
(2012) 07 CAL CK 0242
In the Calcutta High Court
Case No : Writ Petition No. 4532 (W) of 2012

Chowdhury Moniruzzaman

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

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

Citation : (2012) 5 CHN 598

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Ekramul Bari, Biswarup Biswas and Tanuja Basak, for the Appellant; Kamalendu Ghose and Raja Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The petitioner was appointed as an Assistant Teacher in language group in Khagra Gurudas Tarasundari Institution. His appointment was approved as an Assistant Teacher in the said school with effect from 10th September, 1991. At the time of his appointment, his educational qualification was B.A. (Hons), B.T. The said educational qualification of the petitioner was recorded in the approval letter. Subsequently, he enhanced his qualification by acquiring Master Degree in English. Higher scale of pay admissible to the Assistant Teacher having Master Degree was also granted to him after he acquired Master Degree qualification in the relevant subject. The petitioner, further, enhanced his educational qualification by obtaining Doctoral Degree in English from Rabindra Bharati University in 2009. The Doctoral Degree was conferred upon him in the convocation held on 8th May, 2009. After obtaining the Doctoral Degree in January, he claimed two additional increments as per ROPA, 1998. The petitioner's such prayer for grant of two additional increments having been rejected by the District Inspector of schools (S.E.), Murshidabad on 20th February, 2012; the petitioner has come before this Court with this writ petition praying for quashing of the impugned order passed by the

said District Inspector of schools. Let me now consider as to how far the concerned District Inspector of Schools was justified in passing the impugned order in the facts and circumstances of the instant case.

2. On perusal of the impugned order, this Court finds that the petitioner's prayer for grant of two additional increments was rejected by the said District Inspector of Schools by holding, inter alia, that he is not entitled to draw two additional increments in terms of 2005; G.O. No-46-SE(B) dated 27th February, 2009 and G.O. No-37-SE/ES(S)/5P-37/2010 dated 5th January, 2012.

3. Let me first of all consider as to what extent the West Bengal School (Control of Expenditure) Act, 2005 and/or those two G.O.s dated 27th February, 2009 and 5th January, 2012 stand in the way of grant of incremental benefits to the petitioner in the facts and circumstances of the instant case.

4. Government order dated 27th February, 2009 does not impose any ban on grant of such incremental benefit to the teachers who achieved Doctoral Degree. Of course, Government order dated 5th January, 2012 imposes ban on grant of such incremental benefits to those teachers who acquired Doctoral Degrees after the Control of Expenditure Act, 2005 came into operation.

5. Let me now test the legality of the said Government Order.

6. On perusal of the Government Order dated 5th January, 2012; this Court finds that for giving equal opportunity to all Teachers/Headmasters/Headmistress in the academic interest without any privilege and prejudice to any one of them, the Government in the School Education Department decided that the teachers acquiring Post Graduate Degree, after having had the basic qualification of the Honours Degree in the relevant subject and subsequently improving their qualification by acquisition of Ph.D. Degree in the relevant subject or those who were appointed with such higher degree in the above noted subject in their possession after having acquired Honours Degree in the regular course and then Post Graduate Degree in the relevant subject shall get two additional increments from the date of convocation on which such degree is/was awarded. It was, further, mentioned in the said Government order that the benefit of Rule 12(5) of the Government Order dated 12th February, 1999 under ROPA, 1998 is extended upto 18th August, 2005 as a cut-off date, i.e. till before the publication of the Control of Expenditure Act, 2005.

7. Since the petitioner acquired the Doctoral Degree on 8th May, 2009; his claim was rejected by referring to the said cut-off date. Of course, if the Government Order dated 5th January, 2012; as it stands today, is applied in the instant case, then no doubt the petitioner's claim cannot be allowed.

8. In this context, this Court is required to consider the rationality for imposition of such a cut-off date to exclude the claim of such teachers who acquired Post-Doctoral Degree after the said cut-off date. The said cut-off date, i.e. 18th August, 2005 was selected by the Government as the Control of Expenditure Act,

2005 came into force with effect from the said date, under an impression that the grant of incremental benefit to the teachers who acquired Doctoral Degree after the said Act came into operation, is prohibited under the said Act.

9. As such, this Court is now required to consider as to whether the Control of Expenditure Act, 2005 imposed any such ban on grant of incremental benefit to the teachers acquiring Doctoral Degree after 18th August, 2005.

10. Section 14 of the said Act deals with the pay scale of the teachers, section 14(1) of the said Act deals with the pay scale of the teachers who are appointed in the post of Under-Graduate teacher category. Similarly, sub-section 2 of section 14 deals with the pay scale of the teachers who are appointed in the post of Graduate-teacher category. Section 14(3) of the said Act deals with the pay scale of the teachers who are appointed in the Honours-Graduate or Post-Graduate teacher category.

11. Since the petitioner was appointed in the post of Honours Graduate teacher category, the provision contained in section 14(3) of the said Act is relevant for the present purpose. As such, the provision contained in section 14(3) of the said Act is set out hereunder:

Section 14(3)-Every teacher of a school shall, if appointed in the Honours Graduate or Post-Graduate teacher category, be entitled to draw pay of Post-Graduate teacher category, upon acquiring Post-Graduate Degree in the manner as may be specified by the order.

12. The said provision indicates that when a teacher having Honours Degree is appointed in the Honours Graduate/Post-Graduate Degree teacher category, he will get the pay scale admissible to the Post-Graduate teacher, if he enhances his qualification by acquiring Post-Graduate Degree in the manner as may be specified by the order.

13. Thus on plain reading of the said provision, this Court does not find any restriction whereby ban was imposed on the grant of incremental benefits to a teacher who acquired the Doctoral Degree in the relevant subject, after 18th August, 2005. In fact, neither section 14, nor any other provisions of the Act deal with the consequence of the Doctoral Degree, acquired by any teacher, either before or after the enactment of the said Act of 2005.

14. As a matter of fact, the Joint Secretary in his letter dated 1st September, 2011 addressed to the Director of School appearing at page 28 of this writ petition also expressed his view that no section of Control of Expenditure Act, 2005 can stand in the way of grant of drawal of such additional increments to an Assistant Teacher who acquired the Ph.D. Degree in the relevant subject in terms of Clause 5 Rule 16 under Career Advancement Scheme, laid down in ROPA, 1998.

15. Thus, when the Act does not impose any restriction and/or ban on grant of such incremental benefit to the teachers who acquired the Doctoral Degree, the

Government by issuing the Government order dated 5th January, 2012 cannot impose such restriction on grant of two additional increments to certain group of teachers having Ph.D. Degree by selecting a cut-off date of its choice as imposition of such ban will create sub-classification amongst the teachers who acquired Ph.D. Degree prior to the cut off date and the teachers who acquired the Ph.D. Degree after the said cut-off date which is not only arbitrary and irrational but also has no nexus with the object to be achieved.

16. In fact, Punjab & Haryana High Court in the case of State of Haryana etc. vs. Smt. Nirmala Mittal, reported in 2008 (5) SLR 177 did not approve the Government's idea for giving two different scales of pay to the teachers appointed with Ph.D. Degree and teachers acquired Ph.D. Degree after getting appointment by creating sub-classification amongst the teachers standing on the same footing only by referring to the date of confinement of Doctoral Degree on them. Such classification was held to be arbitrary and irrational as it has no nexus with object to be achieved.

17. Thus, by following the principle laid down by the Punjab & Haryana High Court in the said decision, this Court has no hesitation to hold that the classification which was been made by the Government between the teachers, acquiring Ph.D. Degree prior to 18th August, 2005 and the teachers acquired Ph.D. Degree after 18th August, 2005 is also arbitrary and irrational inasmuch as, such classification has no nexus with the object to be achieved. As such, the Government Order dated 5th January, 2012 whereby ban was imposed on the grant of incremental benefits to the teachers acquiring Ph.D. Degree after 18th August, 2005 cannot be retained on record. The said Government order dated 5th January, 2012 is, thus, quashed.

18. The concerned authority is, thus, directed to grant two additional increments to the petitioner for his Doctoral Degree in the relevant subject with effect from the date when such Doctoral Degree was awarded to him in the convocation held on 8th May, 2009.

19. All such financial benefits, including arrear thereof, should be granted to the petitioner within four weeks from the date of communication of this order. The writ petition is, thus, allowed.