

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE RAI CHATTOPADHYAY

WPA 17003 of 2021

Subhash Mandal
-VS-
State of West Bengal & Ors.

For the Appellant : Mr. Shaktipada Jana,
Mr. Subhajyoti Das,
Mrs. Sudipta Pramanik

For the Respondents. : Mr. Swapan Kr. Dutta, Ld. AGP.
Mr. P.K. Das

Hearing concluded on : 17th December, 2024

Judgement on : 17th December, 2024

Rai Chattopadhyay, J :

1. The subject matter of the present writ petition is the rejection of the petitioner's prayer by the District Inspector of Schools, Secondary Education, South 24-Parganas, for grant of higher pay scale to him pursuant to his higher qualification, by dint of its order dated June 29, 2021, as impugned in this writ petition.
2. The said respondent has founded its decision, as above, on the reasons, firstly, that the M.Sc. Course in Mathematics was completed by the writ petitioner without taking any prior permission from the District Inspector of Schools, Secondary Education, South 24-Parganas.

3. Secondly, that the amended provision of the West Bengal Schools (Control of Expenditure) (Amendment) Act, 2016, would not allow the petitioner, who is a teacher in the normal section of the school, to be granted with the post- graduate scale of pay, since as per the amended provision thereof, the teacher appointed for Classes VI to VIII and IX to X shall be entitled to draw pay meant for graduate teachers.
4. Similar grounds have been reiterated by the respondent/D.I. in the written report submitted by it in the Court, in connection with the present case.
5. According to the learned advocate appearing for the petitioner, the said order dated June 29, 2021 of the D.I. as impugned in the present writ petition, would neither be in due conformity with the law settled as well as would be a result of gross non-application of mind by the respondent/D.I. as to the facts and circumstances in the instant case. He would submit further that due to the order having not complied with the law settled in this regard, the same would be rendered as illegal and be set aside.
6. During argument learned advocate appearing for the petitioner would rely on the judgment of the **Co-ordinate Bench in WPA No 8171 of 2022 dated June 10, 2024 (Sandhya Sardar-vs-The State of West Bengal & Ors.)**.
7. He would submit that the issue regarding taking prior permission of D.I. in case of a teacher, who has been appointed after being enrolled in the M.Sc. Course is now settled by dint of the judgment of this Court in Adeel **Uz Zaman-vs- State of West Bengal & Ors. in MAT 825 of 2022 dated February 11,2021** and the subsequent decision of the Hon'ble Full Bench in the judgment of **Utpal Kanti Karan-State of West Bengal, 2024 SCC Online Cal 1274**. That in the judgment of **Sandhya**

Sardar, the Hon'ble Co-ordinate Bench has relied on the said two decisions and following the ratio, has passed its order.

8. He would say that in view of the decision of the Court in the judgments above and the law settled therein, the impugned order of the respondent/D.I. would tantamount to an illegality.
9. He would further submit that so far as the Amendment Act, 2016 as to the West Bengal Schools (Control of Expenditure) Act, 2005 is concerned, which came into effect on February 7, 2017, the same shall have no manner of application in case of the writ petitioner, since the writ petitioner was qualified in the Master's Degree, much before coming into force of the said Amendment Act, 2016, his last date of examinations being September 29, 2013.
10. The State has obviously raised strong objection as to the contentions and prayers of the writ petitioner, in this case.
11. Mr. Dutta, learned advocate appearing for the State respondent would submit on the basis of the report dated June 26, 2024 of the respondent/D.I. in connection with the present case, that on the date of the petitioner having made the application for grant of higher pay scale, the Amendment Act, 2016 has already been in force. Therefore, according to him, the provisions thereof would be applicable in case of the present writ petitioner.
12. So far as the other points of the respondent/D.I. regarding the petitioner having not obtained any permission from the D.I. is concerned, he would say that it is only matter of record that, after entering into service the writ petitioner has proceeded to complete his course of M.Sc. without referring to the D.I. for his permission and hence, according to Mr. Dutta, learned advocate appearing for the State, the writ petition would be liable to be dismissed.

13. Heard submissions and perused the records and the copy of the judgments relied on by the writ petitioner.
14. The petitioner was inducted into service vide appointment letter dated September 24, 2009 and joined in the School on and from October 5, 2009.
15. He has been appointed as an Assistant Teacher in Mathematics in general section. At the time of induction in service, the writ petitioner had already enrolled himself in the M.Sc. Course in Mathematics, with **Netaji Subhas Open University**, through distant mode, on September 12, 2009.
16. In the perspective as above, the law is now well settled by dint of the judgment of the Hon'ble Division Bench in **Utpal Kanti Karan-State of West Bengal, 2024 SCC Online Cal 1274**.
"272(g)- If a teacher has partially completed higher study before entering service he/she would come under purview of G.O.No. 1595-SE(S) dated 26th December, 2005 and the question of taking permission from DIS-SE concerned would not arise".
17. The impugned order of the respondent/D.I. appears to be in absolute violation of the law settled by the Hon'ble Larger Bench by dint of the judgment as above.
18. It is to note that even before the judgment of the Hon'ble Larger Bench, the Division Bench of this Court in **Adeel Uz Zaman case (supra)** had decided the similar point which has also escaped the careful consideration of the respondent/D.I., while passing the impugned order.
19. The Court is inclined to find that due to non-consideration and disobedience of the Hon'ble Larger Bench and other Bench's judgments of this Court, which have settled the law, the impugned order dated June 29, 2001 by the respondent/D.I. is only de hors the law and not

maintainable being not in conformity with the settled position thereof. Hence, the same would be liable to be set aside being in violation of the settled law.

20. So far as the other points of the respondent/D.I. in the said impugned order dated June 29, 2021 is concerned regarding applicability of the provision under the Amendment Act, 2016 in case of the petitioner, the Court is in concurrence to what has been submitted on behalf of the writ petitioner that, on the date when the writ petitioner was eligible for grant of higher pay scale i.e. the subsequent date of his last examinations, the Amendment Act, 2016 had not seen the lights of the day. The same having no retrospective operation cannot be made applicable in case of the writ petitioner.

21. Therefore, so far as the other grounds as envisaged in the impugned order while rejecting the petitioner's prayer for post-graduate scale of pay are found to be not maintainable.

22. The Court can draw inspiration from the judgment of the Hon'ble Co-ordinate Bench of **Sandhya Sardar's** case, as relied on by the writ petitioner, to have dealt with the writ petition by issuing mandatory orders against the respondent therein, in the similar factual background, as it is in the present case.

23. On the discussion as above, the Court finds no legitimate or convincing grounds as to the maintainability of the order of D.I. dated June 29, 2021. The same is found liable to be set aside being dehors the settled provision of law and thus being illegal.

24. Hence, this writ petition is disposed of with the directions as stated below:-

- (i) The impugned order dated June 29, 2021 is set aside.

(ii) The respondent/D.I. is directed to immediately grant higher scale of pay to the writ petitioner meant for post-graduate qualified teachers, with effect from the subsequent date of the last date of examinations of the petitioner, in Master's Degree Course and necessary fixation of pay shall immediately be made effective, maximum within three weeks from the date of communication of copy of this order.

(iii) Arrear salary, if any, payable to the writ petitioner shall be paid by the said respondent within a period of four weeks thereafter.

25. With the above directions, the writ petition being WPA No. 17003 of 2021 is disposed of.

26. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents.

27. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(RAI CHATTOPADHYAY, J.)

Sk.