
(2019) 09 CAL CK 0273

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 10824 (W) Of 2018

Sourav Mitra

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Citation : (2019) 09 CAL CK 0273

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Sourav Mitra, Sreyasree Choudhury, Supriyo Chattopadhyay, Sumon Dey

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

The petitioner is an Assistant Teacher of Panchkahania High School (H.S.), Jhargram, Paschim Medinipur, and has challenged the Office Memorandum dated 23rd April, 2018 passed by the District Inspector of Schools (SE), Jhargram. By the impugned Office Memorandum, the prayer of the petitioner for grant of higher scale of pay was rejected.

Learned Counsel appearing for the petitioner relies on several documents to show that the petitioner had been given the approval of the Managing Committee of Shabra Ramkrishna Bidyabhawan (H.S.), Shabra, Dantan-II, Paschim Medinipur, where the petitioner was earlier engaged on 12th August, 2011. The decision of the Managing Committee to grant permission to the petitioner for improving his qualification was forwarded to the District Inspector of Schools (SE), Paschim Medinipur, on 15th May, 2012. Thereafter a reminder was sent to the Additional District Inspector of Schools (SE), Jhargram, Paschim Medinipur, on 23rd May, 2012. The petitioner thereafter acquired Post Graduate Degree, namely, M.Sc. from Vidyasagar University sometime in 2014. The petitioner was then recommended for mutual transfer on 14th September, 2012 by the School

Service Commission, Government of West Bengal, to the school where the petitioner is presently working. The Managing Committee of the present school recommended the petitioner's name for getting the higher scale of pay pursuant to his improved qualification. The said resolution was forwarded to the Additional District Inspector of Schools (SE), Jhargram, Paschim Medinipur, on 2nd February, 2016. Since no steps were taken by the D.I. or the A.D.I., the petitioner filed a writ petition being W.P.29265(W) of 2017 which was disposed of on 9th January, 2018 directing the concerned respondents to consider the petitioner's claim for grant of post graduate scale of pay. The impugned order was passed pursuant to such direction.

Learned Counsel for the petitioner relies on W.P. 23786 (W) of 2017 [Bhaskar Sen Vs. The State of West Bengal & Ors.] by which a learned Single Judge of this Court relying on the provisions of the West Bengal School (Control of Expenditure) Act, 2005 held that the petitioner in the facts of that case was entitled to higher scale of pay without obtaining prior permission. Counsel submits that the impugned Office Memorandum should be set aside on the ground that the District Inspector of Schools rejected the claim of the petitioner on the basis of the petitioner not being able to produce the prior permission from the concerned authorities.

Learned Counsel for the State relies on a decision of a Co-ordinate Bench of this Court in W.P.2569 (W) of 2011[Soumendra Nath Mirdha Vs. State of West Bengal & Ors.] in which after considering the Government Order No.593-SE(B) dated 27th November, 2007, a learned Single Judge held that if a teacher seeks to improve his qualification with an intimation to get higher scale of pay or additional increments, such teacher is required to get the prior permission from the concerned District Inspector of Schools as provided in paragraph 3 of the abovementioned Government Order. Counsel submits that the impugned memorandum was also passed since the petitioner could not produce his certificate of the M.Sc. degree in Physics on the date of hearing before the concerned District Inspector and further that the writ petition also does not enclose the said certificate.

It is evident from the materials on record that the recommendation of the petitioner for improving his qualification was first sent by the concerned school to the District Inspector on 15th May, 2012 followed by a reminder to the Additional District Inspector on 23rd May, 2012. On being transferred to the present school, the recommendation taken by the Managing Committee of the second school was also sent to the Additional District Inspector on 20th February, 2016. Therefore, despite the three intimations from 2012 onwards, the District Inspector/ Additional District Inspector failed to respond to the recommendations/ intimations sent by the concerned schools.

As has been held by a Division Bench of this Court in Akhtar Hossain Chowdhury Vs. State of West Bengal reported in 2013(2) CHN (CAL) 632, silence on the part of the concerned authorities can be taken to be an affirmation for granting

permission to undertake a higher degree. This decision was also referred to by learned Counsel for the State in the present proceeding.

Further, Counsel appearing for the petitioner produced the M.Sc. certificate in Court today and submitted that the said certificate was not available to the petitioner on the date of hearing before the District Inspector of Schools, which was on 22nd February, 2018. It appears from the impugned decision that the primary reason for refusing the prayer of the petitioner, was that the petitioner could not produce his certificate before the District Inspector and that the petitioner had given a written declaration on 26th February, 2018 that he would submit the certificate when it is made available to him from the concerned university. The decision in W.P.2569(W) of 2011 did not take into consideration the effect of repeated intimations being given to the concerned authorities and their concrete silence and inaction in the matter. In that case, the Court found that the concerned D.I. had not given permission to the petitioner to appear in the M.Sc. Examination.

In the facts of this case, both the D.I. as well as the A.D.I. have repeatedly failed to respond to the intimations sent by both the schools. Such inaction cannot prejudice the petitioner after seven years. This Court accordingly deems it fit to direct the concerned D.I. to consider the matter afresh upon the certificate being produced before the D.I. and to pass a reasoned order on the same. Upon considering the certificate, the D.I. is directed to grant a higher scale of pay to the petitioner from the day following the last day of examination taken by the petitioner, subject to the D.I. being satisfied on the question of the petitioner acquiring a higher scale of pay as certified by the concerned authority which was produced in Court today.

The petitioner will have to produce the original certificate before the D.I. The D.I. is accordingly directed to pass a reasoned order upon hearing all the concerned parties within a period of three weeks from the date of communication of this order.

The impugned order dated 23rd April, 2018 is set aside. W.P.10824(W) of 2019 is disposed of in terms of the above.