

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3040-3041/2017

SHOHIDULLAH

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

WITH

C.A. No. 3042-3043/2017 (XVI)

C.A. No. 3044/2017 (XVI)

C.A. No. 3278/2017 (XVI)

(IA No. 115708/2017 - VACATING STAY)

Date : 25-07-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s)

Mr. Rauf Rahim, AOR
Ms. Manisha Pandey, Adv.

Ms. Madhumita Bhattacharjee, AOR

For Respondent(s)

Mr. S.K. Sinha, AOR
Mr. Somnath Mukherjee, AOR

Ms. Shalini Kaul, Adv.
Mr. Amit Pawan, AOR
Mr. Abhishek Amritanshu, Adv.
Mr. Anand Nandan, Adv.
Mr. Akshat Srivastava, Adv.
Mr. Hassan Zubair Waris, Adv.
Mr. Rohit Rajershi, Adv.
Ms. Shivangi, Adv.

Mr. Rakesh Dwivedi, Sr. Adv.
Ms. Madhumita Bhattacharjee, AOR

Manita Verma, Adv.
Mr. Devashish Bharuka, AOR

Mr. Pijush K. Roy, Adv.
Mrs. Kakali Roy, Adv.
Mr. Mithilesh Kumar Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Mr. Rakesh Dwivedi, learned senior counsel appearing for the State of West Bengal submits that the subject matter of these appeals is pending consideration in other cases before the Full Bench of the Calcutta High Court. An order of reference dated 22.08.2008 in which the following questions were formulated is placed before us:

“(a) Whether, in view of the fact that acquisition of higher qualification or qualifications during the service career of an individual is his right and the same acts as an incentive to career advancement as well as acquiring a higher status of academic brilliance, can such a person be forced to stagnate on lower status perennially and forced to continue to work on a lower scale of pay which is not commensurate to the high qualification(s) acquired subsequent to his appoint?

(b) Whether, in view of Question No.(a) above, should it not be held that the ratio decided in Tarak Chandra Roy's case supra, read with the provisions of Section 14 and 20 of "The West Bengal School (control of Expenditure) Act, 2005", amount to creating an unreasonable embargo upon an individual's freedom and right to acquire higher educational qualification(s) and therefore, runs counter to the provisions of Article 14 of the Constitution of India?

(c) If the answer to Questions No. (a) is in the negative and to 'Question No.(b) in the affirmative, then should it not be held that the provisions of section 14 and 20 of "The West Bengal School (control of Expenditure) Act, 2005", are ultra vires the relevant provision of the constitution of India referred to above?

(d) Whether, in view of the aforesaid, should it not be held that the ratio decided in Tarak Chandra Roy's case supra, holding that "the Pedititioner having been appointed in the pass category clearly therefor, cannot get the benefit of his post graduate qualifiction" is not the proper proposition and that the correct proposition is the one that has been decided in Sauvik Ghosh's case supra, holding, inter alia in Para 35 therein that "If,..... the Government Order dated 13th July, 1999 were to mean initial fixation would be on the basis of the educational qualifications mentioned in the recommendation of the school "Service commission, and a teacher appointed on the recommendation of school Service commission would be bound by the qualification as mentioned in the recommendation for all time to come and even an enhancement of qualification the teacher would not be entitled to the higher scale of pay.... only because the School Service Commission had mentioned a different qualification in its initial recommendation, the Government Order would have to be struck down as totally arbitrary, discriminatory and violative of Article 14....?"

As the writ petitions were filed in the year 2008 and pertain to higher scales for higher qualifications to be paid to the respondents, we request the High Court to expedite the hearing of the matters before the Full Bench.

List these appeals after three months.

(GEETA AHUJA)
COURT MASTER (SH)

(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER