

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**F.M.A. 1304 of 2022
With
CAN 1 of 2022**

**Barnali Adak
Vs.
The State of West Bengal & Ors.**

**Mr. Kamalesh Bhattacharjee, Sr. Advocate
Mr. A. Bhattacharjee For the Appellant.**

**Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee ... For the State Respondents.**

Admittedly, the appellant is a post graduate candidate at the time of her entry to the service as Assistant Teacher. She was granted pass category scale of pay. It is alleged that with the permission of the School she undertook the Post Graduate Course and obtained the M.P.Ed degree in the year 2007. However, prior permission of the District Inspector of Schools was not taken for the purpose of undergoing the aforesaid course.

Mr. Kamalesh Bhattacharjee, learned senior Advocate appearing on behalf of the appellant has submitted that in 2004 the writ petitioner/appellant participated for the post of Assistant Teacher in Secondary School in the Physical Education Group in the 5th Regional Level Selection Test. The appellant was successful and by a letter dated 5th April, 2005 the

S.D.

Secretary of the West Bengal Regional School Service Commission, Southern Region recommended the appellant for appointment as Assistant Teacher in Physical Education with qualification B.P.Ed with B.A. (Hons) in Bengali in Birlapur Vidyalaya, South 24 Parganas against the pass graduate vacancy and the petitioner joined the School on 26th April, 2005. The appellant is a Graduate in B.A. (Hons) in Bengali and B.P.Ed in Physical Education she improved her qualification as master in Physical Education in 2006. After joining the School on 26th April, 2005, she applied for study leave for improvement of her qualification for acquiring Post Graduate Degree in Physical Education ie. M.P.Ed and by resolution dated 21st September 2005 the Managing Committee of the said School allowed study leave in favour of the appellant. The Secretary of the School on 13th September, 2005 informed the appellant that the School has no objection in allowing the appellant to avail the study leave without; M.P.Ed Part-I and Part-II examination of 2006 was conducted. M.P.Ed Part -1 Examination was conducted in June, 2005 and Part-II in January, 2007. The appellant successfully completed both the courses in 2007. On 29th January, 2013 the appellant applied for Post Graduate Scale of Pay.

In view of the failure on the part of the respondent authorities the writ petition was filed. The

learned Single Judge without considering the relevant Circulars and the Government Orders dismissed the writ application merely on the ground that the petitioner pursued the Post Graduate Course without obtaining prior permission of the District Inspector of Schools (SE). The Larger Bench in its judgement dated 7th February 2024 held that in which one of us (Soumen Sen, J) was a member, the requirement of a prior permission was considered amongst others in paragraph 183 of the judgement. However, it has also been held that enhancement of pay on acquisition of higher qualification during the service career would be dependent upon the available benefits under the Rules, at the time of acquisition of higher qualification and cannot be claimed as a matter of right in absence of rules.

The factual matrix of the matter is required to be gone into before the District Inspector of Schools (SE), South 24 Parganas.

Accordingly, we dispose of the appeal (FMA 1304 of 2022) and the connected application (CAN 1 of 2022) by directing the District Inspector of Schools (SE), South 24 Parganas to consider the prayer of the appellant for higher scale of pay on acquiring M.P (E.d) degree in 2007 in accordance with law and taking into consideration the Larger Bench Judgement dated 7th February, 2024 within six weeks from the date of

communication of this order after giving a reasonable opportunity of hearing to all the stake holders, by a reasoned order which shall be communicated to the appellant within a week from the date of passing of the order.

The appeal succeeds.

The order dated 27th June, 2022 is set aside.

We, however, record that the learned Single Judge did not have the opportunity to consider the aforesaid aspect of the matter as the issues coming up for consideration have been considered only in 2024 by the Larger Bench.

(Soumen Sen, J.)

(Smita Das De, J.)

