posts of primary school teachers. They ought to have been known that the recruitment process could be initiated at any point of time and if the Part II examination was not held and results published before that, they would stand at a disadvantage in the process of selection. They could also have challenged the advertisement dated 26 September, 2016 prior to the last date of application had they moved with a sense of urgency. It is well-established that delay defeats equity. Delay cannot be defined in the abstract. It depends on the facts and circumstances of each case. In my opinion, and for the reasons aforesaid, there was delay on the part of

the petitioners in approaching this Court. Hence, I am unable to pass any order directing the respondents to keep vacant any post as prayed for on behalf of the petitioners.

13. However, the respondents including the Board are directed to conduct the Part II examination of B. El. Ed. programme/course for the session 2014-16 as expeditiously as possible and definitely within three months from date. The result of the Part I examination so held will be published as early as possible and in any event within three months from the last date of examination. In any event, the aforesaid exercise shall be completed before the next recruitment process is initiated by the concerned respondents. The result of the Part II examination of the concerned B. El. Ed. course shall be published within six weeks from date. In case certificates have not been issued to the petitioners in respect of TET 2014 which they claimed to have successfully cleared, such certificates shall be issued to them within eight weeks from date by the concerned respondents subject to they having passed TET 2014.

14. WP Nos. 25581 (W) of 2016 and 25579 (W) of 2016 are accordingly disposed of, without however, any order as to costs.

15. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.