

06.12.2023
Item No. ml.91
Crt.No.22
b.r.

WPA 29783 of 2017

Amitava Majumdar
-vs-
The State of West Bengal & Ors.

Mr. Saktipada Jana
..... for the petitioner.

Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal
.... For the State.

Mr. Saktipada Jana, learned counsel, appears for the petitioner.

Mr. Sabyasachi Mondal, learned State counsel led by Mr. Supriyo Chattopadhyay, learned Additional Government Pleader, appear for the respondent nos. 1 to 3.

This is a hearing matter.

The departmental note dated **March 3, 2018** shows that despite there being a direction dated **December 8, 2017**, no affidavit in opposition has been filed.

The petitioner claimed higher pay scale after enhancement of his qualification. The petitioner applied before the **Managing Committee** of one **Malihati-Kandra High School (H.S.), District Murshidabad (for short, the Murshidabad School)**. The permission was

granted by the **Managing Committee** of the school at **page-25** to the writ petition.

The West Bengal Board of Secondary Education has also granted leave to the petitioner for enhancement of his qualification **annexure-p-4 at page-30 to the writ petition.**

By a communication dated **January 2, 2009**, the Murshidabad School applied before the jurisdictional **District Inspector of School -Murshidabad (for short, D.I., Murshidabad)** to grant permission to the petitioner for acquiring higher qualification, **annexure p-2 at page 24** to the writ petition. District Inspector, Murshidabad has not yet attended the prayer made by the Murshidabad school.

Pursuant to the recommendation made by the West Bengal School Service Commission, the petitioner was transferred to one **Iswaripur Margina Vidyaniketan (High School) H.S., South 24-Parganas** (for short, the said South 24-Parganas School) with effect from **December 9, 2014**. The Managing Committee of the said South 24-Parganas School then submitted an application dated **July 22, 2016, annexure p-7 at page 34** to the writ petition, before the jurisdictional **District Inspector of School, 24-Parganas (South) (for short, D.I., South 24-Parganas).**

Since no action was taken by the State authorities by both the District Inspectors of Schools, Murshidabad and South 24-Parganas, the petitioner moved a writ petition being **WP No. 16054(W) of 2016**. By an order dated **September 8, 2016**, a co-ordinate Bench disposed of the writ petition by granting the respondent authorities to consider the prayer of the petitioner as per the provisions of the **West Bengal Schools (Control of Expenditure) Act, 2005** within a specific time frame, **annexure p-8 at page 35** to the writ petition.

Pursuant to the said direction of the co-ordinate Bench, the District Inspector, 24-Parganas (South) passed its impugned order dated **February 20, 2017**, **annexure p-11 at page 43** to the writ petition, with an observation that since the petitioner acquired his higher qualification before joining the South 24-Parganas school, the jurisdictional District Inspector of Schools, South 24 Parganas was not in a position to consider the matter in accordance with law.

Challenging this impugned order dated **February 20, 2017**, the petitioner filed the instant writ petition.

Mr. Saktipada Jana, learned Counsel appearing for the petitioner submits that the law is now well settled that once application has been made before the jurisdictional District Inspector School seeking permission for a teacher for enhancement of his

qualification and such an application is not dealt with by the District Inspector of School and has been kept pending, it is deemed in law that permission has been granted to the teacher concern for enhancement of his qualification during his employment.

In support, learned counsel for the petitioner relied upon the following two decisions of the **Hon'ble Division Bench** of this Court:-

- (i) *In the matter of : Akhtar Hossain Chowdhury -vs- State of West Bengal reported at 2013 (2) CHN (CAL) 632*
- (ii) *(ii) In the matter of : The State of West Bengal & Ors. -vs- Madhumita Naskar & Anr. judgement dated October 4, 2023 rendered in MAT 1579 of 2019.*

In the light of the above, learned counsel for the petitioner submits that the claim of the petitioner ought to have been and should be allowed for higher pay scale by the appropriate State authority.

Mr. Sabyasachi Mondal, learned State advocate led by Mr. Supriyo Chattopadhyay, learned Additional Government Pleader, appear for the respondent no. 1 to 3 and submits that the issue may be referred before the **respondent no.2** for a reasoned decision.

Considering the submission made on behalf of the parties and upon perusal of the materials on record,

this Court is of the firm view that, the impugned order dated **February 20, 2017** is totally baseless and cannot sustain in law. It appears that the jurisdictional State authority simply had avoided to decide the issue without any tenable reason. Accordingly, the impugned order dated **December 20, 2017 annexure p-10 at page 43** to the writ petition stands **set aside and quashed**.

To sub-serve justice, the **respondent no.2** upon issuing a hearing notice of at least **seven days** to the petitioner and the respondent no.4 shall decide the issue on the basis of the existing material before the District Inspector of Schools, South 24-Parganas on the basis whereof the impugned order dated **February 20, 2017** was passed after giving an opportunity of hearing to the petitioner and the respondent no.4 and then shall pass a reasoned order in accordance with law.

The **respondent no.2** while deciding the issue shall taken into account and consider the two Division Bench judgements as referred to above and the petitioner shall provide copies thereof to the respondent no.2.

The entire exercise as directed above shall be carried out and completed by the **respondent no.2** positively within a period of **five weeks** from the date of communication of this order.

The **respondent no.2** then communicate his reasoned order to the petitioner and the respondent no.4 within a further period of **two weeks** positively from the date of the reasoned order to be passed.

In the event, the reasoned order goes in favour of the petitioner all the appropriate authorities shall take all consequential and further steps to give effect to the reasoned order positively within a period of **three weeks** from the date of communication of the said reasoned order to such authorities.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner and the petitioner shall be at liberty to urge whatever points he wish to urge by relying upon the relevant law on the issue before the **respondent no.2**.

It is made clear that this order shall not create any right or equity in favour of the petitioner, if the petitioner is not eligible to receive his claim strictly in accordance with law.

On the above terms, this writ petition being **WPA 29783 of 2017** stands **allowed**, without any order as to costs.

(Aniruddha Roy, J.)