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30.11.2021.
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 18188 of 2021
(Via Video Conference)**

**Mita Mondal
-versus
The State of West Bengal & Ors.**

**Mr. Samarendra Nath Biswas.
...For the Petitioner.**

**Mr. Md. Sarwar Jahan,
Sk. Nayeemul Hoque.
...For the Respondent
Nos. 3 and 4.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Suman Dey.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner is a teacher of a primary school. She participated in the Primary Teachers' Training Examination 2006 held in the month of November, 2011 and was successful. The salary of the petitioner was raised to category 'A' on and from July, 2011 in terms of the Memorandum No. 2329(44)/12-13 dated 18th September, 2012 issued by the Murshidabad District Primary School Council.

The Murshidabad District Primary School Council by a subsequent Memorandum No.1019-A(44)/1yrPTTI can/2018-19 dated 27th July, 2018 withdrew and cancelled the earlier notification dated 18th September, 2012. In view of the withdrawal of the

earlier notification the pay of the petitioner stood reduced on and from September, 2018.

The grievance of the petitioner is that as she obtained the training, accordingly, pursuant to the memorandum dated 18th September, 2012 the authority ought to allow 'A' category scale of pay to her.

The petitioner relies upon orders passed by this Court by the Hon'ble Single Bench as well as by the Hon'ble Division Bench wherein in similar matters the Hon'ble Division had been pleased to observe that the writ petitioners received 'A' category scale of pay till September, 2018, and directed the authorities to pay 'A' category scale of pay to the petitioners for the subsequent period and to continue to pay till the disposal of the appeal without prejudice to the rights and contentions of the appellants.

The Hon'ble Division Bench further directed that in the event the appeal succeeds, any payment made in terms of the order of the Court may be refunded or adjusted against future salaries of the petitioners.

It has been submitted by the authorities that the appeal is pending consideration till date.

The petitioner also relies upon the judgment passed by the Hon'ble Supreme Court in the matter of State of Punjab & Ors. -vs-Rafiq Masih (White Washer) reported in (2014) 8 SCC 883 wherein the Hon'ble Supreme Court held that recovery by the employers would be impermissible from employees where excess payment has been made for a period in excess of five years before the order of recovery is issued.

The petitioner submits that she is an employee in the Group 'C' category and recovery would be impermissible in view of the order passed by the Hon'ble Supreme Court in the matter of Rafiq Masih (supra).

The petitioner made an application highlighting his grievance before the Chairman, District Primary School Council and the District Inspector of Schools, Primary Education, Murshidabad on 7th October, 2021 and the same was received by the office of the respondents on 25th October, 2021. She alleges that her representation has not been taken into consideration by the respondent authorities till date.

The petitioner prays relief in terms of the order passed by the Hon'ble Division Bench.

The learned advocate appearing for the Murshidabad District Primary School Council submits that though the order of cancellation was passed in the year 2018 but the petitioner did not take any step when her salary was reduced from category 'A'. She approached the authorities for the first time in October 2021 only after being aware of the interim order passed by the Hon'ble Division Bench on 11th February, 2021.

It appears from the submissions made on behalf of the parties that the cause of action for filing the instant writ petition arose in the year 2018.

The petitioner approached the authorities for the first time in October, 2021 and filed the writ petition on 16th November, 2021. Sufficient time ought to be given to the respondent authorities for consideration of the prayer of the petitioner.

In view of the above, the instant writ petition is disposed of by directing the Chairman, Murshidabad District Primary School Council to take a decision with regard to the representation filed by the petitioner being annexure P-11 to the writ petition in the light of the order passed by this Court on 15th January, 2020 in W.P. 15294 (W) of 2018 read with the interim order dated 11th February, 2021 passed by the Hon'ble Division Bench in MAT 714 of 2020 with CAN 1 of 2021 with CAN 2 of 2021.

Decision shall be taken by the aforesaid respondent at the earliest, but positively within a period of ninety days from the date of communication of a copy of this order.

The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

The petitioner is directed to forward a copy of her representation posted on 7th October, 2021 along with a copy of the order passed in W.P. 15294 (W) of 2018 and the order passed in MAT 714 of 2020 to the aforesaid respondent at the time of communicating the order of this Court.

The decision in the case of Rafiq Masih (supra) will not come to the aid of the petitioner in the instant case as there is no order yet for recovery of the excess payment made to the petitioner.

WPA 18188 of 2021 stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)