

AD-29
Ct No.01
Jalpaiguri
03.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

MAT 1 of 2021
with
CAN 1 of 2021

Dr. Tapan Kumar Das
Vs.
The State of West Bengal and others

Mr. Debajit Kundu

...for the appellant

Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh

....for the State

Learned counsel for the appellant contends that the learned Trial Judge committed an error of law inasmuch as Clause 2 of the Government Order (Memorandum) dated November 04, 2016 was misinterpreted. It is submitted that although there is no connection between protected pay scale and the increments as contemplated in the said memorandum, the learned Single Judge proceeded on the premise that since the petitioner has taken the advantage of protected pay scale, he is not entitled to the increment. It is argued that the said contention is contrary to the memorandum itself.

Learned counsel appearing for the respondent-authorities places reliance on the judgment of the learned Single Judge to elaborate that the interpretation of the learned Single Judge was absolutely in consonance with the said memorandum. It is submitted that the learned Single Judge, at internal page-4 of the judgment, clearly considered the memorandum and observed that the petitioner had entered into the service on or after September 01, 2008 and had acquired Ph.D subsequently while being in service, whereas Clause 2 envisaged that the person has to enter into service with Ph.D/M.Phil degree.

Learned counsel appearing for the appellant further tries to contend that in the event sub-clause (a) of Clause 2 is not applicable, the other clauses ought to have been considered to be applicable to the petitioner. However, we do not find any merit in such contention and/or any irregularity or illegality or misinterpretation in the order of the learned Single Judge. Clause 2 of the relevant Circular clearly indicated that teachers who have entered into service on and after 01.09.2008 with Ph.D/M.Phil and other higher qualifications

As such, the petitioner having not qualified on such criterion, could not be benefited with the increments as prayed for.

Inasmuch as the other clauses are concerned, the said arguments are being made for the first time in the

appellate court and never advanced before the learned Single Judge. Moreover, in view of the logic on which Clause 2 (a) was refused, the other sub-clauses cannot also be applicable to the appellant.

In such view of the matter, we do not find any ground for admission of the appeal.

Accordingly, MAT 1 of 2021 and CAN 1 of 2021 are dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)