

05.09.2019
BR

W.PA. 510 of 2019

Mily Sahana

Vs.

The State of West Bengal & Ors.

Mr. Sakti Pada Jana, ...for the Petitioner.

Mr. Debobrata Dhar

Mr. Hirak Barman

Ms. B. Bose ... for the State.

Affidavit of service filed in Court today be kept on record.

The petitioner has filed the present writ petition for direction upon the District Inspector of Schools (S.E.), Jalpaiguri, to grant post graduate scale of pay to the petitioner as the petitioner has enhanced **her** qualification in relevant subject and group that is to say M.Sc. in Physics. The petitioner's name was recommended by the concerned School Service Commission for the post of Assistant Teacher in Physics under science group as B.Sc. (Hons.) category for Jalapara Basti Hindi Junior High School, Jalpaiguri. Thereafter, the petitioner joined the said school on **20.07.2011**. **Her** appointment was subsequently approved by the concerned District Inspector of Schools (S.E.) on **08.09.2011**. Thereafter, the petitioner acquired post graduate degree that is to say M.Sc. in Physics, which is the relevant subject and group in the year 2012 and result was published sometime in February, 2012. After obtaining post graduate degree the petitioner made a representation before the School Authority as well as the concerned District Inspector of Schools (S.E.) for grant of higher scale of pay and the school authority also forwarded petitioner's prayer to the respondent no. 3, District Inspector of Schools (S.E.), **Jalpaiguri** along with all relevant documents for approval.

Mr. Jana, learned advocate for the petitioner submits that by Memo No. 25-SE(B)/IM-102/98 dated 12.02.1999 issued by the School Education Department, Government of West Bengal introducing the revised scale of the teaching and non-teaching staff of recognized non-Government Educational institution, provides under paragraph 12(3) as follows:

“All Teachers, including Geography teachers and Librarian of Secondary Schools who have improved/ will improve their qualifications, who were appointed with higher qualification in the subject or group relevant to their teaching/appointment shall got higher scale of pay appropriate to their qualification, with effect from the 1st January, 1996 or the date of improving qualification whichever is later.”

Mr. Jana also submits that amendment of ROPA, 1998 was notified under Memo No. 155-SE(B) dated 13.07.1999 and sub-paragraph (3) of paragraph 12 was amended. The substituted provisions runs as follows:-

“All Teachers, including Geography teachers and Librarians of Secondary Schools, who have improved/ will improve their qualifications or who were appointed with higher qualification in the subjects or group relevant to their teaching appointment shall got higher scale of pay appropriate to their qualifications with effect from the 1st January, 1996 or the date of improving qualifications whichever is later provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of that school.”

Learned advocate for the petitioner also contends that grant of prior permission from the authority is not required. In support of his contention Mr. Bari relies on Single Bench decisions reported in 2009(4) CHN 440 (Maleka Khatun Vs. State of West Bengal & Ors.), 2012(1) CLJ (Cal) 349 (Pampa Das Vs. The State of West Bengal & Ors.) and (2013)3 WBLR (Cal) 856 (Nibir Kumar Som Vs. State of West Bengal & Ors.). Learned advocate for the petitioner also relied on the decision passed in by the Hon'ble Division Bench of this Court reported in 2013(2) CHN (Cal) 632(Akhtar Hossain Chowdhury Vs. State of West Bengal & Ors.).

In conclusion, learned advocate for the petitioner submits that the concerned District Inspector of Schools (S.E.) should be directed to grant benefit of higher scale of pay to the petitioner from the following date of the last date of Part-II M.Sc. Examination.

Per contra, Mr. Dhar submits that it is a pre-mature writ petition. Nothing has been decided by the concerned District Inspector of Schools (S.E.). Prayer of the petitioner for grant of higher pay scale has not been decided as yet. Therefore, it would be perfect if the concerned District Inspector of Schools (S.E.) is directed to dispose of the petitioner's prayer for grant of higher scale of pay in accordance with law.

Considering the submissions advanced by the learned advocates appearing for the parties and after perusing the records and also considering the decisions relied on by the learned advocate for the petitioner, in my view, justice would be sub-served if the respondent no. 3, the District Inspector of Schools (S.E.) is directed to consider and dispose of the petitioner's prayer for grant of higher scale of pay as he has acquired post graduate degree that is to say M.Sc. in Physics, which is the relevant subject and group in the light of the discussions as indicated above and also in the light of the decisions relied on by Mr. Jana after giving an opportunity of hearing to the petitioner within a period of six weeks from the date of communication of this order and thereafter communicate the decision within a further period of two weeks to the petitioner.

With this direction, this writ petition is allowed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order be given to the parties expeditiously, if applied for.

(Samapti Chatterjee, J.)