

OD - 2

APOT/148/2021  
With  
WPO/189/2020  
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE

THE STATE OF WEST BENGAL AND  
ORS.

-Versus-

ABHIJIT SAHA AND ORS.

BEFORE :  
THE HON'BLE JUSTICE SOUMEN SEN  
And  
THE HON'BLE JUSTICE UDAY KUMAR  
Date : 8<sup>th</sup> August, 2023

Appearance :  
*Mr. Somnath Ganguli, Adv.*  
*Mr. Vivek Basu, Adv.*  
*...for the appellant/respondent.*

*Mr. Anjan Bhattacharyya, Adv.*  
*...for the respondents/writ petitioner.*

The Court : The appeal and the application are heard together and disposed of by this order.

The appellants are aggrieved by the judgment and order dated 25<sup>th</sup> November, 2020 passed by the learned Single Judge in directing the respondent no.3 to re-issue the approval for appointment of the petitioner after making necessary correction and the financial effect of the approval should relate back to 1<sup>st</sup> April, 2008.

We have heard the learned counsel for the parties. It appears that the District Inspector of Schools (S.E.), Kolkata (in short 'D.I.') in issuing the letter for approval of appointment has extended the financial benefit with effect from 19<sup>th</sup> September, 2019 in purported consideration of the representation made on behalf of the writ petitioner in terms of the order dated 10<sup>th</sup> September, 2015. From the impugned order dated 19<sup>th</sup> September, 2019 it does not appear that the D.I. had considered the representation of the petitioner dated May 13, 2015. It is an unreasoned order and suffers from non application of mind. In view of the fact that the petitioner was approved on and from 1<sup>st</sup> April, 2008, the financial benefit of the writ petitioner is required to be decided on consideration of the staff pattern. It appears that he was appointed against the vacancy accrued at the relevant point of time. The D.I. has also, in the impugned order, recorded that the appointment of the petitioner as an approved teacher with effect from 1<sup>st</sup> April, 2008. In so far as the financial benefit is concerned, the D.I. had not indicated the reason for not extending the financial benefit with retrospective effect, although, prima facie, it appears that on 1<sup>st</sup> April, 2008 he was a B.Sc (Hons.) with B.Ed. degree and his scale of pay could not be of pass graduate unless there was no vacancy at the relevant point of time. He appears to have been appointed

against a sanctioned post after the vacancy arose. The D.I. also appears to have overlooked the memorandum dated 20<sup>th</sup> September, 2001.

In view of the fact that these factors were not considered by the D.I. in granting approval with regard to the financial benefits, we direct the D.I. to reconsider the financial benefit extendable to the writ petitioner on the basis of the materials to be produced by the school and the writ petitioner in a fresh hearing to be conducted by the D.I. We make it clear that the last two columns of the impugned order, namely, 'Scale of Pay' and 'Remarks' are only to be revisited as the other issues are supportable on the basis of the affidavit already filed on behalf of the parties before the learned Single Judge.

Since the school authorities are not represented despite notice, the Advocate-on-record for the writ petitioner shall immediately communicate this order to the teacher-in-charge of Shree Jain Vidyalaya at the earliest. The school authorities are directed to produce all relevant records before the D.I.

The D.I. of Schools (S.E.), Kolkata is directed to decide the matter after giving reasonable opportunity of hearing to the writ petitioner and the school authorities within four weeks from the date of communication of this order

by either of the parties and dispose of the same by a reasoned order and communicate the said order to the parties within a week thereafter.

It is needless to mention that the writ petitioner shall continue to enjoy all the benefits that the writ petitioner was enjoying prior to the order passed in the writ petition.

The order of the learned single judge dated 25<sup>th</sup> November, 2020 is modified to the aforesaid extent. The appeal succeeds in part.

Accordingly, the appeal (APOT/148/2021) and the connected application for stay (IA No.GA/2/2021) also stand disposed of.

**(SOUMEN SEN, J.)**

**(UDAY KUMAR, J.)**