

FMA 2697 of 2015
with
IA No. CAN 2 of 2015 (Old No. CAN 5315/2015)
(The State of West Bengal & Ors. Vs. Md. Habibur
Rahaman & Ors.)

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
... For the Appellants

Mr. Sakti Pada Jana
Mr. Subhajyoti Das
Ms. Sudipta Pramanik
**.... For the respondent/
writ petitioner**

The present appeal has been preferred challenging the order dated 20th November, 2013, passed by the learned Single Judge in WP 13736 (W) of 2013. By the said order, the writ petition was disposed of with a direction upon the District Inspector of Schools (SE), South 24-Parganas (hereinafter referred to as 'the DI') to grant a higher scale of pay to the writ petitioner/respondent with effect from May 2013. The DI was further directed to extend notional benefits to the writ petitioner/respondent from the date of improvement of his qualifications for the purpose of calculating retiral benefits.

Mr. Chattopadhyay, learned advocate appearing for the State and its functionaries, submits that the writ petition was disposed of at the motion stage without calling for affidavits from the State and without affording any opportunity to the respondents to produce relevant documents in support of the stand taken by the State. He further submits that, at the time of initiation of the selection process, through which the writ petitioner/respondent was appointed to the post of Assistant Teacher in an aided

Madrasah, he possessed the qualification of 'KAMIL' and, as such, was appointed in the Pass category on 1st November, 2008.

He contends that since the writ petitioner/respondent was appointed in the Pass category, he is not entitled to claim any higher scale of pay upon improvement of his qualifications. Referring to a notification dated 30th January, 2019, he submits that a person who acquired the 'KAMIL' qualification prior to 2008 is to be treated as a Pass Graduate, and such a candidate is not entitled to claim either the Honours scale or the Post Graduate scale.

He further submits that the aforesaid aspect was not considered and that the notification dated 30th January, 2009 was not taken into account by the learned Single Judge while passing the order under appeal. He contends that such infirmity warrants interference in the present appeal and calls for the issuance of appropriate directions. He further submits that various questions of fact are required to be examined by the competent administrative authority before any decision can be taken on the writ petitioner/respondent's claim for a higher scale of pay.

In rebuttal, Mr. Jana, learned advocate appearing for the writ petitioner/respondent, draws our attention to the advertisement dated 4th October, 2007 issued by the West Bengal Central School Service Commission (hereinafter referred to as 'the Commission') and submits that there was only one category for the post of Assistant Teacher in Arabic. He submits that the essential qualification prescribed for the said post was MM/MF. He contends that the 'KAMIL' qualification is equivalent to the 'MF' qualification. He further submits that the advertisement made no distinction between Honours and Pass categories, and that a single

examination was conducted for all candidates, irrespective of such distinction. According to him, the same procedure is followed in respect of the posts of Assistant Teacher in Physical Education and Work Education, where B.P.Ed./M.P.Ed. qualifications are prescribed.

Referring to the advertisement memo dated 16th April, 2009, he submits that all candidates possessing 'KAMIL' and 'MM' qualifications were appointed in the Pass category. He further submits that, subsequently, in terms of the notification dated 30th January, 2009, candidates similarly situated with the petitioner were granted a higher scale of pay. He contends that, in such circumstances, the learned Single Judge has rightly directed the DI to grant the higher scale of pay to the writ petitioner.

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

Admittedly, the appellant acquired the 'KAMIL' qualification prior to 2008 and was appointed in the Pass category in the pay scale of Rs. 4,650/--Rs. 10,175/-, while he was pursuing the MM course. As noted earlier, Mr. Jana contends that the 'KAMIL' qualification is equivalent to the 'MF' qualification, and that the advertisement did not provide for separate Pass and Honours categories in respect of either MM or MF qualifications. However, the notification dated 30th January, 2009 reflects that 'KAMIL' qualifications acquired up to 2008 and 'MM' qualifications under the old syllabus up to 1997 were granted the same scale of pay. It thus appears that these two qualifications are treated as equivalent. Referring to certain notifications, Mr. Jana further submits that candidates similarly situated to the writ petitioner have been granted the benefit of a higher scale of pay.

Therefore, certain questions of fact are involved which are required to be resolved before any decision can be taken regarding the entitlement of the writ petitioner/respondent to a higher scale of pay. As such, we are of the view that, without taking these aspects into consideration, the learned Single Judge misdirected himself in issuing a mandatory direction for grant of a higher scale of pay to the writ petitioner/respondent.

Accordingly, the order impugned in the appeal is set aside. However, liberty is granted to the writ petitioner/respondent to make a comprehensive representation before the Director of Madrasah Education, respondent no. 2, for advancement of his claim for a higher scale of pay within a period of four weeks from the date of this order, enclosing a copy of this order and such other relevant documents as the appellant may wish to rely upon.

In the event such representation, along with the documents appended thereto, is received by respondent no. 2, the same shall be considered, after affording an opportunity of hearing to all interested parties, including the writ petitioner/respondent, and a decision shall be taken in accordance with law within a period of six weeks from the date of receipt of such representation.

With these observations and directions, the appeal and its connected application are disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official website of this court.

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