

(2014) 12 CAL CK 0109
In the Calcutta High Court

Case No : W.P. 11809(W) of 2013 and C.A.N. 9516 of 2013

Aswini Kumar Sahoo

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2015) 2 WBLR 910

Hon'ble Judges : Sahidullah Munshi, J

Bench : Single Bench

Advocate : Balai Lal Sahoo and Sankha Prasad Roy, Advocate for the Appellant;
Sanat Kumar Biswas and Rajib Kumar Acharyya, Advocate for the Respondent

Judgement

Sahidullah Munshi, J.—This writ petition has been filed challenging an order dated 5th February, 2013 passed by the Chairman, Purba Medinipur District Primary School Council whereby the respondent No. 4, the said Chairman of Purba Medinipur District Primary School Council denied the petitioner from availing the benefit of pay fixation at a higher scale having regard to his completion of primary teachers' training course and that he was appointed as a Headmaster of the school.

2. In short, the petitioner's case is that he was appointed as an Assistant Teacher in Basudevberia Dakshin Palli Primary School and an appointment letter to that effect was issued under memo No. 7138(4) dated 14th November, 1986 whereby the petitioner was appointed as an Assistant Teacher in the scale of Rs. 280/- to Rs. 617/- plus usual allowances as admissible under the rules with effect from the date on which he joined the post. The petitioner was subsequently sent for completion of Primary Teachers' Training course and he completed the Primary Teachers' Training examination, 2005 in the month of June 2005 from a Government recognized Institution. After completion of the said training, while the petitioner is rendering his service as a trained candidate, he was favoured with an appointment letter under memo No. 2318/4/ES dated 17th December, 2007 issued by the Chairman, Purba Medinipur District Primary

School Council, as Headmaster of the said school and after receipt of the said appointment letter on 24th December, 2007, the petitioner assumed charge as Headmaster of the said school. It is the case of the petitioner that although, he has been discharging his function as Headmaster of the school and that he has passed Primary Teachers' Training examination, he has not been favoured with higher scale of pay as he is entitled to under different circulars.

3. Inasmuch as the respondent authorities did not favour the petitioner with higher scale of pay as he is entitled to, he filed a writ petition before this Hon'ble Court for a direction upon the concerned authorities to grant him higher scale of pay according to his entitlement and this Hon'ble Court passed an order on 24th September, 2012 in W.P.1679(W) of 2012, directing the Chairman of the concerned Primary School Council to forthwith and in any case within two weeks from the date of communication of the said order to take a decision on the prayer of the petitioner for higher scale of pay. It was observed that if the petitioner obtained Teachers' Training Course certificate from a recognized Institution, the pay of the petitioner should be re-fixed with effect from the date of publication of the teachers' training course results. This Hon'ble Court also directed for payment of all arrear dues payable to the petitioner within a specified period of time and after communication of the said order. The petitioner submits that the said order was duly communicated to the Chairman, Purba Medinipur District Primary School Council and in compliance with the said order the respondent No. 4 afforded an opportunity of hearing to the petitioner and after hearing was completed he has passed an order which was communicated to the petitioner under memo No. 3174/5/C-S dated 5th February, 2013. The said order dated 5th February, 2013 has been impugned in this writ petition and from the said order it does not appear that the respondent No. 4 has passed his order in consonance with the order passed by this Court rather he has avoided the issue and denied the petitioner from the higher scale of pay. The petitioner has also placed reliance on a circular being No. 4649(40)-SC/PII dated 21st August, 1969. On the subject, "eligibility for enjoying the higher scale of pay on passing the junior/senior and Post-Graduate basic training examination" the circular says that in respect of teacher in-service, the benefit of trained teachers' pay may be allowed after the publication of results. Such benefit would be given effect from the date of joining the respective posts on completion of the junior and senior or Post Graduate basic training examination as a regular or casual trainee. In the present case, the petitioner was a teacher in-service and he completed the training course in June 2005 and he continued to serve the school as a trained teacher on and from the month of June 2005 and subsequently, he continued to work as Headmaster since 24th December, 2007. He made an application on 23rd June 2010 addressing it to the respondent No. 4, on the basis of which the impugned order was passed.

4. In the facts and circumstances of the case, it is apparent that the writ petitioner's submission with regard to his entitlement of revised scale of pay is quite justified and by not re-fixing the petitioner's scale of pay the respondent

No. 4 has committed illegality which renders the impugned order to be not sustainable in law. The justification made by the respondent No. 4 that since after completion of 18 years the writ petitioner is enjoying higher scale of pay he is not entitled to further revision of scale of pay, is unjustified. The petitioner, because of his completion of teachers' training course, is entitled to a separate benefit irrespective of the scale of pay fixed for his completion of 18 years' of service as indicated in the impugned order.

5. I, therefore, set aside the order impugned for two reasons, namely,

i) The respondent No. 4 has failed to act in terms of the order dated 24th September, 2012 passed by this Hon'ble Court in W.P.1674(W) of 2012.

ii) The impugned order contains some reasons but the reasons are not sufficient and based on law of reasonableness.

6. I also direct the said respondent No. 4 to decide the issue of re-fixation of higher scale of pay of the writ petitioner because he has completed his basic training in June 2005 and that he was appointed as Headmaster in the year 2007 irrespective of any higher scale of pay made available to him on his completion of 18 years of service. The said consideration has to be made by the respondent No. 4 taking into consideration of necessary circulars available on the field and the pay fixation rules within a period of 12 weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner and such other persons who may found interested. The respondent No. 4 shall also pass a reasoned order and communicate the same to the petitioner.

7. In view of the disposal of the writ petition itself C.A.N. 9516 of 2013 stands disposed of.

8. Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned counsel for the parties, upon compliance of all usual formalities.