
(2008) 03 CAL CK 0057
In the Calcutta High Court
Case No : F.M.A. No. 557 of 2007

Baishali Banerjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

West Bengal Schools (Control of Expenditure) Act, 2005 — Section 14, 16, 20

Citation : (2008) 2 CALLT 590

Hon'ble Judges : Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Saikat Banerjee, Sk Kamaluddin, for the Appellant; Bhudeb Bhattacharyya, Monotosh Chakraborty and Arati Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—The appellant was a post graduate degree holder in Physical Education. She was selected for the post of Physical Education through the regular recruitment process conducted by the School Service Commission. At that stage her post graduate result was yet to be published. She was recommended to Sinthi Ramkrishna Sangha Vidyamandir (Girls) as a Physical Education teacher as a pass graduate. After declaration of her result she applied for higher pay scale which was denied by the State. She approached the learned single Judge. Learned single Judge by judgment and order dated April 10, 2006 dismissed the writ application after observing that in view of the provisions of Sections 14, 16 and 20 of the West Bengal Schools (Control of Expenditure) Act 2005 she was not entitled to higher scale. Hence this appeal.

2. Identical question was gone into by Indira Banerjee, J. in the case of Bhaskar Chakraborty v. State of West Bengal and Ors. W.P. 2326(w) of 2002, His Lordship vide judgment and order dated September 22, 2004 allowed the writ petition and directed extension of the post graduate scale to the writ petitioner therein who was identically circumstanced with the present appellant. A belated appeal was filed along with an application for condonation of delay which was dismissed by

the Division Bench vide judgment and order dated December 12, 2006 in MAT 2096/2006. We are told, State accepted the said order and extended benefit to the writ petitioner therein. Learned Counsel, appearing for the appellant, submits that citing the said decision in the case of Bhaskar Chakraborty (supra) several orders were passed where State Government extended the benefit.

3. Mr. Saikat Banerjee, learned Counsel, appearing for the School Service Commission contends that the teachers appointed through School Service Commission are entitled to pay as per their qualification recorded by the School Service Commission and mentioned in the respective letters of recommendation. In the instant case, the appellant was a pass graduate. Accordingly, she was recommended. Her subsequent acquisition of post graduate degree is of no consequence as her claim for higher pay is hit by Section 14 of the said Act of 2005.

4. Mr. Bhudeb Bhattacharyya, learned Counsel, appearing for the State, while adopting the submission of Mr. Saikat Banerjee, contends that when the appellant was appointed in pass category she was not entitled to higher pay scale for post graduate qualification as that was not mentioned by the School Service Commission while making recommendation for her appointment.

5. We have carefully perused the pleadings and judgment and order of the learned single Judge. We have also perused the single bench decision in the case of Bhaskar Chakraborty (supra). Mr. Banerjee has also relied upon a decision of this bench in the case of State of West Bengal and Ors. v. Shyamsundar Mohanta FMA 584/2006, delivered on November 16/22, 2007.

6. Prior to 1996 the State from time to time extended the benefit of higher pay scale to the teachers who acquired post graduate qualification in course of service. Initially such extension was restricted to subject relevant to his/her teaching. The said rule was relaxed and the post graduate degree holders, being pre-1996 appointees were all extended post graduate scale. Such benefit was given by the State probably to encourage the teaching staff to improve their qualification for the welfare of the student. Our attention has not been drawn to any other reason for extension of such benefit by the State counsel. If that be the position there could not be any distinction between Pre 1996 appointees and Post 1996 appointees.

7. The issue was discussed by us in detail in the case of Shyamsundar Mohanta (supra). There we held that a candidate while applying before the School Service Commission concealed his higher qualification and opted to be selected in pass category was not entitled to higher pay. However, in view of the 2002 circular if someone opts in honours category and subsequently acquires post graduate qualification he would be entitled to the benefit of higher scale.

8. The case in hand is, however, having a salient feature. The appellant is a Physical Education teacher. There is no honours course taught by any of the Universities in the State. Hence there could be no such category in the School

Service Commission in the concerned subject. We also do not find any such distinction being made in Physical Education by the School Service Commission. Hence all candidates who are having appropriate qualification in Physical Education are considered in one category i.e. pass category. If that be the position their subsequent acquisition of post graduate qualification cannot be equated with any other subject.

9. In the instant case the appellant undertook post graduate study. She appeared in the post graduate examination. Before the result could be published she was selected and appointed in the post. In the case of Bhaskar Chakraborty (supra) the identical situation happened. Hence in our view, the appellant was entitled to the benefit of the higher pay scale.

10. Let us now examine the said Act of 2005 to find out whether there is any hindrance in the way of extending higher pay scale to the appellant. Appellant was appointed in 2001. She acquired post graduate qualification in 2001. Hence she was to be considered contemporarily. Her case was unnecessarily kept pending. Her prayer could not be considered to her disadvantage under the provisions of the said Act of 2005 in this regard. Learned Counsel appearing for the appellant has successfully drawn our attention to Section 16 wherein it is provided that notwithstanding anything contained in the said Act, the terms and conditions of service of a teacher shall not be varied to his or her disadvantage in the view of the commencement of the said Act.

11. In Circular dated June 03, 2002 the State considered the cases of the candidates who were undergoing post graduate studies or had appeared at the post graduate examination but result was yet to be published. Those candidates, if selected, in honours category were extended post graduate scale after acquiring post graduate qualification. Since in Physical Education there is no such distinction between pass category and honours category the benefit of the circular dated June 03, 2602 should be extended to the Physical Education teachers being similarly circumstanced with Bhaskar Chakraborty (supra) and the present appellant.

12. The appeal thus succeeds and is allowed.

13. The order under appeal is set aside.

14. The State is directed to consider the prayer for extension of the higher pay scale in the light of the observations made herein.

15. The entire process must be completed and communication must be -made within a period of four weeks from the date of communication of this order.

16. The appeal is disposed of accordingly without any order as to costs.

17. Urgent Xerox certified copy of this order, if applied for, be given to the parties.

Tapas Kumar Giri, J.

18. I agree.