

05.09.2024.
PB
Sl. No.4.
Ct. No.18

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

WPA 16494 of 2024

Bisweswar Bera
Vs
State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Biswarup Biswas,
Mr. Aninda Bhattacharya.
.....for the petitioner.

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee.
.....for the State.

Matter relates to release of arrear dues for sanctioning postgraduate scale of pay in favour of the petitioner by the District Inspector of Schools (SE), Paschim Medinipur, vide memo dated 16th March, 2023 sanctioning postgraduate scale of pay w.e.f. 30th November, 1999.

Learned advocate representing the petitioner submits that in terms of the sanction accorded by the concerned District Inspector of Schools (SE), Paschim Medinipur being respondent no.3, petitioner though is receiving salary on fixing his basic pay in

postgraduate scale of pay w.e.f. April, 2023, but the arrear accrued due to sanction of postgraduate pay scale w.e.f. 30th November, 1999 till date has not been released in favour of the petitioner.

In course of submission, notice of the Court has been drawn to the order passed by the co-ordinate bench on WPA 8411 of 2009 which was filed seeking postgraduate scale of pay assailing the order dated 13th February, 2009 passed by the State respondent.

According to the petitioner, the order passed by the co-ordinate Bench on 29th August, 2018 was carried in appeal preferred by the State respondent being FMA 387 of 2020 wherein the Hon'ble Division Bench on 9th December, 2021 observed that the issue needs to be kept pending till the Hon'ble Special Bench answer the reference relating to sanction of higher scale of pay in terms of the order of the Hon'ble Supreme Court.

It is submitted that pursuant to the order dated 9th December, 2021 passed by the Hon'ble Division Bench, matter was placed before the Hon'ble Special Bench and the appeal was disposed of along with other matters vide judgment dated 7th February, 2024.

The order passed by the Hon'ble Supreme Court on 8th May, 2024 in Civil Appeals No.3040-3041 of 2017 is also relied upon in order to contend that

taking note of the judgment of the Hon'ble Special Bench dated 7th February, 2024, the Hon'ble Supreme Court disposed of those appeals.

The sum and substance of the submissions made on behalf of the petitioner is in view of the reference answered by the Hon'ble Special Bench vide judgment dated 7th February, 2024 and which was not interdicted by the Hon'ble Supreme Court while disposing of the appeals by order dated 8th May, 2024 at present there is no impediment in releasing arrear dues in favour of the petitioner.

State respondents are represented by Mr. Chattopadhyay who submits that in view of the issue being set at rest relating to release of arrear dues by virtue of the judgment dated 7th February, 2024 delivered by the Hon'ble Special Bench, the State authority shall take steps for releasing the arrear dues provided bill is sent by the school authority where petitioner is presently working.

Having considered the respective submissions made on behalf of the parties, it appears that the order of the co-ordinate bench dated 29th August, 2018 passed on the writ petition being WPA 8411 of 2009 was assailed by preferring an appeal by the State respondent being FMA 387 of 2020 and the same was kept pending till the reference is answered

by the Hon'ble Special Bench in terms of the order of the Hon'ble Supreme Court touching upon the issue relating to sanction of higher scale of pay. The Hon'ble Division Bench found it fit that the appeal preferred by the State respondents should be considered by the Hon'ble Special Bench on being assigned by the Hon'ble Chief Justice.

On perusal of the judgment dated 7th February, 2024 passed by the Hon'ble Special Bench, it appears that the appeal being FMA 387 of 2020 was one of the matters which was under consideration by the Hon'ble Special Bench and the same was disposed of along with other matters by a common judgment. The judgment dated 7th February, 2024 of the Hon'ble Special Bench was considered by the Hon'ble Supreme Court and by passing an order dated 8th May, 2024, the pending appeals being Civil Appeals No.3040-3041 of 2017 were disposed of.

On conjoint reading of the order of the Hon'ble Supreme Court dated 8th May, 2024, judgment of the Hon'ble Special Bench on 7th February, 2024 and the order passed by the Co-ordinate Bench on 29th August, 2018, this Court finds that the issue is no more *res integra* in view of the reference being answered by the Hon'ble Special Bench wherein the ratio of Adul Uz Zaman Vs. State of West Bengal &

Ors. in MAT 825 of 2020 was affirmed by the Hon'ble Special Bench. Only clarification which needs to be made that on sanction of postgraduate scale of pay by the concerned District Inspector of Schools (SE), Paschim Medinipur, the petitioner is entitled to receive up-graded pay from the date of publication of result of M.A. final examination.

In view of the aforesaid discussions, the respondent no.3 is directed to modify the memo dated 16th March, 2023 only to the extent of sanctioning postgraduate scale of pay to the petitioner from the date of publication of result of Part-II M.A. Examination, not from the date following the last date of M.A. Part-II Examination. Such modification shall be made by issuing appropriate order by the respondent no.3 by four weeks from the date of communication of this order and subsequent thereto, steps shall be taken by the State respondents to release arrear dues in favour of the petitioner within a period of six weeks thereafter.

The school authority of Chandra High School being respondent no.4 is directed to send the arrear bills to the respondent no.3 by seven days after the order to be passed by the respondent no.3 modifying his previous order dated 16th March, 2023 for

releasing arrear dues from the date of publication of final result of M.A. Examination.

With the aforesaid observation, the writ petition stands disposed of.

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

Urgent certified photocopy of this order, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Saugata Bhattacharyya, J.)