

S/L 77
16.02.2023
Court. No. 12
Sourav

WPA 20671 of 2009

Iswar Mandi
Vs.
The State of West Bengal & Ors.

Mr. Raghunath Adhikary
Ms. Tanaya Banerjee
Ms. Divya Kar

...for the petitioners.

Mr. Santanu Kumar Mitra
Mr. Avishek Prasad
Mr. Mirja Kamaruddin

...for the State.

Both the writ petitioner and the State are represented by their respective learned advocates.

The instant writ petition is now taken up for hearing.

I have heard learned advocate for the writ petitioner as well as learned advocate for the State at length.

The present case is now taken up for passing appropriate order.

By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner ventilated his grievance to the effect that he had joined as an Assistant Teacher in Language Group in Ghosediha High School (H.S.), P. O. Ghosediha, P.S. Keshpur, Dist- Paschim Medinipur on June 2, 1997 with Honours Scale of Pay and at that time, he was perusing his study in M.A (Bengali) in regular course.

It is the further case of the petitioner that he appeared in the said M.A examination after taking study leave from his school and ultimately, he succeeded his M.A examination, the result of which was published on October 27, 1998. It is

the further case of the petitioner that on passing M.A examination in Bengali, the petitioner became entitled to M.A Scale of Pay and, accordingly, he made prayer before the respondent nos. 4 and 5 authority i.e., the School for getting such enhanced pay and such prayer was duly approved and recommended by the Managing Committee of the School.

It is the grievance of the writ petitioner that even after such recommendation, the respondent no. 3 i.e., the District Inspector of Schools (S.E.), Paschim Medinipur did not consider such representation and thus, finding no other alternative, he had approached this Hon'ble Court by filing a writ petitioner being W.P. No. 28933 (W) of 2008 where a co-ordinate Bench of this High Court directed the respondent no. 3 to consider the representation of the present writ petitioner and to pass a reasoned order within a specified time and also to communicate the said decision within a period of four weeks from the date of taking such decision. It is submitted that the respondent no. 3 on 24.08.2009 by its impugned order declined to grant the prayer of the writ petitioner for which the instant writ petition has been filed.

Mr. Adhikary, learned advocate for the writ petitioner in course of hearing files supplementary affidavit wherefrom it reveals that in the meantime, the writ petitioner has changed his School and he is presently posted at Pasang High School, P.O. Pasang, Dist- Paschim Medinipore in the same vacancy as an Assistant Teacher in the Language Group. In course of hearing, Mr. Adhikary, learned advocate also draws attention of this Court to the different G.O.s. as

issued by the Government of West Bengal, School Education Department as well as the reported decisions i.e., 1) ***Maleka Khatun Vs. State of West Bengal & Ors.***, reported in **2009 (4) CHN 440**; 2) ***Pampa Das Vs. The State of West Bengal & Ors.***, reported in **2012 (1) CLJ (Cal) 349**; 3) ***Akhtar Hossain Chowdhury Vs. State of West Bengal***, reported in **2013 (2) CHN (CAL) 632** and 4) ***Subhasish Naskar Vs. State of West Bengal***, reported in **2012 (4) CHN (CAL) 372**.

It is submitted that in view of the prevailing G.O, there cannot be any impediment on the part of the State respondents, more specifically on the part of the respondent no. 3 to grant Higher Scale of Pay as prayed for.

Per contra, learned advocate Mr. Avishek Prasad led by Mr. Santanu Kumar Mitra, learned Counsel for the State draws attention of this Court to the order dated 25.07.2019 as passed by the Hon'ble Supreme Court of India in Civil Appeal Nos. 3040-3041 of 2017 in the case of ***Shohidullah Vs. State of West Bengal & Ors.*** It is submitted that the issue of grant of Higher Scale of Pay on acquisition of higher qualification during the service career of an individual is at present pending before the Larger Bench of this Hon'ble High Court in WPA 9921 of 2007 (***Utpal Kanti Karan Vs. State of West Bengal & Ors.***). It is submitted on behalf of the State/respondents that in the event any contrary decision is taken in the instant writ petition during the pendency of the writ appeal before the Larger Bench of this Hon'ble High Court, that would be against judicial decorum and discipline. It is thus submitted on behalf of the State that

let the instant writ petition be kept adjourned *sine di* till disposal of the WPA 9921 of 2007 as pending before the Larger Bench of this High Court.

On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for both the sides, it reveals to this Court that by the impugned order, the respondent no. 3 authority rejected the prayer of the present petitioner to grant him the Higher Scale of Pay on the ground that 50 per cent of the total staff in the said Group is entitled to enjoy such Higher Scale of Pay and that at that time more than 50 per cent teachers were enjoying such facilities in the said School. Admittedly, the impugned order was passed in the year 2009. From the supplementary affidavit it reveals that in the meantime, the present writ petitioner has changed his School i.e., from Ghosediha High School (H.S.) to Pasang High School where he is still working as Assistant Teacher of Language Group.

Such being the position, it may so happen that with the passage of time and with the change of school, the writ petitioner may be entitled to the reliefs as prayed for in the instant writ petition. Such being the position and in view of the discussion made hereinabove, this Court gives the liberty to the present writ petitioner to submit his representation afresh before the respondent no. 3 authority and on receipt of such representation, the present respondent no. 3 i.e., District Inspector of Schools (S.E.), Paschim Medinipore shall consider such representation upon hearing the petitioner, the School authority of Pasang High School, P.O. Pasang, Dist- Paschim Medinipore and any other person if

therebe any and shall take appropriate decision with regard to the representation of the writ petitioner within a month from the submission of the representation by the present writ petitioner before him. It is further directed that the fate of such representation shall have to be communicated to the present writ petitioner by the respondent no. 3 authority within a period of two weeks from the date of taking such decision.

It is, however, made clear that observation, if therebe any, as made in this order is purely limited for the disposal of the instant writ petition and the respondent no. 3 while taking the appropriate decision in accordance with law shall not be influenced with any of the observation as made hereinabove.

With the aforementioned observation, the instant writ petition being **WPA 20671 of 2009** is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)