

30-09-2021
Court No.1
Km/Sh- 03

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

W.P.A. 807 OF 2021

Alipnur Khatun. **Petitioner.**
-Vs-
State of West Bengal & Ors. **Respondents.**

Mr. Pradip Kumar Ghosh,
Mr. Debajit Kundu.
..For the Petitioner.

Mr. Subir Kumar Saha,
Mr. Momenur Rahaman,
..For the State.

The present writ petition has been preferred challenging *inter alia* the inaction on the part of the respondents to grant the post graduate scale of pay to the petitioner.

Mr. Kundu, learned advocate appearing for the petitioner submits that after obtaining the honours degree in Education in the year 2008, the petitioner enrolled herself for post graduate course in Education under Distance learning mode at Rabindra Bharati University for the session 2009-2010. She completed her Master of Arts (in short, M.A.) Part-I course and passed the examination. The Part-I result was published on 18.02.2010. While she was undergoing the Part-II M.A. course, she participated in the selection process for appointment to the post of assistant teacher of Education under honours/post graduate (in short, Hons./PG)

category. She emerged to be successful and pursuant to the recommendation of the West Bengal Regional School Service Commission *vide* memo dated 16.04.2010, she was appointed to the post of assistant teacher of Education (Hons./PG) in OBC-A category at Shaktigarh Balika Vidyalaya (in short, the said school). Such appointment was also approved by the respondent no.3 *vide* memo dated 09.11.2010. The petitioner thereafter continued with the M.A. Part-II course and participated in the Part-II examination and emerged to be successful. The M.A. Part-II result was published on 03.08.2011. Thereafter, the petitioner submitted a representation dated 25.02.2014 to the respondent no.3 for grant of post graduate scale of pay. Her claim was twice recommended and forwarded by the school authorities *vide* memoranda dated 25.02.2014 and 24.07.2018. In the midst thereof, the respondent no.3 by a memo dated 21.05.2014 referred the petitioner's claim to the respondent no.2 seeking necessary instruction. The respondent no.2 maintained a deceptive silence and kept the petitioner's claim in abeyance. Aggrieved thereby the petitioner has approached this Court.

Mr. Kundu submits that the petitioner's claim had been withheld on the ground that she had not obtained prior permission from the respondent no.3 for enrolling herself and for appearing in the M.A. examination. The said issue is no longer *res integra* inasmuch as it has

been declared by this Court that when a candidate has enrolled himself/herself for a masters degree course prior to his/her appointment and emerges to be successful in the said course, the authorities cannot deny his/her post graduate scale of pay on a purported ground that he/she ought to have obtained prior permission from the respondent no.3. In support of such contention, he has drawn the attention of this Court to a judgment dated 11.02.2021, passed in *MAT 825/2020* and a judgment dated 25.03.2021 passed in *WPA 14468 of 2013*.

He further submits that the respondent no.3 is the approving authority and the petitioner's claim could not have been withheld on a purported plea that instruction has been sought for from the higher officials.

Mr. Rahaman, learned advocate appearing for the State respondents submits that the Samsi College Study Centre through which the petitioner pursued the M.A. course was affiliated to the University of Gour Banga. However, the petitioner has pursued the course at Rabindra Bharati University.

In reply, Mr. Kundu submits that the Samsi College is a Centre for distant and online education of Rabindra Bharati University. In support of such contention, he has produced a list of approved study centres of Rabindra Bharati University. Let the said list, as produced, be kept on record. A copy of the same has been handed over to Mr. Rahaman.

A perusal of the memo dated 21.05.2014 issued by the respondent no.3 does not reveal any doubt as regards the petitioner's qualification and the fact that she got herself enrolled in the M.A. course prior to her appointment as an assistant teacher in Hons./P.G. category.

Indisputably, the petitioner got herself enrolled in the M.A. course prior to her appointment to the post of assistant teacher in the said school and she enhanced her qualification in a subject relevant to the group in which she was appointed. She had also been sanctioned the Hons./P.G. scale of pay. Dealing with the issue as to whether prior permission is required from the respondent no. 3 for claiming the post graduate scale of pay by students who had got themselves enrolled for the masters degree course prior to their appointment, the Hon'ble Division Bench in MAT 825 of 2020 with CAN 1 of 2021 observed *inter alia* as follows :

"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 27th November, 2007".

In view thereof, the petitioner's claim for post graduate scale of pay cannot be withheld for lack of prior permission from the respondent no.3.

Accordingly, this Court directs the respondent no.3 to take a decision towards grant of post graduate scale of pay of pay and the consequential benefits to the petitioner upon considering her representation dated 25.02.2014, as annexed at page 60 of the petition and upon granting her an opportunity of hearing and to pass a reasoned order and communicate the same to the petitioner.

The above exercise shall be completed within a period of four weeks from the date of communication of this order along with a copy of the writ petition.

It is made clear that the petitioner's claim cannot be rejected on the ground of lack of prior permission from the respondent no.3.

With the aforesaid observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the appearing parties on compliance of all requisite formalities.

(TAPABRATA CHAKRABORTY, J.)