

MANU/WB/1431/2024

IN THE HIGH COURT OF CALCUTTA

WPA 21508 of 2023

Decided On: 14.06.2024

Mrinal Barik **Vs.** The State of West Bengal and Ors.

Hon'ble Judges/Coram:

Rajasekhar Mantha, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sabyasachi Chatterjee, Imtiaz Akhtar, Badrul Karim, Indrani Roy and Sarajit Roy

For Respondents/Defendant: Supriyo Chattopadhyay, Iti Dutta, Saikat Banerjee, Ratul Biswas and Kaushik Chowdhury

DECISION

Rajasekhar Mantha, J.

1. Mr. Saikat Banerjee, learned counsel, who normally represents the WBBPE is requested to represent the instant matter along with Mr. Kaushik Chowdhury and Mr. Ratul Biswas. The Board shall regularize their appointment.

2. The petitioner is a transgender person.

3. She succeeded in the TET 2014 and also in the TET 2022. Despite thereof, the petitioner was not called for counseling or interview.

4. Pursuant to directions dated 19th April, 2023 passed in WPA 415 of 2023 filed by the petitioner, the Chief Secretary of the State held a meeting. He referred to an order dated 25th April, 2023 indicating that by notification dated 30th November, 2022 issued by the Department of Women & Child Development & Social Welfare of the State, transgender persons are entitled to equal opportunity of employment without any discrimination whatsoever.

5. The Hon'ble Supreme Court in the case of National Legal Service Authority Vs. Union of India & Ors. reported in MANU/SC/0309/2014 : 2014:INSC:275 : (2014) 5 SCC 438 at paragraph 135 has declared as follows,

135. We, therefore, declare:

136. Hijras, eunuchs, apart from binary genders, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

135.2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

135.3. We direct the Centre and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all

kinds of reservation in cases of admission in educational institutions and for public appointments.

135.4. The Centre and the State Governments are directed to operate separate HIV serosurveillance centres since hijras/transgenders face several sexual health issues.

135.5. The Centre and the State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.

135.6. The Centre and the State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

135.7. The Centre and the State Governments should also take steps for framing various social welfare schemes for their betterment.

135.8. The Centre and the State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

135.9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

136. We are informed an expert committee has already been constituted to make an in-depth study of the problems faced by the transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with the recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this judgment and implemented within six months.

137. the writ petitions are, accordingly, allowed as above.

6. It is further clear from the notification dated 30th November, 2022 (supra) that the State itself had adopted a policy of equal treatment in employment to transgender persons. The WBPPE has a transgender person on its board.

7. This Court, however, notes that in terms of paragraph 135 (3) in NLSA (supra), reservation has not yet made in the State for transgender persons.

8. In those circumstances, this Court directs the Chief Secretary of the Government of West Bengal to ensure 1% reservation for the category of persons mentioned in the NLSA (supra) above, in all public employment in the State.

9. In the facts of the case and in exercise of extraordinary jurisdiction conferred on this under Article 226 of the Constitution of India, this Court is inclined to direct the Secretary, West Bengal Board of Primary Education to arrange for interview and counseling of the petitioner as a special case and recruit her as an Assistant Teacher in the primary section.

10. Let a decision be taken by the Secretary, WBBPE immediately upon receipt of copy of this order. The petitioner's appointment shall be made against present future

vacancies.

11. Let appropriate relaxation be made in the instant case for the petitioner by the Principal Secretary, School Education Department to ensure her appointment.

12. With the aforesaid observations, the instant writ petition shall stand disposed of.

13. There shall be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

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