

24.08.2023
Item No. 125
Crt.No.22
b.r.

WPA 5665 of 2019

Bimal Chandra Jana
-vs-
The State of West Bengal & Ors.

Mr. Subir Sanyal
Mr. Saikat Banerjee
Ms. Juin Dutta Chakraborty
..... for the petitioner.

Ms. Iti Datta
..... for the State.

The petitioner claimed higher pay scale on the basis of acquiring higher qualification. The claim of the petitioner has a checkered history of rejection. One after another writ petitions were filed but ultimately the claim of the petitioner has not been redressed.

Mr. Subir Sanyal, learned Counsel appearing for the petitioner referring to the order of co-ordinate Bench dated **November 13, 2018** passed in **WP 5955(W) of 2018 annexure p-13 at page 50** to the writ petition submitted that there was a specific direction how the respondent no.3 shall proceed while deciding the case of the petitioner. Pursuant to the said order, the reasoned order dated **January 30, 2019 annexure p-15 at page 57** to the writ petition was passed by the **respondent no.3**, the same is impugned in this writ petition. Referring to the said impugned order, he submitted that

on a plain reading therein it appears that the mandate of the co-ordinate Bench dated November 13, 2018 was not followed. Hence he seeks quashing of the said impugned order.

Ms. Iti Datta, learned State counsel, appears for the respondent nos. 1 to 4.

Referring to the impugned order, she submits that the respondent no.3 has complied with the direction of this Court passed earlier and the petitioner in law not being eligible to receive his claim, the claim was rejected.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first reproduces the direction of the co-ordinate Bench made on **November 13, 2018**, which reads as follows:-

“I am not inclined to enter into the merits of the petitioner’s claim. In my view the order impugned is indefensible since there is absolutely no reference to this court’s earlier order dated 3rd October 2013 passed in WP No. 14554(W) of 2008. The order which is assailed in this writ petition cannot be said to be in compliance of this court’s order dated 19th April 2017. The order is set aside. The matter is remanded back to the concerned D.I. of Schools for fresh consideration in accordance with law and in the light of the order of this court dated 3rd October 2013 passed in W.P. No. 14554(W) of 2008. All points are left open. The concerned D.I. of Schools shall take a fresh reasoned decision in

accordance with the applicable Rules/Regulations/Circulars/Notification and the earlier orders of this court within a period of six weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or his authorized representative. The order so passed shall be communicated to the petitioner within a week from the date of the order.

Since I have not invited affidavits, the allegations contained in the writ petition are deemed not to be admitted by the respondents.

W.P. No. 5955(W) of 2018 is accordingly disposed of.”

The order previous to the said order dated **November, 13, 2018**, being order dated **October 3, 2013** passed by a co-ordinate Bench available at **page 41** to the writ petition. Thereafter the order dated **April 19, 2017** is available at **page 46** to the writ petition.

In the light of these orders as referred to above and on scrutiny of the impugned order dated January 30, 2019, this Court of the firm view that the mandate of the co-ordinate Bench dated November 13, 2018 in terms whereof, the respondent no.3 was directed to decide the issue was not at all complied with. The impugned order suffers from gross perversity and the infirmity in the decision making process is **ex facie** apparent on the face of it.

In view of the above, the said impugned order dated **January 30, 2019 annexure p-15 at page 57** to the writ petition **stands set aside and quashed.**

For the foregoing reasons and discussion, the **respondent no.3** is directed to revisit the issue in strict compliance of the mandate laid down by co-ordinate Bench in its order dated **November 13, 2018 annexure p- 13 at page-50** of the writ petition passed in **WP 5955(W) of 2018** positively within a time frame as specified therein from the date of communication of this order.

The appearing respondents has filed its affidavit in opposition today in Court. The petitioner has also filed its affidavit in reply in Court. Time for such affidavits after being extended till today, the same are taken on record.

On the above terms and with the above observations, this writ petition **WPA 5665 of 2019** stands **allowed**, without any order as to costs.

(Aniruddha Roy, J.)