

S/L 56
14.06.2021
Court. No. 17
GB

W.P.A. 3157 of 2020

Susanta Halder
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Shuvro Prokash Lahiri.

...for the Petitioner.

*Ms. Chaitali Bhattacharya,
Mr. Kartick Chandra Kapas.*

...for the State.

Mr. Lahiri, learned Advocate for the petitioner submits that the subject matter of challenge in this writ petition is covered by a decision of another learned co-ordinate Bench of this Court.

Ms. Bhattacharya, learned Advocate represents the State respondents. The fact of the case in this writ petition is that the petitioner was appointed as an assistant teacher for the subject 'Mathematics' in Naity High School (H.S), District Hooghly. At that point of time, the petitioner was an honours graduate. The petitioner completed the master degree in mathematics during his tenure as an assistant teacher. The part-2 examination was completed when he was serving in the school. The petitioner informed his employer that he was going to take the examination and got leave without pay but did not take prior permission from the District Inspector of Schools. The prayer of the petitioner for higher scale of pay on enhancement of his qualification of master degree in

mathematics was turned down by the State respondents by a memo dated January 16, 2020.

Aggrieved by the aforementioned memo, the writ petition was filed. The contention of the petitioner was that when the petitioner started his M.Sc. course he was not appointed. He was not an in-service candidate. Thus when he started to pursue his postgraduate course there was no occasion for him to take prior permission from the District Inspector of Schools. Nor was there any scope for him to mention that he was pursuing M.Sc. in Mathematics in the job application form. It is only during part-2 examination that he became in-service candidate. He appeared at the post graduate examination and qualified the same. Thus, the petitioner prays that the order impugned passed by the State respondents be set aside in terms of the order already passed by several co-ordinate Benches of this Court.

Ms. Bhattacharya, learned Advocate for the State respondents very fairly submits that the State Government has not preferred any appeal against this order. Although the issue was remanded back by the Hon'ble Apex Court for a decision on the issues of payment of higher scale by a larger Bench, the issues involved in this matter has already been decided by a Division Bench and on the basis of the order of the Division Bench, other co-ordinate Benches have also passed orders by allowing higher scale of pay.

I do not find any reason not to agree with the Hon'ble judges, inasmuch as, it is an admitted fact that the petitioner

was not an in-service candidate when he started his course. The petitioner did not take part-2 examination behind the back of the authorities. The impugned memorandum does not cover such a situation, inasmuch as, the question of taking prior permission did not arise. Moreover, the petitioner had already completed part of the postgraduate course before he took appointment. Thus, following the decision of this Court in the matter of **Animesh Chowdhury Vs. State of West Bengal & Ors. (In re: WPA 14468 of 2013)** and the reasoning of the Hon'ble judge, the writ petition is allowed. The impugned memo dated January 16, 2020 is quashed and set aside.

The authorities are directed to grant higher scale of pay to the petitioner on and from March 1, 2010.

In view of the pandemic situation, the time limit to be granted to the authorities to complete the entire exercise is leniently taken note of and the respondents are granted three months time to complete the entire exercise.

The concerned authorities are directed to act on the basis of the server copy of this order.

This writ petition is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar, J.)