

13.01.2026.
15
Ct.No.24.
as

WPA 30589 of 2017
with
CAN 1 of 2018 (Old CAN 4266 of 2018)

Dipak Kumar Saha
Vs.
The State of West Bengal & Ors.

Md. Sarwar Jahan,
Mr. Lalratan Mandal,
Ms. Tapati Sarkar.

...for the Petitioner.

Mr. Supriyo Chattopadhyay, Ld. AGP,
Mr. Sabyasachi Mondal.

...for the State.

1. The petitioner is aggrieved by an order passed by the respondent No.4 on November 2, 2017, pursuant to an order passed by this Hon'ble Court, while disposing of W.P.No.26120 (W) of 2016.
2. Mr. Jahan appearing for the petitioner submits that the petitioner had been appointed as an Assistant Teacher (Physical Education) in Khanrapara High School (H.S.). The petitioner had a Master's degree in History. Thus, when there was a shortage in teachers imparting history in Class V to XII, the services of the petitioner was engaged as such, by the Managing Committee of the School. The petitioner had rendered such services from 1999 and continues to do so even today.
3. The petitioner does not want a transfer but restricts his prayer to enhance pay as stipulated in Clause I of G.O.No.57-SE (S) dated January 27, 1995.

4. Mr. Chattopadhyay, learned Additional Government Pleader appears for the respondent authorities and submits that the petitioner cannot be construed in any manner to be eligible for Clause II of the aforestated Government Order.

5. In fact, he further submits that even to come within the contours of Clause I of the said Government Order, prior permission of the District Inspector of Schools is required and ought to have been taken by the school authorities, prior to engaging the petitioner as a teacher taking additional history classes of students in Class V to XII. This prior permission not being taken, the petitioner is completely disentitled to seek any benefit under the aforestated Government Order dated January 27, 1995.

6. I have heard the learned Counsel appearing for the parties and perused the records as well as the Government Order dated January 27, 1995 and the decision relied upon by Mr. Chattopadhyay in FMA 1678 of 2013 (CAN 7638 of 2015, in CAN 892 of 2013 and in CAN 7637 of 2013) passed on July 17, 2017.

7. The facts of the case are clear and unequivocal. It is not in dispute that the petitioner had been appointed as a Physical Education teacher and had been asked to take classes in history, since he had a higher qualification in such subject by the school authorities. It is also not in dispute that the prior permission of the District Inspector of Schools had not been taken by the school authorities.

8. However, it is equally true that the school authorities had made an application to the District Inspector of Schools

on January 2, 2001 requesting for, fixation of pay for improvement of qualification of the petitioner.

9. In spite of such application made by the school authorities on January 2, 2001, the respondent No.4 has not taken any steps to dispose of such application either allowing or rejecting such request. On the contrary, the very same respondent (Respondent No.4) proceeded to dispose of the representation of the petitioner in terms of the order of this Hon'ble Court, holding that the petitioner was not entitled to be appointed as a teacher in History, even though he had taken classes, as the same would not be covered under Clause II of the Government Order of January 27, 1995. Clearly, the respondent No.4 misdirected himself and proceeded to decide an issue which was never the contention of the petitioner. The petitioner's limited contention that he be permitted enhanced pay pursuant to Clause I of the Government Order of January 27, 1995 was, thus, never considered by the authorities.

10. I have considered the decision relied upon by Mr. Chattopadhyay, which relates to the applicability of the Clause II of the Government Order of January 27, 1995, on which there is no dispute. Thus, with due reference to the judgment of the Hon'ble Division Bench, I hold that the petitioner is not entitled to get any benefit under Clause II of the Government Order for transfer from Physical Education to History.

11. However, as the petitioner's principal grievance has not been addressed by the respondent No.4, I direct the

respondent No.2 (presently, the Commissioner of School Education) to consider the prayer of the petitioner that he be granted enhanced pay, as he has taken the classes in respondent No.7 in History, as he had higher qualification in the subject, inspite of being an approved teacher in Physical Education. The respondent No.2 will dispose of this issue by also taking into account that the respondent No.4, being the concerned authority kept the application for fixation of enhanced pay pending since January 2, 2001, without disposing of the same in any manner, either by rejection or approval.

12. Since the appointment stipulates a “prior permission” of the respondent No.4, under the Government Order of January 27, 1995, in the event the respondent No.2 finds that such enhancement of pay can be done in favour of the petitioner, the same can only commence from January 3, 2001 and not prior thereto. The pendency of the application and keeping the same in abeyance since 2001 by the respondent No.4 will be strictly construed by the respondent No.2 while considering the application of the petitioner.

13. Such consideration by the respondent No.2 will be made upon hearing the parties concerned including the petitioner and the respondent No.4 upon adequate prior notice. The respondent No.2 will dispose of the matter by passing a reasoned order in respect thereof within a period of four weeks from the date of conclusion of the hearing. The reasoned order will be duly communicated to the

petitioner and the respondent authorities within 15 days therefrom.

14. With these aforestated directions, the writ petition and the connected application are disposed of.

15. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Reetobroto Kumar Mitra, J.)