

**03.
31.01.2022.
Ct. No. 11.
F.B.**

WPA 11189 of 2014

(Via Video Conference)

**Subrata Sarkar
-Vs.-
The State of West Bengal & Ors.**

**Mr. SK. Sahjahan
..... For the Petitioner.**

**Mr. Supriyo Chattapadhyay,
Ms. Iti Dutta
..... For the State.**

The petitioner was appointed as Assistant Teacher (Mathematics) in the Jagannathpur Arabinda Palli Bharati Vidyalaya (H.S), District 24 Parganas (N). Prior to his appointment, the petitioner was pursuing the MSc (Mathematics) Course from Netaji Subash Open University since the year 2004 but the petitioner could not clear the 7th & 9th papers of Part-II examination. In the meantime, the petitioner was appointed as Assistant Teacher in the said school on 23.02.2008. The petitioner had to appear 7th and 9th papers Part-II examination of MSc (Mathematics). The petitioner has made representation to the Secretary of the school through the Headmaster requesting for grant

of permission to appear in the MSc (Mathematics) 7th & 9th papers, Part-II examination.

On the request of the petitioner, the Managing Committee allowed the petitioner to appear in the said examination.

The petitioner had accordingly appeared in the examination and passed the said examination. The Vice-Chancellor of Netaji Subash Open University issued Degree Certificate of MSc (Mathematics) dated 13.05.2010 and accordingly the petitioner has submitted the said certificate to the authorities along with an application with the request to grant higher scale of pay. The representation submitted by the petitioner has not been considered by the respondent authorities and accordingly the petitioner has filed the instant application. The petitioner has prayed for a direction upon the respondent authorities to consider the case of the petitioner for grant of higher pay scale as the petitioner has completed MSc (Mathematics) and the petitioner is entitled to get the said benefit. The petitioner has relied upon the Judgment passed by the Co-ordinate Bench of this Court in W.P.A. 14468 of 2013 (Animesh Choudhury-Vs.- State of West Bengal & Ors.).

Per contra, the learned Counsel for the respondent has submitted that though the petitioner has applied to appear in the 7th and 9th papers of MSc (Mathematics) Part-II examination and the Managing Committee has considered the grievance of the petitioner for appearing in the examination but the competent authority, i.e. the District Inspector of Schools has not granted permission to the petitioner and as such no permission was granted to the petitioner to appear in the examination.

The Counsel for the respondent further contended that the petitioner had made representation to A.D.I. of Schools (SE) for grant of higher pay scale after obtaining MSc. Degree in Mathematics but the A.D.I of Schools is not the competent authority. The District Inspector of Schools is the competent authority.

The Counsel for the respondent further contended that if the petitioner will submit his representation before the appropriate authority i.e. District Inspector of Schools, the said authority will consider the same in accordance with law.

Heard the learned Counsels appearing for the respective parties and the documents available on record. It is admitted that prior to the appointment as Assistant Teacher, the petitioner was pursuing his

study in MSc (Mathematics) but the petitioner could not clear 7th and 9th papers Part-II examination of the said course and as such when the petitioner had joined the service, the petitioner has made an application praying for allowing the petitioner to appear in the 7th and 9th papers Part-II examination. The Managing Committee of the school had allowed the request of the petitioner to appear in the said examination. The petitioner has obtained MSc degree in Mathematics and thereafter the petitioner made representation for grant of higher scale of pay. In the similar matter the Hon'ble Division Bench of this Court in the case of State of West Bengal & Ors.- Vs-Meghnath Roy (MAT No. 514 of 2019) dated 16.12.2019 held that sub section(3) of Section 14 of 2005 Act also did not envisage any prior permission being sought by any teacher before seeking a Post Graduate qualification.

The judgment relied upon by the petitioner 'Animesh Choudhury -Vs.- State of West Bengal & Ors.(*supra*) in the said case the Co-ordinate Bench of this Court relying upon the judgment passed by the Division Bench as mentioned (*supra*) held that:-

“.....Undoubtedly, the writ petitioner, at the time of joining the present school was already pursuing the higher studies and the Managing Committee of the present school had permitted him

to pursue such course without affecting academic interest of the institution. Section 14(3), as it stands, does not require any prior permission to be taken for obtaining higher qualification. However, manner in which a teacher must be entitled to higher scale of pay upon acquiring post-graduate degree is indicated in the Government Order dated 27th November, 2007”.

The petitioner has made representation to the A.D.I. of Schools (SE) dated 01.12.2011 and not to the District Inspector of Schools and thus the petitioner is given liberty to make a comprehensive representation to the District Inspector of Schools and if such representation is filed, the District Inspector of Schools (SE) shall consider the representation of the petitioner for grant of higher pay scale after granting an opportunity of hearing to him, giving regard to the documents and the Judgment passed by the Co-ordinate Bench of this Court in W.P.A. 14468 of 2013 (Animesh Choudhury-Vs.- State of West Bengal & Ors.) and the Judgment passed by the Hon'ble Division Bench of this Court in MAT No. 514 of 2019 (State of West Bengal & Ors.-Vs.- Meghnath Roy) within a period of six weeks from the date of receipt of representation by passing a reasoned and speaking order.

WPA 11189 of 2014 is thus disposed of.

No order as to costs.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

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

(Krishna Rao, J.)