

Court No. 17

WPA 8773 of 2022

16.08.2022

Meraj Sekh

(AD 5)

Vs.

The State of West Bengal & Ors.

(S. Banerjee)

Mr. Sudipta Dasgupta

Mr. Arka Nandi

Mr. Sutirtha Nayek

... for the petitioner

Mr. Biswabrata Basu Mallick

Mr. Sanjib Das

... for the State

Mr. Sauvik Nandy

... for the NCTE

Md. Sarwar Jahan

Mr. Naymul Hoque

... for the DPSC

Mr. K. Chowdhury

... for the Board

The petitioner participated in 2020 selection process of Primary Teachers. After crossing all hurdles like verification of documents including educational qualification and the interview, he was empanelled and got appointment. Subsequently the Chairman of the District Primary School Council started further verification for preparing service book and releasing the monthly salary. At that stage the petitioner's appointment was withdrawn and cancelled following one guideline issued by the West Bengal Board of Primary Education, which is an undated one

(in my view a ghostly document as there is no date) where the Chairman of the DPSC followed paragraph 6 at page 5 of the report in the form of affidavit filed by the DPSC affirmed on 29th July, 2022.

The said guideline says that for the calculation of percentage of marks obtained in Honours subject only for Honours-graduates and marks obtained in Pass subjects shall be considered for Pass-graduates. The petitioner in his Honours subject got less than 45% (the petitioner is a OBC-A candidate) but if his numbers in Pass subjects are taken together with Honours marks subject he has got more than 45%.

On this ground the appointment was cancelled and withdrawn. However, learned advocate for the NCTE submits that the NCTE's guideline is only 50% in graduation with training qualification.

Therefore, it is clear that the DPSC made a serious mistake in not following the NCTE's guideline. By calculating the marks only of the Honours subjects is against the NCTE guidelines. The Board cannot lay down a further guideline which is against the NCTE guidelines. Therefore, the impugned order of withdrawal and cancellation dated 31st March, 2022 is set aside and quashed. The petitioner should be allowed to work in the school where he was

recommended with his full back salary as he could not perform his duty for the illegality committed by the DPSC and the Board. He was not at fault for not performing his duties. All other benefits attached to his service for the period from illegal termination to his joining again shall have to be given. The absence in service of the petitioner for the above withdrawal of and cancellation of appointment shall not be considered as break in service.

With this observation and direction this writ application is allowed.

(Abhijit Gangopadhyay, J.)