

W.P.A. 15125 of 2024

**Md. Hifzur Rahman
Vs.
The State of West Bengal & Ors.**

Mr. Ekramul Bari
Sk. Intiaj Uddin
...for the petitioner

Ms. Jhuma Chakraborty
Ms. Munmum Tewary
...for the State

Affidavit-of-service filed on behalf of the petitioner is taken on record.

The writ petition is taken out, *inter alia*, challenging the order of the Commissioner of School Education dated 22nd April, 2024 whereby prayer by the petitioner for grant of higher pay scale on acquiring postgraduate degree in History was spurned.

During course of hearing, Mr. Ekramul Bari, learned advocate representing the petitioner has relied upon the order of the Hon'ble Division Bench dated 21st December, 2023 passed on an intra Court appeal being MAT 266 of 2020 preferred by the petitioner against the order of the coordinate Bench dated 21st January, 2020. While disposing of the said appeal the Hon'ble Division Bench observed that the concerned District Inspector of Schools is

required to find out as to whether acquiring of higher qualification by the petitioner/appellant was taken into consideration for upgradation as fulfillment of criteria and in that case the 2005 Act would not stand in the way.

It is the contention of the petitioner that West Bengal Schools (Control of Expenditure) Act, 2005 (hereinafter referred to as the said Act of 2005) was brought into effect on and from 2005 and the petitioner obtained higher qualification in 2004. Therefore, the said Act of 2005 does not have any application in determining the eligibility of the petitioner to enjoy higher scale of pay.

The prayer of the petitioner has been opposed by the learned advocate representing the State-respondents upon placing reliance on the judgment of the Special Bench dated 7th February, 2024. It is also submitted that petitioner was an approved assistant teacher in Arabic but enhanced his qualification of MA in History which is not his relevant subject. It is further submitted that staff pattern of the school does not permit the petitioner to obtain higher qualification in History for the purpose of enjoying higher scale of pay and according to the State-respondents in the event the provisions of the said Act of 2005 do not apply in case of the petitioner the previous rules do not permit sanction of postgraduate scale of pay in his favour.

Having considered the submissions made on behalf of the parties and taking note of the judgment of the

Special Bench dated 7th February, 2024 and the order of the Hon'ble Division Bench dated 21st December, 2023 it appears that the State-respondents were directed to find out whether acquiring of higher qualification by the petitioner facilitated upgradation being one of the conditions to fulfill the criteria. It was also observed by the Hon'ble Division Bench that while deciding the issue the provisions of the said Act of 2005 would not create any impediment.

Since petitioner obtained higher qualification prior to introduction of the said Act of 2005 in terms of the decision of the Special Bench dated 7th February, 2024 the said Act of 2005 need not be taken into consideration but the relevant rules prevailing at the material point of time shall apply in case of determining the eligibility of the petitioner to obtain postgraduate scale of pay. In this regard reliance is placed on paragraph 203 of the judgment dated 7th February, 2024 of the Special Bench wherein the ratio decided by the coordinate Bench in **Shivaji Chakraborty Vs. The State of West Bengal & Ors. (WPA 9657 of 2009)** dated 23rd June, 2010 was taken note of by the Special Bench and the Special Bench concurred with the ratio decided in **Shivaji Chakraborty** (supra). In **Shivaji Chakraborty** (supra) the coordinate Bench decided that since it was a case of pre-2005 Act, the rules applicable at the material time would be made applicable and on being found that the petitioner was granted permission by the

concerned District Inspector of Schools and the study leave was allowed by the West Bengal Board of Secondary Education, benefit of higher scale of pay was granted to the teacher.

But in the case at my hind nothing has been shown before this Court that the petitioner was granted permission by the concerned District Inspector of Schools neither leave was granted by the concerned authority for appearing in the examination save and except the memo dated 4th February, 2003 issued by the respondent no. 3 wherefrom it appears that the respondent no. 3 asked for certain documents including a declaration from the school that the petitioner on acquiring higher qualification would not claim higher scale of pay. Since petitioner did not acquire higher qualification in relevant subject this Court does not find any illegality in the memo issued on 4th February, 2003.

In addition thereto reliance has been placed on Clause 12(3) of memorandum being 25-SE(B)/IM-102/98 dated 12th February, 1999 wherein it has been specifically provided that for grant of higher scale of pay on acquiring higher qualification teachers are required to obtain higher qualification in the relevant subject of teaching. Though it has been rightly pointed out on behalf of the petitioner that provisions of said Act of 2005 are not applicable in the present case but in view of the decision of the Special Bench dated 7th February, 2024 Clause 12(3) of the

aforesaid notification dated 12th February, 1999 is applicable.

In view of aforesaid discussion this Court refuses to interfere with the decision of the Commissioner of School Education, West Bengal dated 22nd April, 2024.

Accordingly, the writ petition stands dismissed.

There shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)