

25.03.2021
(S/L-03)
Ct.-18
(Susanta)

(Via Video Conference)

W.P.A. 11356 of 2020

Soumitra Das

-Vs-

The State of West Bengal & Ors.

Md. Manwar Ali

..... For the Petitioner.

Mr. Samimul Bari,

..... For the State Respondents.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner was appointed as an Assistant Teacher at Debkunda High Madrasah, District Murshidabad on October 6, 2009.

The petitioner applied before the District Inspector of School (S.E.) Murshidabad, the respondent no.4 herein, for higher scale of pay on the ground of enhancement of his qualification.

The petitioner complaining inaction on the part of the authorities to consider his such application filed W.P 4310 (W) of 2015 which was disposed of on February 26, 2016 with a direction upon the authorities to consider the said application of the petitioner.

The respondent no. 4, pursuant to the aforesaid direction, considered the said application of the petitioner and rejected the same by the order impugned dated August 10,

2016 on the ground that he did not take permission of the said respondent no. 4 prior to pursuing his higher studies.

The Memo No. 593-SE(B) ES/O/B/IM-98/2007 dated November 27, 2007 of the Directorate of Madrasah Education, Government of West Bengal governs the issue of additional increment and higher scale of pay for teachers and non-teaching staffs of the State-aided schools upon acquiring post-graduate degree or any other higher diploma or degree.

The paragraph 3 of the said memo is the basis for refusing the prayer of the petitioner.

The petitioner has complied with the requirements of paragraph 1 and paragraph 2 of the said memo.

The paragraph 3 of the said memo stipulates that the teacher is required to seek prior permission of the concerned District Inspector of Schools(S.E.) through the Managing Committee of the School when he wants to claim higher scale of pay for obtaining such higher qualification.

The petitioner was pursuing Masters degree in Information Technology when he was appointed, he cleared all papers of the said course before he joined in the said service of the said Madrasah, excepting one.

The petitioner subsequently cleared the said paper as well and obtained the Masters degree, in this factual matrix, it is preposterous to suggest that he was required to obtain prior permission of the concerned District Inspector of Schools for his higher studies to get the benefit of higher scale of pay in terms of the paragraph 3 of the aforementioned memo dated November 27, 2007.

However, in view of the judgment of the Division Bench of this Court dated February 11, 2021 passed in MAT 825 of 2020, the issue is no longer *res integra*.

The following observation of the said judgment being relevant is quoted below:-

“The very fact that he had already enrolled himself prior to his appointment and that he had already participated in the said examination and successfully completed M.Sc. part-I, in our considered opinion he is not required to obtain any prior permission to enroll himself for the purpose of appearing in the future examination for enhancement of his educational qualification as contemplated in clause 3 of the Government Order dated 7th November, 2007.”

The order impugned dated August 10, 2016 passed by the respondent no. 4, for the aforesaid reason, is set aside.

The petitioner is at liberty to apply before the said respondent no. 4 to get the benefit of higher scale of pay on the ground of enhancement of his qualification within two weeks from date and if such an application is made, the said respondent shall fix the enhanced salary of the petitioner if he is otherwise found eligible to get such benefit.

Since no affidavit-in-opposition has been invited, the allegations made in the writ petition are deemed to have been denied by the respondents.

W.P.A. 11356 of 2020 is, thus, allowed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)