

MAT 513 of 2014
with
I.A No. CAN 1 of 2014(CAN 4621 of 2014)
CAN 2 of 2014(CAN 4652 of 2014)

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State of West Bengal & Ors.
Vs.
Jayanti Basak & Anr.

Mr. Arjun Ray Mukherjee
Ms. Tapati Samanta
... For the Appellants

Mr. Ekramul Bari
Sk. Intiaj Uddin
... For the Respondent no. 1

Re: CAN 1 of 2014(CAN 4621 of 2014)
(Condonation of Delay)

1. There is a delay of 222 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 4621 of 2014 is thus disposed of.

Re: MAT 513 of 2014

1. We have heard the learned counsel appearing for the parties.
2. Learned counsel for the appellants submits

that the issue involved in this appeal is covered by the judgment passed by this bench in MAT 1208 of 2022 (Nupur Sikdar Vs. The State of West Bengal & Ors.) on 19th September, 20023. However, we are unable to accept the said submission of the appellants.

3. The writ petitioner joined the school as an Assistant Teacher in History under Social Science Group on and from 1st January, 1989 in terms of the appointment letter issued by the school authority and the District Inspector of Schools (S.E), Malda duly accorded approval of the appointment of the petitioner under Memo dated 30th January, 1989. She has been in continuous service as an Assistant Teacher. She was a Pass Graduate and wanted to enhance her qualification in History and obtained M.A degree from Burdwan University with the prior approval from the District Inspector of Schools. However, the letter of approval issued by the District Inspector of Schools in the last sentence has stated that the permission was granted without higher scale of pay. This was a subject matter of challenge in all the earlier writ petitions in which orders have been passed from time to time directing the authorities to consider her representation for higher scale of pay.

5. The petitioner/respondent no. 1 has suffered

by reason of wrong interpretation and understanding of relevant circular. The learned Single Judge in deciding the writ petition in favour of the petitioner has taken into consideration that the Government has declared a policy of extending the benefit of Post Graduate scale of pay to the Assistant Teachers of Recognized Non-Government Aided Institutions after enhancement of the qualification by the Assistant Teacher concerned and the Government accepted the recommendation of the Fifth Pay Commission under Revision of Pay and Allowance Rules 2009. No option was given to a District Inspector of Schools (SE) concern for giving prior permission with a pre-condition of giving no assurance for extending the benefit of higher scale of pay. Unlike Nupur Sikdar where there is no clear statutory bar for enhancement of qualification. In the instant case although the petitioner was recruited as Pass Graduate there was a recommendation of the Managing Committee permitting her to pursue higher studies for enhancing her higher qualification in order to enable the school for its upgradation to Secondary school. The letter of recommendation dated 24th January, 2000 and the letter dated 17th February, 2000 addressed to District Inspector of Schools(SE), Malda strongly suggest that the prayer

for acquiring higher qualification would be beneficial to the interest of the students. The prayer for higher scale of pay was resisted by the State on the ground that in view of the West Bengal Schools(Control of Expenditure) Act, 2005, the writ petitioner would not be entitled to such relief. If the D.I is satisfied that the acquiring of such higher qualification by the petitioner would be in the interest of the students, such authority ought to have permitted the petitioner with financial benefits as the petitioner had completed her Post Graduate course in the session of 2000/2001 and appointed prior to the School Service Commission Act, 1997. The relevant Circular permitted higher scale of pay in the event a teacher acquires higher qualification in the relevant subject.

6. It is interesting to note that on 17th September, 2012 the impugned order passed by the District Inspector of Schools dated 22nd August, 2012 was set aside upon noticing that in the impugned order at one place the authority stated that prior permission was issued to the petitioner in Post Graduate degree but in latter part of the order it was recorded that the writ petitioner had not produced the letter of prior permission. The matter was accordingly sent to the authority concern for reconsideration of her prayer for higher

scale of pay.

7. In the second impugned order, the relief was denied on the ground that the petitioner enrolled herself in the Post Graduate course without obtaining prior permission and hence in the light of G.O No. 548-SE(S) dated 24th June, 1997 the prayer for P.G scale of pay of the petitioner was rejected.

“No. 548-SE(S) Dated: the 24th June, 1997.
To: The Director of School Education, West Bengal.

Sub: Recognition of correspondence courses conducted by the different Universities of India.

The undersigned is directed by the order of the Governor to say that henceforth all the teachers teaching in different state-aided schools will have to take prior permission from the District Inspector of Schools (SE) through the Managing Committee, Ad-hoc Committee/Administrator as the case may be if they like to enroll themselves and to appear for the examination conducted through Correspondence/ Distance Mode of education from the UGC-affiliated universities. The Managing Committee of the concerned school shall send such cases to DI(SE) for approval along with their comments, including, inter alia, the relevance of the subject of higher studies and also whether such higher studies are likely to affect the duties of the teacher in the school.”

8. In the instance case the Managing Committee in sending its approval has clearly stated the relevance of the subject of higher

studies. The D.I while granting prior permission could not have denied the higher scale of pay as the relevant Circular relied upon does not give that option to D.I. There was no rule prevailing at that time that gives power to D.I in denying such financial benefit. This arbitrary conduct of the D.I was addressed in the order under appeal.

9. Mr. Ekramul Bari, learned counsel appearing for the respondent no. 1/writ petitioner has referred to a decision of the coordinate bench in ***Rabi Kanta Barman Vs. District Inspector of Schools (SE) & Ors.*** decided on 31st January, 2014 in which the Hon'ble Division Bench has construed Rule 12(3) of the Ropa 1998 and the Government Order no. 549-SE(S) dated 24th June, 1997 and observed that "*we have already indicated above that the petitioner was appointed as an Assistant Teacher in the said school prior to coming into operation of the School Service Commission Act, 1997. As such, the last part of the proviso contained in Rule 12(3) wherein the subject relating to the teachers appointed through the School Service Commission is dealt with, has no application in the present case. So we will have to opt the said portion of the said Rule out of our reconsideration presently.*

Ropa 1998 was notified on 12th February, 1999 and the effect of the said Ropa was given

retrospectively from 1st January, 1996 as per recommendation given by the Pay Commission. Thus, when the new revised scale of pay of the teachers and non-teaching staff was introduced by framing revision of Pay and Allowances Rule 1998, the Government was aware about its earlier Government order issued on 24th June, 1997. When despite having knowledge of the earlier Government Order dated 24th June, 1997, the Government, while framing revision of Pay and Allowances Rule 1998 did not specifically mention in the said Rule that such financial benefit cannot be given to those Assistant Teachers who acquired higher qualification in the relevant subject without obtaining prior permission from the concerned District Inspector of Schools (SE), grant of higher scale of pay to such Assistant Teachers after they have acquired higher qualification in the relevant subject, in our view cannot be denied provided however, they satisfy the condition mentioned therein. In fact, the condition for grant of higher scale of pay to such Assistant teacher is qualified in the said Rule which provides that such higher scale of pay can be granted to those teachers only when such higher qualified teacher in the relevant subject or group is justified as per approved staff pattern of that school.

Thus, in our considered view, if the said condition as provided in the said proviso of Rule 12(3) of the ROPA 1998 is satisfied then the petitioner's prayer for grant of higher scale of pay for his enhanced educational qualification cannot be denied notwithstanding he acquired such degree without obtaining prior permission from the concerned District Inspector of Schools (SE) in terms of the Government Order dated 24th June, 1997. Provided however degree which he acquired is recognized as per the Government Order No. 549-SE(S) dated 24th June, 1997.

Thus, we endorse the conclusion which was drawn by the other Division Bench of this Hon'ble Court in the case of Samir Kumar Saha Vs. State of West Bengal & Ors. (Supra) by holding that the petitioner herein is entitled to get higher scale of pay for his enhanced qualification subject to satisfaction of the conditions as mentioned above."

10. The above decision cited by Mr. Bari is squarely applicable in the instant case. In the cited decision the District Inspector of School (SE) was directed to consider the petitioner's claim for grant of higher scale of pay for his enhanced educational qualification from the date of enhancement of his educational qualification in the relevant subject, afresh in the light of the observations made in the

said decision.

11. In view of the fact that all the conditions stand fulfilled, the D.I could not have denied financial benefit to the petitioner as there was no legal embargo at that relevant point of time.

12. We have been informed that during the pendency of the appeal the order of the learned Single Judge has not been given effect to. Under such circumstances, the appellants are directed to extend the benefit of Post Graduate scale of pay in favour of the petitioner within two months from the date of communication of this order with effect from the date when it was due. In view of the submissions made on behalf of the appellants that the order passed by the District Inspector of Schools (SE), Malda was on an interpretation in which the D.I's thought was permissible and there was no mala fide on the part of the D.I in passing the orders. We set aside the order directing payment of interest on the arrear amount with a condition that in the event the entire amount shall be paid to the petitioner within two months from the date of communication of this order, the appellants would not pay the interest on the arrear amount. In default, interest is directed to pay on the arrear amount in terms of the order of the learned Single Judge.

13. In view of the aforesaid, the appeal being MAT 513 of 2014 stands disposed of.

14. In view of the disposal of the appeal, nothing remains to be decided in the application for stay being CAN 4652 of 2014 and the same is accordingly disposed of.

15. However, 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.

(Uday Kumar, J.)

(Soumen Sen, J.)

