

(2013) 07 CAL CK 0087
In the Calcutta High Court
Case No : Writ Petition No. 13738 (W) of 2013

Basistha Muni Ojha

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

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

Citation : (2013) 4 CHN 592 : (2014) 1 WBLR 978

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Tapabrata Chakraborty, Sakti Pada Jana and Ujani Pal, for the Appellant; Kamalesh Bhattacharya and Swapan Kr. Pal, for the Respondent

Judgement

Debasish Kar Gupta, J.—This writ application is directed against an order passed by the respondent No. 3 under his memo No. 98/(4)/Law dated April 18, 2013. By virtue of the impugned order, the respondent No. 3 rejected the claim of benefit of two additional increments in his favour in connection with his services as an assistant teacher of Shree Balkrishna Vithalnath Vidyalaya, District Kolkata on the following grounds: (i) The petitioner did not possess the basic qualification of Honours Degree in regular course.

(ii) Obtaining of post-graduate degree was not required in view of the staff pattern of the school concerned.

(iii) There was no scope of utilization the above academic qualification of the petitioner in the interest of the institution.

(iv) The post graduate degree was obtained by the petitioner without obtaining prior permission from the District. Inspector of Schools concerned.

(v) The provisions of section 14 of the West Bengal Schools (Control of Expenditure) Act, 2005 stands in the way of not extending the above benefit to the petitioner.

The appointment of the petitioner in the post under reference was approved by the respondent No. 3 under his memo No. 535/G dated September 11, 1976. At that point of time, the petitioner was possessing the B.Sc. (Distinction) & B.Ed. degrees. The petitioner obtained degree of Special honours from Calcutta University in the year 1977 and the scale of pay commensurate to his above degree was awarded to him by the respondent No. 3 under his memo No. 78/1 (5)/Law dated May 25, 2009. The petitioner obtained M.Sc. degree in Botany in the year 1980. Subsequently, the petitioner obtained Ph.D degree in Botany from Ranchi University, the date of convocation being January 9, 2002.

2. Having heard the learned Counsel appearing for the respective parties as also after considering the fact and circumstances of this case, I find that awarding of two additional increments to an assistant teacher of a Recognized Non-Government Aided Educational Institution for obtaining Ph.D degree depends upon the Government Order issued under memo No. 37-SE/ES(S)/5P-37-2010 dated January 5, 2012 but the above Government Order has been quashed and set aside partially so far as the cut off date of extending the above benefit is concerned. According to the above Government Order, (as it stands after partial setting aside) an assistant teacher having the basic qualification of honours degree in relevant subject and subsequently improving his qualification by acquiring Ph.D degree is entitled to get the benefit of two additional increments.

3. After perusing the materials on record as observed hereinabove, I find that the petitioner fulfills the above criteria. The ground mentioned in the impugned order for formation of opinion is extraneous consideration in the light of the provisions of the Government Order under reference.

4. It is the settled principles of law that an order is liable to be set aside in course of judicial review when the decision is based on extraneous consideration.

5. Reference may be made to the decision of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, and the relevant portion of the above decision is quoted below:

28. When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the relevance of the factors, In the present case, it is, however, not necessary to go into the merits and relevance of the grounds having regard to the view, we propose to take on the point of natural justice.

6. In view of the above settled principles of law, the impugned order is liable to be quashed and set aside and the same is quashed and set aside.

7. I direct the respondent No. 3 to extend the benefit of two additional increments in favour of the petitioner from the date of convocation of Ph.D.

degree concerned within two months from the date of communication of this order provided the petitioner has obtained the above degree from the U.G.C. affiliated University.

8. This writ petition stands disposed of.

9. There will be, however, no order as to costs. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.