

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 7907 of 2019

Ramesh Malick & Ors.

Vs.

The State of West Bengal & Ors.

With

**IA No. CAN 1 of 2022, CAN 3 of 2023, CAN 4 of 2023,
CAN 5 of 2023, CAN 7 of 2023, CAN 8 of 2023, CAN 9
Of 2023 & CAN 10 of 2023**

With

WPA 9979 of 2022

Soumen Nandy

vs.

The State of West Bengal & Ors.

With

**IA No. CAN 1 of 2023, CAN 2 of 2023,
CAN 7 of 2023 & CAN 8 of 2023**

- For the writ petitioners :- Mr. Sudipta Dasgupta, Adv.
Mr. Bikram Banerjee, Adv.
Mr. Arka Nandi, Adv.
Ms. Dipa Acharyya, Adv.
Mr. Sutirtha Nayak, Adv.
(In WPA 7607 of 2019)
- For the writ petitioner :- Mr. Firdous Samim, Adv.
Ms. Gopa Biswas, Adv.
Ms. Payel Shome, Adv.
Ms. Sampriya Saha, Adv.
Ms. Purba Mukherjee, Adv.
Mr. Avijit Kar, Adv.
Ms. Mohona Das, Adv.
(In WPA 9979 of 2022)
- For the applicants :- Mr. Saptansu Basu, Sr. Adv.
Mr. Ayan Banerjee, Adv.
(In CAN 9 & 10 of 2023
in WPA 7907 of 2019)
- Mr. Tarunjyoti Tewari, Adv.
(In CAN 8 of 2023 in
WPA 7907 of 2019)
- For the added respondent :- Mr. Santanu Kumar Mitra, Adv.
No. 11 Mr. Subhabrata Das, Adv.
Mr. Amartya Pal, Adv.
(In WPA 7907 of 2019)

For Kuntal Ghosh	:-	Mr. Ayan Poddar, Adv. (In CAN 7 of 2023 in WPA 9979 of 2022)
For the CBI	:-	Mr. Arijit Majumdar, Adv. (In both the matters)
For the State	:-	Mr. Sirsanya Bandopadhyay, Jr. SC. Mr. Arka Kumar Nag, Adv. (In both the matters)
For the Enforcement Directorate	:-	Mr. Dhiraj Kumar Trivedi, Ld. DSGI Mr. Samrat Goswami, Adv. (In both the matters)
For WBBPE	:-	Mr. L.K. Gupta, Sr. Adv. Mr. Saikat Banerjee, Adv. Mr. Ratul Biswas, Adv. Mr. Kausik Chowdhury, Adv.
Heard on	:-	30.11.2023
Judgment on	:-	12.12.2023

Amrita Sinha, J.:-

CAN 9 of 2023 is an application for addition of parties filed by ninety applicants claiming themselves to be prejudicially affected by the order passed by this Bench on 10th October, 2023 in WPA 7907 of 2019 (Ramesh Malick & Ors. vs. State of West Bengal & Ors.) with WPA 9979 of 2022 (Soumen Nandy vs. State of West Bengal & Ors.).

The aforesaid order was passed relying upon a report in the form of affidavit filed by the West Bengal Board of Primary Education with a finding that ninety-four candidates did not qualify in TET 2014 but were issued appointment letter. The Board arrived at the aforesaid finding after verification of all records. The said ninety-four candidates were afforded opportunity to produce documents in support of their educational qualification, but as the said candidates were unable to produce any document in support of their TET qualification, the Board found them to be ineligible for appointment.

Under such circumstances, the Court directed the respective District Primary Schools Councils to cancel the letter of appointment issued in favour

of the ninety-four candidates who did not possess the requisite qualification for being appointed as primary school teachers.

Challenging the order passed by this Bench the applicants, being found ineligible, preferred an intra court appeal before the Hon'ble Division Bench being MAT 210 of 2023 with CAN 1 of 2023 and CAN 2 of 2023 which was considered and disposed of on 18th October, 2023. The Hon'ble Division Bench observed that the basic document, that is, the TET certificate was not annexed or disclosed in the petition. Accordingly, the Court was not inclined to interfere with the order passed by this Bench. However, the Hon'ble Division Bench permitted the said candidates to approach this Bench for modification of the order with convincing materials.

On the strength of the order passed by the Hon'ble Division Bench, the application for addition of party has been filed being CAN 9 of 2023 along with a further application being CAN 10 of 2023 praying for vacating and/or varying and/or modification of the order dated 10th October, 2023.

Learned senior counsel representing the applicants submits that in terms of the order passed by this Court on 10th October, 2023, the Primary School Council has cancelled the letter of appointment issued in favour of the applicants and terminated their service.

It has been submitted that there has been no suppression of material facts by the applicants in the recruitment process. The applicants produced all the educational certificates in support of their candidature; relying upon which letter of appointment was issued. The applicants are in service for a considerable period of time, that is, from the year 2017 to 2023 and by this time they have acquired a permanent status in service. The Council could not have terminated their service without initiating any disciplinary proceeding against them.

It has been submitted that similar order passed by a Coordinate Bench of this Court, whereby appointment of 269 candidates were set aside, has been stayed by the order of the Hon'ble Supreme Court and, accordingly, the order passed by this Bench on 10th October, 2023 ought to be vacated/ modified/ varied by the Court.

The submissions of the applicants have been strongly opposed by the learned advocates representing the writ petitioners and the learned advocate representing the applicants in CAN 8 of 2023 in WPA 7907 of 2019.

It has been submitted that as per the recruitment notice, the eligibility criteria for being appointed as primary school teacher requires that the candidate should possess TET qualification. None of the applicants possess the TET qualification and, as such, they are ineligible for being appointed as primary school teacher. Any candidate who does not possess the eligibility criteria cannot be appointed and the termination of their appointment has been rightly made. Without the requisite qualification, the candidates cannot hold on to the post of primary school teacher.

It has been contended that there is no requirement of conducting any disciplinary proceeding for terminating the ineligible candidates from service as the initial appointment was bad, accordingly, the said candidates never acquired any status in service and, as such, there is no requirement of initiating separate proceeding against them for their termination.

It has been submitted that issuance of the notice of termination of service gives rise to a fresh cause of action and the applicants ought to have filed separate writ petition challenging the same.

Prayer has been made to dismiss the applications.

Learned senior counsel representing the West Bengal Board of Primary Education submits that on detection that the applicants did not possess the

requisite educational qualification for being appointed as primary school teachers, the Board recommended termination of their service.

I have heard and considered the detailed rival submissions made on behalf of all the parties.

The appointment notification for primary teachers dated 26th September, 2016 prescribes the qualification for recruitment in the post of Assistant Teachers in primary schools. The eligibility criteria mention that the candidate should be TET qualified. The application form was available online and the mode of submitting the application form was also online. Marks obtained in the TET examination are required for computation of the total marks obtained by an intending candidate for securing a position in the merit list.

Admittedly, the applicants are not TET qualified and do not possess the TET certificate. Despite not possessing the requisite qualification, the applicants were favoured with letter of appointment. Writ petitions are pending before this Court challenging such illegal appointments and investigation by central investigating agencies are undergoing to identify the culprits involved in such illegal act.

It has been strenuously argued that as the applicants are in service for nearly six years and have acquired a permanent status in service, there is no scope to terminate them without initiating a regular disciplinary proceeding. It has also been painstakingly submitted that the applicants were no way responsible in misleading the appointing authority nor did they suppress any material fact to obtain the letter of appointment. There is no fault in the part of the applicants and there was no role of the applicants in issuing the appointment letter in their favour. The applicants disclosed whatever educational qualification and certificate they possessed before the selection committee and the committee found the applicants eligible for appointment, hence, issued appointment letter in their favour.

The Hon'ble Division Bench order relying upon which the instant application for addition of party has been filed clearly mentions that, it would be open for the applicants to approach the learned Single Judge for modification of the order with convincing materials. Having regard to the fact that the basic document i.e. the TET certificate was not disclosed, the Hon'ble Division Bench declined to interfere with the order passed by this Bench.

In the instant application the TET certificate of the applicants has not been disclosed. The very fact of not disclosing / annexing the TET certificate implies that the applicants do not possess the same. In fact, had the applicants possessed the said certificate, they would have certainly produced the same before the Hon'ble Division Bench and also at the time of verification of testimonials before the Board of Primary Education. As the applicants failed to produce the relevant educational certificates in terms of the recruitment notice, accordingly, the Board recommended termination of their service.

On this ground alone the applications could have been rejected; but as detailed submissions have been advanced by the applicants seeking modification/variation of the order, accordingly, I propose to deal with the said submissions herein below.

Let me consider whether a regular disciplinary proceeding ought to have been initiated for terminating the applicants from service and whether the ineligible applicants acquired a permanent status in service as they have served for nearly six years.

The very basic concept in service jurisprudence is that appointment in a public recruitment is made after conducting a regular selection process. Recruitment notice is published inviting applications from intending candidates mentioning the eligibility criteria and the mode of selection. A job aspirant, only if he/ she possesses the requisite eligibility criteria, can apply for the job. Any candidate who does not possess the minimum eligibility criteria does not have

any right to apply for the same. The selection committee, after conducting competitive examination and after verification of all educational testimonials, selects the best available candidate. The very idea of conducting public examination is to test the comparative merit of eligible candidates and thereafter select the best ones.

In the instant case, the applicants, on account of not possessing the TET qualification, were ineligible to apply for the job at the very first place. The application procedure was conducted online. The application could have been accepted by the online system only after the applicant disclose that he/ she possessed the TET qualification. The application form could not have been accepted online if the candidate had not disclosed that he/ she was TET qualified.

The submission of the applicants that they did not suppress material fact, accordingly, does not appear to be correct. On the contrary, it appears that the applicants disclosed incorrect information in the application form for submitting the same online and thereafter somehow managed to procure the appointment letter despite being ineligible for appointment. Deliberate incorporation of wrong or incorrect data in the application form thereby misrepresenting facts and figures amounts to fraud. It is settled law that fraud vitiates everything as it goes to the very root of the issue.

Does an ineligible candidate acquire any status in service even if he/she served for six years? In the opinion of the Court, the answer would be an emphatic no. Any person who is ineligible for appointment on account of not possessing the requisite qualification does not have any right to be appointed, far less, continue in service. The initial appointment of an ineligible candidate is bad and void ab initio. The same is a nullity. No legal right accrues in favour of an employee who is appointed de hors the provisions of law. Permitting an ineligible candidate to hold on to the post and remain in service is contrary to the principles of Articles 14 and 16 of the Constitution of India.

If ineligible candidates are appointed and permitted to remain in service, then the very purpose and object of conducting a public examination to select the most deserving candidate is frustrated. The entire exercise of conducting a regular selection process becomes futile. Permitting ineligible candidates to remain in service on sympathetic ground will be absolute disservice to the nation and certainly impermissible in law. At a stage when public employment is far and few between, there is no scope for favouritism or nepotism. The recruitment process ought to be absolutely transparent so that the participating candidates may get to assess their individual merit and they also get to know exactly the position where they stand in comparison to a fellow job aspirant.

Any appointment given in the absence of minimum requisite qualification is an incurable defect and the same is liable to be rectified the moment it is detected. An employee cannot claim to hold any status in service, far less, permanent status if it is later detected that the initial appointment was bad. In such a situation there is no requirement of initiating any disciplinary proceeding by permitting the employee to remain in service. An ineligible candidate cannot be permitted to remain in service even for a single moment. The illegality once detected is liable to be rectified forthwith.

In ***Pramod Kumar vs. UP Secondary Education Services Commission & Ors.*** reported in **(2008) 7 SCC 153** the Hon'ble Supreme Court inter alia held that if the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law, a nullity. The Court further held that a candidate must establish existence of a legal right in himself and a corresponding legal duty in the State. If he did not possess the requisite qualification to hold a post, he could not have any legal right to continue. It is, therefore, immaterial whether any proceeding is initiated against him or not.

In ***National Fertilizer Limited vs. Somvir Singh*** reported in **(2006) 5 SCC 493** it was inter alia held that if appointment is made without following the Rules, the same being a nullity, the question of confirming the employees would not arise. Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.

In ***State of Bihar & Ors. vs. Kirti Narayan Prasad*** reported in **2018 SCC Online SC 2615** the Court held that the employees whose appointment was illegal and void ab initio cannot be said to be civil servants of the State and there is no requirement of initiating disciplinary proceedings against them for terminating their service.

In the case at hand, the Court is not convinced that the applicants possess the requisite educational qualification for appointment as primary school teachers in terms of the recruitment notice and, as such, the Court declines to allow the applications filed by them seeking addition and modification/ variation of the subject order.

With regard to the submission that the Hon'ble Supreme Court was pleased to stay the order passed by a Coordinate Bench terminating the service of similarly placed 269 primary school teachers, I am of the opinion that the instant case does not lie in the same footing. Here, the Court did not pass the order of termination. The Council, after permitting the applicants to produce educational certificates, detected that the applicants did not possess TET qualification. The Council recommended termination of ineligible candidates after observing the principles of natural justice. Had the applicants not been given opportunity of hearing or the applicants not been given chance to produce testimonials in support of their educational qualification, then the case would have been otherwise. As it appears that, the order of termination was rightly issued on detection of the ineligibility of the applicants to be appointed as primary school teachers, accordingly, the Court refrains from modifying/ vacating/ varying the order as sought for by the applicants.

CAN 9 and CAN 10 of 2023 in WPA 7907 of 2019, accordingly, stands dismissed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)