

(2019) 11 CAL CK 0112

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5761 (W) Of 2019

Bhairab Sardar

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

West Bengal School (Control Of Expenditure) Act, 2005 — Section 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22
Constitution Of India, 1950 — Article 14

Citation : (2019) 11 CAL CK 0112

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Biswarup Biswas, Sukumar Sarkar, Supriya Chattopadhyay, Sabyasachi Mandal, Saibal Acharyya

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

The petitioner seeks setting aside of an order dated 16th January, 2019 passed by the District Inspector of Schools (S.E.), Kolkata, by which the petitioner's prayer for a higher scale of pay (post-graduate) was rejected.

The reason for rejecting the claim of the petitioner is that the petitioner did not seek prior permission from the District Inspector of Schools through the Managing Committee of the School under the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005 read with G.O. No. 593 -SE (B) dated 27.11.2007.

The case of the petitioner, as submitted by learned counsel, is that the petitioner was recommended as an Assistant Teacher in History in Hons./Post Graduate category to the concerned school after successfully passing the Regional Level Selection Test, 2002. The petitioner's appointment was approved by the District Inspector of Schools recording that the petitioner was qualified in B.A. Hons. in

History as on the date of joining. This is dated 2nd January, 2004. Immediately upon joining the school, the petitioner made an application before the Headmaster for allowing him to sit for the M.A. Part II examination. The petitioner completed M.A. Part I examination on 7th October, 2003 before receiving the recommendation letter. The schedule for the M.A. Part II examination, annexed to the writ petition, shows that the last date of the said examination was on 18th July, 2005, being the date of examination of Paper VIII of the concerned subject. Learned counsel also relies on a letter dated 26th October, 2006, addressed to the Secretary of the concerned school from the Secretary, West Bengal Board of Secondary Education granting approval to the proposal of the Managing Committee for sanctioning study leave on full pay to the petitioner under the relevant Leave Rules. Learned counsel submits that the objection taken by the District Inspector of Schools in the impugned order relying on the 2005 Act or the G.O. dated 27.11.2007 would not apply in the case of the petitioner since the petitioner completed his M.A. Part II examination before the 2005 Act came into force. Learned counsel relies on a decision of a learned Judge dated 23rd June, 2010 passed in W.P.9657 (W) of 2009 (Shivaji Chakraborty -vs- The State of West Bengal & Ors.) where on similar facts, the learned Court held that Section 14 of the Act will not apply in cases where the prayer for grant of higher scale of pay was made on the basis of the candidate completing his Master's degree before the 2005 Act came into force. In the said decision, referring to two dates of notifications, the learned Court held that by a notification dated 6th October, 2005, the Governor had been pleased to appoint 27.12.2005 as the date on which provisions of Sections 2 to 22 of the Act would come into force in the State of West Bengal. Learned counsel submits that the basis of the impugned order, namely that the provisions of the 2005 Act would come into the way of the petitioner for getting Post Graduate scale of pay, cannot be sustained since 2005 Act would not apply to the petitioner's case at all.

Learned counsel for the State relies on an order of the Hon'ble Supreme Court of India passed in Civil Appeal No(s) 3040-3041/2017 (Shohidullah -vs- The State of West Bengal & Ors.), dated 25th July, 2019, where the Hon'ble Supreme Court had set out the questions formulated in an order of reference of this Court and in particular, question (b), which is set out below :-

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.....

(b) Whether, in view of Question No. (a) above, should it not be held that the ratio decided in Tarak Chandra Roy's case supra, read with the provisions of Section 14 and 20 of "The West Bengal School (Control of Expenditure) Act, 2005", amount to creating an unreasonable embargo upon an individual's freedom and right to acquire

higher educational qualification(s) and therefore, runs counter to the provisions of Article 14 of the Constitution of India?"

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....."

By the said order, the Hon'ble Supreme Court had requested the Calcutta High Court to hear the writ petitions filed in 2008 for higher scale of pay in terms of the questions formulated. Learned counsel submits that since the facts of this case falls squarely within question no. (b) as formulated in the order of reference dated 22nd August, 2008 passed by this Court, the present writ petition should also be referred to the Special Bench for hearing such matter. Learned counsel also submits that Section 20 of the 2005 Act has overriding effect on all circulars issued by the State.

Learned counsel for the school submits that the petitioner's case cannot be equated with the decision in Tarak Chandra Roy's case which is part of the questions formulated in the order of reference since in that case the petitioner was concerned with a Post Graduate scale of pay. In the present case, the writ petitioner was recommended to the school on the basis of his Hons. Graduate degree.

I have heard learned counsel for the parties and carefully considered the materials on record.

The facts which are undisputed is that the petitioner was already a Hons. Graduate at the time of his recommendation to the concerned school and had completed Part I of his M.A. examination. The schedule for the Part II of his M.A. examination shows that the last date fixed for such examination was 18th July, 2005. The approval for taking study leave for the examination had also been granted by the Board by way of a letter dated 26th October, 2006 communicated to the Secretary of the concerned school.

The decision in Shivaji Chakraborty applies squarely to the facts of the instant case. As in the petitioner in this case, the petitioner of that case had completed his Master degree in July, 2005. The petitioner in this case also had completed writing the examination on 18th July, 2015. It was specifically held in Shivaji Chakraborty's case that the West Bengal School (Control of Expenditure) Act, 2005, more specifically Sections 2 to 22 of the said Act, came into force on 27th December, 2005.

It is clear from the impugned order that the reason for rejecting the petitioner's application is the 2005 Act and following G.O. of November, 2017. It is also noted that the petitioner appeared for the examination in July, 2005 and the result of his M.A. Part II examination was declared after publication of 2005 Act. This finding is not supported from the documents on record since a certificate from Rabindra Bharati University records that the petitioner appeared for the M.A. Part II (History) examination in the month of July, 2005 and most important, that the date of publication of result is noted as 07.10. 2005. From the notification referred to in Shivaji Chakraborty's case, it appears that Sections 2 to 22 of the 2005 Act came into force on 27.12.2005. Hence, the stand taken on behalf of the

State that the petitioner's application would be subject to Section 14 of the 2005 Act cannot be sustained.

Further, from the questions formulated in the order of reference as set out by the Hon'ble Supreme Court in the order dated 25th July, 2019, including question no. (b), shows that Sections 14 and 20 of the 2005 Act would have to be taken into consideration for deciding the writ petitions filed in 2008 pertaining to higher scale of pay upon qualification acquired by the concerned parties. In the present case since the petitioner completed his M.A. Part II examination on 18.07.2005 and the result of such examination was published on 07.10.2005 before the Act of 2005 came into force on 27.12.2005, the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005, cannot be held to be applicable in the facts of this case.

In view of the above the impugned order dated 16th January, 2019 is set aside.

The District Inspector of Schools (S.E.), Kolkata, will prepare the papers of the petitioner in accordance with the scale of pay which the petitioner is entitled to in the absence of any application of the 2005 Act after fixing the grade pay scale of the petitioner and forwarding the same to the Commissioner of School Education within six weeks from the date of communication of this Order. The concerned school authorities, being the respondent nos. 5 and 6, will forward the requisite papers to the District Inspector of Schools (S.E.), Kolkata, within two weeks from today. The Commissioner of School Education will release the pay of the petitioner as raised by the concerned District Inspector of Schools with effect from 19.07.2005 which is the date following the last date of the M.A. Part II examination. The concerned school authorities will release the pay of the petitioner not later than 07th January, 2020.

The writ petition, being W.P. (W) of 2019, is disposed of in terms of the above.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.