

20.10.2016  
AJ/SD.01.

**W.P. 24882(W) of 2016**

**Rita Halder (Mal) & Ors.**

**-Vs-**

**The State of West Bengal & Ors.**

Mr. Bikash Ranjan Bhattacharya,  
Mr. Piush Chaturvedi,  
Mr. Bhagbat Chaudhuri,  
Ms. Komal Singh.  
.....for the petitioners.

Mr. Amal Sen,  
Mr. Sajal Pandit,  
Mr. Shamim ul Bari.  
.....for the State.

Mr. Subir Sanyal,  
Mr. Ratul Biswas.  
.....for the Board.

Mr. Bhaskar Prosad Vaisya,  
Mr. Gourav Das.  
.....for the respondent no. 7.  
Mr. Ranjan Raha.  
....for the respondent  
nos.11 and 12.

Affidavit-of-service filed in Court today shall be retained with the records.

The challenge in this Public Interest Litigation is directed against the action of the West Bengal Board of Primary Education to recruit teachers in primary schools all over the State within its control and jurisdiction, allegedly, in contravention of a Notification dated 1<sup>st</sup> April, 2015 issued by the Ministry of Human Resource Development.

Mr. Sanyal, learned advocate for the Board and Mr. Sen, learned senior Government advocate for the State have objected to the maintainability of the public interest litigation basically on the ground of lack of locus standi of the petitioners.

Mr. Bhattacharya, learned senior advocate representing the petitioners has countered such objection by contending that the petitioners are social workers,

who are interested in ensuring that the younger generation of the State are taught by teachers having requisite qualifications prescribed by the National Council for Teacher Education. Mr. Bhattacharya has also contended that Notification dated 1<sup>st</sup> April, 2015 referred to (supra) permitted the State of West Bengal to make appointment of primary teachers who were not possessing the requisite qualifications prescribed by the Council only up to 31<sup>st</sup> March, 2016 with a further stipulation that such teachers must acquire the requisite qualifications within two years of the year of appointment; however, by a further Notification dated 26<sup>th</sup> September, 2016, the Board has permitted candidates who have qualified the Teachers' Eligibility Test 2014 to be appointed in the near future with the stipulation that they must acquire the requisite qualifications within two years. Mr. Bhattacharya also submits that no appointment having been made by the cut off date i.e. 31<sup>st</sup> March 2016, the State as well as the Board is not entitled to grant relaxation to any candidate not possessing the requisite qualifications, in terms of the Notification dated 1<sup>st</sup> April, 2015.

The question that would necessarily arise for a debate on this public interest litigation is whether 31<sup>st</sup> March, 2016 is, at all, the cut off date or not. If indeed that is so, relaxation cannot be granted; however, if it is held that 31<sup>st</sup> March, 2016 is not the cut off date within which the appointments are required to be made, the impugned action may not be vulnerable to challenge.

Having heard learned advocates for the parties, we are of the considered view that the writ petition may be admitted, keeping the point of maintainability open. It is ordered accordingly.

Let affidavits-in-opposition be filed by the respondents by four weeks after puja vacation; replies thereto, if any, be filed by two weeks thereafter.

Parties shall be at liberty to mention the writ petition for hearing before the regular Bench, subject to convenience of the Hon'ble Judges, after the period fixed above for exchange of affidavits expires.

Adverting to the point of interim relief claimed by petitioners, it appears to us that grant of interim order as prayed for by them would result in stalling the process of appointment of primary teachers in the State and that would not be a desirable option. We are of the further considered view that the process should be allowed to continue subject to the condition that if any appointment is made in pursuance of such process, the same shall abide by the result of the writ petition. It is also ordered accordingly.

If during the pendency of the writ petition appointments are made, it shall be clearly indicated in the letters of appointment, that might be issued, that such appointment shall abide by the result of the writ petition. This would enable the appointees to enter appearance in the public interest litigation and to contest it.

**( Dipankar Datta, J. )**

**( Siddhartha Chattopadhyay, J. )**