

Court No. 25

24.01.2025

(Item No. 31)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 21216 of 2021

Debapriya Saha

VS

The State of West Bengal & Ors.

Mr. Nirmalendu Bera

Mr. Gora Chand Samanta

Mr. Dinesh Chandra Mondal

Ms. Gopa Das

.... For the petitioner

Mr. Supriyo Chattopadhyay

Ms. Iti Dutta

.... For the State

The petitioner is aggrieved that inspite of her claim for grant of Post Graduate pay scale being a legitimate one, in accordance with law, the respondent District Inspector of Schools, Secondary Education, South 24 Parganas, has not yet considered his such prayer.

Mr. Nirmalendu Bera, learned advocate appearing for the petitioner has submitted that a representation of the petitioner dated November 15, 2021 expressing her such grievance, still remains pending for consideration of the said authority.

The petitioner's case is that before induction in service vide the appointment letter dated September 24, 2008, she enrolled herself for the Master's Degree course in the relevant subject and later on completed the same. She says further that the School Managing

Committee has approved her prayer for grant of higher pay scale and forwarded her representation to the concerned authority. Hence, Mr. Nirmalendu Bera, learned advocate for the petitioner has submitted that in case of the petitioner, she having entered into the Master's Degree course prior to joining her service, the question of taking prior permission from the respondent District Inspector of Schools would not arise. In this regard he has referred to the judgment of the Hon'ble co-ordinate bench of this Court dated April 16, 2021 in W.P.A. 2568 of 2009.

Mr. Chattopadhyay, learned advocate appearing for the State respondent has however raised strong objection as to the contentions and prayer of the petitioner, for the reason that the petitioner has not mentioned in the writ petition the fact of her entering into the course before being inducted in service. He says that in absence of any such averments in the writ petition, the submission from bar to that effect would not be legible for being considered, being beyond pleadings.

Heard submissions.

Perused the record.

It appears that the necessary documents have been filed by the writ petitioner with the affidavit-in-reply, to substantiate his submission that before

entering into the service vide appointment letter dated September 24, 2008 the petitioner has enrolled herself in the Master's Degree Course. The affidavit-in-reply, being the further averments of the writ petitioner on oath and the contentions therein being within knowledge of the respondents, is to be considered as the petitioner's contention on affidavit. In this regard, the Court may refer to the decision of the Supreme Court, as follows:-

Sri-la-Sri Subramana Desika
Gnanasambanda Pandarasannadhi vs. State of
Madras reported in AIR 1965 SC 1578

“17. That takes us to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in support of his petition; but in the affidavit-in-rejoinder filed by the appellant, this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not be issued. We are therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any

stage by the appellant before the matter was argued before the High Court.”

The Court is to further find that the issues involved in the present case have already been settled, by dint of the judgment of the Hon’ble Larger Bench of this Court, in ***Utpal Kanti Karan vs. State of West Bengal & Ors.*** reported in ***2024 SCC online Cal 1274.***

Let the relevant portion thereof be quoted, as herein below:

“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.”

Therefore, the Court finds it proper to direct in this writ petition that let the representation of the petitioner now pending before the District Inspector of Schools, Secondary Education, South 24 Parganas, i.e. dated November 15, 2021, be disposed of by the said authority, after granting a reasonable opportunity of hearing to the writ petitioner and in accordance with the law settled by the Hon’ble Larger Bench in the decision as mentioned above.

In doing so the said respondent may also take into consideration necessary documents as submitted by the writ petitioner.

Let the said respondent take a decision upon prayer of the petitioner as above within a period of four weeks from the date of communication of copy of this order.

The writ petition is disposed of.

Urgent certified photocopy of this order, if applied for, shall be supplied to the parties, on compliance of all necessary formalities.

(Rai Chattopadhyay, J.)