

WPA 23191 of 2018

Sujan Kumar Pal
Vs.
The State of West Bengal & Ors.

Mr. K.M. Hossain
Ms. Keya Sutradhar

..for the petitioner

Ms. Chaitali Bhattacharyya
Mr. Subhendu Roy Chowdhury

...for the State

Writ petitioner is an Assistant Teacher in Computer Science and his approval was accorded by the District Inspector of Schools (S.E.), Kolkata vide memo dated 26th November, 2010 whereby he was sanctioned Honours Graduate Scale of Pay. Prior to his joining in such post he completed 1st and 2nd Semester of Masters of Computer Application (for short “MCA course”) from a recognised institute. Ultimately the petitioner after joining the said institute completed said Masters course in 2012 with the permission of the concerned authorities. On acquiring Master Degree in Computer Application being Assistant Teacher of Computer Science petitioner approached the concerned authorities for sanction of Post Graduate Scale of Pay. Since such prayer was not allowed petitioner filed writ petition being WPA 22892 of 2016 which was disposed of vide order dated 3rd October,

2016 by a coordinate Bench thereby directing respondent no. 3 to take decision on the representation of the petitioner claiming Post Graduate Scale of Pay. Pursuant to such direction of the coordinate Bench the respondent no. 3 by issuing memo dated 8th February, 2017 rejected the claim of the petitioner and the said memo dated 8th February, 2017 is under challenge in the present writ petition.

Mr. K.M. Hossain, learned advocate representing the petitioner has submitted that view taken by the respondent no. 3 that for getting the benefit of Post Graduate Scale of Pay he was required to obtain prior permission in terms of Clause-3 of the circular dated 27th November, 2007 is necessary which is not obtained in the present case, is erroneous. It has further been brought to the notice of this Court that the issue involved in the writ petition is no more *res integra* in view of the judgement dated 11th February, 2021 delivered by the Hon'ble Division Bench in MAT 825 of 2020 (Md. Adeel Uz Zaman Vs. The State of West Bengal & Ors.).

Ms. Chaitali Bhattacharya, learned senior Government advocate appears on behalf of the State-respondents and has defended the decision of the respondent no. 3 on the ground that for getting the benefit of Post Graduate Scale of Pay according to the

State-respondents the teacher concerned is required to obtain prior permission as contemplated under Clause-3 of the circular dated 27th November, 2007.

In addition thereto it has also been submitted that very recently vide order dated 24th March, 2022 on an intra Court appeal being FMA 125 of 2022 (The State of West Bengal and Ors. Vs. Manas Kumar Gorai and Anr.) it has been observed that since the issue of sanction of higher scale of pay for acquiring higher qualification during the service career of the teacher is pending before the larger bench the Hon'ble Division Bench did not decide the said appeal pending decision of the larger bench.

This Court has heard the learned advocates representing the parties and perused the relevant documents available on record.

From the facts of the case it appears that since he has completed two semesters while undergoing MCA course for acquiring Master Degree in the relevant subject before his appointment he did not had the occasion to approach the concerned respondent authorities for obtaining prior permission as contemplated under Clause-3 of the circular dated 27th November, 2007. In addition thereto, in terms of Section 14 (3) of the West Bengal Schools (Control and Expenditure) Act, 2005 since the petitioner was

appointed under the category of Honours/P.G. and on being appointed in the post of Assistant Teacher was sanctioned Honours Graduate Scale of Pay there is no impediment in sanctioning Post Graduate Scale of Pay for acquiring higher qualification subject to the compliance of the provisions of specified order. In the present case since the petitioner had no occasion to obtain prior permission in terms of Clause-3 of the circular dated 27th November, 2007 on enrolling himself in the higher course of study since he was not appointed at the material point of time in the post of Assistant Teacher therefore said Clause-3 of the circular dated 27th November, 2007 ought not to impinge upon the right of the petitioner to obtain Post Graduate Scale of Pay.

The relevant part of the judgement delivered by the Division Bench in Md. Adeel Uz Zaman (supra) is quoted below:-

“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. 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”.*

In the present case, since the petitioner enrolled himself in higher course of study prior to his joining in the post of Assistant Teacher in my considered view and placing reliance on Md. Adeel Uz Zaman (supra) the issue is not covered by the questions formulated in the order of reference dated 22nd August, 2008 which are pending consideration before the larger bench.

In view of the above discussion the impugned memo dated 8th February, 2017 passed by the respondent no. 3 stands set aside. This Court directs the District Inspector of Schools (SE), Kolkata being the 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 sanction of Post Graduate Scale of Pay on the ground of lack of prior permission. The entire exercise shall be completed within a period of eight (8) weeks from the date of communication of this order after giving reasonable opportunity of hearing to the

petitioner and the school authorities being respondent nos. 4 & 5. A reasoned order shall be passed within the aforesaid period and shall be communicated to the petitioner within one (1) week thereafter.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Saugata Bhattacharyya, J.)