

OD 16

WPO/458/2019
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

AFSHA MUSARRAT
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date: 13th February, 2024.

Appearance:
Mr. Sakti Pada Jana, Adv.
Mr. Subhajyoti Das, Adv.
. . .for the petitioner.

The Court: The petitioner is represented by Mr. Jana. The respondents including the State are not represented. It is found from record that in spite of there being direction for filing affidavit in opposition, no affidavit in opposition has yet been filed by the respondents. Hence, it is understood that the respondents including the State are not interested to contest the matter.

The writ petitioner has challenged an order of the District Inspector of Schools (Secondary Education), Kolkata dated 31.07.2019.

By dint of the same, the concerned respondent as above has turned down writ petitioner's prayer for additional increment/higher scale of pay, pursuant to her obtaining higher qualification, that is, M.A.

degree. The writ petitioner is aggrieved due to such rejection of her prayer and has preferred this writ petition.

The factual background of the case in a nutshell may be narrated as hereinbelow:

The writ petitioner joined the Madrasha-Tus-Sabaya High Madrasah (H.S.) on 24.06.2006. Her service was approved by the respondent as mentioned above, on 26.09.2006. She joined in a post containing a pay scale of honours graduate category. On 25.06.2015, the Managing Committee of the Madrasha took a resolution pursuant to a prayer made by the writ petitioner to grant her permission for enhancement of her qualification. Subsequently, the resolution and the recommendation of the Managing Committee, as above, was forwarded to the District Inspector of Schools (Secondary Education), Kolkata on 12.11.2015.

However, since thereafter the concerned respondent as above has not acted on the resolution/recommendation of the Managing Committee of the Madrasha, recommending grant of permission to the writ petitioner, to obtain higher qualification. In the meantime, by submission of fees, the writ petitioner got admission in M.Sc. course and consequently completed the same. On 04.05.2018, she applied for enhancement of her scale of pay, pursuant to her M.A. degree.

After the first round of litigation before this Court and pursuant to this Court's order, the concerned respondent took up the issue of

enhancement of pay scale to the writ petitioner and the resultant order is dated 31.07.2019, which is impugned in this writ petition.

By relying on a Government Order no.593-SE(B) dated 27.11.2005, the concerned respondent has rejected writ petitioner's prayer for grant of higher scale of pay commensurate to her educational qualification of M.A. degree. The following portion of the said Government Order has been relied on:-

"All the teachers teaching in different state Aided Schools will have to take prior permission from the Managing Committee/Adhoc Committee/Administrator as the case may be to enroll themselves and to appear for any examination for enhancement of cases will take a decision in its next meeting and convey its decision to the teacher concerned immediately. A copy of the decision of the Managing committee will be forwarded to the Office of the District Inspector of Schools (S.E.) of the concerned district."

Mr. Jana representing the writ petitioner has pointed out Clause 3 of the said notification no.593-SE(B) /ES/O/B/1M-98/2007, which is as follows:

"The teacher is required to seek prior permission of concerned District Inspector of Schools (SE) (only when he/she wants to claim additional increment/higher scale of pay etc. for obtaining such higher qualification) through the Managing Committee of the School."

He says that his client has duly applied within time before the Managing Committee and the Managing Committee has also duly forwarded its recommendation forthwith, to the concerned respondent, for necessary action. He alleges that, it is only the inaction on part of the concerned respondent, for which the formal permission was not obtained by his client, before she took admission in the M.A. course. He says that the authority should have acted within a reasonable period of time. He insists that the same should not be a deterrent factor for not granting the benefit to his client which she is otherwise eligible to, under the existing rules, after obtaining higher qualification.

Mr. Jana has relied on a judgment reported in 2013(2) CHN (CAL) 632 and also an administrative order passed by the Commissioner, School Education, West Bengal to suggest that the law settled in this regard should prompt the concerned respondent to allow additional increment/higher scale of pay to the writ petitioner. He has sought for necessary order in this writ petition.

It appears from record that the writ petitioner, who was initially engaged with the concerned Madrasha, as an Honours Graduate candidate, had made application to seek permission for enhancement of her educational qualification on 25.06.2015. The managing Committee recommended for such a permission to be granted to her and forwarded her file to the concerned respondent on 12.11.2015. Thereafter within the cut-off date the writ petitioner got admitted to the M.A. course on

21.07.2016. Therefore, evidently from 12.11.2015 to 21.07.2016, the concerned respondent remained inactive in granting or refusing permission to her for obtaining higher qualification. This silence of the concerned respondent is unexplained. There has not been any record to show that the respondent, during this period of time has even rejected writ petitioner's prayer. This appears to be gross inaction, on part of the respondent authority, to comply with the statutory duty, vested on it. This is arbitrary and illegal. Under such circumstances, restraining the writ petitioner to obtain benefit under the existing rules for higher scale of pay, would be violative of the rules and regulations in operation and arbitrary and illegal, too.

Considering the above this Court finds the impugned order dated 31.07.2019 of the respondent No.3, District Inspector of Schools (S.E.), Kolkata to be illegal and not maintainable. The same is hereby set aside.

It is directed that the writ petitioner be immediately granted and paid the higher scale of pay, commensurate to her enhanced qualification, with effect from the date of her being qualified as such. Necessary pay fixation be made and all arrears accumulated till date, be released immediately.

Writ Petition being WP No. 458 of 2019 is disposed of.

(RAI CHATTOPADHYAY, J.)