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MAT 284 of 2022

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IA No.: CAN 1 of 2022 [App. Order]

Md. Rafique Ahmed

– *Versus* –

The State of West Bengal & Others

Mr. Md. Manuwar Ali,

Ms. Nandita Kundu

... for the Appellant.

Mr. Swapan Kumar Datta,

Mr. Prodyot Kr. Das

... for the State.

The present appeal has been preferred challenging an order dated 10th February, 2022 passed by the learned single Judge in the writ petition, being WPA 30810 of 2014 which was preferred by the writ petitioner/appellant herein, namely, Md. Rafique Ahmed (in short, Rafique) challenging the order dated 21st January, 2014 passed by the respondent no.3 herein.

Mr. Ali, learned advocate appearing for the appellant submits that the impugned order has been passed misconstruing the provisions of the Government circular dated 27th January, 1995. Rafique, though initially approved as an Assistant Teacher in the Physical Education/Work Education group, enhanced his qualification by obtaining Master degree in English. The study leave for appearing in the said examination, in which he ultimately succeeded in the year 2003, was approved by the competent authority. His

service was thereafter utilized for teaching English in normal section and accordingly he became entitled to the post graduate scale of pay. Being oblivious of such factual scenario, the learned single Judge rejected Rafique's claim by a cryptic order.

Mr. Ali strenuously argues that in the academic interest of the school, Rafique's service was utilized to teach English and accordingly, the learned single Judge ought to have appreciated that Rafique should have been granted post graduate scale of pay on the basis of such higher qualification, as there was a specific rider under the relevant Revision of Pay and Allowances Rules (hereinafter referred to as the ROPA Rules) that all existing secondary school teachers, who have improved their qualification, not relevant to their teaching subject, will be allowed higher scale on qualifying basis after five years' teaching counting from the date on which higher qualification was obtained.

He contends that the circular dated 24th June, 1997 pertains to recognition of degrees and the memo dated 11th November, 2011 pertains to conversion of teaching post from normal section to higher secondary section, upon which reliance was placed by the respondent no.3 in the order dated

21st January, 2014, have no manner of application in respect of the appellant's claim. Such issues, as urged, were glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference in the present appeal.

Mr. Datta, learned Government Pleader appearing for the State/respondents denies and disputes the contention of Mr. Ali and submits that there is no infirmity in the order impugned inasmuch as Rafique could not establish the fact that his services had been utilized to teach English in the normal section of the said school.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The provisions of the circular dated 27th January, 1995 *inter alia* provides that the school teachers who were appointed with higher qualifications in subjects not relevant to their teaching or who improved their qualifications subsequent to their appointment in subjects not relevant to their teaching and who took classes in subjects relevant to their respective higher qualification, shall be allowed the higher scale of pay on qualification basis subject to prior approval of the respondent no.3 and strictly according to

the actual academic need of the individual school. In the present case, no document had been placed as regards utilization of Rafique's service as an English teacher by the school authorities and as to whether such service was utilized with prior permission from the respondent no.3 or as to whether the school authorities ever approached the respondent no.3 for such prior permission.

In the said conspectus, the learned single Judge refused to exercise discretion in favour of Rafique and we do not find any patent error of law in such decision, warranting interference in appeal.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)