

Ml- 10.06.2024
37 Ct.18
rkd

W.P.A. 8173 of 2022

Chandra Mukherjee

-vs-

The State of West Bengal & Ors.

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das

....for the petitioner.

Mr. B. P. Vaisya,
Mr. B. B. Mallick
Mr. J. Banerjee,
Mr. B. Halder

....for the State.

In the writ petition the decision of the District Inspector of Schools (S.E.), South-24 Parganas as contained in the memo dated 18th November, 2021 is under challenge whereby prayer of the petitioner for according postgraduate scale of pay was spurned.

Mr. Jana, learned advocate representing the petitioner submits that the petitioner was appointed as Assistant Teacher in Science Group with educational qualification B.Sc (Hons.) in Physics on and from 13th November, 2007 in Dakshin Sangur Karunamoyee Girls' High Schools, South 24 Parganas.

From the date of petitioner's appointment she was granted Hons. Graduate scale of pay. Prior to her joining the post of Assistant Teacher

petitioner completed Part-I examination of M.Sc. in Physics and subsequently she completed postgraduate course on appearing M.Sc. (Physics) Part-II Examination in the year 2008. Previously, petitioner filed writ petition being WPA 23301 of 2017 since her prayer for grant of postgraduate scale of pay was not contemporaneously considered by the concerned State respondents. The said writ petition was disposed of by this Court vide order dated 8th January, 2021 directing the concerned District Inspector of Schools to take decision in accordance with law in view of the order passed by the coordinate Bench dated 5th June, 2018 passed on the writ petition being WPA 23158 of 2017.

It has been submitted on behalf of the petitioner that subsequently on an identical issue a judgment was delivered by the Hon'ble Division Bench in ***Adeel Uz Zaman -vs- The State of West Bengal & Ors. in MAT 825 of 2020 dated 11th February, 2021.***

According to the petitioner since the Hon'ble Division Bench in ***Adeel Uz Zaman*** (supra) has decided that in the event the candidate joins the post with Hons. graduate scale of pay at the time when the said candidate has completed a part of higher course of studies for obtaining post

graduation degree in the relevant subject of teaching the prescription as contained in the Circular dated 27th November, 2007 to obtain permission from the concerned District Inspector of Schools to undergo higher course of studies, is not warranted.

It has also been submitted that the ratio of ***Adeel Uz Zaman*** (supra) has already been approved by the Special Bench in the judgment dated 7th February, 2024.

Mr. Vaisya, learned Additional Government Pleader represents the State respondents who has made submission to defend the decision taken by the concerned District Inspector of Schools in the memo dated 18th November, 2021.

It has been submitted on behalf of the State respondents that in view of amendment being made i.e. the West Bengal Schools (Control of Expenditure) (Amendment), Act, 2016 on 2nd February, 2017 petitioner being the teacher of normal section in the concerned school is not entitled to receive postgraduate scale of pay.

Having considered the submissions made on behalf of the parties and on perusal of the impugned memo dated 18th November, 2021 issued by the District Inspector of Schools (S.E.) South 24

Parganas, it appears that apart from reliance being placed on West Bengal Schools (Control of Expenditure) (Amendment) Act, 2016 the prayer of the petitioner for grant of postgraduate scale of pay was turned down since permission was not obtained from the concerned District Inspector of Schools before enrolling her name for higher course of studies.

The issue of obtaining permission from the concerned District Inspector of Schools in terms of the Circular dated 27th November, 2007 is no more *res integra* in view of the ratio of **Adeel Uz Zaman** (supra) as decided by the Hon'ble Division Bench considering the fact that at the time of joining the post in the present case on 13th November, 2007 petitioner completed M.Sc. Part-I course.

It is also required to be recorded herein that the view expressed by the Hon'ble Division Bench in **Adeel Uz Zaman** (supra) has been approved by the Larger Bench in the judgment dated 7th February, 2024.

An additional point has been taken while rejecting the claim of the petitioner that an amendment has been carried out with effect from 2nd February, 2017 to the West Bengal Schools (Control of Expenditure) Act, 2005 and in terms of

such amended provision only the teachers working with Hons. graduate scale of pay in the higher secondary section are entitled to receive postgraduate scale of pay.

However, nothing has been shown to this Court that this West Bengal Schools (Control of Expenditure) (Amendment) Act, 2016 has retroactive operation. In the present case petitioner obtained postgraduate qualification in the year 2008; therefore right of the petitioner to obtain postgraduate scale of pay is required to be considered in the light of the decision of the Hon'ble Division Bench in ***Adeel Uz Zaman*** (supra).

In view of the above discussion, the impugned memo dated 18th November, 2021 issued by the concerned District Inspector of Schools (S.E.), South 24 Parganas stands set aside.

The concerned District Inspector of Schools being respondent no.3 is directed to grant postgraduate scale of pay to the petitioner from the date of publication of the result of M.Sc. Part-II Examination within a period of four weeks from the date of communication of this order.

Accordingly, the writ petition stands allowed.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)