

02.02.2024
Court No. 13
Item No. 5
AP

WPA 2561 of 2024

**Sumanta Koley and Ors.
Vs.
State of West Bengal and Ors.**

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Smpriti Sah

.... For the Petitioners.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag

.... For the State.

Mr. Subir Sanyal,
Mr. Saikat Banerjee,
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury

... For WBBPE.

Facts of the Case

1. The subject matter of the instant writ petition is a recruitment process to the posts of Assistant Teachers in Government Aided/Government Sponsored and Junior Basic Primary Schools conducted by the West Bengal Board of Primary Education pursuant to a Notification dated 29th September, 2022. The qualifications prescribed for the candidates, relevant therein, are as follows :

*“ 3. **Qualification:** (a) No person shall be appointed by the concerned District Primary School Council/ Primary School Council as an Assistant Teacher unless he/she is a citizen of India and has completed the age of 18 years as on 1st day of January of the year of advertisement (i.e. 01.01.2022) and has not completed the age of 40 years on the 1st day of January of the year of advertisement (i.e. 01.01.2022). Relaxation of age*

as per the existing rule of the State Govt. is admissible.

(b) The candidate shall possess the minimum educational and training qualifications as prescribed by the National Council for Teacher Education prevailing as on date of publication of recruitment notification.

AND

TET qualified candidates who are undergoing D.El.Ed./D.Ed. (Special Education)/B.Ed. Training (session-2020-2022) and who have qualified in D.El.Ed./D.Ed. (Special Education)/B.Ed. Training Part-I examination (session 2020-2022) will be given opportunity to participate in the recruitment process to be initiated by the Board.”

2. The petitioners before this Court can be segregated in two categories. The petitioner Nos.1 to 4 possess B.Ed. degree as also Diploma in Elementary Education (D.El.Ed.) issued by the West Bengal Board of Primary Education. The petitioner Nos.5 to 12 possessed D.El.Ed. degree issued by the National Institute of Open Schooling (NIOS) as also the Diploma from the West Bengal Board of Primary Education.

3. The recruitment process started with receipt of online applications, where the candidates were required to specify the qualification, which was to be the primary qualification.

4. The writ petitioner Nos.1 to 4 specified B.Ed. degree as their primary qualifications and the writ petitioner Nos.5 to 12 used D.El.Ed. (NIOS) as their primary qualifications.

5. The Board thereafter permitted the petitioners to edit and alter their qualifications on 14th December, 2022. The reason why this was permitted was not stated before Court. There could be many reasons behind this as would be evident from the discussions hereinafter.

6. On 25th November, 2022 two sets of writ petition came to be disposed of by the Rajasthan High Court whereby non-inclusion of B.Ed. qualification in the process of recruitment to primary teachers in the State was challenged. In another batch of petitions the Notification dated 28th June 2018 issued by the National Council for Teacher Education, prescribing B.Ed as a qualification for recruitment as a primary teacher was also challenged.

7. The Rajasthan High Court, inter alia, held that candidates hold B.Ed. degrees could not be allowed to participate in the process of recruitment to primary teachers. The notification of the NCTE dated 28th June, 2018 came to be struck down by the Rajasthan High Court. The reasons therefor were that a B.Ed. qualification is not sufficient for the purpose of equipping a teacher to teach students at the primary level i.e. Class

1 to Class 4. It was also held that B.Ed. qualification cannot be deemed as higher qualification.

8. The judgement of the Rajasthan High Court was carried before the Hon'ble Supreme Court in a Special Leave Petition being **Civil Appeal No.5068 of 2023 (Devesh Sharma Vs. Union of India and Ors.)**. Along therewith were heard two other writ petitions i.e. WP 137 of 2022 and WP 881 of 2022 challenging notifications of the Government of Bihar and Uttar Pradesh which called B.Ed candidates to participate in the recruitment to the post of primary teachers.

9. Back in West Bengal, a writ petition was filed by the candidates, who are undergoing the D.El.Ed course, to allow them to participate in the aforesaid recruitment process dated 29th September, 2022.

10. The WBBPE even before the writ petition was taken up, permitted such persons to participate. The said writ petition came to be disposed of based on the above. A rival group, however, filed **MAT 1725 of 2022 (Shrabani Nayek and Ors. Vs. Soumen Paul and Ors.)** challenging the decision of the Board to permit in-course D.El.Ed candidates to participate in the recruitment process.

11. The Division Bench by a judgement dated 11th April, 2023 the **Shrabani Nayek case (supra)** held that, "in-course D.El.Ed candidates", could not be allowed to participate in the recruitment process.

12. The decision dated 11th April, 2023 is now pending challenge before the Hon'ble Supreme Court in ***Special Leave to Appeal (C) No(s).12660 of 2023 and SLP (C) No. 25324 of 2023 along with Diary No(S).25090 of 2023***. Initially, the Supreme Court stayed the publication of the merit list. Subsequently, by an order dated **29.01.2024** the Supreme Court permitted the WBBPE to publish the merit list and proceed with the recruitment process and publish the merit list. In so far as the appellants therein were concerned the Board was directed to conduct final interviews and aptitude test within six weeks. The remaining post was directed to be kept vacant subject to further orders of the Hon'ble Supreme Court.

13. Armed with the directions of the Supreme Court as above, the Board has published the merit list in the selection process dated 29th September 2022.

14. Prior thereto on 11th August 2023 the decision of the Supreme Court in ***Devesh Sharma Vs. Union of India and Ors.*** reported in **2023 SCC OnLine SC 985** came to be pronounced. The judgement of the Rajasthan High Court (supra), holding that B.Ed. degree holders will not be allowed to participate in the selection process of primary teachers, was upheld. The notice of the NCTE dated 28th June, 2018 was held illegal and correctly struck down by the High Court.

15. Some proceedings in the mean time occurred here in Kolkata. **W.P No.10108 of 2023** was filed by **Mrinmoy Sarkar and Ors.**, another set of candidates, who prayed for the option of migrating from D.El.Ed candidates to B.Ed. candidates in the said recruitment process.

16. By an order dated 1st May, 2023, i.e. before the decision of the Supreme Court in **Devesh Sharma (supra)** a Coordinate Bench of this Court at an interim stage, permitted the writ petitioners to so migrate as B.Ed. candidates instead of in-course D.El.Ed candidates. The said petitioners possessed both qualifications.

17. The Board was directed to allow such as an interim measure to so merit the writ petitioners. The said decision was confirmed by an order dated 17th May, 2023 in appeal being **MAT 804 of 2023** preferred by the WBBPE and Ors.

18. In yet another decision the Supreme Court in the case of **Jaiveer Singh Vs. State of Uttarakhand** reported in **(2023) SCC OnLine SC 1584** has held that the D.El.Ed (NIOS) is not equivalent to a regular full time two year D.El.Ed course degree. This has put the writ petitioner nos. 5 to 12 in a quandary as they had applied as D.El.Ed (NIOS) as their primary qualification. They also possessed the regular D.El.Ed certificates.

The Arguments of the Petitioners

19. With the advent of the decision of the Supreme Court in ***Devesh Sharma (supra)***, the said writ petitioners in ***WP No.10108 of 2023*** as also the instant writ petitioners nos. 1 to 4 were left in the lurch. They realized that on one end their qualification as in-course D.El.Ed candidates was deemed ineligible by a decision of a Division Bench of this Court and the matter was pending in the Supreme Court and on the other end the second qualification i.e. B.Ed. qualification also was rendered useless. They could not thus participate in the selection process at all. The writ petitioners herein, are in an equally precarious position, but are slightly better placed than those in WPA 10108 of 2023.

20. The writ petitioner Nos.1 to 4 herein seek an option at this stage after the directions of the Supreme Court in ***Soumen Paul and Ors. (supra)*** to allow them to migrate from B.Ed. qualified candidates to that of D.El.Ed candidates. They have the recognised D.El.Ed qualification issued by the West Bengal Board of Primary Education.

21. The writ petitioner Nos.5 to 12 herein who also has regular D.El.Ed certificate issued by the WBBPE to wish to migrate from from the status of D.El.Ed (NIOS) candidates to that of candidates with regular D.El.Ed degrees issued by the W.B.B.P.E.

The Arguments of the West Bengal Board of Primary Education

22. Mr. Subir Sanyal, learned counsel appearing for the WBBPE has vehemently and aggressively opposed the writ petitioners' prayers. He has submitted that the Board is in serious confusion having been tossed from one end to other by various Courts. The recruitment process, may never come to an end. There is a serious dearth of teachers in the State.

23. It is also submitted that the decision of the Rajasthan High Court rendered on 25th November, 2021, should have been a wake up call for the writ petitioners. They could not have switched over from B.Ed. candidates against immediately thereupon. They did not avail options switching opportunity provided to them on 14th December, 2022 and subsequently a notification dated 5th June, 2023 based on a division Bench decision in ***Mrinmoy Sarkar and Ors. (supra)***. They should not now be permitted to switch options.

24. It is next argued that the prayer made by the writ petitioners is in direct conflict with the decision of the Supreme Court in the case of ***Soumen Paul and Ors. (supra)*** dated 29th January, 2024.

The Court's Analysis

25. This Court has carefully heard the arguments advanced by Mr. Firdous Samim, learned counsel for the

writ petitioners as also by Mr. Subir Sanyal, learned counsel for the West Bengal Board of Primary Education.

26. In the **Soumen Paul case (Supra)** proceedings pending before the Supreme Court, the issue is in respect of one section of candidates in the aforesaid recruitment process i.e. “in-course D.El.Ed candidates”. The Supreme Court has already protected the appellants therein and has not pronounced any thing with regard to other category of candidates, who participated in the recruitment process. The order of the Supreme Court in **Soumen Paul**, thereafter, cannot stand in the way of grant of lawful relief, if any, to the writ petitioners.

27. There is no dispute to the fact that the writ petitioners and each of them hold the D.El.Ed degrees issued by the WBBPE. As on date this is the only qualification that has not been questioned by any party or any side or in any part of this country as a valid qualification for the purpose of being qualified as a primary teacher in this country. The NCTE prescribes and recognized the same as does the State of West Bengal.

28. It would, therefore, be grossly inequitable and unfair not to permit the writ petitioners to migrate as candidates having the D.El.Ed degrees in the aforesaid recruitment process.

29. The argument that the **Mrinmoy Sarkar decision (supra)** give a chance of switch over to the petitioners is

misplaced. In the said case the petitioners were not parties. The petitioners therein were seeking to switch over from D.El.Ed status to B.Ed status.

30. The argument of Mr. Sanyal that the writ petitioners were fence sitters and contemplated jumping from one branch to another and hence must be deemed as opportunistic, cannot be used as an argument to negate rights under Article 16 of the Constitution of India.

31. This Court is conscious of the fact that the WBBPE has had to face many hurdles flip-flops in undertaking subject recruitment process in September 2022. That by itself cannot deprive citizens of this country from a chance to seek public employment opportunity, when they are qualified to do so.

32. The confusion in the instant case is a result of the illegal and unclarified communication of the NCTE in issuing the circular dated 28.06.2018 in recognizing a B.Ed. degree as an acceptable qualification for primary teachers. The subsequent striking down thereof by Rajasthan High Court and the Supreme Court of India cannot frustrate the rights of the petitioners. The writ petitioners cannot be made to suffer on account of any mistake or illegality or impropriety on the part of the State.

33. The WBBPE also cannot evade responsibility for the fiasco as they have illegally permitted, (a) B.Ed

holders, (b) D.El.Ed (NIOS) holders and (c) “in course D.El.Ed persons” to participate in the recruitment process. Naturally the candidates chose the degree in which they had the highest marks as the basis of their application.

34. It is only in August 2023 that the law stood settled that a B.Ed. degree is not a valid qualification for the post of primary teachers. It is only on 28th November 2023 that it was held in the Jaiveer Singh decision (supra) that the D.El.Ed issued by the NIOS is not equivalent to the regular D.El.Ed certificated issued by a Primary Education Board or other institution.

35. The argument of Mr. Sanyal that the Rajasthan High Court had pronounced the same in November 2022, and the argument based on Article 226(2) of the Constitution of India cannot be accepted by this Court to deprive the writ petitioners for any chance to participate in a selection process of government teachers. The matter was thereafter pending before the Supreme Court until August 2023.

36. What has weighted with this Court in favour of the writ petitioners in allowing interim relief is that they had at all materials times possessed the D.El.Ed qualification from the WBBPE. To deprive the petitioners of the right to switch over as D.El.Ed candidates would amount to

depriving them of rights under Article 16 of the Constitution of India.

Conclusion and Interim Orders

37. It is therefore ordered that the writ petitioner Nos.1 to 12 shall be treated as D.El.Ed Board certificate holding as having changed from their originally opted primary qualification.

38. There shall also be an interim order directing that marks and ranks of the petitioners shall be published separately by the WBBPE.

39. Needless to mention that all the degrees and certificates of each of the writ petitioners, shall be duly verified by the West Bengal Board of Primary Education.

40. Let affidavit-in-opposition be filed within a period of four weeks from date. Reply, if any, be filed within a period of two weeks thereafter.

41. Liberty to mention.

(Rajasekhar Mantha, J.)