

Court No. 22
26.02.2024

(Item No. ML-
159)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 19538 of 2016

Debabrata Banerjee
VS
The State of West Bengal & Ors.

Md. Manuwar Ali
Ms. Bratati Dutta
Ms. Moumita Karmakar
..... for the petitioner
Mr. Shamimul Bari
Mr. Rezaul Hossain
.... For the State

This is a hearing matter.

The note of the registry dated February 17, 2017 shows that despite there being a direction dated November 7, 2016 the respondents failed to file any affidavit-in-opposition.

Considering the issue involved in the writ petition and considering the subsequent development of law on the issue, this Court thinks that, no useful purpose shall be served by keeping this writ petition pending any further, hence, this Court proceeds for its final disposal.

The petitioner claims higher pay scale by virtue of acquiring his Post Graduation degree (M.Sc.) in Mathematics being the relevant subject and group. Since the claim was not allowed in favour of the petitioner, the petitioner moved this Court previously through **W.P. 18221(W) of 2015**. By an order dated **September 1, 2015, Annexure P-4 at page 26** to the writ petition, a co-ordinate bench disposed of the said

writ petition directing the jurisdictional District Inspector of Schools to consider the case and pass a reasoned order in the manner and mode as directed therein. The said order specifically directed that, the jurisdictional District Inspector of Schools ***“will not stand on the point the petitioner had not obtained the prior permission from the competent authority for completion of Master Degree in Mathematics”*** as would be evident from **page 33** to the writ petition.

Pursuant to the said direction of the co-ordinate bench the respondent No. 3 by its impugned order dated **April 21, 2016, Annexure P-5** at **page 36** to the writ petition, rejected the claim of the petitioner on the plea that, the petitioner did not obtain prior permission, though by under the said co-ordinate bench’s order dated **September 1, 2015**, the respondent No. 3 was debarred from taking this plea.

Md. Manuwar Ali, learned counsel appearing for the petitioner today places reliance on ***Sub-paragraph (f) to paragraph 272*** from the judgment delivered by the Larger Bench, *inter alia*, ***In the matter of: Utpal Kanti Karan Vs. State of West Bengal & Ors.*** dated **February 7, 2024** rendered, *inter alia*, ***in WPA 9921 of 2007 with APO 343 of 2013 with WPA 303 of 2023*** and submits that, the particular notification mentioned by the respondent No. 3 in the impugned order being **G.O. No. 1595-**

SE(S) dated **December 26, 2005** would not apply any further on the issue in view of the law laid down by the special bench as referred to herein.

Mr. Shamimul Bari, learned State counsel appearing for respondent Nos. 1 to 3 submits that, in the instant case the petitioner claims higher pay scale on the basis of acquiring **M.Sc. Degree in Mathematics** and not **Phd. Degree**. The observation of this Special Bench as referred to above in **paragraph 272 (f)** of the said Larger Bench decision does not apply in the instant case as convocation does not take place for Post Graduation degree and the observation of the Special Bench would apply for the Phd. holders only.

It appears from records as submitted by the learned counsel appearing for the parties that the previous order of the co-ordinate bench dated **September 1, 2015** is still holding the field and no appeal was carried out.

For the foregoing reasons and discussions, the impugned order dated **April 21, 2016, Annexure P-5** at **page 36** to the writ petition stands **set aside** and **quashed**.

To sub-serve justice, since once a decision has already been taken by the respondent No. 3 without appreciating the spirit and purport of the order dated **September 1, 2015**, the respondent No. 2 upon giving a prior hearing notice of at least seven days to

the petitioner and the respondent No. 4 to 6 and after giving them an opportunity of hearing shall decide the issue on the basis of the existing materials by passing a reasoned order in accordance with law.

The respondent No. 3 shall transmit and place all the materials, records and files relating to the petitioner on the basis whereof the order impugned was passed before the respondent No. 2 positively within a period of two weeks from the date of communication of this order.

The respondent No. 2 then shall carry out the entire exercise and complete the same as directed above positively within a period of **six weeks** from the date of receiving the records and files from the respondent No. 3. The respondent No. 2 shall then communicate its reasoned order to the petitioner and the respondent Nos. 4 to 6 positively within a further period of **two weeks** from the date of the said reasoned order to be passed.

The respondent Nos. 4 to 6 shall place and transmit all the relevant records relating to the petitioner before the respondent No. 2 in course of the hearing. The petitioner shall serve a copy of this writ petition along with all its annexures upon the respondent No. 2 for his perusal.

In the event, the reasoned order goes in favour of the petitioner, then all consequential steps shall be taken in accordance with law by respondent No. 3 and

the respondent Nos. 4 to 6 positively within a period of **three weeks** from the date of communication of the said reasoned order to give effect thereto.

The petitioner shall be at liberty to place the Larger Bench decision before the respondent No. 2 for his consideration.

It is made clear that, this order shall not create any right or equity in favour of the petitioner if the petitioner is not eligible to receive his claim strictly in accordance with law but while considering the issue the respondent No. 2 shall take into account the mandate given by the co-ordinate bench in its order dated **September 1, 2015** upon the respondent No. 3 mentioned in **page 33** to the writ petition.

The petitioner shall serve a copy of this order upon the respondent Nos. 4 to 6 to enable them to be represented before the respondent No. 2 in the hearing.

With the above observations and directions, this writ petition being **W.P.A. 19538 of 2016** stands **disposed of**, without any order as to costs.

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

(Aniruddha Roy, J.)