

W.P.A. 24929 of 2012

SUJAN ROY VS. STATE & ORS.

Mr. Shuvro Prokash Lahiri
...for the petitioner
Mr. Supriyo Chattopadhyay
Mr. Suman Dey
..for the State

Despite service, none appears on behalf of the learned Advocate for the State respondents. Mr. Chattopadhyay with Mr. Suman Dey are requested to appear in the matter. Their appearance may be regularized.

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.

Mr. Chattopadhyay, learned Advocate for the State respondents had already appeared in a similar matter, the decision of which is being relied upon by Mr. Lahiri.

The fact of the case in this writ petition is that the petitioner was appointed as an assistant teacher in the subject 'Mathematics' in P.P.D. High School, Panduk, District Burdwan. At that point of time, the petitioner was an honours graduate. The petitioner had completed master

degree in mathematics during his tenure as an assistant teacher. The part-2 examination was completed when he was serving in the school and had been granted leave without pay. The petitioner informed his employer that he was going to take the examination 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 July 10, 2012.

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 pursuing his postgraduate course there was no occasion for him to take prior permission from the District Inspector of Schools nor was there any occasion for him to put it in his job application form. It is only during part-2 examination that he became an in-service candidate and upon grant of leave by the concerned authorities, that is, the school as also the Board, 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.

Mr. Chattopadhyay, learned Advocate for the State respondents very fairly submits that the State Government has not preferred any appeal against this order. Although a matter had been remanded by the Hon'ble Apex Court for a decision on the issue of payment of higher scale by a larger Bench. The issue involved in this matter has already decided by a Division Bench and on the basis of the order of the Division Bench, other co-ordinate Benches have also passed order and setting the memoranda and allow 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. The petitioner did not take part-2 examination behind the back of the authorities. The impugned memorandum issued does not cover such a situation, inasmuch as, prior to appointment 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 July 10, 2012 is quashed and set aside.

The authorities are directed to grant higher

scale of pay to the petitioner on and from July 1, 2008, being the appropriate date.

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.

This writ petition is disposed of.

There will be however no order as to costs.

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

(Shampa Sarkar,J.)