

07.08.2024

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Sl. No. 109

Ct. No. 08

MAT 1507 of 2024

With

CAN 1 of 2024

The State of West Bengal & anr.

Vs.

Mrinal Barik & ors.

Mr. Anirban Ray, Ld. G.P.

Mr. Sirsanya Bandhopadhyay

Mr. Piyush Agarwal

Ms. S. Kajaria

Mr. Debjyoti Das

... for the appellants

Mr. Saikat Banerjee

Mr. Rahul Biswas

Mr. Kaushik Chowdhury

..... for the WBBPE

Despite service, there is no appearance on behalf of the respondents. Let affidavit-of-service filed today be taken on record.

The respondents succeeded in TET, 2014 and also TET, 2022 but was not called for the counseling or the interview. On the basis of the aforesaid stand taken in the writ petition, the approach was made and by the impugned order, the Single Bench has directed the State Government to ensure 1% reservation for the transgender persons into a public employment throughout the State.

Apropos the aforesaid observation, further direction was passed upon the State, particularly, the Secretary, West Bengal Board of Primary Education to arrange for interview and counseling of the petitioner as

a special case and recruit her as assistant teacher in a primary school.

The Judgment appears to have been founded upon the law declared by the Supreme Court in **National Legal service Authority vs. Union of India and ors.** reported in **(2014)5 SCC 438** wherein the constitution Bench held that the transgender apart from binary gender be treated as a third gender to ensure their rights guaranteed under part III of the Constitution of India. It was further held that the transgender person has a right to be identified as a separate gender and the Government was directed to give a legal recognition on the basis of such gender. A further direction was passed upon the Government to take steps to include them as socially and economically backward classes of the citizen so as to extend all kind of reservation in recruitment/admission in the educational institutions and also the public employment.

On the basis of the aforesaid constitution Bench decision, it is informed by the learned Government Pleader that a Special Committee has already been set up and entrusted with the duties and obligations of collating the data and the other relevant information before a conscious decision can be taken. The constitution Bench decision never recognizes that 1% of the vacancies so notified should be reserved for the aforesaid category of persons and, therefore, the

mandamus as issued is beyond the conceivable self-imposed limitations by the Courts in exercise of powers under Article 226 of the Constitution of India. The point boils down to whether 1% of the total vacancy so reported should be reserved for such persons when the State Government or the Central Government has not taken any final decisions thereupon.

We thus find a prima facie case having made out. We stay the operation of the impugned orders for a period of 10 weeks from date or until further order whichever is earlier.

The appellants are directed to communicate this order to the respondents by speed post and shall file the affidavit-of-service on the returnable date.

The application is made returnable 6 weeks hence.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)