

03,DL,Ct.18
26.03.2021.
AJ.

W.P.A. 4365 of 2021

Chiranjib Kayal
-Vs-
The State of West Bengal & Ors.

Mr. Saktipada Jana,
Mrs. Ujani Pal (Samanta).
... for the petitioner.

Mr. Tapan Kumar Mukherjee,
Ms. Saheli Mukherjee.
....for the State.

Affidavit-in-opposition filed on behalf of the State respondents and affidavit-in-reply thereto filed by the petitioner are taken on record.

The petitioner was declared qualified in the 7th Regional Level Selection Test (AT) 2006 and on the recommendation of the West Bengal Regional School Service Commission (Southern Region) he was appointed as the Assistant Teacher in Mathematics (Honours) in the category of Honours/PG in Satghara High Madrasah.

The petitioner at the time of his said appointment was pursuing his M.Sc. in Mathematics under the University of Kolkata. The petitioner after joining service applied for leave without pay for the period from April 03, 2008 to July 15, 2008 to the Secretary of the Managing Committee of the said Madrasah.

The Managing Committee in its meeting dated April 12, 2008 took the resolution approving the said prayer for said leave of the

petitioner. The Teacher-in-Charge of the said Madrasah under his letter dated June 16, 2008 forwarded the said resolution of the Managing Committee to the District Inspector of Schools (S.E.), the respondent no.3 herein.

The petitioner by his letter dated May 07, 2008 sought permission of the respondent no.3 to complete his said course but the said respondent did not respond to the said letter of the petitioner. However, the petitioner after completing his said M.Sc. course applied before the Secretary of the said Madrasah to grant higher scale of pay on the basis of his enhanced qualification.

The said prayer of the petitioner was approved by the Managing Committee of the said Madrasah by its resolution dated April 05, 2014 and forwarded the same to the respondent no.3.

The petitioner aggrieved by the delay in consideration the said prayer of the petitioner moved a writ petition being W.P. No. 21474(W) of 2019 before this Court which was disposed of by the order dated December 02, 2019 by directing the respondent no.3 to consider the prayer of the petitioner for higher scale of pay on the basis of his enhanced qualification.

The respondent no.3 pursuant to the aforesaid direction by the order impugned in the instant writ petition being order dated February

07, 2020 bearing Memo No. 88/1(3)/RO/LAW has refused to grant such enhanced scale of pay to the petitioner on the ground that the petitioner since has enhanced his qualification without taking prior permission of the said respondent no.3 as required in terms of paragraph 3 of the Government Order bearing Memo 593-SE(B) ES/O/1M-98/2007

dated November 27, 2007.

Mr. Sakti Pada Jana, learned advocate appearing on behalf of the petitioner submits that the petitioner since was pursuing his higher studies at the time of joining in his service, the paragraph 3 of the said Government order cannot stand in his way to get higher scale of pay on the basis of his enhanced qualification.

Mr. Jana in support of his such contention relied on a decision of the learned Single Bench of this Court in the case of ***Chaitali Banerjee v. The State of West Bengal*** reported in **2019(2) CHN (Cal) 568** and an unreported Division Bench judgment of this Court dated **February 11, 2021** passed in **MAT 825 of 2020** in the case of ***Md. Adeel Uz Zaman v. The State of West Bengal & Ors.***

Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader appearing on behalf of the State respondents submits that in

terms of paragraph 3 of the aforementioned Government order dated November 27, 2007 prior permission of respondent no.3 to enhance his qualification is *sine qua non* to get the benefit of higher scale of pay and the petitioner since has not obtained such prior permission, he is not entitled to the benefit of the paragraph 3 of the said Government order. Therefore, according to him, the respondent no.3 is fully justified in refusing the prayer of the petitioner.

Having heard the learned Counsel for the parties and on perusal of the materials-on-record it appears that the interpretation of the word prior permission appearing at paragraph 3 of the relevant Government order is the issue to be answered in the present matter.

The learned Single Judge of this Court interpreting the said word at paragraph 10 of the judgment reported in **2019(2) CHN (Cal) 568 (supra)** thus, held :-

10. *“Having regard to the above claim of enhancement of qualification, this court is of the view that the provision of clause I of the Memo dated 27th November 2007 (supra) be read to treat the petitioner’s single enrolment for the composite M.Sc. course prior to taking up duties in the school. It is the further view of this Court that the use of the word ‘and’ in the Memo dated 27th November, 2007 be read as conjunctive in the facts of this case.”*

The Division Bench in its judgment dated February 11, 2021 passed in MAT 825 of 2020 observed as follows :-

“.....The very fact that he had already enrolled himself prior to his appointment and that he had already participated in the said examination and successfully completed M.Sc., part-I, in our considered opinion he is not required to obtain any prior permission to enroll himself for the purpose of appearing in the future examination for enhancement of his educational qualification as contemplated in Clause 3 of the Government Order dated 27th November, 2007.”

In view of such pronouncement of the judgments by the learned Judges of this Court, the issue is no longer *res integra*.

It is preposterous to suggest that a teacher who is pursuing his higher studies at the time when he joined his service needs to take prior permission for completion of his said higher studies to get the benefit of paragraph 3 of the said Government Notification, therefore, the rejection of the prayer of the petitioner on the ground that he did not take prior permission from the respondent no.3 to enhance his qualification is not justified.

The order impugned is, accordingly, set aside.

The respondent no.3 is directed to give the petitioner the benefit of enhanced pay scale on the basis of his enhanced qualification if he is otherwise found to be eligible for such benefit upon consideration of his representation forwarded to the respondent no. 3 by the Headmaster of the said Madrasah.

The respondent no.3 shall arrive at his decision on the said representation within a period of four weeks from the date of communication of this order and shall communicate his decision to the petitioner immediately.

W.P.A. 4365 of 2021 is disposed of with the above terms. No order for costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)