

22.05.2024

Sl. No.15.

Ct. No. 35

s.g.

WPA/ 19835/2021

Samsad Banu

Vs.

The State of West Bengal & ors.

Mr. Washef Ah. Mondal,
....for the petitioner.

1.The writ petitioner is the assistant teacher employed as an Honours/P.G category teacher in the School, namely Birinchibari Surendranath Balika Vidyalaya (H.S.).

2. She is aggrieved with the impugned order of the District Inspector of Schools of Secondary Education, South 24-parganas/respondent no.4 dated December 3, 2019. By dint of the same the said respondent rejected petitioner's claim for enhanced scale of pay pursuant to her enhanced qualification of master's degree (M.Sc). Hence this writ petition.

3. Mr. Mondal is appearing for the writ petitioner. He has placed sufficient reliance on the Full Bench Judgement of this Court reported in **2024 SCC online, 1274 Utpal Kanti Karan Vs. State of West Bengal & Ors.** On the basis of the same he submits that the Full Bench has already decided regarding the Government order no. 593 –SE (B) dated November 27, 2010 not to have any statutory force. In such view of the fact, he

says, that the decision of the respondent no.4 rejecting the petitioner claim for her higher scale of pay pursuant to the higher qualification would be a nullity, in the eye of law. He seeks that appropriate order may be passed allowing the writ petition.

4. No one is appearing for the respondent State or the other respondents.

5.No affidavit-in-opposition has also been preferred in spite of directions passed by the Court.

6. Hence, the writ petition is taken up for hearing and disposal, in absence of the respondents.

7. The writ petitioner was appointed on March 16, 2005. Thereafter she applied before the Managing Committee of the School and her appeal was allowed by the Managing Committee vide resolution dated June 22, 2008 to grant her permission to undertake master's degree course for enhancement of her qualification. Thus, she got enrolled for M.Sc degree course. Her results were published on February 14, 2013.

8. The respondent no.4 has relied on the Government Order no. 593-SE (B), dated November 27, 2010 and Clause 3 thereof. Let the said Clause be extracted as herein below:

"3. The teacher is required to seek prior permission of concerned District Inspector of Schools (SE) (only when he /she wants to claim additional increment/higher scale of pay

etc. for obtaining such higher qualification) through the Managing Committee of the School."

9. On the basis of the same, the respondents have stated in the impugned order that since the writ petitioner has not taken any prior permission, for enhancement of her qualification, by virtue of the said notification, she would not be entitled to claim any benefit of increment or higher pay scale. What transpires from the respondent's stand is that the writ petitioner to claim additional increment on the basis of higher qualification, should have taken prior permission of the concerned District Inspector of Schools (SE).

10. This Court however, finds the said ground to be absolutely baseless in view of the fact that the Managing Committee of the School has forwarded in due course, the materials and papers as regards the writ petitioner's prayer for enrollment for higher qualification, that is ,vide letter dated November 4, 2008. As a matter of fact respondent no. 4 since thereafter has not acted upon the same for grant of necessary permission to the writ petitioner. It has not even rejected by the same. The authorities have maintained a stoic silence in this regard.

11. The inaction of the respondent no.4 since after receipt of the prayer of the writ petitioner as above through the Managing Committee of the School vide letter dated November 4, 2008, cannot be allowed to cause detriment in

interests of the writ petitioner, who has duly proceeded with the settled norms, in order to seek permission for admission in the M.Sc course. Instead, as the prayer of the petitioner, duly forwarded to the respondent D.I. of Schools, has not been answered at all, the same would be understood to be a deemed permission, of the concerned authority/respondent no.4.

12. The respondent no.4 by dint of its letter dated December 3, 2009 has endeavoured to take undue advantage of the silence maintained by it since the year 2008, since after receipt of writ petitioner prayer as above. That can not be maintained as proper. Instead on the basis of the facts and circumstances of this case the Court finds that the respondent no.4 having applied Clause 3 of G.O. no. 593-SE (B), dated November 27, 2010 in case of the writ petitioner erroneously which is uncalled for, unfair, arbitrary and not maintainable.

13. The ratio decidendi of the Full Bench of this Hon'ble Court in the case as mentioned above, would certainly be applicable in case of the present writ petitioner, in so far as, the Court has declined to accept any statutory force as regards the Government order dated November 27, 2010, which has been made applicable in case of the writ petitioner.

14. On the entire discussion as made above, this Court finds it proper that the writ petition be allowed.

15. The writ petition being WPA 19835 of 2021 is allowed and disposed of along with applications, if any, with the following direction :-

- I. Impugned letter of respondent no.4, District Inspector of Schools,(SE), South 24-parganas, dated December 3, 2019 is set aside.
- II. Respondent no. 4 is directed to take immediate adequate steps for grant of increment/revision in the pay scale, as applicable pursuant to the higher qualification of the present writ petitioner with effect from the date of publication of the result, that is, October 15, 2012.
- III. Revised pay fixation may immediately be made but not later than three weeks from the date of this order.
- IV. Arrear of the balance pay according to the revised pay scale has to be paid within four weeks time from the date of this order.

16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of legal formalities.

(Rai Chattopadhyay, J.)