

Court No. 22

WPA 15533 of 2019

03.10.2023

Praloy Kumar Mandal

(AD 45)

Vs.

The State of West Bengal & Ors.

(S. Banerjee)

Mr. Robiul Islam

... for the petitioner

Mr. Supriyo Chattopadhyay

Mr. Sabyasachi Mondal

... for the State

Pursuant to the direction made by this Court on August 25, 2023, on the prayer of Mr. Chattopadhyay, learned Additional Government Pleader appearing for the respondent nos. 1 to 3, time to file counter-affidavit stands extended till today. The counter-affidavit, affirmed on September 18, 2023, is filed today in Court and is taken on record. Copy has already been served upon Mr. Rabiul Islam, learned counsel for the petitioner.

The petitioner has been working as an Assistant Teacher at one **Harhari High School**, District – Murshidabad. The petitioner teaches Mathematics. The appointment of the petitioner was on the basis of his qualification as an Honours Graduate in Mathematics. Subsequently the petitioner applied before the relevant school authority for acquiring post-graduation degree, i.e., M.Sc. in Mathematics. The school authority by its

communication dated June 2, 2009, **Annexure P-2** at **page 16** of the writ petition, forwarded the same before the respondent no. 3 and since then the said application of the school has not been attended by the respondent no. 3.

Mr. Rabiul Islam, learned counsel for the writ petitioner submits that meanwhile the petitioner has enhanced his qualification and acquired **M.Sc. (Mathematics)**. The petitioner's claim is for receiving the higher pay-scale commensurating with his post-graduation degree. He also submits that the moment the school authority has forwarded its application before the respondent no. 3 seeking permission for the petitioner for acquiring higher qualification, the obligation of the petitioner and the school authority came to an end. Pendency of the application before the respondent no. 3 without any result will have no consequence if the petitioner has acquired his higher qualification in the meantime. In support, he relied upon a decision of an Hon'ble Division Bench of this Court ***In the matter of: Akhtar Hossain Chowdhury -Vs.- State of West Bengal and Ors.***, reported at **(2013) 2 CHN 632**.

In the previous round of litigation the issue had received consideration by a co-ordinate Bench in WP No. 21931(W) of 2018. By an order dated January 4,

2019, **Annexure P-6** at **page 33** to the writ petition, the co-ordinate Bench directed the respondent no. 2 to consider the issue and pass its order.

Pursuant to and in terms of the said direction of the co-ordinate Bench the respondent no. 2 has passed its reasoned undated order under **Memo. No. 19(04)/LS/RO, Annexure P-7** at **page 35** to the writ petition. By the said impugned order the respondent no. 2 rejected the claim of the petitioner. The substance of the plea for rejection was that prior permission was not obtained from the respondent no. 3 by the petitioner before acquiring higher qualification and hence the higher pay-scale was denied.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appears for the State-respondents. He relies upon the counter-affidavit affirmed on behalf of the respondent no. 2 on September 18, 2023. He submitted that there was no illegality in the impugned order as in the absence of permission being granted by the respondent no. 3, even if the petitioner has acquired the higher qualification, he is not eligible to receive the higher pay-scale in law.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this court that admittedly prior to acquiring

the higher qualification, the petitioner duly approached and applied before this school authority and the school authority in turn by its communication dated June 2, 2009, **Annexure P-2** at **page 16** of the writ petition, has applied before the respondent no. 3 for granting such permission in favour of the petitioner. Admitted also, it is that, such application of the school authority has not yet seen the fate of it, neither has it received any attention of the respondent no. 3 since 2009. The moment the petitioner has applied before the school authority seeking permission for acquiring higher qualification, the obligation of the petitioner comes to an end. In the facts of this case, the school authority has also forwarded the case of the petitioner along with its application before the respondent no. 3 way back on June 2, 2009 along with necessary resolution of the Managing Committee of the school taken in favour of the petitioner and the respondent no. 3, an authority of the State, failed and neglected to pay any heed thereto. As a result, the claim of the petitioner has not seen its fate as on date. The inaction is on the part of the respondent no. 3 for which no blame or latches can be attributed either to the petitioner or upon the school authority. The petitioner has no role to play. For an inaction on the part of the State authority the petitioner should not suffer. The petitioner has obtained M.Sc.

(Mathematics) which is not disputed by the State authorities in any manner. There is no rebuttal to such contention in the counter-affidavit filed by the respondent no. 2.

In view of the law laid down by the Hon'ble Division Bench ***In the matter of: Akhtar Hossain Chowdhury (supra)***, the respondent no. 2 ought not to have rejected the claim of the petitioner on the ground that prior permission not being obtained by the petitioner, higher pay-scale was denied. An Article 12 authority, being the respondent no. 3, ought to have acted expeditiously as well as judiciously to discharge its obligation. The State authority cannot act in such an arbitrary fashion which would take away the valuable right of an individual which is otherwise exercisable in law after such a right having been acquired by the individual in a bona fide manner.

In view of the above discussions and reasons the impugned order, **Annexure P-7** at **page 35** to the writ petition, cannot sustain in law and the same stands **set aside and quashed**.

In the light of the above, the respondent no. 3 shall immediately take steps and approve the higher scale of pay in favour of the petitioner commensurating with his post-graduation degree strictly in accordance

with law but positively within a period of **two weeks** from the date of communication of this order.

The respondent no. 3 then shall communicate and transmit such approval to the respondent no. 4 for making the necessary calculation on account of arrears payable to the petitioner in accordance with law till **September 30, 2023**. The respondent no. 4 shall carry out the entire exercise and communicate the same to the respondent no. 3 and the petitioner also positively within a period of **two weeks** from the reopening date after the Puja Vacation of the school.

The respondent no. 3 then shall transmit and forward the necessary documents, records and claim of the petitioner to the respondent no. 2 positively within a period of **three weeks** from the date of receipt of the calculation from the respondent no. 4.

The respondent no. 2 then shall take all steps to release the arrear amount in favour of the petitioner and shall take all consequential steps for making necessary payment to the petitioner on the basis of such higher pay-scale. The entire exercise shall be done and carried out by the respondent no. 2 positively within a period of **six weeks** from the date of receiving the necessary claim from the respondent no. 3.

The respondent no. 3 henceforth shall assure and take all further steps to pay salary of the petitioner with all other allied benefits on the basis of the said higher pay-scale as directed above on and from **October 1, 2023** without any interruption.

At the time of superannuation of the petitioner all the benefits shall be calculated and be paid to the petitioner taking into account of the said higher pay-scale since the date it is payable to the petitioner in accordance with law as directed above.

On the above terms and with the above directions, this writ petition, being **WPA 15533 of 2019** **stands allowed**, without any order as to costs.

(Aniruddha Roy, J.)