

05.01.2024
SI No.1-4
Court No.8
(ar,gc)

**MAT 107 of 2022
with
I.A No. CAN 1 of 2022**

**Sunil Tudu
Vs.
State of West Bengal & Ors.
with
MAT 714 of 2020**

**The District Primary School Council,
Murshidabad & Anr.**

**Vs.
Bhriguram Karmakar & Ors.
with
MAT 715 of 2020**

**The District Primary School Council,
Murshidabad & Anr.**

**Vs.
Parthasarathi Choudhury & Ors.
with
MAT 716 of 2020
with
I.A No. CAN 1 of 2022**

**The District Primary School Council,
Murshidabad & Anr.**

**Vs.
Mathura Kumar Ghosh**

Mr. Prosenjit Mukherjee
Mr. Amit Kumar Datta
... For the Appellant in
MAT 107 of 2022

Md. Sarwar Jahan
Sk. Nayeemul Haque,
Mr. Maidul Islam
Mr. Sayantan Hazra
Mr. Kaustav Roy
Mr. Sumit Naskar
... For the Appellants in
Item nos. 2,3 and 4

Mr. Ekramul Bari
Syed Mansur Ali
Sk. Intiajuddin
... For the Writ petitioners/Respondents
in Item nos. 2,3 and 4

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta
... For the State

1. All the appeals involved common questions of law and facts are taken up together by consent of the parties and disposed of by this common order along with the applications.
2. The appeals preferred by the concerned District Primary School Council were heard extensively on 11th February, 2021 on which date we disposed of the stay applications by directing the concerned District Primary School Council to pay salary in A category scale of pay to the writ petitioners for the subsequent period and shall continue to pay till the disposal of the appeals without prejudice to the rights and contentions of the appeals.
3. Sri Sunil Tudu preferred an appeal being MAT 107 of 2022 in view of the denial of such right to the petitioner by the learned Single Judge, although he seems to have been similarly circumstanced as that of the other writ petitioners in the batch of appeals preferred by the concerned District Primary School Council.
4. Mr. Sarwar Jahan, learned advocate appearing for the concerned District Primary School Council, has submitted that the interim order

passed on 11th February, 2021 by disposing of the stay petitions has not considered the notification dated 3rd September, 2001 issued by the NCTE. The order passed by the Joint Secretary, Government of West Bengal, School Education Department (Elementary Education Branch) dated 4th March, 2013 is not applicable since the memo issued by the Joint Secretary Government of West Bengal, School Education Department, Law Branch on 19th December, 2014 says that unless the teachers concerned obtained the training certificate on or before 31st December, 2005, the concerned teachers would not be entitled to A category scale of pay.

5. Mr. Ekramul Bari, learned counsel appearing for the writ petitioners/respondents in respect of the appeals filed by the concerned District Primary School Council, Murshidabad relies upon the interim order dated 11th February, 2021.
6. Mr. Prosenjit Mukherjee, learned advocate appearing for the appellant in MAT 107 of 2022, has submitted that detailed interim order passed by us has covered other aspect of the issue raised by the present appellants in other appeals and it would be clear upon reading the Circulars together with the order passed by the Appeal Committee of the West Bengal Board of Primary Education that the writ petitioners are entitled to

said relief. Mr. Mukherjee submits that in addition to the aforesaid relief, the order passed by a coordinate bench in MAT 1666 of 2015 with CAN 10738 of 2015 on 7th December, 2015 in which the decision of the Commissioner of School Education containing in the letter dated 11th December 2012 expressed the view that the writ petitioners in the said proceeding who were appointed before 3rd September, 2001 and obtained one year PTTI degree in the session of 2005-06 are entitled to get A category scale of pay in terms of the Notification being no. 277-SE(P) dated 26th March, 2012 and subsequent order being No. 996-SE(Law) dated 15th June, 2012 of the School Education Department.

7. In the instant case, there cannot be any dispute that Prem Kumar Basak & Ors. in MAT 1666 of 2015 were similarly placed as that of the present writ petitioners and they were extended the same benefits of 'A' Category scale of pay. Although the order of the Coordinate Bench does not decide the issue elaborately but it appears that even the State of West Bengal considered that since the teachers were appointed before the cut off date and obtained one year PTTI degree in the session 2005-2006 would be entitled to 'A' Category scale of pay in terms of the relevant notification as duly communicated by the

Commissioner of School Education in its letter dated 11th December, 2012 and on that basis the order of the Secondary School Education Department dated 19th December, 2014 was not accepted. However, without taking into consideration of the aforesaid order, we passed an order on 13th January, 2020 in FMA 804 of 2019 with CAN 8193 of 2019 in respect of the Chairman, District Primary Council, Nadia in which on the basis of the clarificatory notification of 4th March, 2013, we were of the view the writ petitioners in the said proceeding would be entitled to 'A' Category scale of pay. The said order passed on consideration of the notification dated 4th March, 2013.

8. However, in the present proceeding, we have heard the learned Advocate General earlier on 11th February, 2021 where we have elaborately discussed the issue. The issues which are now sought to be raised were considered by us at the time of passing the interim order. Since it was a mere repetition of the argument that was made by the learned Advocate General when we considered the prayer for interim reliefs, we are of the view that the views expressed by us at the time of passing the interim order shall hold good even at this final stage in absence of any other

better materials being produced at the time of argument.

9. It is an admitted position that the Government has accepted the order of the Appellate Committee of the West Bengal Board of Primary Education in similar situation and the said decision was relied upon by the Coordinate Bench in MAT 474 of 2014. We have extensively referred to the said order of the appellate authority in our previous order.
10. In view of the aforesaid facts, we confirm the interim order passed on 11th February, 2021 and dismiss the appeals preferred by the District Primary School Council, Murshidabad.
11. Accordingly, the appeals being MAT 714 of 2020, MAT 715 of 2020 and MAT 716 of 2020 with CAN 1 of 2021 stand dismissed.
12. The appeal, being MAT 107 of 2022, preferred by Sri Sunil Tudu is allowed and disposed of.
13. In view of the disposal of the appeal, being MAT 107 of 2022, the connected application being CAN 1 of 2022 also stands disposed of.
14. In view of the fact that by reason of the order passed in MAT 107 of 2022, the writ petition is virtually disposed of by consent of the parties, we treat W.P. No.16566(W) of 2019 as on the day's list and dispose of in terms of this order.

15. It is not in dispute that all the writ petitioners including Sri Sunil Tudu were appointed prior to 31st December, 2005.
16. For the purpose of reasoning, the order dated 11th February, 2021 shall be read as part of this order.
17. However, there are few typographical errors in the order dated 11th February, 2021 which needs correction.
18. At page 5, 1st paragraph, third sentence, the “NCTE notification dated” has been wrongly mentioned as “4th September, 2001” instead of **“3rd September, 2001”**. In the 8th sentence from the bottom, between the words “of” and “understanding” the word **“such”** shall be included and in the same sentence “the” shall be deleted and replaced by **“and”**.
19. At page 6, 1st paragraph, last but 4th sentence, the word “session” shall be replaced by the word **“qualification”**.
20. At page 7, towards the middle after the words “respondent-council was”, the word **“not”** to be inserted.
21. Let these corrections be incorporated in the order dated 11th February, 2021.
22. The server copy shall be corrected accordingly.

23. In the matter of Sunil Tudu, the District Primary School Council, Birbhum is directed to revise the pay scale and release 'A' Category scale of pay to the appellant within eight weeks from date.
24. It is needles to mention that the writ petitioners are entitled to get all consequential benefits in view of the sanction of 'A' Category scale of pay in their favour.
25. The department is directed to ensure that all the appeals and applications along with W.P. No. 16566(W) of 2019 are shown as dismissed/disposed of today in terms of this order.
26. However, there shall be no order as to costs.
27. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)