

FMA 1394 of 2017

**Partha Pratim Dey
Vs.
State of West Bengal & Ors.**

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Mr. Kamalesh Bhattacharyya
Mr. Dilip Kumar Maiti
... For the Appellant

Dr. Sutanu Kumar Patra
Mr. Supriya Dubey
... For WBCSSC

Mr. Bibekananda Tripathy
Mr. Kaustav Chatterjee
... For the State

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

2. The basis of the order impugned appears to be on an erroneous understanding of the post to which the appellant was transferred. The post to which the appellant was transferred was approved and the documents alleged not to have been disclosed would be insignificant as by reason of such transfer the appellant did not get any better benefit, save and except by reason of the order of the learned Single Judge passed in WP 34409(w) of 2013 on 12th December, 2013 the writ petitioner was permitted higher scale of pay after taking into consideration that he had acquired M.A in the year 2002 and the school authorities have been allotting him classes. The

students and the school ultimately got benefited by the order the learned Single Judge.

The said order has attained finality.

We are not going into the merit of the said judgment. The appeal against such judgment was dismissed.

However, we cannot disregard the fact that the school to which the petitioner was transferred there should be the same requirement where the appellant could have asked for higher scale of pay. Any other view would be contrary to the Rule 12(3) of ROPA 1998 and the Notification no. 57SE(S) dated 27th January, 1995. The transferee school shall decide the higher scale of pay of the petitioner consequent upon acquiring higher qualification in non-relevant subject to fulfilment of the condition mentioned in the order dated 12th December, 2013.

3. The order of the learned Single Judge dated 12th December, 2013 was a conditional order and it cannot continue indefinitely unless the basis for such higher pay scale exists in the present transferee school.

4. As we find that there has been no suppression of facts, the order impugned is set

aside.

5. The approval for the transferred post shall be granted by D.I within two weeks from date.

6. The amount of Rs. 1,00,000/- to be refunded to the appellant by the learned Registrar General within two weeks from the date of communication of this order.

7. This order shall be immediately communicated to the school by either of the parties as it involves payment of higher pay scale which would be conditional upon the fulfillment of the requirement mentioned in the order passed by the learned Single Judge in the earlier writ proceeding and reiterated in this order.

8. On such consideration, the appeal being FMA 1394 of 2017 is allowed and stands disposed of.

9. However, there shall be no order as to costs.

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

(Uday Kumar, J.)

(Soumen Sen, J.)

