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ORDER SHEET
WPO No.93 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

INDRANI KAR
VERSUS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA ROY

Date: 22nd February, 2023.

Appearance:

Mr. Debabrata Saha Roy, Sr. Adv.

Mr. Falguni Bandyopadhyay, Adv.

Ms. Sreetama Neogi, Adv.

Ms. Riya Ballav, Adv.

. . .for the petitioner.

Mr. Saptansu Basu, Sr. Adv.

Mr. Debapriya Gupta, Adv.

. . .for the respondent nos.4 & 5.

Mr. T.M. Siddiqui, Adv.

Mr. Paritosh Sinha, Adv.

Mr. Nilotpal chatterjee, Adv.

. . .for the State.

The Court: The petitioner came to be an Assistant Teacher for the subject Hindi at **Balika Siksha Sadan**, Calcutta. Several rounds of writ litigations were there. The petitioner claimed the higher pay scale from the date of her appointment at the relevant school that is May 5, 2008 at page 17 of the writ petition by virtue of possessing the post graduation decree.

Mr. Debabrata Saha Roy, learned counsel appearing for the writ petitioner drew attention of this Court to the judgment and order dated August 29, 2019 passed by a Coordinate Bench in the previous round of writ petition filed by the petitioner herself being **WP 269 of 2019** at **page 39** to the writ petition. The relevant observation of the Single Bench is quoted below:-

***“It is to be noted that this is the third round of litigation by reason of three orders passed by the DI on 9th February, 2017, 28th March, 2019 and 12th April, 2019 respectively. The reason given in each of the three orders for rejecting the prayer of the petitioner is that the school does not have a sanctioned post in the Higher Secondary section in Language group. The other reason given in the order of 28th March, 2019 that the pupil teacher ratio in the school is not at par with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 is vague and devoid of particulars. It is unfortunate that despite being put on notice from the school itself that there have been no revised order/Memorandum of appointments after 1968, the DI has failed to take effective steps in that respect. It is also significant that despite the DI being of the view that there is no sanctioned post in the Language group in the Higher Secondary section of the school, the teacher in-charge admittedly is enjoying a higher scale of pay in the Language group although placed in the Normal section.*”**

In the above facts, this Court is of the view that no useful purpose will be served by directing the DI to consider the case of the petitioner yet again since similar orders were passed on two occasions prior to the present proceeding. The impugned orders are therefore liable to be modified and the DI is directed to take expeditious steps to follow through with the letter of the school dated 9th July, 2019 in terms of sanctioning a requisite number of posts in the Higher Secondary section without any further delay. Since it is evident that the teacher who had been approved to teach Hindi in the Higher Secondary section retired way back in 2003 and there is no other teacher of Hindi presently in the said school except the petitioner, the District Inspector being the respondent no.3 is directed to accord a scale of pay to the petitioner which had been approved and given to the petitioner since May 2008 before revision of the same from September 2019 onwards. The school authorities will also ensure that the distribution of classes to the petitioner should be made expeditiously corresponding to the higher scale of pay in terms of this order.

WP 269 of 2019 is disposed of in terms of the above directions”

The said order was carried into an appeal by another teacher in **APOT 135 of 2019**. The Hon’ble Division Bench after hearing the parties disposed of the said appeal with the following observations:-

“Therefore, it is clarified that the upgradation of scale of pay as prayed for by Ms. Indrani Kar would be considered upon her fitment against the said vacancy which caused due to the retirement of Satwant Lal on 27th April, 2009.

We make it clear that we have not interfered with the other directions passed by Learned Single Judge save and except that the fitment of Indrani Kar shall be against the vacancy of Satwant Lal.

Leave to prefer an appeal is allowed.

GA No.2466 of 2019, GA No.2468 of 2019 and APOT No.135 of 2019 stand disposed of.”

Mr. Saha Roy then drew attention of this Court to two documents at **pages 65 and 66** to the writ petition and submitted that the State Authority had approved the identical claim of other teachers who were similarly placed with that of the petitioner. Hence, the petitioner claimed the similar benefit in her case through this writ petition.

Mr. Saptansu Basu, learned senior counsel appeared for respondent nos.4 and 5.

Mr. T.M. Siddique learned advocate appeared for the respondent nos.2 and 3.

After hearing the submissions made on behalf of the parties and after considering the materials on record, this Court is of the view that, since the issue involved had already received the conclusive attention of the Hon’ble Division Bench as would be evident from the order of the Division Bench dated November

26, 2019 at **page 45** to the writ petition, there is no further scope for this Court to venture to travel on the said issue, any further.

Inasmuch as considering the nature of the issue and the case of the petitioner this Court is also of the view that to decide the issue several factual aspects and the applicability of the relevant Rules and Government Orders may be necessary.

In view of the above, to subserve justice, the respondent no.3 is directed to consider the case of the petitioner in the light of her representation **dated February 14, 2020 appearing at page 54** to the writ petition and **March 5, 2020 appearing at page 55** to the writ petition upon giving a prior seven days hearing notice to the petitioner and the relevant school authority and after giving them an opportunity of hearing shall decide the issue strictly in accordance with law with its reasoned order.

While deciding the issue the respondent no.3 shall take into consideration the judgment of the Coordinate Bench dated August 29, 2019 at page 39 to the writ petition and the judgment of the Hon'ble Division Bench dated November 26, 2019 at page 45 to the writ petition and also the two documents at page 65 and 66 to the writ petition.

The entire exercise as directed above shall be carried out and completed by the respondent no.3 positively within a period of six weeks from the date of communication of this order. The respondent no.3 shall communicate the said reasoned order to the petitioner and the relevant school authority within a further period of two weeks from the date of the reasoned order to be passed.

It is made clear that this Court has not gone into the merit of the claim of the writ petitioner in any manner and the writ petitioner shall be at liberty to urge whatever points she wishes to urge, but of course, not beyond the scope of the said two judgment and order as mentioned above, relying upon whatever documents and records she wishes to rely upon. The relevant school authority shall also be at liberty to make its appropriate submissions and to cooperate with the respondent no.3 in every respect.

Since affidavits are not called for the allegations made in this writ petition are deemed not to have been admitted by the respondents.

In the event, the reasoned order goes in favour of the petitioner then the respondent no.3 shall take all further consequential steps to give effect to the said reasoned order forthwith and positively within a period of six weeks from the date of passing of the said reasoned order.

It is further made clear that this order shall not create any equity or right in favour of the petitioner and the claim of the petitioner shall be dealt with by the respondent no.3 strictly in accordance with law.

On the above terms this writ petition **WPO 93 of 2021** stands disposed of without any order as to costs.

Affidavit of service filed in Court be taken on record.

(ANIRUDDHA ROY, J.)

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