

16.12.2021
SL No. 93
Court No. 24
(P.M.)

WPA 20323 of 2021

**Sk. Gowsar Ali & Anr.
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Gargi Banerjee
... for the petitioners

Mr. Souvik Nandy
... for NCTE

Mr. Prosenjit Mukherjee,
Ms. Madhurima Sarkar
.... For Madrasah Service Commission

Mr. Supriyo Chattopadhyay,
Mr. Gourav Das
.... for the State

The petitioner applied for being appointed as Physical Education Teacher in a Madrasah in response to the advertisement published on 6th February, 2014 by the West Bengal Madrasah Service Commission.

The essential qualifications as mentioned in the recruitment notice for being appointed as Assistant Teacher in Physical Education are:

Essential Qualification:

- I. Bachelor's Degree in General Stream of Arts/Science/Commerce with Post Graduate Basic Training/Degree/Diploma in Physical

Education from a Teachers' Training Institution duly recognized by the NCTE in the relevant academic session

II. Knowledge in Islamic Studies and Culture.

The petitioner has been intimated under the provisions of the Right to Information Act that his name could not be empanelled as he secured less than 45% marks in the Higher Secondary Examination.

The Madrasah Service Commission relied upon the notification dated 12th November, 2014 published by the National Council for Teacher Education.

The petitioner has placed documents in connection with a candidate namely Meheub Hossain bearing Roll No. 23201571 who was empanelled in the Physical Education subject even though he secured less than 45% marks in the Higher Secondary Examination. The petitioner has annexed the mark-sheet of one Meheub Hossain in page 138 of the writ petition.

According to the petitioner the respondent authorities ought not to take into consideration the criteria laid down in the NCTE notification dated 12th November, 2014.

It is the specific case of the petitioner that the last date for filing the application form in terms of the Madrasah Service Commission notice dated 6th February, 2014 was 15th February, 2014. The rule that is applicable on the date of publishing the recruitment notice ought to be applied and not a notification which was published later on.

The learned advocate representing the Madrasah Service Commission submits that the NCTE notification dated 12th November, 2014 was applied uniformly in respect of all the candidates and the petitioner was not prejudiced in any manner.

It has further been submitted that no specific instruction as to whether the empanelled candidate ranked 45 is the same candidate whose mark-sheet is appearing as page 138 of the writ petition.

It has been further submitted that assuming that it is the same candidate the said candidate qualifies in accordance with the NCTE notification dated 12th November, 2014, as the said candidate participated in sports/games in school/college/District level in accordance with the NCTE (Recognition norms and procedure) Regulations, 2007.

It has been submitted by the parties that counselling for appointment will start from tomorrow (17.12.2021).

The aforesaid Mehabub Hossain has been impleaded as respondent No. 9 in the instant writ application. Though the copy of the writ petition has been dispatched but there is no proof of service of the writ petition upon him.

As any order passed herein may prejudice the private respondent, accordingly the instant writ application is adjourned till 23rd December, 2021.

The petitioner is directed to serve a fresh notice upon the private respondent No. 9 intimating the next date of hearing.

Any step taken by the respondent Commission in the meantime shall abide by the result of the writ application.

Supplementary affidavit filed by the petitioner annexing the NCTE Regulation, 2001 is taken on record.

The affidavit of service filed in Court is also taken on record.

(Amrita Sinha, J.)