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MAT 1119 of 2018
with
I.A No. CAN 1 of 2018(Old No. CAN 7806 of 2018)
CAN 2 of 2018(Old No. CAN 7807 of 2018)

The District Inspector of Schools (S.E),
Murshidabad & Ors.
Vs.
Md. Mainul Islam & Ors.

Mr. Supriyo Chattopadhyay
Mr. Suman Dey
... For the Appellants

Md. Sarwar Jahan
Md. Ashraful Huq
Mr. Firoze Hossain
... For the Writ Petitioner/Respondent

Re:CAN 1 of 2018(Old No. CAN 7807 of 2018)
(Condonation of Delay, filed on 25.9.2018)

CAN 7806 of 2018 is an application for condonation of delay in preferring the appeal.

We have seen the explanations offered by the appellants for preferring the appeal beyond the statutory period of limitation. We are satisfied with those explanations.

Accordingly, the application for condonation of delay is allowed upon condoning the delay of 276 days in preferring the appeal.

CAN 7806 of 2018 is thus disposed of.

Let the appeal be registered, if it is, otherwise in form.

Re: MAT 1119 of 2018
with
CAN 2 of 2018(Old No. CAN 7807 of 2018)
(Stay Application, filed on 25.9.2018)

The appeal and the application for stay being CAN 7807 of 2018 are disposed of by a common order with the consent of the parties.

The appeal is directed against the order dated 15th November, 2016 passed by the learned Single Judge thereby the order dated 18th March, 2011 passed by the Director of School Education, West Bengal was set aside upon giving direction on the concerned respondent authorities to extend the benefit of Post Graduate scale of pay to the writ petitioner from the date of his joining as an Assistant Teacher in Shyamnagar High School, District-Murshidabad (hereinafter referred to the said school).

This matter relates to grant of Post Graduate scale of pay in favour of the writ petitioner in view of possessing Post Graduate degree in Arabic.

The case which was made out by the writ petitioner before the learned Single Judge was that he was having B.A (pass course) in Arabic participated in the Regional Level School Test (RLST) 2001 and thereafter he joined the said school on 1st February, 2003 as an Assistant Teacher in Arabic, and the post was meant for a teacher having pass graduate qualification.

It is the contention of the writ petitioner before us that at the time of participating in the selection process conducted by the School Service of Commission in the year 2001 the writ petitioner was a student of M.A course under the University of Calcutta and subsequently he obtained qualification of M.A in Arabic upon passing the final examination held in 2002. Therefore, it is the prayer of the writ petitioner/respondent to grant Post Graduate scale of pay in recognition of his qualification of Post Graduate degree in Arabic on the strength of Clause 12(3) of ROPA Rules 1998.

There was a previous writ petition being WP 2738(w) of 2009 which was triggered due to refusal of the concerned respondent authority to grant said benefit of Post Graduate scale of pay to the petitioner, whereupon vide an order dated 24th November, 2010 the learned

Single Judge directed the Director of School Education, West Bengal to consider and dispose of the representation of the petitioner for grant of higher scale of pay in accordance with law. The Director of School Education in his turn passed order, as contained in Memo dated 18th March, 2011, whereby the claim of the petitioner for grant of post graduate scale of pay was spurned upon placing reliance on the judgments delivered by the two different Hon'ble Division Benches in two different matters.

Challenging the order dated 18th March, 2011 passed by the Director of School Education, West Bengal refusing to sanction post graduate scale of pay in favour of the petitioner, the writ petitioner/respondent had filed the connected writ petition, which was disposed of by the learned Single Judge vide order dated 15th November, 2016 allowing the claim of the writ petitioner with a direction upon the respondent authority to sanction post graduate scale of pay within a particular time.

This is an appeal at the instance of the State authorities against the order of the learned Single Judge granting relief to the petitioner by directing authority concerned to sanction post graduate scale of pay on the ground that without taking into consideration the clarification, which was made by the Education Department vide a Memo No. 155-SE(B) dated 13th July, 1999 clarifying Clause 12(3) of ROPA Rules 1998 impugned order was passed. Clause 12(3) of ROPA Rules 1998 has been clarified by the subsequent Memo dated 13th July, 1999 which reads as under:-

“(3) All teachers, including physical Education teachers and Librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualification,

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. If such teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission.”

On perusal of the modified Clause 12(3) of ROPA Rules 1998 suggests that in case of a teacher being appointed on the recommendation of the School Service Commission, the fixation of pay of such teacher is to be governed by the qualification, which is mentioned in the recommendation Memo issued by the School Service Commission for payment of salary to the concerned teacher.

In the case at our hand it appears that the petitioner was recommended by the School Service Commission vide Memo dated 7th January, 2013 for the post of Assistant Teacher in the said school earmarked for a teacher having pass graduate degree. Pursuant to such recommendation the petitioner joined the said post with effect from 1st February, 2003 and such appointment was duly approved by the concerned District Inspector of Schools (SE), Murshidabad thereby sanctioning pass graduate scale of pay in favour of the petitioner.

We have perused the order of the Director of School Education, West Bengal dated 18th March, 2011, which is under challenge in the connected writ petition.

The consideration which led the Director of School Education, West Bengal to arrive at the conclusion in the order dated 18th March, 2011, we are not ad idem with the view expressed by the Director of School Education, West Bengal while refusing the claim of the petitioner. But on a different consideration we are constrained to hold against the petitioner herein. Clarificatory Memo dated 13th July, 1999 seals the fate of the petitioner, since he was appointed on the

recommendation of the School Service Commission and such Memo recommending the petitioner for appointment indicates fixation of pay scale in the pass graduate scale of pay.

In view of the clarification as offered by the said Memo dated 13th July, 1999 and since the name of the writ petitioner was recommended by the School Service Commission as a teacher having pass graduate degree we have no other option but to refuse sanction of post graduate scale of pay to the writ petitioner.

Accordingly, the appeal and the application for stay stand allowed and the order of the learned Single Judge dated 15th November, 2016 is set aside.

There will be no order as to costs.

Urgent Xerox certified copy to be made available to the parties upon compliance of necessary formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)

