
(2013) 06 CAL CK 0026
In the Calcutta High Court
Case No : Writ Petition No. 13943 (W) of 2009

Arunava Konar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 06 CAL CK 0026

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Ekramul Bari and Ms. Taniya Basak, for the Appellant; Narayan Ghosh Dastidar, for the Respondent

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—By the present writ petition the petitioner has inter alia prayed for a writ in the nature of Mandamus commanding the respondents to cancel a memo dated June 9, 2009 which has been annexed to the writ petition as Annexure P-3 and for a direction upon the respondent no. 3 to grant post-graduate pay scale to the petitioner in terms of the post-graduate qualification in the subject relevant to his teaching and group and for other reliefs. The case of the petitioner inter alia is this that he joined Selimabad High School within the district of Burdwan as an Assistant Teacher of Physical Education with effect from March 21, 2001. This appointment was also approved by the respondent no. 3.

2. The petitioner states that at the time of making the application before the School Service Commission he already obtained an M.P.Ed. degree in the year 1997. In the application form he mentioned only up to the bachelor level degree as his qualification as there was no column for mentioning the M.P.Ed. degree.

3. After joining the school he made representation to the appropriate authorities for grant of higher scale of pay and the school authorities in turn had forwarded the papers to the respondent no. 3. The petitioner has referred to various

Government Orders and submits that in spite of making repeated representations the respondents did not grant higher scale of pay and kept the prayer of the petitioner in abeyance for an indefinite period.

4. The petitioner had earlier filed a writ petition which was disposed of by this court with a direction upon the respondent no. 3 to consider the case of the petitioner and in terms of the said order the respondent no. 3 under the impugned memo communicated his decision rejecting the case of the petitioner. The petitioner has assailed the decision of the respondent authorities on various grounds and has prayed for the reliefs as mentioned before. It may be mentioned that in spite of being given an opportunity to file affidavit the respondents have not filed any affidavit-in-opposition. Therefore, the writ petition was taken up for hearing on the basis of the pleadings in the petition.

5. It appears from the order impugned that the authorities had rejected the petitioner's claim for higher scale of pay on twofold grounds. The District Inspector of Schools, Secondary Education, Burdwan, i.e., the respondent no. 3 herein had recorded the career of the petitioner and thereafter observed that the post of Physical Education teacher was meant for pass-graduate holders only. So the petitioner had been enjoying the post-graduate scale of pay as per the rules and in conformity with the selection for appointment as an Assistant Teacher in Physical Education. The respondent no. 3 has mentioned a Government Order of 1999 which clearly states that if such a teacher is appointed through West Bengal School Service Commission his pay will be fixed in the scale of pay as per his qualification mentioned by the School Service Commission. It has also been mentioned that the West Bengal Schools (Control and Expenditure) Act, 2005, (for short, the Act) has been in force from August 19, 2005 and as per the said Act every teacher of the school shall if appointed in the post of a graduate-teacher category be entitled to draw pay in the scale of pay in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than the qualification specified for such post.

6. According to the said respondent since the petitioner was recommended by the School Service Commission with the graduate qualification with B.P.Ed. against prior permission for the post of Assistant Teacher of Physical Education (pass-graduate with B.P.Ed.) the claim of the petitioner for higher scale of pay for his M.P.Ed. cannot be entertained. Thus the petitioner's prayer was turned down.

7. Mr. Bari, the learned advocate for the petitioner has assailed this order issued by the respondent no. 3 and referred to the judgment in the case of Partha Chatterjee Vs. State of West Bengal and Others, . The facts of that case have strong similarity with the facts of the present case. A learned single judge of this court had held:

23. In the circumstances, the question which arises for determination in this Court is whether two sets of teachers, possessing the same educational

qualifications and performing the same work and hence similarly circumstanced whether working in the same school or different Government aided schools, can be treated differently in the matter of fixation of salary only because the minimum requisite educational qualification fixed by the District Inspector for the post in question is lower.

24. Fixation of different scales of pay for teachers of the same or different aided schools, with the same qualifications, who perform the same duties and functions and are hence equally circumstanced violates principles of equal work for equal pay and offends Article 14 of the Constitution of India, more so in the absence of specific rules prescribing the requisite educational qualifications for teachers of different classes.

.....
.....
.....

28. The petitioner who possesses the post graduate degree in Physical Education being his relevant teaching subject at the time of appointment would be entitled to the scale pertaining to his post graduate qualification irrespective of the qualification mentioned by the School Service Commission and irrespective of the minimum requisite qualification for the post.

8. I am in respectful agreement with views expressed by the learned single judge. So, the rejection of the petitioner's claim on this ground cannot be sustained.

9. The next ground for rejecting the petitioner's claim for higher scale of pay has been that the said Act admittedly came into being in the year 2005. But the petitioner was appointed in the year 2001 when the Act had no existence whatsoever. It is now a known principle of statutory construction that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation. The said Act thus also has no retrospective effect.

10. The writ petition is allowed. The petitioner is entitled to the grant of the benefit of scale of pay from the date of his initial appointment.

11. The respondents are directed to release the arrear salary to the petitioner in terms of the higher scale of pay for holding the post-graduate degree within eight weeks from the date of the communication of the order.

12. There shall be, however, no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.