

09-09-2021
ct no. 05
Sl. 02.
Sayandeep

W.P.A. 21113 of 2019

Subrata Kumar Ghosh
-Versus-

The State of West Bengal & Ors.

(Via Video Conference)

Mr. Sakti Pada Jana
Mrs. Ujani Pal (Samanta)
...for the petitioner

Mr. Suprioyo Chattopadhyay
Mr. Sabyasachi Mondal
....for the State

Writ petitioner is an Assistant Teacher in Prasadpur Ramranjan High School (hereinafter referred to as the “said school”), District Birbhum with effect from 13th July, 2011 and in support of such appointment of the writ petitioner the concerned District Inspector of Schools (SE), Birbhum issued approval of appointment vide memo dated 16th August, 2011. The concerned District Inspector of Schools sanctioned Hons. graduate scale of pay while granting approval to the writ petitioner in acknowledging the educational qualification of writ petitioner that is B.Sc Hons. in mathematics and from the date of appointment the writ petitioner has been enjoying such Hons. graduate scale of pay. It further appears from the schedule of first semester examination, 2010

of M.Sc. in Mathematics issued by the controller of examinations of the Burdwan University dated 25th November, 2010 that the writ petitioner participated in the said examinations which commenced on and from 24th December, 2010 and ended on 4th January, 2011. The schedule of 2nd semester which was held in the month of June and July in 2011 is also annexed to the writ petition at page -33. From these facts, it is clear that the writ petitioner was undergoing postgraduate course in Mathematics in Burdwan University prior to his joining as Assistant Teacher in the said school. Ultimately, petitioner passed M.Sc. examination in Mathematics in 2012 and thereafter approached the District Inspector of Schools(SE), Birbhum through his school authority for sanction of postgraduate scale of pay.

The prayer of the writ petitioner was spurned by the concerned District Inspector of Schools vide memo dated 13th October, 2015 on the ground that there was no prior permission obtained from the office of the said District Inspector of Schools (SE). The said rejection order dated 13th October, 2015 was assailed in the writ petition being WP No. 17232(w) of 2018 which was disposed of by a coordinate Bench upon passing an order dated 27th June, 2019

thereby the said memo of the concerned District Inspector of Schools (SE) dated 13th October, 2015 was set aside with a direction upon the District Inspector of Schools (SE) to pass a reasoned order on the prayer of the writ petitioner for sanctioning postgraduate scale of pay.

Pursuant to the said order dated 27th June, 2019 passed by the Coordinate Bench, the concerned District Inspector of Schools(SE) again rejected the prayer of the writ petitioner for sanction of postgraduate scale of pay by issuing memo dated 22nd August, 2019 chiefly on the ground that there was non-compliance of circular letter dated 27th November, 2007, which was issued in terms of Section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005 which prescribes requirement of obtaining permission from the District Inspector of Schools by the teacher who wants to enhance his academic qualification while in service and on another ground which has also been pointed out by the concerned D.I. is non-compliance of Clause 25 of the West Bengal Board of Secondary Education (Conduct and Discipline of Teachers and non-Teaching Staff) Regulations, 2004. The said decision of the District Inspector of Schools concerned as contained in the memo

dated 22nd August, 2019 is under challenge in the present writ petition which is at page-56, annexure P-11.

Mr. Sakti Pada Jana, learned advocate appears on behalf of the writ petitioner and submits before this Court that the grounds taken by the concerned District Inspector of Schools(SE), the respondent No. 3, is not tenable in view of the judgment of the Hon'ble Division Bench dated 11th February, 2021 passed on MAT 825 of 2020 (**Md. Adeel Uz Zaman vs. The State of West Bengal & Ors.**). The contention made on behalf of the writ petitioner is that the issue relating to requirement of obtaining permission by an in-service teacher undergoing higher course of study for obtaining higher qualification in the relevant subject in order to enjoy higher scale of pay has been considered in the said judgment of the Division Bench dated 11th February, 2021 on the anvil of the circular letter dated 27th November, 2007 and therefore the issue relating to requirement of obtaining prior permission is no more *res integra*. In addition thereto, it has also been submitted on behalf of the writ petitioner that Clause 25 of the West Bengal Board of Secondary Education (Conduct and Discipline of Teachers and non-Teaching Staff) Regulations, 2004 has no

manner of application in the present case, since the writ petitioner has obtained due permission from the school authority which is dated 3rd December, 2011.

Mr. Suprioyo Chattopadhyay, learned Senior Government advocate, duly assisted by Mr. Sabyasachi Mondal, learned advocate appears on behalf of the State respondents and submits that in view of the relevant provisions of the circular letter dated 27th November, 2007 as well as Clause 25 of the Regulations of 2004 the writ petitioner is not entitled to enjoy the benefit of higher scale of pay.

This Court has considered the submissions of the learned advocates representing the rival parties and also gone through the relevant provisions of the circular letter dated 27th November, 2007 as well as Clause 25 of the Regulations of 2004.

It appears on perusal of the judgment dated 11th February, 2021 passed by the Hon'ble Division Bench in **Md. Adeel** (supra) that it has unequivocally been decided by the Division Bench that where the teacher concerned is appointed in a permanent post in a Government recognized secondary school while he is undergoing higher course of study in the relevant subject, obtainment of permission as

envisaged under the said circular letter dated 27th November, 2007 is not required.

While appreciating the ground indicated by the respondent No. 3 in the impugned memo dated 22nd August, 2019 relating to non-compliance of Clause 25 of Regulations, 2004 this Court finds it proper to quote the said Regulations 25 below:

“Submission of applications for appearing at any examination—Every teacher or non-teaching staff shall submit an application for appearing in any examination through the appointing authority and with the approval of the Committee.”

On plain reading of said Clause 25, it appears that the teacher concerned is required to submit an application for appearing in any examination through appointing authority and with the approval of the Committee. Here, in the present case, it is undisputed that the said school authority being the appointing authority of the writ petitioner permitted him to undergo higher course of study vide Managing Committee Resolution dated 3rd December, 2011 therefore said Clause 25 of Regulations of 2004 does not create any impediment in the matter of

sanctioning postgraduate scale of pay to the writ petitioner.

In view of the above discussion, the impugned memo dated 22nd August, 2019 issued by the District Inspector of Schools (SE), Birbhum is set aside. The respondent No. 3 is directed to consider the claim of the writ petitioner for sanction of postgraduate scale of pay afresh on the basis of the observations made above as well as the observations made by the Hon'ble Division Bench in its judgment dated 11th February, 2021 passed in **Md. Adeel** (Supra). Such decision shall be taken by the District Inspector of Schools (SE) within a period of eight weeks from the date of communication of this order and communicate the decision taken in terms of this order to the petitioner within two weeks thereafter. Before taking decision the District Inspector of Schools (SE) shall give opportunity to the petitioner as well as the school authority where the petitioner is serving at present.

With the above observation, the writ petition stands disposed of.

There shall be no order as to costs.

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

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Saugata Bhattacharyya, J.)