
(2014) 01 CAL CK 0084
In the Calcutta High Court
Case No : W.P. No. 2955 (W) of 2013

Ashim Kumar Khan

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 2 CALLT 66 : (2014) 3 CHN 163

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Biswarup Biswas, Advocate for the Appellant

Final Decision : Allowed

Judgement

Debasish Kar Gupta, J.—None appears on behalf of the State Respondents on January 15, 2014. The hearing of this was adjourned to give the above respondents one more chance. The above order was communicated to the learned Advocate appearing on behalf of the State-Respondents. None appears on behalf of the State respondents when the matter, is called on today. Let the affidavit of service be kept on record. The writ application is filed by the petitioner assailing an order passed by the respondent No. 3 under is memo No. 18/3(iii) 6 dated January 16, 2013. By virtue of the impugned order the prayer of the petitioner for extending the benefit of post graduate scale of pay in connection with his service as an Assistant Teacher of Sedikhan's Dearh Vidyaniketan, District-Murshidabad in Language (Bengali) was rejected.

2. Having heard the learned counsel appearing for the petitioner as also after considering the impugned order I find that the above claim of the petitioner was rejected on the following grounds:

(i) The staff pattern of the school concerned did not permit granting of the above benefit to the petitioner;

(ii) The State Government divided the teaching post into two categories, i.e.

graduate category and honours/post graduate category. Since the petitioner was appointed in pass category there is no scope for extending the benefit of post graduate scale of pay in his favour;

(iii) The petitioner was not entitled to get post graduate scale of pay in view of the West Bengal Schools (Control of Expenditure) Act, 2005.

(iv) The petitioner did not obtain prior permission for appearing in the M.A. Examination;

3. The point of law regarding staff pattern has already been decided in the matter of Raghunath Mondal Vs. State of W. Ben., and the relevant portions of the above decision are quoted below:

The provisions, of the clause 2 of the departmental circular No. 670SE(S)/1M 14/98 dated September 4, 1998 (hereinafter referred to as "ROPA, 1998") are also quoted below-

2. For High School/High Madrasah/Higher Secondary (Normal Section):

(a) Language group-For posts (Two pass degree & two Hons./Master degree)

(b) Science & Mathematics - Three posts (one pass degree & two Hons./Master degree.)

(c) Social Science - Two posts (one pass degree & one Hons./Master degree.)

(d) Work Education, Physical and Social Service - Two posts. They must be having qualifications as mentioned in the procedure 14 SE(S) dt. 8.1.98.

(e) Headmaster/Headmistress - One. He/She must be having qualifications as mentioned in the procedure 14 SE(S) dt. 8.1.98.

After perusing the aforesaid provisions of the said ROPA, 1998, I find that the same entitles the petitioner who was appointed with higher qualification to enjoy the benefit of the post graduate scale of pay with effect from January, 1996 or the date of improving the qualification, whichever was earlier. With regard to the provisions of Clause 2 of departmental circulars No. 670 SE(S)/1M 14/98 dated September 4, 1998, I find that the same was in operation in a different field which prescribed the staff strength in a particular group of teaching having no nexus with the scale of pay of the assistant teachers of that school. After further scrutiny of the above departmental circular I find that the two groups of assistant teachers namely, for Pass Degree and Honours/Master degree were prescribed in the departmental circular. The petitioners belonged to the group of Honours/Master degree. Therefore, the claim for granting postgraduate scale of pay in accordance with provisions of said ROPA, 1998 cannot be rejected taking recourse to the departmental circular under reference.

That apart it is the settled principle of law that when a departmental circular is competed with statutory rules, the rule should prevail. Reference may be made to the decision of C.L. Verma Vs. State of M.P. and another, . Paragraph 6 of the

aforsaid judgment is quoted below:

6. The question which arose for consideration in the writ petition before the High Court at the instance of the appellant was whether in the face of the mandate in Rule 29 the administrative order could operate. It is not the stand of the State Government that the order dated May 15, 1981, is one under the proviso to Rule 29. In fact, the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employees. An administrative instruction cannot compete with statutory rule and if there be contrary provisions in the rule the administrative instructions must give way and the rule shall prevail. We are, therefore, of the view that the appellant, in terms of Rule 29, ceased to be a Government employee on his attaining the age of 58 years, two days prior to the order of dismissal. In view of the fact that he had already superannuated, government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The ratio of the decision in *R.T. Rangachari v. Secretary of State for India in Council* supports the position.

4. With regard to the scope of extending the benefit of post graduate scale of pay in favour of an Assistant Teacher who has appointed under graduate category has been decided in the matter of *Partha Chatterjee Vs. State of West Bengal and Others*, and the relevant portions of the above decision are set out below:

(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.

(25) IN this context, it may be relevant to record, as pointed out by learned Counsel appearing on behalf of the petitioner, the prescribed minimum requisite qualification for the post of Assistant Teacher of Physical Education is a Bachelor of Physical Education.

(26) ACCORDINGLY, the Government Order dated 22nd November, 1993 was issued clarifying that Physical Education teachers with Masters degree in Physical Education from recognized Universities would be entitled to get higher scale of pay notwithstanding the fact that post graduate degree in physical education was not necessary for appointment as Assistant Teacher of Physical Education.

(27) THE Government Order dated 22nd November, 1993 is a specific order which pertains to Assistant Teachers of Physical Education. It I(Sic. is) doubtful whether the Circular dated 13th July, 1999 which is a general circular can supersede a specific Circular with regard to Assistant Teachers of Physical education which has not till date been withdrawn, rescinded, cancelled or superseded. On the other hand, the said Government order has been clarified by an Order No. 417 SE (S)/5p 33/98 dated Calcutta 8th March, 2000 the relevant portion whereof is extracted hereinbelow. "2. Now in clarification of Para. 3 of Government Order No. 759 edn. (S) dated 22.11.93 the undersigned is directed to say that the benefit of higher scale of pay is admissible to those Physical Education teachers only who have obtained such degree on completion of two years regular course from the recognised University. This order will take effect from the date of issue of this clarification.

5. Question of obtaining prior permission for enrolment for pursuing post graduate study has been dealt with in the matter of *Sutapa Kundu v. State of West Bengal & Ors.* (In Re: FMA 2199 of 2013 with CAN 10370 of 2012) and the relevant portions of the above decision are quoted below:

Nothing has been produced before us to show that the writ petitioner was required to take prior permission from the Board for prosecuting her studies in master degree course through correspondence course and as such notwithstanding no permission was granted by the Board, her entitlement to get higher scale of pay for her enhanced educational qualification cannot be denied in view of the Government Circular dated 3rd June, 2002 as mentioned above.

Before concluding, we also want to record here that since the petitioner prosecuted her study through correspondence course even she was not required to take any permission for study leave from the Board.

As such, we hold that the learned Single Judge of this Court was not justified in rejecting the petitioner's said writ petition.

The concerned authority is thus directed to grant higher scale of pay to the writ petitioner for her enhanced qualification if it is found that she acquired such qualification in the relevant subject, with effect from the date following the last date of M.A. Part II Examination in which she appeared. Such exercise including grant of financial benefit and the arrears thereof should be extended to the petitioner positively within a period of eight weeks from the date of communication of this order.

6. So far as the applicability of the West Bengal Schools (Control of Expenditure) Act, 2005 is concerned, the same has no manner of application in this case. In view of the fact that the petitioner obtained MA Degree in Bengali in the year 2004, the last date of examination being September 18, 2004 which was prior to the above enactment. Needless to point out that the provisions of the above act has no retrospective effect.

7. In view of the discussions and observations mentioned hereinabove none of the grounds reflected in the impugned order is sustainable in law. Therefore, the impugned order is quashed and set aside.

8. The, respondent No. 3 is directed to extend the benefit of post graduate scale of pay to the petitioner in connection with his service under reference with effect from the date following the last date of his M.A. Part II examination after taking necessary steps to reification and to release his remuneration including arrears within two months from the date of communication of this order.

The writ petition, is, thus, disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis.