

Item-
16. 14-05-2025

MAT 122 of 2024
CAN 2 of 2024

sg

Ct. 8

Rabindra Nath Sen
Vs.
The State of West Bengal & Ors.

Mr. Sarajit Sen
Mr. Saumyen Datt
Ms. Dolon Dasgupta

...for the appellant

Mr. Monish Sen
Ms. Oisani Mukherjee

...for the respondent nos. 3-5

Mrs. Koyeli Bhattacharyya
Mr. Bibek Dutta
Ms. Keya Panja

...for W.B.B.S.E.

Mr. Supriyo Chattopadhyay
Mr. Arindam Ghosh

...for the State

1. A reasoned order dated 2nd March, 2023 passed by the Director of Public Instruction, West Bengal, was a subject matter of challenge in WPA 10361 of 2023 in which the impugned order dated 12th September, 2023 was passed.
2. The issue came up for consideration as to whether in view of the Notification dated 5th October, 1998, the earlier Notification dated 10th January, 1986 stands superseded with regard to the claim for up-gradation from the post of Lower Division Clerk to the post of Upper Division Clerk on the basis of the students' roll strength. If the roll strength had gone beyond 1100 then this up-gradation is allowable by reason of the said Circular.

3. As fairly submitted by Mr. Supriyo Chattopadhyay, learned Additional Government Pleader, the Circular dated 5th October, 2018 does not in any way impair the rights in favour of the writ petitioner by virtue of the Circular issued by Higher Education Department, Government of West Bengal being No. 60-Edn (CS) dated 10th January, 1986.
4. On a conjoint reading of both the Circulars, it appears to us that the later Circular dated 5th October, 2018 is the creation of non-teaching posts and it does not affect or in any way disturb the earlier Circular dated 10th January, 1986. It has to govern the claim of the writ petitioner as admittedly the students' roll strength has increased in the meantime.
5. The learned Counsel for the College Authorities has submitted that the claim of the writ petitioner can at best be considered from the year 2019 as there was an incumbent who retired in the meantime and he would have been the rightful claimant from 2016 to 2019.
6. This fact is not in dispute.
7. In view of the above, we allow the claim of the writ petitioner for up-gradation from the post of Lower Division Clerk to the post of Upper Division Clerk with all financial benefits from December, 2019 till date. All other financial benefits consequent upon this order shall be released within a period of eight weeks from date.
8. The College authority has submitted that there are two other similarly placed Lower Division Clerks who may

be entitled to the same benefits.

9. The College Authority may approach the Director of Public Instruction, West Bengal, for similar relief if they are entitled in law.
10. The order of the Director of Public Instruction, West Bengal dated 2nd March, 2023 is set aside.
11. The appeal succeeds. There shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Smita Das De, J.)