

17.05.2024
Item No.03 DL
Ct.18
A.J.

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

WPA 25355 of 2023

**Raju Das
-Vs-
The State of West Bengal & Ors.**

Mr. Gourav Das,
Ms. Madhumanti Das.
.... for the Petitioner.

Mr. Supriyo Chattopadhyay, A.G.P.,
Ms. Iti Dutta.
....for the State.

Mr. Chattopadhyay, learned Additional Government Pleader files the report of the District Inspector of Schools (S.E.), District: 24 Parganas (South), the respondent no.4 herein dated May 10, 2024, let it be kept with the record.

The petitioner being a successful candidate in the 10th Regional Level Selection Test (A.T.), 2009 was recommended for appointment and was accordingly appointed as an Assistant Teacher at Bawali High School (H.S.), Nodakhali, District : 24-Parganas (South) of the subject Mathematics (H/PG).

The petitioner at the time of his such appointment was pursuing Post-graduate course in Mathematics with the Netaji Subhas Open University through distance learning mode, which he continued after obtaining permission from the Managing Committee of the said school. The said course was concluded on October 15, 2012 and the result was published on February 14, 2013.

The petitioner thereafter prayed before the School Authority for grant of higher scale of pay on the basis of his said enhanced qualification. The School Authority in turn, placed the said prayer of the petitioner before the respondent no.4, but before it could attract the attention of the said respondent, the petitioner was transferred to his present school, i.e. Pairachali High School (H.S.), Falta, District : 24-Parganas (South).

The prayer of the petitioner for higher scale of pay since was pending for a long time, the petitioner through his learned advocate issued a notice demanding disposal of the said pending issue.

The petitioner took out a writ petition being WPA 11918 of 2023 praying disposal of the said demand notice.

A co-ordinate Bench of this Court vide order dated May 11, 2023 had directed the respondent no.4 to consider the said demand notice treating it as a representation of the petitioner and to dispose it of in accordance with law.

A specific observation in the said order dated May 11, 2023 was made that while disposing the referred issue, the respondent no.4 must take into consideration the decision of the learned Single Judge of this Court passed in **WPA 21113 of 1919 (Subrata Kumar Ghosh –Vs- The State of West Bengal & Ors.)** and the decision of the Hon'ble Division Bench dated *February 11, 2021* passed in **MAT 825 of 2020 (Md. Adeel Uz Zaman –Vs- The State of West Bengal & Ors.)**.

In compliance with the said direction, the said respondent by the impugned order dated June 27, 2023 has disposed of the referred issue by rejecting the prayer of the petitioner for higher scale of pay holding *inter alia* that “The

prayer of the petitioner for post graduate scale of pay is not maintainable and rejected in terms of para 3 of Government Order No.593-SE(B) dated 27.11.2007 and (Control of Expenditure Amendment) Act, 2016)".

Mr. Das, learned advocate for the petitioner submits that the issue since has been settled by different judgments of this Court, the learned single judge while directing to consider the prayer of the petitioner for higher scale of pay had categorically observed that the respondent no.4 in arriving to a conclusion with regard to the said prayer, is obliged to consider all the judgments of this Court on the subject. Those judgments were placed, but the said respondent has rejected the prayer of the petitioner without considering the same.

He further submits that the Special Bench of this Court in a recent judgment dated February 07, 2024 passed in ***WPA 9921 of 2007*** with ***WPA 303 of 2023 (Utpal Kanti Karan Vs. State of West Bengal & Ors.)*** has held that a teacher who was pursuing his higher studies before entering in the service would be governed by the G.O. No. 1595-SE(S) dated December 26, 2005, and not by the G.O. No.593-SE(B) dated November 27, 2007, the rejection of the prayer of the petitioner is therefore, not sustainable.

Mr. Chattopadhyay submits that though the issue after the aforementioned judgments of this Court, particularly after that of the said Special Bench is no longer *res integra*, but in the absence of any particular Government Order, the respondent no.4 is not in a position to grant relief to the petitioner as prayed for.

The petitioner had joined the service while he was pursuing his Post-Graduate course and continued the said

course after obtaining permission from the Managing Committee of the school where he was employed, as required under the provisions of the **G.O. No. 1595-SE(S)** dated **December 26, 2005**.

In the aforesaid context, it is apposite to quote the following paragraph of the judgment of the Special Bench in case of ***Utpal Kanti Karan (supra)***:-

*“...272)...g) If a teacher has partially completed higher study before entering service he/she would come under purview of **G.O. No.1595-SE(S)** dated 26th December, 2005 and the question of taking permission from DIS-SE concerned would not arise.”*

The **G.O. No.593-SE(B)** dated **November 27, 2007** has got no manner of application in the facts and circumstances of the instant matter.

In view of the discussion made above, the rejection of the prayer of the petitioner for higher scale of pay on enhancement of his qualification in the relevant subject is not sustainable, the order impugned is therefore set aside.

The respondent no.4 is directed to grant higher scale of pay to the petitioner with effect from the last date of his Post-Graduate examination i.e. October 15, 2012. The arrear salary be paid to the petitioner accordingly.

To avoid recurrence of rejection of such prayer(s) of similarly placed teachers, the Joint Secretary, School Education Department, (Law Branch), the respondent no.2 herein is requested to issue appropriate Government Order as expeditiously as possible.

WPA 25355 of 2023 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)