

39. 13.09.2024
Court No.14
(Tanmoy)

WPA 9410 of 2024
Anikul Islam & Anr.
- Versus -
State of West Bengal & Ors.

Mr. Firdous Samim, Adv.,
Ms. Gopa Biswas, Adv.,
Ms. Payel Shome, Adv.,
Ms. Sampriti Saha, Adv.

...for the petitioners.

Mr. Swapan Banerjee, Adv.,
Mr. Diptendu Banerjee

...for the State.

Mr. Saikat Banerjee, Adv.,
Mr. Ratul Biswas, Adv.,
Mr. Kaushik Chowdhury, Adv.

...for WBBPE.

1. Receipt showing deposit of deficit Court fees is taken on record.

2. The petitioners participated in the recruitment process initiated by the West Bengal Board of Primary Education (WBBPE) in the year 2022. The petitioners possessed the qualification of D.El.Ed. from NIOS in the Session 2017-2019 and B.El.Ed. in the Session 2017-2021. After the panel of recommended candidates was published by the Board, the petitioners came to learn that their candidature was not taken up for selection as the training qualification relied upon by them was not accepted by the Board.

3. The petitioners rely upon an order passed by a co-ordinate Bench of this Court on February 2, 2024 in WPA 2561 of 2024 (**Sumanta Koley & Ors. v. State**

of West Bengal & Ors.), wherein the Court came to a *prima facie* finding that the petitioners ought not to be deprived of their right to switch over as D.El.Ed candidates. The Court directed the Board to treat the petitioners as D.El.Ed Board certificate holders as having changed from their originally opted primary qualification. The Court further directed the Board to publish the marks and ranks of the petitioners separately.

4. The order passed by the co-ordinate Bench was carried in appeal in MAT 533 of 2024 with IA No: CAN/1/2024 with IA No: CAN/2/2024 (*West Bengal Board of Primary Education & Ors. v. Sumanta Koley & Ors.*). By an order dated May 10, 2024, the Hon'ble Division Bench was pleased to dismiss the appeal.

5. A Special Leave Petition was preferred before the Hon'ble Supreme Court of India being Special Leave Petition (Civil) Diary No. 24493/2024 (*West Bengal Board of Primary Education & Ors. v. Sumanta Koley & Ors.*), which also stood dismissed by an order dated July 19, 2024.

6. The petitioners seek similar relief as granted by the co-ordinate Bench in the matter of Sumanta Koley (*supra*).

7. Learned Advocate representing the Board opposes the prayer of the petitioners. It has been submitted that the writ petition of Sumanta Koley

(supra) was filed in the month of February, 2024. Here, the petitioners chose to wait till March 28, 2024 for affirming the writ petition. The petitioners were fence sitters and they ought not to be granted the same benefit as has been done in the case of Sumanta Koley (supra).

8. It has been submitted that the recruitment process ought not to be left open for an indefinite period of time. Litigation ought not to be permitted to linger beyond a particular point of time. The process of recruitment gets held up because of the pending litigations. Presently there is no vacancy where the appointment of the petitioners may be made.

9. I have heard the submissions made on behalf of the parties. *Prima facie* from the documents placed before this Court it appears that the petitioners stand on the same footing as that of Sumanta Koley (supra). It is, however, true that the present writ petition has been filed nearly two months after the writ petition was filed by Sumanta Koley. The argument of benefit granted in favour of fence sitters was also made in the case of Sumanta Koley (supra). The Court considered the matter in details and passed order which was tested up to the level of the Hon'ble Supreme Court. The order passed by the co-ordinate Bench has been affirmed till the highest level.

10. This Court fails to appreciate as to why a different standard will be adopted while dealing the case of the petitioners when both the petitioners in the present writ petition appear to be on the same footing as the petitioners in the matter of Sumanta Koley (supra).

11. Accordingly, this Court is minded to grant *interim* relief to the petitioners in the line of relief granted in the matter of Sumanta Koley (supra).

12. The Board is, accordingly, directed to treat the B.El.Ed. Certificates relied upon by the petitioners as their training qualification. The marks and ranks of the petitioners shall be published separately by the Board at the earliest. The degrees and the certificates relied upon by the petitioners shall be verified by the Board.

13. The respondents are directed to file affidavit-in-opposition within a period of four weeks from date. Reply thereto, if any, be filed within two weeks after reopening of the Court after the ensuing puja vacation.

14. Liberty to mention.

(Amrita Sinha, J.)