

(2021) 10 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5217 Of 2021

Mafida Begum And 11 Ors. Vs State Of Assam And 6 Ors

Date of Decision : 06-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 10 GAU CK 0014

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : Dr. B Ahmed

Judgement

1. Heard Dr. B. Ahmed, learned counsel for the petitioners. Also heard Mr. D. Saikia, learned Advocate General for the State, assisted by Mr. N.J. Khataniar, learned Standing counsel for the Elementary Education Department, respondent nos.1 and 2 and Mr. V. Choudhury, learned Standing counsel for the respondent nos.3 to 7.

2. Issue notice of motion including notice on the prayer for interim relief, returnable on 22.11.2021.

3. As all the respondents are represented by their respective learned Standing counsel, requisite additional copies of the writ petition along with one additional copy for the learned Advocate General be served on the learned Standing counsel for the respondents within 2(two) days.

4. Heard both sides on the prayer for interim relief.

5. For considering the interim prayer, relevant pleading in the writ petition, documents appended thereto and submissions made at the Bar are required to be referred to.

6. In brief, the case of the petitioners is that they are untrained in-service teachers who are serving in various schools. It is claimed that they had obtained their Diploma in Elementary Education course during the session 2017-19 from the National Institute of Open Schooling (NIOS for short). However, the NIOS did

not issue a pass certificate to the petitioners, purportedly on the ground that the petitioners had upgraded their Class-12 pass certificate to 50% marks for general candidates and 45% marks in case of reserved category candidates after October, 2019. Nonetheless, the mark-sheets issued by the NIOS for the Diploma in Elementary Education were marked as "NC". According to the learned counsel for the petitioners the abbreviation "NC" stands for "Not Certified". The Regional Director, Regional Centre of NIOS (respondent no.5) had issued the impugned letter dated 13.08.2020 to the effect that the candidates who have upgraded their Higher Secondary marks in October, 2019 or subsequent sessions shall not be considered for clearance of "NC" status in the result of NIOS Diploma in Elementary Education. The learned counsel for the petitioners submits that the petitioners had not only upgraded their Class-XII marks but they had also obtained the Diploma in Elementary Education course. The grievance of the petitioners is that the NIOS has not granted to the petitioners the certificate of Diploma in Elementary Education.

7. On 18.09.2021 an advertisement has been issued by the Director of Elementary Education, Assam (respondent no.2) for selection and appointment of Assistant Teachers in Lower Primary and Upper Primary Schools wherein it is provided that the date of online application for the candidates who had already qualified in Assam Teachers Eligibility Test (A-TET for short) would be from 27.09.2021 to 27.10.2021. The grievance of the petitioners is that the "NC" status mentioned in the mark-sheets would exclude/debar/preclude the petitioners from submitting their respective online application forms in view of existence of Clause-21 of the employment advertisement wherein it is provided that "The candidates having not clear (NC) status against any qualification will not be eligible to apply". Accordingly, the petitioners have also assailed clause-21 of the said advertisement dated 18.09.2021. Accordingly, the present writ petition has been filed under Article 226 of the Constitution of India for setting aside the Clause-21 of the advertisement dated 18.09.2021, for directing the respondents no.2 to accept and process online application of the petitioners for quashing of the communication dated 13.08.2020 issued by respondent no.5 and for a direction to the respondents to issue pass/ completion certificate of Diploma in Elementary Education.

8. The learned counsel for the petitioners submits that the NIOS authorities had altered their position because as per Annexure-1 to the writ petition it was specifically provided that if the teacher is graduate then improvement of marks of Class-XII is not applicable but also in the admission notice for doing 2-year diploma in Elementary Education course (2017-19), the eligibility qualification was graduate in any stream of Arts, Science and Commerce but vide Anneure-6 to the writ petition it was provided that "If the teacher is graduate, still the improvement of marks of Class-XII is applicable". In this respect it is submitted that the recruitment advertisement dated 18.09.2021 the existence of Clause-21 as the petitioners are ineligible to apply although they have the requisite qualifications which makes the petitioner otherwise eligible for applying for the

post of Assistant Teachers in Lower Primary and Upper Primary Schools.

9. Per contra, the learned Advocate General has opposed the prayer for interim relief. It is submitted that the abbreviation does not stand for "not certified" but it stands for "not clear". It is further submitted that as per the requirement of the Right of Children to Free and Compulsory Education Act, 2009, necessary eligibility criteria and/ or conditions for recruitment was included in the impugned advertisement dated 18.09.2021 including Clause-21 thereof and the said condition no.21 is in consonance with the communication dated 13.08.2020 impugned in the present writ petition wherein it is provided, inter alia, that "The candidates who have done their up-gradation within March-May, 2019 session (from any recognized board, including NIOS) or through NIOS on-demand examination till 30th September, 2019 only shall be considered for clearance of "NC" form the NIOS D.El.Ed. result."

10. On a pointed query of the Court, the learned Advocate General has submitted that in the present recruitment process for filling up 7242 vacancies of Assistant Teachers of L.P. Schools and 2112 vacancies of Assistant Teacher, Science Teacher, Assamese Language Teacher and Manipuri Language Teacher of U.P. Schools under the Directorate of Elementary Education, the selection process is as provided in clause 25 of the employment advertisement and that there would be no written or viva-voce examination. The applicants are required to upload their online applications and documents in the website of the Directorate of Elementary Education and would be electronically verified by using modern technology with the help of digi-locker, scanning, barcode, QR Code for genuineness and the authorities have also reserved their right to physically verify documents. Therefore, it is submitted that unless appropriate document is filed, the candidature of applicants submitting non-compliant document would stand rejected as there is no scope of introducing any document at any later point of time.

11. Considered the statements made in the writ petition and documents appended thereto. The Court takes note of the projection made by the petitioners that all of them are graduates and are teaching in private schools and further projection that (i) being graduates, though the petitioners were not required to improve their Class-XII marks, (ii) that the NIOS had changed their stand and subsequently introduced the requirement of improving Class-XII marks, and (iii) the petitioners have the requisite qualification. However, the fact remains that the NIOS, i.e. the authority who had issued the mark-sheets to the respective petitioners had made endorsement therein to the effect that it is "NC" i.e. "not clear" status. Therefore, till the said endorsement is not removed upon final adjudication, by virtue of an ad interim direction, the mark-sheets of the petitioners cannot be given "clear" status so as to make the petitioners eligible to be selected for appointment.

12. In this writ petition, the petitioner has prayed for declaring Clause-21 of the employment advertisement as illegal, in so far as it excludes/ debar/precludes

the petitioners from submitting their online applications; for directing the respondent no. 2 to accept the online applications of the petitioners; for quashing the communication dated 13.08.2020 issued by the respondent no. 5; and for directing the respondents to immediately issue Diploma Elementary Education pass/ completion certificate and mark-sheets having clearance from "NC" status. In light of such prayers, if as an ad interim measure, the enforceability of Clause 21 of employment advertisement dated 18.09.2021 is stayed/ suspended, it would amount to grant the final reliefs to the petitioners, because not only such an interim order might lead to the appointment of the petitioners, but of the petitioners get employment, the other prayers would be rendered otiose.

13. Moreover, it is seen that the mark-sheets (Annexure-4 series) containing remark "NC" i.e. "not certified" is in respect of examinations held in the month of March, 2019 and the present challenge has been made after more than 2 (two) years. Similarly, the communication dated 13.08.2020 (Annexure-11), by which it has been mentioned that the cases of the candidates who have upgraded their Higher Secondary marks in October, 2019 or subsequent sessions shall not be considered for clearance of 'NC' status in the result of NIOS D.El.Ed., has now being assailed after over a year.

14. Therefore, in light of the discussions above, the prayer for ad interim relief at this stage is refused.

15. List in the admission column on 22.11.2021.