

S/L 97
21.05.2024
Court. No. 551
Sourav

WPA 18318 of 2013

**Shri Harekrishna Mandal
Vs.
State of West Bengal & Ors.**

*Mr. Sudeep Sanyal
Mr. Snehasis Jana
Mrs. Tutun Das
Mr. Chandrachur Lahiri*

...for the petitioner.

*Mr. Supriya Chattopadhyay
Mr. Pinaki Bhattacharyya*

...for the respondent nos. 1 to 4.

1. Both the writ petitioner and the respondent no. 1 to 4 are represented by their respective learned advocates.
2. By filing the instant writ petition, the writ petitioner has prayed for setting aside the order dated 03.05.2013 as passed by the respondent no. 3 thereby declining the present writ petitioner to grant higher scale of pay, more specifically, Honours scale/post graduate scale of pay.
3. On perusal of the petition under consideration, it reveals that it is undisputed that the present writ petitioner was appointed in the respondent no. 5 school in the year 1989 as an Assistant Teacher for Social Science Group and at that time, he possessed B.Sc. (pass) educational qualification. The writ petitioner while in service was willing to enhance his qualification in the subject of Geography and with such intention, he made appropriate application before the school authority to grant permission to complete B.Sc. in Geography Honours.

4. On consideration of such application of the writ petitioner, the Managing Committee of the said school in a meeting dated March 7, 2002, unanimously resolved in favour of the petitioner. However, it has been resolved further that for obtaining permission from the respondent no. 3, the school authority would forward the prayer of the petitioner to the respondent no. 3, i.e., D.I of School (S.E). Admittedly, no favourable order was passed by the D.I of School in favour of the petitioner for enhancing his qualification in the subject of Geography. However, in the meantime, the writ petitioner had passed B.Sc. in Geography from Netaji Subhas Open University in the year, 2004.
5. After obtaining the said bachelor degree in B.Sc. Geography Honours, the petitioner intended to enhance his qualification further and accordingly, he made an application before the school authority to permit him to pursue higher studies. In the same fashion, the Managing Committee of the said school forwarded the application of the writ petitioner to the respondent no. 3 with a positive recommendation but once again, the respondent no. 3 did not grant any permission. In course time, the writ petitioner also passed M.Sc. in Geography and, thereafter, he made an application before the school authority for forwarding his prayer for higher scale of pay to the respondent no. 3 which has been rejected by the

respondent no. 3 by passing the order dated 03.05.2013.

6. In course of hearing, Mr. Sanyal, learned advocate appearing on behalf of the petitioner submits before this Court that in the internal page. 2 of the order dated 03.05.2013, the respondent no. 3 had raised two flimsy grounds for rejecting the prayer of the writ petitioner. It is contended by Mr. Sanyal that the staff pattern of the teaching staff of the school has become redundant in view of the Full Bench decision of this Hon'ble Court as passed February 7, 2024 in WPA 9921 of 2007.
7. It is further submitted by Mr. Sanyal that ground no. IV of the internal page. 2 of the order dated 03.05.2013, is also not applicable since the writ petitioner was not appointed through School Service Commission, therefore, the relevant Act i.e., West Bengal Schools (Control and Expenditure) Act, 2005 cannot be applied in the case of the present petitioner.
8. It is further submitted by Mr. Sanyal that the issue involved in the instant lis has been dealt with in the Full Bench decision dated February 07, 2024 as passed in WPA 9921 of 2007 (Utpal Kanti Karan vs. State of West Bengal and others).
9. Per contra, Mr. Bhattacharyya, learned advocate appearing on behalf of the respondent no. 3, submits before this Court that from the materials as placed before this Court, it would reveal that while pursuing honours course as well as post graduate course in

Geography subject from the Netaji Subhas Open University, the petitioner had not taken any prior permission of the D.I of School which is mandatorily be taken in terms of the relevant G.O. dated 27.11.2007 and, therefore, the petitioner is not entitled to higher scale of pay as per paragraphs 4 and 7 of the said G.O. no. 593-SE (B) dated 27.11.2007.

10. On perusal of the entire materials as placed before this Court, it is undisputed that the writ petitioner before this Court had admittedly appointed as an Assistant Teacher in the Graduate (pass) category and at that time, he did not possess any honours degree or post graduate degree qualification. Admittedly, further such qualifications have been obtained by him while he was in service but without taking prior permission of the D.I. of School. Basically, on the aforesaid ground quoting the relevant paragraphs of G.O. dated 27.11.2007, the petitioner's prayer was rejected. Admittedly, on the date of passing of the said order of rejection dated 03.05.2013, the D.I. of School had no occasion to go through the Full Bench decision as passed in WPA 9921 of 2007 on February 7, 2024.
11. In view of such, while allowing the instant writ petition and while setting aside the order dated 03.05.2013 as passed by the D.I. of Schools (S.E), Paschim Medinipur, this Court permits the writ petitioner to submit a fresh representation before the said D.I. of School, if he is so advised and in the event such representation is submitted before the D.I. of

Schools (S.E), Paschim Medinipur, the same shall be considered by the said D.I. of schools keeping in mind the relevant provisions of the G.O. no. 593-SE (B) dated 27.11.2007 along with other prevailing G.Os including the Full Bench decision of this Hon'ble Court as passed on 07.02.2024.

12. It is further ordered that while considering the said representation, the D.I. of Schools (S.E), Paschim Medinipur shall give adequate opportunity of hearing either to the petitioner personally or to his learned advocate and shall pass a reasoned order in writing positively within two months from the date of filing the representation afresh.
13. The D.I. of School (S.E), Paschim Medinipur/respondent no. 3 is further directed to communicate its decision to the writ petitioner preferably by email within three days from the date of passing of the reasoned order.
14. Liberty is given to the writ petitioner to provide his email address to the respondent no. 3 at the time of hearing of the representation.
15. It is made clear that while disposing the instant writ petition, this Court has not gone into the merit of the instant writ petition and in view of such, the respondent no. 3, i.e., D.I. of Schools (S.E), Paschim Medinipur is free to take any decision on the representation of the writ petitioner in accordance with law without being influenced by any of the observations made hereinabove.

16. In view of the above observation, the instant writ petition being **WPA 18318 of 2013** is disposed of.
17. Both the writ petitioner and the respondent no. 3, i.e., D.I. of Schools (S.E.), Paschim Medinipur are directed to act on the server copy of this order.
18. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)