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2024

Ct. No. 08

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MAT 1298 of 2024
IA No. CAN 1 of 2024
IA No. CAN 2 of 2024
IA No. CAN 3 of 2024

Badrinath Pal and others
Vs.
The State of West Bengal and others.

Mr. Pratik Dhar,
Mr. Shounak Ghosh,
Mr. Sakhawat Khandakar,
Mr. Ankon Mondal.

... for the appellants.

Mr. Supriyo Chattopadhyay, Ld. AGP,
Ms. Iti Dutta.

... for the State.

Mr. Kaushik Chowdhury.

... for the WBBPE.

Ms. Asha Gourisaria Gutgutia,
... for the NCTE.

Re: CAN 2 of 2024

There is no appearance on behalf of the District Primary School Council, Murshidabad. The State is represented. The copy of the applications has been served upon the District Primary School Council, Murshidabad.

The present appeal is filed by the third parties, who were not arraigned as party in the writ petition, assailing the impugned order on the premise that it vitally affects their rights as the direction was passed by the Single Bench to widely publish the said order across the State and to all the District Primary School Councils to do the needful.

Immediately upon being apprised of the impugned order, the appellants consulted with the Counsel and was advised to file the instant appeal with the leave of this Court,

The circumstances, as stated above, occasioning the delay in filing the instant appeal is found satisfactory and, therefore, the delay in filing the instant appeal is hereby condoned.

The application is, thus, disposed of.

Re: CAN 1 of 2024

This is an application seeking leave to file the instant appeal.

By an order dated 14th May 2024 passed in WPA 27394 of 2022, the Single Bench has directed the Elementary School Education Department to identify and communicate to the writ petitioners therein the of the institution recognized by the NCTE, who are conducting the bridge course and it was further observed that in the event such institution is not available, it will be deemed that the writ petitioners/appellants herein are entitled to 'A' category scale of pay. The time for such exercise was limited to eight months, which admittedly has not expired as yet.

In an identical matter, we have found that 3446 teachers are getting the 'A' category scale of pay despite having not undergone the bridge course from an institution recognized by the NCTE. Such discrimination being patent and evident and the present appellants stand on the same footing that of the appellants of the said mandamus appeal, therefore, we find that they are regarded as persons aggrieved and, therefore, have a right to challenge the said order.

Accordingly, the leave to file appeal is hereby granted. The application is, thus, disposed of.

By consent of the parties, the main Mandamus Appeal is taken up for final disposal.

The present appeal arises from a judgment and order dated 14th May 2024 directing the Additional Secretary, Elementary School Education Department to identify and communicate the petitioners, the name of

the institution recognized by the NCTE where they can undergo the bridge course as aforesaid. In the event, there is no institution made available to the petitioners by the State, the petitioners' claim for 'A' category pay scale shall be deemed to have crystallized after eight months from date of the said order.

The dispute pertains to a denial of 'A' category scale of pay to the appellants who have all the requisite qualifications except having undergone the bridge course of six months. The Single Bench was apprised of the judgment of the Apex Court rendered in case of **Devesh Sharma Vs. Union of India** reported in **2023 SCC Online SC 985** wherein the Apex Court held that the B.Ed. is no longer a recognized training qualification for teaching students in the primary level in the School. However, the safeguard was provided that the said judgment would not affect the in service teachers.

Since the writ-petitioners/appellants were getting 'B' category scale of pay, they raised a grievance that the other similarly circumstanced teachers are benefited with 'A' category scale of pay despite having not undergone the bridge course as contended by the State.

Interestingly, the argument was perceived to the extent that the writ-petitioners have raised a grievance that there is no institution recognized by the NCTE to impart the bridge course in the State which appears to have been taken a front seat or in other words, the sheet-anchor of an argument advanced by the appellants and the direction was passed upon the Education Department to identify the institution recognized by the NCTE to conduct the bridge course and in the event, the same is communicated to the appellants, they have to undergo with such bridge course before they become entitled to a 'A' category scale of pay.

The Single Bench was conscious that in the event, there is no institution found in the State, competent enough to conduct the bridge course after getting

recognition from the NCTE within a period of eight months from the date, the appellants shall be entitled to 'A' category scale of pay. Obviously, the reason behind the aforesaid direction appears to be that in absence of any institution recognized by NCTE, the teachers in service, shall not be affected as they are entitled to 'A' category scale of pay.

At the time of determination of the instant appeal, we noticed that several similarly circumstanced persons were getting 'A' category scale of pay despite having not undergone the six months bridge course for which the direction was passed upon the authorities to disclose the aforesaid fact. The report would reveal that 3446 number of teachers who do not have the certificate of six months bridge course, are getting 'A' category scale of pay whereas the writ-petitioners are still getting 'B' category scale of pay though stands on the same pedestal that of those persons. Since the direction was passed by this Court to disclose the aforesaid fact and the authority found several persons getting the category 'A' scale of pay, caused a letter on 24th July 2024 requesting the departments to immediate assign the reasons behind extending the benefit of category 'A' scale of pay.

The decision has not been taken as yet. It is still at the nebulous stage. The process has been activated after this Court opined that there are several similarly circumstanced persons that of the appellants getting the 'A' category scale of pay. Article 14 of the Constitution of India provides for equal treatment with the others and, therefore, the equality is the hallmark of the constitutional provisions. Since Article 14 is included in Part-III of the Constitution, it is a fundamental right of every citizen to be treated equally with the others. However, such principle cannot be applied in abstract manner as the equality should be judged amongst the equals and not amongst un-equals.

The Apex Court in ***Bondu Ramaswamy & Ors Vs.***

Bangalore Development Authority & Ors. reported in **(2010) 7 SCC 129** held that the Article 14 applies when the invidious discrimination is meted out to the equals without any rational basis. The said provision creates a protective umbrella to a persons who have been treated worse than the others having footing on the same pedestal and the reference can be gainfully applied from the decision rendered by the Apex Curt in **Glanrock Estate (P) Ltd Vs. The State of Tamil Nadu** reported in **(2010) 10 SCC 96**.

The position as it stand today is that 3446 candidates who stand on a same footing that of the appellants are getting 'A' category scale of pay, despite having not undergone the six months bridge course and, therefore, it is evident and apparent from the conduct of the authorities that the appellants are inflicted with the act of discrimination offending Article 14 of the Constitution of India. Though the wise-mind has awaken after the direction was passed by this Court, yet it has not seen the ultimate destination and it would be injustice to the appellants if they are denied the similar treatment with those who stand on a same footing.

The teachers who are getting 'A' category of scale of pay are not before us and, therefore, we cannot make any comment on their entitlement as it would deny them an opportunity of hearing in this regard.

Since we found the act of discrimination being patent on the basis of the disclosure made in the report, the order impugned needs to be modified to the extent that the appellants shall be provided 'A' category scale of pay in the same manner that of the said 3446 candidates and the authority shall take an independent decision in granting the said scale of pay from the date on which the each of the appellants are entitled to.

This order shall not prevent the respondent authorities to take an appropriate decision, if so warrants, in accordance with law and the conferment of

a right to get 'A' category scale of pay shall not be treated as precedent or a judgment in rem but to apply to the appellants before us nor shall stand in the way of taking an independent decision in this regard.

With these observations the appeal being MAT 1298 of 2024 is disposed of. The connected applications being CAN 3 of 2024 are also disposed of.

For abundant precaution, it is hereby made clear that the authorities while granting the 'A' category scale of pay, shall adhere the parity with 3446 number of teachers and if it is found that they stand on the same footing, the direction made hereinabove shall be implemented.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)