
(2012) 12 CAL CK 0009

In the Calcutta High Court

Case No : A.S.T. No. 356 of 2012 with A.S.T.A. No. 238 of 2012

West Bengal Board of Primary Education

APPELLANT

Vs

Rupa Paul

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Citation : (2013) 1 CHN 401

Hon'ble Judges : Tarun Kumar Das, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : L.K. Gupta, Subir Sanyal and Ratul Biswas in A.S.T. 356 of 2012 and Badri Narayan Adhikary in A.S.T. 360 of 2012, for the Appellant; Ashok Kr. Banerjee, Ansar Mondal, Joyotosh Majumder, Abhratosh Majumder, Sakya Sen and Debjani Roy for State in A.S.T. 356 of 2012 and A.S.T. 360 of 2012 and Subrata Mukhopadhyay, Basabi Rai Chowdhury and Shamit Sanyal, Asha G. Gutgutia in A.S.T. 365 of 2012 and A.S.T. 360 of 2012 for NCTE, Joyotosh Majumder, Siddhartha Ghosh and Anindya Bose 24 Pgs. (S) in A.S.T. 356 of 2012 and A.S.T. 360 of 2012 for DPSE, for the Respondent

Judgement

Re: A.S.T.A. 238 of 2012

1. This application has been filed in connection with the appeal preferred from the order dated 13th December, 2012 passed by a Learned Judge of this Court whereby and whereunder the said Learned Judge passed an interim order staying the operation of the impugned Notification dated 19th October, 2012 issued for appointment of primary school teachers in different primary schools in the State of West Bengal from the stage of conducting Teachers' Eligibility Test. It is not in dispute that more than 34,000 posts of primary school teacher are lying vacant at this stage and the appellants herein took steps for filling up those vacant posts.
2. The writ petition was filed on behalf of some of the trained candidates who are eligible to be appointed as primary school teachers.
3. The writ petitioners challenged the validity and/or legality of the aforesaid Notification on the ground that the said Notification was issued in violation of the

conditions for relaxation granted by the Central Government in its Notification dated June 2011.

4. The learned counsel representing the appellants herein submits that the impugned Notification was issued for filling up the vacant posts of Primary School Teachers in different primary schools strictly in accordance with law and there is no illegality and/or irregularity in the aforesaid Notification.

5. The learned counsel representing the respondents/writ petitioners, however, submits that the candidates like the writ petitioners who are possessing requisite qualifications as prescribed by NCTE cannot be treated at par with the candidates not having the requisite qualifications prescribed by NCTE.

6. Mr. Gupta, learned senior counsel representing the eligible as per NCTE norms will get priority over the candidates who are eligible only due to the relaxation granted by the NCTE.

7. Going through the impugned order under appeal passed by the learned Single Judge, we find that the said Learned Judge while considering the prayer for interim relief made on behalf of the writ petitioners specifically considered the risk of wastage of huge amount of money from the public exchequer in the event Teachers" Eligibility Test is allowed to take place now and ultimately the writ application succeeds.

8. The learned Single Judge was, however, satisfied that the Teachers" Eligibility Test is required to be conducted for selection of primary teachers. Learned Single Judge however, did not consider that the candidates, who applied for the post of primary school teachers pursuant to the impugned Notification, have already purchased application forms from the appellants and the appellants collected about Rs. 55 crores from the said candidates who are seeking appointment to the post of primary school teachers in different schools. A portion of the aforesaid amount can be easily utilised for holding the Teachers" Eligibility Test.

9. In the event the Teachers" Eligibility Test is not allowed to be held now, then the same will affect huge number of candidates who have already submitted application forms after purchasing the same from the appellants herein.

10. Furthermore, we cannot forget that several thousand primary schools in West Bengal require eligible primary school teachers in order to run primary schools smoothly. The primary school students of West Bengal will be denied primary education in the absence of eligible primary school teachers. Therefore, the steps taken by the appellants to fill-up the vacant posts of primary school teacher cannot be delayed for an indefinite period.

11. We are also of the prima facie opinion that on account of the interim order passed by the Learned Single Judge, an apparent deadlock has been created in the matter of appointment of primary school teachers at this stage.

12. We should, therefore, make an endeavour to put an end to the aforesaid

deadlock in the matter of appointment of primary school teachers without violating any prescribed rules or norms of the NCTE. It is not in dispute that the trained candidates should get priority over the untrained candidates.

13. Therefore, we allow the appellants herein to hold the Teachers' Eligibility Test. The appellants are however, directed to prepare two separate select lists of successful candidates, one exclusively for the trained candidates having qualification prescribed by NCTE and other separate select list for the untrained relaxed category candidates who are not possessing qualifications as prescribed by NCTE.

14. We also make it clear that in order to fill up the vacant posts of primary school teachers, the appellants as well as the concerned authorities of the State Government will at first appoint candidates from the select list of the trained eligible candidates who are qualified as per NCTE norms.

15. The candidates from the select list of untrained candidates will be appointed as primary school teachers only after total exhaustion of the select list of the trained candidates. In other words, all the selected eligible trained candidates will get priority over the untrained selected candidates in the matter of appointment to the post of primary school teachers.

16. Needless to mention that the participation of the candidates in the Teachers' Eligibility Test and subsequent appointment to the posts of Primary School Teacher will be without prejudice to the rights and contentions to the parties herein in the pending writ petition and all the appointments made by the appellants in terms of this order will abide by the result of the writ petition.

17. Let it also be on record that we have not expressed any opinion with regard to any issue raised in the writ petition on merits.

18. With the aforesaid observations and directions we modify the impugned order under appeal passed by the Learned Single Judge and dispose of both the application as well as appeal upon treating the said appeal as on day's list.

19. This order will also govern the other connected appeal being A.S.T. 360 of 2012 and the connected application being A.S.T.A. 236 of 2012 since the said appeal has been preferred from the same order passed by the Learned Single Judge on 13th December, 2012 in W.P. 24817(W) of 2012.

20. Therefore, the other connected appeal being A.S.T. 360 of 2012 and the application being A.S.T.A. 236 of 2012 stand disposed of in terms of the order mentioned hereinabove.

21. In the facts of the present case, there will, however, be no order as to costs. Let xerox plain copy of this order duly countersigned by Assistant Registrar (Court) be given to the learned Advocates of the respective parties on the usual undertakings.