

MAT 712 of 2018
With
IA No. CAN 1 of 2018 (Old No. CAN 8993 of 2018)
(Via Video Conference)

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Md. Tohidur Rahaman
-vs-

State of West Bengal and Ors.

Mr. Anjan Bhattacharya
.... For the appellant

Mrs Supriyo Chattopadhyay, Sr. Govt. Advocate,
Ms. Iti Dutta ... for the State

The instant appeal arises from the judgment dated 21.9.2017 passed by the Single Bench in W.P. No. 9437(w) of 2017 whereby and whereunder this writ petition filed by the appellant seeking higher scale of pay for acquiring Master's degree in Geography was rejected.

The appellant was subjected to a second round of litigation before this Court . The appellant was admittedly appointed as the Assistant Teacher in Geography with effect from 1st November, 2008 for classes V to X. At the relevant point of time the concerned Madrasha did not acquire the status of Higher Secondary and the eligibility criteria for acquiring the qualification to the post of Assistant Teacher was pass graduate. The said post did not require the Honours degree or pass graduate degree but was to a post graduate candidate and the petitioner was appointed at such post. Subsequently, in the year

2011 the said Madrasha acquired the status of the Higher Secondary and obviously several posts were sanctioned. Within a year of joining the post as Assistant Teacher and upon taking the prior permission of the concerned authority, the appellant appeared in the post graduate degree course and obtained a degree in Geography. Since the status of the Madrasah was elevated to higher secondary and the recruitment process would take sometime, the appellant was requested to hold the classes in Geography which permitted him to appear for higher scale of pay under the West Bengal Schools (Control of Expenditure) Act, 2005. Since the said application was kept in suspended animation for a pretty long time, the appellant approached this Court by filing a writ petition being W.P. No. 21586(w) of 2014 which came to be disposed of on 9.9.2016 directing the District Inspector of Schools (S.E.) to consider the said application within the stipulated time. The said prayer for higher scale of pay was rejected by the said authority on 24.1.2017 with categorical finding that since the appointment of the petitioner as Assistant Teacher was at the category of post graduate, he is not entitled to a higher scale of pay by enhancing his qualification even upon obtaining a prior permission.

Our attention has been drawn to Section 14 (3) of the Said Act which postulates that every teacher of a school if appointed in a Honours graduate or post graduate

teacher category shall be entitled to draw the pay commensurate with the post graduate category upon acquiring a post graduate degree. It needs no ambiguity upon the reading of the aforesaid provision that if the category of posts for which the appointment is made reserving the minimum educational qualification as Honours graduate or a pass graduate degree, upon enhancing the qualification the appointee to such category of post would be entitled to higher scale of pay.

The question which voiced down is whether the category of post to which the petitioner has been appointed contains the educational qualification as Honours Graduate or a pass graduate before seeking any benefit under the aforesaid provision.

Our attention is drawn to Section 14 (2) of the said Act which envisages that the teacher having appointed in the post of graduate teacher category shall only be entitled to draw a pay in the scale of pay commensurate therewith and even if he acquired the higher qualification then what was specified in such post he would not be entitled to claim any additional increment or higher scale of pay. Admittedly the appellant was appointed to a post of the graduate teacher category despite having the qualification as Honours graduate and later on upon enhancing the qualification that is by acquiring Master's degree in a relevant subject does not ipso facto make him entitled to

claim additional increment or the higher scale of pay.

The appellant has chosen to participate in such category with conscious mind that even if he was acquired the Honours degree yet he did not intend to derive any benefit therefrom obviously for avoiding the more competition that would come in the way and even if such conscious decision has been taken. Later on he would not take rebound and claim the benefit under Section 14(3) of the said Act.

In our view, Section 14 (2) of the said Act squarely applies to the case of the appellant and not Section 14 (3) and, therefore, we do not find any infirmity or illegality in the impugned order rejecting the writ petition.

The appeal sans merit and accordingly dismissed.

No order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)