

06.09.2024
Court No. 18
Item No.141(ML)
(Suvendu)

WPA 4109 of 2023

Abul Kalam Azad
-Versus-
The State of West Bengal & Ors.

Mr. Benazir Ahmed
.....for the petitioner

Mr. Bhaskar Prasad Vaisya, Ld. AGP
Mr. Ranjan Saha
.....for the State

In the writ petition order of the District Inspector of Schools (SE), Purba Burdwan dated 28th September, 2022 is under challenge. By the said order dated 28th September, 2022, the District Inspector of Schools (SE), Purba Burdwan, being respondent no. 3 has rejected the prayer of the petitioner for consolidation of pension thereby fixing petitioner's pension taking note of pay which petitioner enjoyed on treating him a teacher being entitled to enjoy postgraduate scale of pay. According to the petitioner, if his pension is fixed on treating him as a postgraduate teacher he would be entitled to receive pension at higher rate. Petitioner was approved as an Assistant Teacher in Social Science Group having B.Com qualification being an organizing teacher. Petitioner obtained

postgraduate degree in Bengali in 1999 from University of Burdwan as a regular student and thereafter the school authority unilaterally upgraded pay of the petitioner upon fixing it in postgraduate scale of pay. Petitioner retired on superannuation on 31st March, 2015 and State respondents by issuing Pension Payment Order released retiral dues in favour of the petitioner including pension upon treating him as pass graduate teacher which led down gradation of basic pension of the petitioner. Petitioner prays for upgrading his basic pension treating him as a postgraduate teacher.

A writ petition being WPA 24164 of 2019 was filed by the petitioner and same was disposed of by this Court by an order dated 23rd September, 2021 directing the respondent authority to take decision on representation of the petitioner dated 12th September, 2019. In terms of said order dated 23rd September, 2021, the District Inspector of Schools (SE), Purba Burdwan has passed the impugned order on 28th September, 2022.

Learned advocate representing State respondents has opposed the prayer of the petitioner since petitioner was initially approved as an organizing teacher granting pass graduate

scale of pay in consideration of his educational qualification of B.Com pass. It is also submitted that since postgraduate qualification was obtained in non-relevant subject, therefore, in terms of ROPA Rules of 1998 he is eligible to receive pass graduate scale of pay. Therefore, according to State respondents, the impugned order passed by the concerned District Inspector of Schools dated 28th September, 2022 may not be interfered with.

Having considered the submissions made on behalf of the parties and taking note of the report filed by the Commissioner of School Education, West Bengal dated 29th May, 2024 in terms of order of a Coordinate Bench dated 25th April, 2024, it transpires that initially petitioner was appointed being an organizing teacher under pass graduate category reckoning petitioner's educational qualification as B.Com pass. Petitioner's pay was fixed in pass graduate scale of pay. Petitioner obtained post graduate qualification in Bengali which is not petitioner's relevant subject of teaching.

In Revision of Pay and Allowance Rules, 1998, which was issued vide memorandum dated 12th February, 1999, Clause 12(3) provides that a teacher is entitled to receive

postgraduate scale of pay provided the said teacher obtained higher qualification in the relevant subject. Considering the date of obtaining higher qualification by the petitioner since last date of examination was 25th March, 1999, it is found that Clause 12(3) of ROPA 1998 applies in the present case which does not permit sanction of post graduate scale of pay in favour of the petitioner for acquiring post graduate qualification in Bengali which is not relevant subject of his teaching since initially he was appointed in Social Science Group under pass category.

Before parting with, it needs to be recorded that how an approved Assistant Teacher took admission in post graduate course under Burdwan University as a regular student without being permitted by the respondent no. 3. A teacher cannot function as an approved teacher and pursue his higher course of studies being a regular student simultaneously. There is nothing on record which goes to show that petitioner was sanctioned leave for undergoing higher course of studies being a regular student.

In above conspectus, this Court does not find merit in the writ petition and same is dismissed.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)