

01 31.7.2023

Ct-08

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FMA 1647 of 2013
with
I.A No. CAN 1 of 2013(Old CAN No. 6170 of 2013)

Moumita Sarkar
Vs.
State of West Bengal & Ors.

Mr. Saptangshu Basu, Sr. Adv
Ms. Saswati Chatterjee
Mr. Sourabh Sengupta
... For the Appellant

Mr. Tapan Kumar Mukherjee, Ld. AGP
Sk. Md. Galib
Mr. Somnath Naskar
... For the State

The appeal and the stay application are taken up together for consideration.

The appellant is an Assistant Teacher of Taherpur Girls' High School, P.O. Taherpur, District-Nadia. She was a teacher having B.Sc Honours in Geography.

After joining the school the petitioner prayed before the managing committee of the school to appear in the M.Sc Part-II Geography Examination. After obtaining M.Sc degree in Geography she made a prayer for post graduate scale of pay, however, her prayer was rejected by the Director of School Education on the ground of non-obtaining prior permission from the District Inspector of Schools(S.E) Nadia which reads as follows:-

“With reference to the subject noted above the undersigned has to inform him that the prayer may be registered as the incumbent took no permission from the D.I/S(SE) in compliance with column 3 of the Order No. 593-Se(B) dated 27.11.07.”

Admittedly, she obtained post graduate qualification before the West Bengal Schools (Control of Expenditure) Act, 2005 came into force. The Director of School Education relied upon the said Act for post graduate scale of pay and had declined to accede to the said request.

The appellant challenging the order of D.I filed a writ petition being WP 1674(w) of 2012. The said writ petition was dismissed on 12th March, 2013, inter alia, on the following observation:-

“..... Though the petitioner has been able to file the papers relating to approval of study leave, there is no paper that the School Authority had sent any papers to the concerned Additional District Inspector of Schools (SE). Nor is there any paper to show that the District Inspector of Schools(SE), Nadia granted her permission to appear at the M.Sc. Part-II Examination in Geography.

On the other hand, from Annexure P-4 at page no. 31, I find that the prayer for higher scale has been regretted to the petitioner on the ground that the incumbent took no permission from the District Inspector of Schools (SE) in compliance with column 3 of the Order No.593-SE (B) dated November 27,

2007.

Moreover, the petitioner did not annex any paper to show that she had successfully completed her Post Graduate Degree, i.e. M.Sc in Geography.

Therefore, for want of proper necessary papers, I am of the view that this application is not maintainable.

Accordingly, the application is dismissed.”

The petitioner in this proceeding had disclosed documents to show that she made applications on 6th July, 2005 and 30th July, 2005 to the Secretary, Taherpur Girls' High School for permission to appear for M.Sc, Part-II Examination, the application dated 9th July, 2005 of the petitioner addressed to the Secretary, Taherpur Girls' High School was for grant of study leave for 39 days for M.Sc. Part-II Examination, the letter dated 14th July, 2005 of Headmistress Taherpur Girls' High School addressed to the Additional District Inspector of Schools, Ranaghat Sub-Division, District-Nadia for permission for granting study leave for appearing in the examination dated 19th July, 2005, the application dated 17th May, 2007 of the petitioner addressed to the Secretary, Taherpur Girls' High School was after obtaining Post Graduate Degree in M.Sc. (Geography), the letter dated 29th May, 2009 of Headmistree Taherpur Girls' High School

addressed to the Additional District Inspector of Schools, Ranaghat Sub-Division, District-Nadia was for submitting the resolution regarding M.Sc Part-II Geography vide Memo 593-SE(B) dated 27.11.2007 of the School Education Department, Government of West Bengal. The relevant resolution to the effect of granting permission and all the necessary documents in this regard have been referred and disclosed in paragraph 4 of the application for additional evidence.

In fact, the Assistant Secretary, West Bengal Board of Secondary Education in its communicated dated 24th November, 2005 had asked for fresh copy of the resolution of the managing committee sanctioning the study leave with full pay in favour of the appellant. The said letter was followed by the communication dated 14th September, 2005 of the Assistant Secretary, West Bengal Board of Secondary Education addressed to the Headmistress Taherpur Girls' High School requesting her to submit papers granting study leave with full pay in favour of Smt. Sarkar. These documents were not produced when the writ petition was heard and disposed of on merits.

Now having regard to the disclosures made in the application for additional evidence, it is now clear that the school authorities had sent all the relevant papers and documents including the resolution of the Managing Committee giving the requirement permission, we are of the view that the matter is required to be taken into consideration afresh by the Director of School Education, West Bengal. The application for higher scale of pay has to be considered on the basis of the relevant circulars operating in the field at the time the MC had taken a decision in her favour and her eligibility is required to be decided when she made the application for such permission.

In deciding the matter, it is needless to mention that the larger interest of the school and students should be taken into consideration as the school and the students are likely to be benefited from a teacher with higher qualification. A teacher with higher qualification is expected to impart better knowledge in the subject and the students are likely to be benefited by reason of acquiring such higher qualification. It is no doubt that the teacher would be benefited in terms of money but the benefit of schools and the students

cannot be ignored. It would be the endeavour of schools to have academic excellence and it is the duty of the State to encourage academic excellence in all the schools since ultimate beneficiary would be the students. At the relevant point of time, the West Bengal Schools (Control of Expenditure) Act, 2005 was not in force. Even assuming that the said Act could be applicable, the benefits could not be denied unless the authorities are of the opinion that such expenditure towards payment of higher salary to a teacher would be a futile exercise or would not be beneficial to the school or the students. The consideration for denying higher scale of pay would be that already there are sufficient number of teachers having Honours/Post-Graduate Degree on the same subject in the institution and as such payment of higher scale of pay would be a burden on the expenditure. In other words, the staff pattern and the teachers-students ratio may not justify any higher qualified teacher in a particular subject. However, these were not the consideration for denying higher scale of pay.

In view thereof, we set aside the order passed by the learned Single Judge.

We direct the Director of School Education, West Bengal to reconsider the matter in the light of the observations made in this order after giving a reasonable opportunity of hearing to the school and the teacher concerned. The entire exercise shall be completed within a period of four weeks from the date of communication of this order.

All documents disclosed in the application for additional evidence shall be placed before the authorities concerned for reconsideration of the matter.

The appeal is allowed.

Accordingly, the appeal and the application stand disposed of.

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

(Uday Kumar, J.)

(Soumen Sen, J.)

