

14.05.2025.
28
Ct.No.7.
as

WPA 12622 of 2023

Sheikh Abdul Razzaq
Vs.
The State of West Bengal & Ors.

Sk. Sahjahan Ali.
...for the Petitioner.

1. In spite of service, nobody appears for the State.
2. The present writ petition has been preferred seeking a direction upon the concerned respondents to grant the petitioner a higher scale of pay on account of his acquisition of a higher qualification in Mathematics, a subject relevant to his teaching.
3. The petitioner began pursuing an M.Sc. in Mathematics in 2007. During the course of his studies, the West Bengal Regional School Service Commission, South Eastern Region, initiated a selection process to fill several posts of Assistant Teachers in the region.
4. The petitioner offered his candidature for the post of Assistant Teacher in Mathematics, participated in the selection process, and was declared successful. Consequently, he was recommended for appointment as an Assistant Teacher in Physics at Moulana Jamaluddin Siddiquia High Madrasa. Pursuant to the said

recommendation, the petitioner joined the school on October 5, 2009.

5. The petitioner made a prayer to the Secretary of the Managing Committee of the Madrasah seeking permission to appear in the M.Sc. Part-II final examination in Mathematics. The Managing Committee, by adopting a resolution, granted such permission. Pursuant thereto, the petitioner appeared in the examination and was awarded a Master's Degree in Mathematics by the University of Calcutta in 2010. The last date of his final examination was July 16, 2010.

6. Subsequently, the petitioner submitted an application through the Headmaster to the competent authority, seeking grant of a higher scale of pay. He also requested that his representation be forwarded to the District Inspector of Schools (SE), Howrah, for necessary consideration. However, despite receipt of his representation, no steps were taken in this regard.

7. Mr. Ali, learned advocate representing the petitioner, submits that the issue concerning the requirement of prior permission for a candidate who entered service while pursuing an M.Sc. course is no longer *res integra*. He refers to the decision reported in 2024 Supreme (OnLine) (Cal) 3278 (*Utpal Kanti Karan & Ors. vs. State of West Bengal & Ors.*), where the Hon'ble Special Bench, while addressing the reference, observed that if a teacher has partially completed higher studies before entering service, they would fall under the purview of G.O. No. 1595-SE(S) dated

December 26, 2005. In such cases, the requirement to obtain permission from the District Inspector of Schools would not apply.

8. Referring to an unreported decision of a Hon'ble Division Bench of this Court delivered in an intra-court appeal, MAT 1825 of 2022 with CAN 1 of 2024 (*Mijanaur Rahaman vs. The State of West Bengal & Ors.*), Mr. Ali submits that the Hon'ble Division Bench also accepted such view and held that if a teacher had partially completed higher studies before entering service, he/she is not required to obtain permission from the District Inspector of Schools concerned to complete the studies and obtain a postgraduate degree. He also places reliance on a judgment reported in 2022 (1) Cal. L.J. 17 (*Md. Adeel UZ Zaman vs. State of West Bengal & Ors.*) and on unreported decisions of the Hon'ble Division Bench rendered in FMA 1299 of 2021 (*The State of West Bengal & Ors. vs. Animesh Choudhury & Ors.*). Additionally, he cites an unreported judgment passed by a Co-ordinate Bench of this Court in WPA 8171 of 2022 (*Sandhya Sardar vs. The State of West Bengal & Ors.*) in support of his contention.

9. Heard the learned Advocates representing the petitioner and perused the materials placed before me.

10. If the admitted facts are succinctly summarized, it becomes evident that the petitioner was pursuing an M.Sc. degree in Mathematics prior to entering service, and completed the course after obtaining prior permission from the Managing Committee, which also granted him study

leave. It is further admitted that the petitioner was appointed in the Honours/PG scale, but not on the strength of a postgraduate degree. However, it is undisputed that he completed his M.Sc. degree and entered service after the promulgation of the West Bengal Schools (Control of Expenditure) Act, 2005. Section 14(3) of the said Act is relevant for resolving the issue raised in this writ petition. Provision of Section 14(3) of the Act is reproduced hereinbelow:

“(3) Every teacher of a school shall, if appointed in the Honours Graduate or Post graduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order.”

11. A plain reading of the aforesaid provision indicates that if a teacher is appointed in the Honours Graduate or Postgraduate teacher category, he shall be entitled to receive the Postgraduate scale upon acquiring a Postgraduate degree, in the manner specified in the relevant Government Order.

12. It may not be out of place to mention that the issue of taking prior permission from the District Inspector of Schools for a candidate who entered service while pursuing a postgraduate course is no longer res integra. In paragraph 272(g) of the judgment delivered in the case of *Utpal Kanti Karan & Ors. (supra)*, the Hon’ble Special Bench, while answering the reference, ruled that if a teacher has partially completed higher studies before entering service, he would fall under the purview of G.O. No. 1595-SE(S) dated

December 26, 2005, and the question of obtaining permission from the concerned District Inspector of Schools would not arise.

13. Subsequently, following the decision of the Hon'ble Special Bench, two different Hon'ble Division Benches in case of ***The State of West Bengal & Ors. Vs. Animesh Choudhury & Ors.*** (Supra) and ***Mijanaur Rahaman Vs. The State of West Bengal & Ors.*** (Supra), directed the authority concerned to grant higher scale of pay in the like situation.

14. It is needless to observe that the decisions of the Hon'ble Special Bench and the Hon'ble Division Bench are binding upon this Court. The circular vide G.O. No. 593-SE(S), referred to by Mr. Mitra, was considered by the Hon'ble Special Bench, which concluded that the same has no statutory force. Therefore, I am of the view that the judgments delivered by the Hon'ble Special Bench, as well as the order passed by the Hon'ble Division Bench, are squarely applicable to the case at hand.

15. Accordingly, this writ petition is disposed of by directing the District Inspector of Schools to take a decision on the petitioner's representation. If the District Inspector finds substance in the petitioner's contention, the next course of action shall be taken, which may include the grant of the higher scale of pay in accordance with the law from the last date of his Part-II examination. If the District Inspector finds that the petitioner's contention lacks merit,

a reasoned order shall be passed and communicated to the petitioner.

16. The entire exercise shall be carried out within a period of eight weeks from date.

17. With this observation and order, this writ petition is disposed of. However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)