

3009
2024
MONDAY

Court : 08
Item : DL-06
Matter : MAT
Status : DO
Bench ID : 266211
Transcriber : **NANDY**

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 1825 of 2022
with
CAN 1 of 2024

Mijanaur Rahaman
Vs.
The State of West Bengal & Ors.

Mr. Samim Ahmed, Advocate
Mr. Arka Maiti, Advocate
Ms. Ambiya Khatun, Advocate

.....for the Appellant

Mr. Santanu Kumar Mitra, Advocate
Mr. Subhabrata Das, Advocate

.....for the State

1. The petitioner claims higher scale of pay after obtaining the master degree under the Career Advancement Scheme which was denied by the Authority.
2. The writ-petition was dismissed solely on the ground that the petitioner did not inform the District Inspector of Schools (SE) that he is pursuing a post-graduate degree course at the time of joining or thereafter.
3. The appellant submits that in view of the judgment of the Special Bench rendered in the case of ***Utpal Kanti Karan Vs. State of West Bengal & Ors.*** in ***APO 343 of 2013***, he is entitled to a higher scale of pay having pursuing the post-graduate degree course at the time of his appointment.
4. On the other hand, the State submits that in view of the Government Order No. 593-SE(B) dated

27.11.2007, in the event, the petitioner does not seek a prior permission of the concerned District Inspector of Schools (SE) for pursuing a higher degree course, he will not be entitled to higher scale of pay.

5. The Division Bench judgment of this Court in case of ***Md. Adeel Uz Zaman Vs. State of West Bengal & Ors.*** reported in ***2021 LAB IC 2074*** (in MAT 825 of 2022 dated 11.02.2021), was cited before the Single Bench wherein it is held that since the teacher enrolled himself in the post-graduate degree course prior to his appointment and successfully competed subsequently, there is no point in seeking prior permission to enroll himself for the purpose of higher degree courses. The Single Bench distinguished the ratio laid down by the Division Bench on the ground that the petitioner ought to have informed that he is pursuing the post-graduate degree course at the time of his appointment to the District Inspector of Schools and having not done so, the ratio of law laid down in the above-noted decision is not coming in aid of the appellant.
6. We are unable to countenance the view expressed by the Single Bench for the reason that the said GO dated 27.11.2007 is only in relation to a candidate who was in service and intended to pursue the post-graduate degree course. In such event, prior permission may be necessary but we do not find any obligation in the said GO imposed upon the candidate who

was pursuing the higher degree course at the time of his appointment and subsequently completed the same.

7. It is misnomer that a person who is not in service would seek permission from the District Inspector of Schools. The language used in the said GO does not indicate that at the time of joining the service, the information or intimation should be given. At times we have come across where the application offering the candidature may contain an information about pursuing the higher degree course which itself is indicative of the fact that there is sufficient knowledge having percolated into the authorities.
8. Be that as it may, GO 1595-SE(S) dated 26.12.2005 does not put any fetter of such nature and the Special Bench answered the reference in this regard in the following:-
“(g) If a teacher has partially completed higher study before entering service he/she would come under purview of GO No. 1595-SE(S) dated 26.12.2005 and the question of taking permission from DIS-SE concerned would not arise.”
9. In view of the above, the judgment impugned in the instant appeal runs counter to the judgment of the Special Bench and, therefore, cannot be sustained.
10. Accordingly, the judgment impugned is set aside.
11. The authorities are directed to adhere to the principle of law laid down by the Special Bench and all the exercise shall be completed within

eight weeks from the date of communication of this order.

12. The appeal being **MAT 1825 of 2022** and the connected application being **CAN 1 of 2024** are **disposed of**.

(Harish Tandon, J.)

(Partha Sarathi Sen, J)