

138 25.03.2022
BD Ct.15

W.P.A. 13603 of 2019

Chinmoy Pal

-vs-

State of West Bengal & Ors.

Mr. Biswarup Biswas

Mr. Gorachand Samanta

... for the petitioner.

Ms. Chaitali Bhattacharya

Mr. Kartick Chandra Kapas

... for the State.

Writ petitioner claims post graduate scale of pay for acquiring Masters degree in Physics since he was appointed on the post of Assistant Teacher earmarked for Honours/Post Graduate candidates in a Government aided High School.

Mr. Biswarup Biswas, learned advocate appearing for the writ petitioner has submitted that prior to being appointed in the post of Assistant Teacher he commenced higher course of study for acquiring Masters degree in physics under Kalyani University and in paragraph 30 of the writ petition it has been specifically pleaded that Part-I examination was held in July 2007 whereas petitioner was appointed in the post on 8th October, 2007 on the recommendation of the School Service Commission and was sanctioned Honours graduate scale of pay. After being appointed petitioner successfully completed post graduate course in the year 2008 and subsequent thereto he claimed for sanction of post graduate scale of pay since his initial appointment was in the post reserved for

Honours/Post Graduate candidate. It has also been submitted upon placing reliance on Section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005 that a teacher being appointed with the qualification of honours degree is entitled to receive post graduate scale of pay on acquisition of higher qualification. Petitioner approached the concerned authorities which did not yield any result which triggered the first writ petition being WPA 11933 of 2018 which was disposed of by a Co-ordinate Bench by directing the District Inspector of Schools (S.E.), Nadia being the respondent no.3, to pass a reasoned order on the claim of the petitioner for sanction of post graduate scale of pay. Pursuant to such order of the Co-ordinate Bench dated 12th December, 2018 the respondent no. 3 spurned the claim of the writ petitioner by issuing Memo dated 17th January, 2019 which is under challenge in this present writ petition.

In course of submission made on behalf of the petitioner Mr. Biswas, learned advocate, has relied on the Judgment dated 11th February, 2021 passed by the Hon'ble Division Bench in MAT 825 of 2020 (**Md. Adeel Uz Zaman -vs- State of West Bengal & Ors.**) wherein it has been decided by the Hon'ble Division Bench that in the case of sanction of post graduate scale of pay wherein concerned teacher commenced his higher course of study before being appointed in the relevant post the provisions contained under Government Order dated 27th November, 2007 shall not apply.

Ms. Chaitali Bhattacharya, learned senior

Government advocate appears on behalf of State respondents and has defended a decision of the respondent no. 3 as contained in memo dated 17th January, 2019 and it has further been submitted that petitioner is required to obtain permission from the respondent no. 3 through the concerned school for appearing in Part-II examination even the petitioner commenced his course of study prior to his appointment in the post of Assistant Teacher.

This Court has considered the rival submissions made on behalf of the parties and also perused the relevant documents available on record.

Since the petitioner was appointed on the recommendation of the School Service Commission on the post of Assistant Teacher with Honours graduate qualification and his appointment was approved by the respondent no.3 and was sanctioned honours graduate scale of pay, in consideration of provisions under section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005 petitioner is entitled to receive post graduate scale of pay provided he fulfils the conditions as stipulated in the relevant Government Orders. However, in the present case it has already been decided by the Hon'ble Division Bench in **Md. Adeel Uz Zaman(supra)** that where the teacher has already commenced higher course of studies prior to his appointment as Assistant Teacher in that event Clause 3 of the Government Order dated 27th November, 2007 shall not apply. Relevant part of the decision of the Hon'ble Division

Bench runs infra-

*“ There cannot be any doubt that the appellant was appointed on 21st July, 2019 in Science and Maths Group against a sanctioned vacancy and at the relevant point of time he had only B.Sc. Honours Degree in Chemistry. It was on the basis of such qualification he was appointed as a Science Teacher in Chemistry of the said college (sic). This appointment letter shows that the authority concerned was aware of all facts that he was pursuing higher studies. In fact, the document disclosed clearly reveals that he had completed his part-I examination in M.Sc. and was pursuing his higher studies. It is in the backdrop of such fact that we need to consider the Government Order dated 27th November, 2007. Clause-1 of the said order is applicable when the teacher concerned is yet to enroll himself in the course and to appear in the examination for enhancement of education qualification. 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 such view of the matter the decision cited by the Government Pleader passed by a learned single Judge in **Purna Chandra Misra (supra)** has no manner of application.”*

On perusal of the impugned decision of the respondent no.3, it appears that chiefly on applying Clause 3 of the said Government Order dated 27th November, 2007 the prayer of the petitioner for sanction of post graduate scale of pay has been turned down. In view of the decision taken by the Hon'ble Division Bench in **Md. Adeel Uz Zaman(supra)** such stand of the respondent no. 3 cannot survive. Accordingly the decision of the respondent no.3 as contained in impugned memo dated 17th January, 2019 stands set aside.

In view of the above matter, this Court directs the concerned respondent no.3 to consider the prayer for higher scale of pay afresh.

For the reasons stated above it would not be open to the respondent no.3 to reject the prayer for higher scale of pay on the ground of lack of prior permission. The entire exercise shall be completed by the respondent no.3 within a period of eight (8) weeks from the date of communication of this order after giving a reasonable opportunity of hearing to the petitioner and the concerned school. A reasoned order shall be passed within the aforesaid period and should be communicated to the petitioner within two weeks thereafter.

With the aforesaid direction the writ petition stands disposed of. However there shall be no order as to costs.

Urgent Photostat certified copy of this order

be supplied to the parties, if applied for, as early as possible.

(Saugata Bhattacharyya, J.)