

WPA 25232 of 2017

28.8.2024

Ct.35,sl.1

sk

Indrajait Deb Sharma .-vs-State of West Bengal & Ors..

Mr. Manuwar Ali
....for the petitioner.

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta

...for the State.

1. Affidavit-in-opposition filed on behalf of the respondent no. 3 is taken on record.
2. The petitioner has challenged the order of the District Inspector of Schools, Secondary Education, North 24-Parganas dated July 11, 2017, by dint of which his prayer for grant of higher pay scale, pursuant to his higher qualification has been rejected by the said respondent authority.
3. The ground for which the prayer of the petitioner has been rejected is mentioned to be the provision made under Government Order No. 548/SE-S dated 26.6.1997 (hereinafter referred to as G.O.No.548).
4. On perusal of the G. O. No. 548, it appears that the same relates to the subject matter "*Recognition of correspondence courses conducted by the different Universities of India*".
5. It has been provided therein that in case a teacher enrolled himself for appearing in the examination conducted through correspondence/distance mode of education from the UGC affiliated Universities, he has to

take prior permission from the District Inspector of Schools (SE), through the Managing Committee, Ad-hoc Committee/Administrator of the Schools.

6. It has further been provided that the Managing Committee after approval of such prayer of the incumbent, was forwarded the same to the District Inspector of Schools (SE), for approval.

7. The subject matter of the petitioner's case, is not similar. The same is not related to grant of permission to pursue with any correspondence course, by him.

8. Accordingly, the Court finds that the memo No. 548 which has been relied on by the respondent/District Inspector of Schools (SE), North 24-Parganas, in the said impugned order dated July 11,2017, is only misplaced reliance and erroneous.

9. On the contrary, it is found that the petitioner enrolled himself for Master's Degree Course before entering into service in 2001.

10. On 31.01.2001, the petitioner was appointed as an Assistant Teacher as a pass graduate candidate, in a commensurate scale of pay.

11. Later, on 31.01.2003, he qualified for the second time in another recruitment process, to be an Assistant Teacher with Honour's Graduate qualification and for the commensurate pay scale of an Honours Graduate category teacher. Before that i.e. prior to appointment of

the petitioner for the second time, the writ petitioner is in the Honours Graduate category, he has qualified in the Part-I examination of the Master's Degree course, in 2002.

12. In 2004, the petitioner has finally qualified in the M.A. Degree course, having been successful in Part-II examination thereof. His date of result of M.A. Degree final examination is on 11.2.2004.

13. Ms. Dutta, learned advocate appearing for the respondent State has raised objection, that in spite of being qualified in the year 2004, the writ petitioner has submitted his claim for higher scale of pay, only in the year 2013. Thus, the State has made endeavour to bring forth the point of belated prayer made by the petitioner, which according to the State respondent, could not be maintainable.

14. The same, however, is not a ground taken up by the concerned respondent/District Inspector of Schools(SE), North 24-parghanas in the impugned order dated 11.7.2017. The said order is for the reason and on the basis of G.O. No. 548, which the Court has already found to be not applicable, in case of the present petitioner.

15. The respondent would not be eligible to bring forth any new ground at the stage of hearing of the writ

petition which may have the effect of improving its case at a subsequent stage.

16. Admittedly, the writ petitioner has enrolled himself for the higher degree course before entering into service. It is also an admitted fact that after entering into service, he has obtained permission of the School Managing Committee, to conclude the Master's Degree Course, which he has already entered into.

17. The writ petitioner, being governed at the relevant point of time under the ROPa Rules 1998, would be eligible for the higher pay scale, upon achieving higher qualification, subject to the staff pattern of the school. He would be eligible for such benefit with effect from the date following the last date of final examination, according to the Government Order No. Edn. 253, dated 17.9.1994.

18. In this regard, the Court is amply guided by the Hon'ble Larger Bench Judgment, in the case of ***Utpal Kanti Karan vs. State of West Bengal & Ors. reported in 2020 SCC Online Cal 3256***, where the Hon'ble Larger Bench has held eligibility and right of the petitioner for grant of higher scale of pay after accomplishing the higher degree in the qualification. Similarly, the ratio of the decision of this Court in ***Sunil Kumar Saha vs. The State of West Bengal reported in (2013) 2 CHN(CAL) 565*** would be squarely

applicable in case of the present petitioner. Both the cases as above have been relied on by the petitioner in this case.

19. On the premise as above, this Court is of the opinion that the concerned respondent i.e. respondent no. 3, the District Inspector of Schools (SE), North 24-Parganas should consider the petitioner's case afresh in terms of the decision of the Hon'ble Full Bench of this Court as mentioned above and also in terms of the discussion made in this case, as above.

20. The impugned order dated 11.7.2017 is not substantiated with sufficient and appropriate reasons and is erroneous. Therefore the same is set aside.

21. The respondent no. 3(D.I.) shall consider the petitioner's case in the manner as mentioned above, after affording opportunity of hearing to the petitioner and dispose it of, by dint of a reasoned order.

22. The entire exercise as above shall be concluded by the respondent no. 3 within a period of four weeks from the date of communication of this order.

23. The writ petition is disposed of.

24. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)