

FMA 1162 of 2015

The State of West Bengal & Anr.

Vs.

Dipak Kumar Das & Ors.

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Ms. Tapati Samanta
... For the Appellant/State

Mr. Tulsidas Maiti
Mr. Pradip Kumar Ghosh
Mr. Snehasish Bala
... For the Respondent no.1/
Writ Petitioner

1. We have heard the learned counsel
appearing for the parties.

2. The writ petitioner was appointed
for the post of Assistant Teacher of Mayta
High School, District- Paschim
Medinipur. The appointment was
approved with effect from 6th January,
1986. At the relevant point of time he
was having the academic qualification of
B.Sc. (Honours in Chemistry).
Subsequently, he applied for prior
permission for obtaining M.Sc. degree in
Dietetics and Community Nutrition
Management. The Managing Committee
of the school adopted a resolution in
favour of the petitioner and forwarded the
same to the respondent no. 3 on 18th
February, 2003.

3. The petitioner obtained M.Sc. degree in Dietetics and Community Nutrition Management from Vidyasagar University, the last date of examination of Part-II examination on May 07, 2005. He consequent upon acquiring post graduate qualification applied for extension of post-graduate scale of pay. Due to inaction on the part of the authorities to consider his prayer for post graduate scale of pay he filed a writ petition being WP 689(w) of 2011 which was disposed of on 1st September, 2011 with a direction upon the respondent no. 3 to take a decision with regard to his claim in accordance with law. The said claim was, however, rejected on the following grounds:-

i) M.Sc. degree obtained by the petitioner was not relevant with that M.Sc. in Chemistry.

ii) No prior permission for appearing in the M.Sc. examination was obtained from the competent authority.

4. Before the learned Single Judge the petitioner relied upon a Certificate of the Course Co-ordinator, Department of Bio-

Medical Laboratory Science & Management, Vidyasagar University, Midnapore, issued on 8th October 2012 which is quoted below:-

“This is to certify that a major part of the course of M.Sc. in Dietetics and Community Nutrition Management (Vidyasagar University) with special reference to Nutritional Biochemistry, Food preservation & adulteration, Statistics and Computer application are relevant to the Biochemistry/Organic Chemistry at the U.G. level of chemistry course. On that basis Chemistry (Hons.) students are eligible to take their admission in the M.Sc. course in Dietetics and Community Nutrition Management.”

5. Learned Single Judge relied upon the contents of the said Certificate observed that his first ground for rejection cannot be sustained in law. In so far as the second ground is concerned, learned Single Judge relied upon the observation of the Division Bench in MAT 1458 of 2012 and observed that his claim for higher scale of pay cannot be rejected on the ground of not obtaining prior permission.

6. Learned counsel for the appellant submits that the West Bengal Central

School Service Commission issued Circulars with regard to the acceptance of different subjects and in such Circulars there is a clear distinction between Chemistry and Nutrition. Moreover, in terms of Order no. 1426/1428 (VI)/CSSC/ESTT/2008 dated 7th November, 2008 under serial nos. 69 and 70 the case of the petitioner cannot be considered for post graduate scale of pay. The said two serial nos. are reproduced below:-

69	Nutrition(H/P G)	B.Sc.(Major) in Clinical Nutrition & Dietetics(CNDV)	Calcutta University	Accepted as equivalent to Nutrition (Hons.)
70	Nutrition(H/P G)	M.Sc. in Dietetics & Community Nutrition & Management	Vidyasaga r University	Accepted as equivalent to PG in Nutrition

7. In view of conflict of perception with regard to the courses being pursued by the writ petitioner, we feel that the Secretary, School Education Department shall revisit the issue taking into consideration that by reason of the earlier order of the Division Bench lack of prior permission should not be considered as an ineligibility for post-graduate scale of pay if otherwise he is entitled to in law.

8. In view of the submission made on behalf of the petitioner that the petitioner is taking additional classes in Nutrition on which he acquired his post-graduate degree apart from B.Sc. (Hons.) he cannot be denied increment of post-graduate scale of pay the Secretary shall take into consideration the staff pattern, teacher pupil ratio and if the students and the institution are benefitted by reason of the petition acquiring post-graduate degree as the interest of the students are of paramount consideration.

9. The Secretary, School Education Department shall consider the matter within four weeks from date taking into consideration the relevant Circulars applicable to the petitioner at the time of his acquiring post-graduate qualification. The Secretary shall also give reasonable opportunity of hearing to the petitioner in deciding his prayer for post-graduate scale of pay or increment as the case may be and pass a reasoned order to be communicated to the petitioner within one week thereafter.

10. The School authority shall produce all relevant records that are necessary for consideration of the higher scale of pay or increment before the Secretary.

11. For the reasons aforesaid, the order directing payment of post-graduate scale of pay is set aside.

12. On such consideration, the appeal being FMA 1162 of 2015 stands disposed of.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

