
(2015) 05 CAL CK 0068
In the Calcutta High Court
Case No : Writ Petition 7657 (W) of 2014

Azad Ali

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 05 CAL CK 0068

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Biswaroop Bhattacharya and Golam Mohiuddin, Learned Advocates, for the Appellant

Final Decision : Disposed off

Judgement

Samapti Chatterjee, J.

1. Affidavit of service filed on behalf of the petitioner be kept on record.
2. The petitioner joined on 25th October, 2008 as Assistant Teacher in Arabic/Theology group in Chandua Damipur High Madrasah, Dist-Malda. His service was approved on 17th December, 2008. The petitioner acquired Mumtazul Muhaddethin degree from the West Bengal Board of Madrasah Education in the year 2005. On the basis of the notification dated 30th January, 2009 passed by the Joint Secretary, Government of West Bengal Minority Affairs and Madrasah Education Department the Scale of Pay for teacher holding qualification of Fazil and MM was upgraded to the scale of Rs. 6000-227=7800-250-9800-275-12000+ with effect from 1st February, 2009. It was also mentioned in the said circular under serial No. "e" that the persons who have acquired MM degree after 1995 onwards, they will come under the purview of this notification to enjoy the scale with effect from 1st February, 2009. The said notification dated 30th January, 2009 is quoted below:

"WHEREAS an expert Committee was constituted by the Govt. vide notification

No. 25-MD dated 8.1.2008 the equivalence of Kamil and MM concerned studies related issue in connection with Senior Madrasah.

AND WHEREAS the committee after detailed deliberates have furnished recommendations and the Govt. have accepted the same.

The scale of pay for teachers holding qualification of Fazil, Kamil and MM will be as follows w.e.f. 1.2.2009.

This has the concurrence of Finance Deptt. Vide U.O. No. 1879 Group P (Pay) dated 29.1.09.

By order of the Governor Sd/- Joint Secretary Date : 30.1.2009"

Though the petitioner acquired MM degree in the year 2005, in spite of that fact petitioner was placed in scale of Rs. 3800/-7775/- instead of Rs. 6000/- Rs. 12,000/- even after 1st January, 2009, therefore by virtue of this notification dated 30th January, 2009 the petitioner was very much entitled to enjoy the scale as prescribed under the said notification with effect from 1st February, 2009.

Therefore, the petitioner made vernal representations to the concerned authority. Since the said authority was sitting tight over the petitioner's prayer, therefore, the petitioner was compelled to file the present writ petition before this Hon"ble Court to ventilate his grievance for getting higher scale of pay as recommended by the notification dated 30th January, 2009.

3. Mr. Biswaroop Bhattacharya, Learned Advocate appearing for the petitioner, submitted that once by the order of the Governor the qualification MM with Kamil degree has been declared as equivalent to the post graduate degree for getting the benefit of post graduate scale, the petitioner is legally entitled to get the post graduate scale i.e. Rs. 6000/- Rs. 12,000/- with effect from 01.01.2009, but in the present case the petitioner has been purportedly denied of such financial benefit as admissible under the law.

4. Mr. Bhattacharya further submitted that the similarly situated teachers are permitted to enjoy the post graduate scale, who were also appointed by the School Service Commission having qualification MM with Kamil degree but the District Inspector of Schools (SE) concerned ignoring the said Government orders purportedly withheld the post graduate scale of the petitioner w.e.f. 01.01.2009 thereby depriving the petitioner to get admissible scale of pay taking away the valuable right of the petitioner, this kind interference of this Hon"ble Court is highly warranted under Article 226 of the Constitution of India.

5. Mr. Bhattacharya also submitted that once it has been decided by the Government to provide post graduate scale w.e.f. 01.01.2009 to the teachers appointed in Senior Madrasah having qualification MM with Kamil degree, there is no scope to withheld such post graduate scale tot he petitioner being the Assistant Teacher of the concerned Senior Madrasah appointed with the

qualification MM with Kamil degree, this purported act on the part of the respondent authorities particularly the concerned District Inspector of Schools (SE) is totally illegal, arbitrary and malafide.

6. Mr. Bhattacharya further contended that other candidates who have been possessing MM degree on and from 1995 have been allowed to enjoy higher pay scale i.e. Rs. 6000-12000/- with effect from 1st February, 2009 barring the petitioner.

7. Despite direction for filing of affidavit-in-opposition, no affidavit has been filed.

8. Having heard the submissions advanced by the learned Advocate appearing for the respective parties and after meticulously perusing the records, I am of the view that the notification dated 30th January, 2009 where it is specifically stated that the persons who are possessing MM degree with effect from 1995 onwards are very much entitled to enjoy the higher scale of pay of Rs. 6000-12000/- with effect from 1st February, 2009 .

9. I also cannot ignore the submission advanced by Mr. Bhattacharya that in the advertisement no entry qualification was mentioned for the post of Assistant Teacher in respect of the Madrasah concerned. Therefore, I find some substance in the argument of Mr. Bhattacharya that other candidates who have acquired MM qualification on and from 1995 onwards have been allowed to enjoy the higher pay scale i.e. Rs. 6000-12000/- pursuant to the notification dated 30th January, 2009.

10. In my opinion justice would be sub-served if the Director of Madrasah, West Bengal is directed to consider the petitioner's representation in the light of the observation, as indicated above and in accordance with law, after giving an opportunity of hearing to the petitioner within a period of eight weeks from the date of communication of this order and the decision of the hearing would be communicated upon the petitioner within two weeks thereafter.

11. With this direction and observation the writ petitioner is disposed of.

12. There will be no order as to costs.

13. Urgent certified xerox copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.