

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 94 OF 2012

WEST BENGAL UNEMP.TRAIND.TECH.ASSN.& ANR

Petitioner(s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent(s)

(With appln(s) for ad-interim ex-parte stay,stay and office report)
(For final disposal)

WITH W.P(C) NO. 294 of 2012
(With appln.(s) for stay and office report)

W.P(C) NO. 39 of 2013
(With appln.(s) for stay and permission to file additional documents and intervention and office report)

W.P(C) NO. 51 of 2014
(With appln.(s) for ex-parte stay)

W.P.(C) No. 3 of 2014
(With appln.(s) for ex-parte stay and office report)

W.P.(C) No. 257 of 2014
(With appln.(s) for stay and office report)

Date: 23/04/2014 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s)

WP 94/2012

Mr. Sunil Fernandes,Adv.
Mr. Raghav Chadha, Adv.
Ms. Astha Sharma, Adv.

Mr. Ajay Sharma, Adv.

Mr. Subhasish Bhowmick, Adv.

WP 51/2014

Mr. Joydeep Mazumdar, Adv.
Mr. Amitabroto Roy, Adv.
Mr. Rohit dutta, Adv.
Mr. Devojjyoti, Adv.
Mr. Shibashish Misra, Adv.

WP 3/2014

Mr. Joydeep Mazumdar, Adv.
Mr. Rohit Dutta, Adv.
Mr. Shibashish Misra, Adv.
Mr. Amitabrato Roy, Adv.

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WP(C) 257/2014

Mr. Joydeep mazumdar, Adv.
Mr. Amitabroto, adv.
Mr. Rohit Dutta, Adv.
Mr. Shibashish Misra, Adv.
Mr. Devojjyoti, Adv.

For Respondent(s)

Mr.Parijat Sinha, Adv.

Ms. Reshmi Rea Sinha, Adv.
Mr. S.C. Ghosh, Adv.

Mr. Abhijit Sengupta, Adv.

Mr. Arjun Harkauli, Adv.

Ms. Shagun Matta, Adv.
Mr. Anip Sachthey, Adv.

Ms. Asha G. Nair, Adv.
Mr. Gaurav Sharma, Adv.
Ms. Sushma Suri, Adv.

Mr. Avijit Bhattacharjee, Adv.

Mr. Abhishek Atrey, Adv.
Mr. Brijesh Panchal, Adv.

Ms. C.K. Sucharita, Adv.

For West Bengal
Board of
Primary Education

Mr. Kunal Chatterjee, Adv.
Ms. Maitrayee Banerjee, Adv.

WP 39/2013

Mr. J.S. Chhabra, Adv.
Mr. Balraj Dewan, Adv.
Mr. R.C. Tiwari, Adv.
Mr. Rajeev Kumar Gupta, Adv.

I.A. No.3/14 in
WP 39/2013
For Intervenor

Mr. Dushyant Parashar, Adv.
Mr. Balraj Dewan, Adv.

NCTE

Mr. Amitesh Kumar, Adv.
Mr. M.K. Sinha, Adv.
Mr. Shashank Shekhar, Adv.

State of Uttarakhand

Mr. Abhishek Atrey, Adv.
Mr. Ashutosh Kumar Sharma, Adv.
Mr. Brijesh Panchal, Adv.

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UPON hearing counsel the Court made the following
O R D E R

In compliance of the directions issued by this
Court on 25th February, 2014 the respondent-State of West
Bengal has filed an affidavit. In the affidavit, it has
been stated as under :-

"3. That in the aforesaid order dated 2nd February,
2014, the Hon'ble Justice S.S. Nijjar and the Hon'ble
Justice A.K. Sikri inter alia directed the State of West
Bengal as well as the Board to file a comprehensive
affidavit setting out as to :

a) How many teachers with requisite qualification

are available for appointment?

b) How many of them are trained and how many of them are untrained as per Rules?

c) How many posts are available?

d) In the test also, how many trained and qualified teachers passed; and how many qualified and untrained teachers have passed; and how many unqualified and untrained candidates passed?

In this affidavit, it is categorically stated that the qualified teachers who have cleared the examination were appointed. The untrained teachers who had also qualified the examination have only been appointed after all the qualified selected trained teachers had been appointed. It is sought to be argued before us by Mr.

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Sunil Fernandes and other learned counsel that the action of the State of West Bengal in widening the field of selection by making the competition open to untrained teachers, on the basis of relaxation obtained from the NCTE, has discriminated against the trained teachers. It is further sought to be contended that the relaxation which has been obtained from the Central Government as well as NCTE is based on the wrong information. In the application seeking relaxation, the State had made a categorical statement that the State does not has sufficient number of trained teachers to be appointed and therefore, minimum qualification laid down under Sub-Section 1 of Section 23 of the Right to Education Act, 2009 be relaxed. According to the data supplied by the respondent State in the present affidavit, it was further stated that the State Government shall give priority to those eligible candidates who possess the minimum qualification specified in the NCTE Notification dated 25th August, 2010 and only thereafter, consider the eligible candidates with the relaxed qualifications

specified in the Notification.

Mr. Fernandes has submitted that both the reasons given were not correct. In fact, the affidavit filed by the respondent on 25th February, 2014 discloses that the total number of available posts for the West Bengal School Service Commission were 46,401. The available trained

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teachers for this category within the State of West Bengal was 82,517. This figure only represent the trained and qualified candidates who appeared in the examination. In the State of West Bengal, the total number of trained teachers who would be eligible to sit in the examination would exceed 1-1/2 lacs. Therefore, according to Mr. Sunil Fernandes, the foundation for seeking relaxation was with an ulterior motive of wanting to show preference to the untrained teachers. It is further submitted that if the untrained teachers are totally excluded from the field of eligibility for selection, the trained candidates who qualified and available for appointment would be much more, than the available vacancies. All these issues raised by the Writ Petitioners have not been controverted by the State by filing a detailed counter affidavit.

Prima facie, it appears to us that the submissions made by learned counsel for the petitioners Mr. Fernandes and other learned counsel has substance. At this stage, learned counsel for the State of West Bengal submits that the justification for relaxation would co-relate to the number of institutes which existed in 2011 for giving Bachelor of Education (B.Ed) and Diploma in Education, Bachelor of Elementary Education (B.El.Ed). He further submits that certain other information will also be required to be given in order to give justification as to why relaxation was required. The learned counsel, therefore, seeks a short adjournment. The prayer is allowed.

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We, however, make it clear that the appointments made of untrained teachers shall abide by the decision of the Writ Petitions.

Issue notice on the Intervention Applications. The respondents can file the response to the intervention applications within six weeks.

List these matters on 6th August, 2014.

(Sukhbir Paul Kaur)
Court Master

(Indu Bala Kapur)
Court Master