

(2001) 03 CAL CK 0040

In the Calcutta High Court

Case No : Writ Petitioner No. 12939 (W) of 2000

Deb Kamal Mukherjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Citation : (2002) 1 ILR (Cal) 495

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Maharaj Sinha and Subrata Dutta, for the Appellant; P.P. Choudhury, for the Respondent

Judgement

Pratap Kumar Ray, J.—Petitioner, a retired Headmaster of Matigara Harasundar High School being aggrieved by the fixation of last pay and the amount of Provisional Pension to that effect by the District Inspector of Schools (SE) Siliguri, in terms of Memo No. 1415/G/S(6) dated July 21, 1997, has challenged the same in this writ application praying the following reliefs:

(a) A writ in the nature of Mandamus commanding the Respondents not to give any effect and/or further effect to the impugned order as in Annexure "I" herein;

(b) A further writ in the nature of Mandamus commanding the Respondents to pay Rs. 2,150/- per month as the Provisional Pension as well as Rs. 70,750/- as the provisional gratuity on the basis of the last basic pay drawn i.e. Rs. 4,300/- plus interest as admissible under the law as the approved Head Master of the Matigarah Hara Sunde. High School, Post Office Matigarah, District Darjeeling ;

(c) A writ in the nature of Mandamus Commanding the Respondent authorities to pay final pension and gratuity on the basis of the last pay drawn as the approved Head Master of the said school.

2. Respondent Nos. 1, 2 and 3-filed Affidavit-in-Opposition opposing prayers of sanction of provisional pension and grades in favour of the Petitioner in the scale

of Headmaster, by annexing a decision of Director of School Education issued under Memo No. 2045/TA dated December 22, 1999, whereby in view of Petitioner's lack of qualification to enjoy the pay scale of Headmaster of a High School or Higher Secondary School, the pay as enjoyed by the Petitioner for the period January 1, 1969 to August 31, 1996 that is from the date of assuming the charge of Headmaster of a High School till the date of retirement was directed to be deducted being an excess amount drawn by the Petitioner and in lieu thereof direction was made to pay working allowance for discharging the duties of Headmaster for the said period under existing rule providing 20 per cent of basic pay in his grade according to qualification. In the Affidavit-in-Reply the said Memo dated December 22, 1999 of Director of School Education, West Bengal which to be referred to as DSE for brevity has been challenged by the Petitioner on several grounds.

3. It is submitted by Mr. Maharaj Sinha, learned Senior Advocate, appearing for the Petitioner that while the Petitioner was working as Headmaster of Matigara Harasundar Junior High School, the school was upgraded with retrospective effect from January 1, 1969 in terms of the decision dated November 2, 1970 issued by the appropriate authority and Petitioner continued to discharge the function of Headmaster, on enjoyment of the pay scale as was admissible to him while he was working as Headmaster of Junior High School. Petitioner filed a representation for fixation of his pay scale as Headmaster of High School in view of its upgradation in terms of Government Circular no-. 386-Edn. (S) dated March 12, 1974. Learned Advocate of the Petitioner submitted that in terms of the said Circular Letter dated March 12, 1974, Petitioner was eligible to enjoy the pay scale of Headmaster of a High School irrespective of the fact of his qualification of a Special Honours degree, since, by the said Circular Letter, a provision was made for regularization of such appointment in the post of Headmaster for enjoyment of such pay scale of a Headmaster of High School. It is contended by the Petitioner that in terms of the representation of the Petitioner dated May 24, 1974, the District Inspector of Schools (SE) Darjeeling by his Memo No. 918/IM-59 dated August 22, 1974, allowed the Petitioner's pay scale in the post of Headmaster of a High School and in pursuance thereof the School Authority continued to pay the Petitioner's salary in terms of the grant in aid rules in the said pay scale as applicable to the duly qualified Headmaster of a High School. Petitioner continued to receive such pay scale till the date of retirement on August 31, 1996 by enjoying the basic pay of Rs. 4,100.00 in terms of the revised pay scale as introduced by: notification No. 33-Edn (b) dated March 7, 1990. It is contended by the learned Advocate of the Petitioner that in view of enjoyment of the pay scale of a qualified Headmaster of a High School, the fixation of the basic pay of Rs. 2,850.00 being the pay of Assistant Teacher of a High School and thereby fixation of provisional pension to the tune of Rs. 1,408.00 on that basis was absolutely bad and illegal. The learned Advocate of the Petitioner further challenged the Memo dated: December 22, 1999 issued by Director of School Education, West Bengal on the ground that

after retirement, such Memo was issued directing deduction of alleged excess amount as drawn by the Petitioner due to enjoyment of pay scale of a Headmaster of a High School for the period January 1, 1969 to August 31, 1996, without hearing the Petitioner. It is contended vehemently that principle of natural justice was violated and accordingly prayed for quashing and setting aside of said Memo dated December 22, 1999 issued by Director of School Education, West Bengal being Annexure "A-1" of the Affidavit in Opposition and to grant necessary relief to the Petitioner. Learned Advocate of the Petitioner relied upon the judgment of the Apex Court passed in the case *Bhagwan Shukla v. Union of India and Ors.* 1995 (2) L.L.J. 726 in support of his case, contending, inter alia, that without any opportunity, since the Petitioner pay scale was fixed and direction was given to deduct excess amount as drawn, the same is liable to be quashed as the Petitioner has suffered a civil consequence without any hearing. However, learned Advocate of the Petitioner invited this Court to look into the Circular Letter No. 386-Edn. (s) dated March 12, 1974 which would satisfy the Petitioner's claim for enjoyment of pay scale of Headmaster of a High School. It is contended that in terms of the said Circular Letter dated March 12, 1974 Petitioner was regularized as a qualified Headmaster of the High School. It is contended by the learned Advocate of the Petitioner that in terms of Clause. 2 of the said Circular Letter dated March 12, 1974, the regularization of appointment of graduates with Special Honours in the post of Headmaster of the High School was allowed. Learned Advocate of the Petitioner further referred to the cl. 5A of the said Circular Letter dated March 12, 1974 in support of his contention.

4. Learned Advocate Mr. Subrata Dutta of the Respondents opposed the prayer of the Petitioner, contending, inter alia, that Petitioner being under qualified to hold the post of Headmaster of a High School was not eligible to enjoy the benefit of qualified Headmaster, since, qualification Special Honours was not considered as regular Honours by different Circular Letters for the purpose of enjoyment of pay scale of a Headmaster. It is urged by the learned Advocate of the Respondents that the qualification for the post of Headmaster of High School in terms of Finance Department Memo No. 666-F dated March 1, 1971 was fixed as graduates with Honours Degree or with Master Degree securing not less than 40 per cent marks at M.A./M. Sc. examinations plus five years teaching experience in recognized Secondary Schools. Special attention has been drawn of this Court by referring Finance Memo dated March 1, 1971 wherein it was categorically provided that graduates with Special Honours would not be treated as Honours Graduates for the purpose of enjoyment of the pay scale of a Headmaster of a High School and holder of the post being under qualified in terms of the qualification prescribed by the said Circular Letter was entitle only to get 20 per cent of basic pay in terms of his qualification.that is the basic pay of a Assistant Teacher of a High School. It is contended further that the Petitioner's pay scale in the post of Headmaster of a High School was never approved by the District Inspector of Schools concerned as alleged. It is contended further that since the

Petitioner was under qualified teacher to enjoy pay scale of Headmaster, Petitioner representation as filed praying fixation of last pay in terms of the pay scale of a qualified Headmaster and thereby fixation of provisional pension to that effect was duly considered by the Director of School Education, West Bengal in terms of reference of such as made by the District Inspector of Schools concerned. In terms of the communication of the DSE, West Bengali Petitioner is not legally entitled to enjoy the pension in the pay scale of a qualified Headmaster and excess amount as drawn by the Petitioner was illegal and Petitioner is liable to refund the same.

5. Learned Advocate of the Respondents has relied upon the judgment of this Court passed in the case Sankar Prasad Sinha Mahapatra v. State of West Bengal and Ors. C.L.T. 1992 (1) H.C. 365 in support of her contention. It is further contended that the Petitioner was not eligible to enjoy the pay scale of the qualified Headmaster and never at any point of his service he was regularized as qualified Headmaster. It is contended that even by application of Memo No. 386-Edn. (s) dated March 12, 1974, Petitioner was not entitled to be regularized, since, the Petitioner within three years from the date of assumption of a charge of Headmaster of the upgraded High School did not improve his qualification to hold the post of Headmaster. It is contended further that the Petitioner representation as filed was duly considered by the Director of School Education, West Bengal in terms of the letters as well as the forwarding letter as was sent by the District Inspector of School concerned to the Director of School Education, West Bengal. It is contended further that though Petitioner was not heard personally on that issue but in terms of the Circular Letter since the Petitioner is not at all eligible to enjoy the pay scale of a qualified Headmaster, Petitioner has not been prejudiced.

6. Considering the rival contentions of the parties, following points emerge for adjudication:

(a) Whether the Petitioner in terms of the Memo No. 386-Edn. (s) dated 12th March, 1974 issued by Education Department, Secondary Branch, Government of West Bengal was eligible for regularization of his service as Headmaster to enjoy the pay scale of a qualified Headmaster of a High School ;

(b) Whether Petitioner was approved Headmaster to enjoy the qualified pay scale of a Headmaster of a High School ;

(c) Whether the decision reached by the Director of School Education, West Bengal directing to deduct the excess amount of the pay and to allow 20 per cent of the basic pay in the grade of Assistant Teacher for holding the post of Headmaster for the concerned period, was right and justified ;

(d) Whether the Petitioner has been prejudiced for not granting any personal hearing-on issue in question and for other reliefs.

7. For adjudication of point No. (a) above, the relevant Memo No. 386-Edn. (s)

dated March 12, 1974 issued by the Education Department, Secondary Branch, Government of West Bengal is required to be considered. The said Memo is quoted in extenso herein-below:

Government of West Bengal

Education Department

Secondary Branch

No. 386-Edn.(S) Dated, Calcutta, the

5p-30/Pt. 72 12th March,"1974

To : The Director of Public Instruction, West Bengal

Sub : Recruitment to the posts of Headmaster/ Headmistress in recognized Non-government High and Higher Secondary Schools.

The undersigned is directed to say that qualifications for the posts of Headmaster/Headmistress in aided recognized non-government High and Higher Secondary Schools have been prescribed by the Government from time to time in connection with the revision of scales of pay of teachers of aided recognized non-Government Secondary Schools. The minimum qualifications prescribed for the purpose have been shown in Annexure-I to Finance (Audit) Department Memo No. 666-F dated the 1st March, 1971 and Headmaster/Headmistresses of recognized non-Government High and Higher Secondary Schools not possessing the prescribed minimum qualification who have been specially permitted to draw pay in the revised scale or at the initial state of scale have been shown in the notes thereunder. It has however, come to the notice of the Government that in spite of the direction given in G.O. No. 1332-Edn. (S) dated the 24th December, 1996 to the effect that no under-qualified temporary measure, a large number of persons without the prescribed minimum qualification have been appointed and allowed to continue in the posts of Headmaster/Headmistress for years;

2. Headmaster/Headmistresses not possessing the prescribed minimum qualifications who are still in position may be placed under one of the following categories:

1. Third class M.A./M.Sc. (if, there be any) appointed on or after the 1st March, 1961 ;
2. M.A./M.Sc. securing less than 40% marks appointed after 24th December, 1966;
3. Graduates with Special Honours appointed after the 24th December, 1966;
4. Pass Course Graduates appointed on or after the 1st April, 1962 (Those in position on the 31st March, 1962 with the approval of the appropriate authority was allowed the time-scale) ;

5. The question of regularization of those appointments has been under consideration of Government for some time. After careful consideration the Governor is pleased to direct that:

(a) Persons under categories (1), (2) and (3) above may, at their option be, admitted to the revised scale provided (i) their work has been satisfactory, (ii) appointment was approved by the appropriate authority, (iii) had the training-qualification and five years" teaching experience at the time of initial appointment as Headmaster/Headmistress, and (iv) have been in position for a continuous period of 3 years prior to the 1st April, 1970;

(b) Pass Course Graduates who were in position on the 31st March, 1962 and permitted to draw pay at the initial stage of the prescribed scale of Headmaster/Headmistresses may be permitted to draw increments subject to fulfillment of conditions specified in Clause (a) above ;

(c) Pass Course Graduates appointed between the 1st April, 1962 and the 24th December, 1966 (both days inclusive) may, at their option, be permitted to draw at the initial stage of the revised scale of pay subject to fulfillment of conditions specified in Clause (a) above. They may be permitted to draw usual increments in the scale of pay on their improving qualifications to the prescribed standard within a period of three years, otherwise, they may be replaced by qualified persons ;

(d) Pass Course Graduates with requisite training qualification and teaching experience appointed after the .24th December, 1966 may be admitted to the prescribed scale of pay on their improving qualifications within a period of three years, otherwise, they may be replaced by-qualified persons;

(e) Other Headmasters and Headmistresses who do not have the prescribed minimum, qualifications and who had less than three years" continuous service to their credit on the 1st April, 1970 may be admitted to the prescribed scale of pay on improvement of their qualifications within a period of three years.

4. The following principles are prescribed for fixation of pay of the eadmasters/Headmistresses referred to in els. (a) and (b) under para 3 above subjects to fulfillment of the conditions specified therein:

(i) Pay of Headmasters/Headmistresses under category (a) may be fixed with effect from the 1st April 1970 at the initial stage of the time-scale or at a stage corresponding to the officiating pay drawn or admissible under the existing rules. If there is no such stage, then the pay should be fixed at the stage next below, the difference being treated as personal pay to be merged in future increments ;

(ii) Headmasters/Headmistresses under category (b) whose pay had already been fixed at the initial stage of the time-scale may be permitted to count their service from the 1st "April, 1970 for increments in the scale.

Financial benefit in all the cases should be given from the date of issue of this

order.

5. For future recruitment the following principles should be observed:

(i) No Junior High School should be recommended recognition as a High School unless a duly " qualified Headmaster/Headmistress for a High School is in position:

(ii) No appointment of any under qualified Headmaster/Headmistress should be approved except for a period of six months in exceptional circumstances. Grant against the post may be withheld if the authorities of the schools concerned do not comply with the directions of the Director of Public Instruction, West Bengal. For good and sufficient reasons the Director of Public Instruction may, however, extend the period of temporary approval by another six months.

(iii) Assistant Headmaster/Assistant Headmistress with the prescribed minimum qualification for the post of Assistant Headmaster/Assistant Headmistress and with a period of continuous service for at least five years as Assistant Headmaster/Assistant Headmistresses will be eligible for appointment as Headmasters/ Headmistresses though attempts in every case should be made to recruit the best available candidate.

Sd/- B.N. Chatterjee,

Joint Secretary.

8. In terms of the said Memo dated March 12, 1974 Petitioner applied for regularization of his service to draw the pay scale in the post of Headmaster despite the fact that he was not an Honours Graduate but holding a Special Honours degree, which was not an eligible qualification to enjoy the pay scale of Headmaster. Petitioner's such application was recommended by the Managing Committee of the School and a decision was reached informing the Managing Committee by the District Inspector of Schools (SE) Darjeeling on August 22, 1974 holding that the Petitioner would be entitled to get the pay scale of Headmaster in. the event of fulfillment of the Government Order dated March 12, 1974 aforesaid, The Managing Committee of the School accordingly took a resolution granting such pay scale to the Petitioner. The school, which was earlier under salary deficit scheme came under grant in aid rules of the Government. In terms of such rule, payments of the teachers are made on the basis of the requisition of the Managing Committee of the School to the Office of the District Inspector of Schools concerned, who in turn, upon verification of the same refers the matter to the Government Treasury for necessary release of cheque in favour o'f the School in question. After disbursement of the money in pursuance of the requisition and making necessary entry in the acquaintance role, Managing Committee used to have regular audit and such audit is required to be inspected and verified of the Officers of the Education Department. In terms of the decision reached by the District Inspector of Schools (SE) Darjeeling dated August 22, 1974 accordingly the present Petitioner enjoyed pay scale of Headmaster despite

his qualification of Special Honours degree till his date of retirement and never at any point of time, Petitioner was considered as in the pay scale of Assistant Teacher holding the post of Headmaster. Prior to the appointment of the Petitioner in the post of Headmaster till this time there is an embargo of appointment of a Special Honours degree-holder in the post of Headmaster of a Secondary School. Petitioner while was working in the post of Headmaster of a Junior High School for which he was eligible, the School got upgradation to a 10 class High School with retrospective effect from January 1, 1969 and Petitioner was allowed to hold the post of Headmaster on payments of pay scale of Assistant Teacher resulting the application of the Petitioner praying release of pay scale of Headmaster in the year 1974 when the aforesaid decision dated August 22, 1974 was referred to by the District Inspector of Schools concerned. At the time of retirement, accordingly, last pay certificate was issued by the Secretary of the concerned School showing the Petitioner in the pay scale of the Headmaster in terms of the revised pay scale as introduced under Notification No. 33-Edn. (b) dated Calcutta, March 7, 1990. The last pay certificate as annexed at page 28 of the writ application proves the fact that Petitioner was getting basic pay to the tune of Rs. 4,100.00 along with a special pay of Rs. 200.00, in the pay scale of Rs. 2,200.00-4,000.00 upon enjoying the last increment on April 1, 1996 prior to his retirement, which was effected from August 31, 1996. Soon after retirement when the Petitioner retirement benefits and pension matters were required to be decided, the Respondent, District Inspector of Schools (SE) Siliguri had shown the Petitioner as Assistant Teacher in lieu of the post of Headmaster with basic pay of Rs. 2,850.00 and thereby a provisional pension of Rs. 1,460.00 was granted. Along with this provisional pension order dated July 21, 1997 issued by the District Inspector of Schools, Siliguri, a calculation sheet for sanctioning provisional pension and gratuity was also annexed wherefrom it appears that on considering the Petitioner as Assistant Teacher in terms of the revised pay scale, Petitioner last pay was fixed and the provisional pension was calculated accordingly whereas from the last pay certificate issued by the School Authority, it appears that Petitioner enjoyed the basic pay scale of Headmaster on fixation of basic pay of Rs. 4,100.00 prior to his retirement being in the pay scale of Rs. 2,200.00 - 4,000.00 in terms of the revised pay scale introduced in terms of the Notification of the year 1990 as aforesaid. The Petitioner lodged a protest to that effect about fixation of provisional pension in the pay scale of Assistant Teacher before the District Inspector of Schools, Siliguri, who referred the matter to the Director of School Education, West Bengal by the communication dated October 29, 1997, wherein the said District Inspector of Schools though held that Petitioner rendered service of the Headmaster and enjoyed the pay scale of Headmaster from January 1, 1969 to August 31, 1996, but there was no formal approval in favour of the Petitioner for enjoyment of such pay scale. The District Inspector of Schools, Siliguri accordingly in his letter prayed for necessary order for according approval of Petitioner's service as Headmaster by regularization of the issue upon holding the Petitioner eligible candidate to enjoy pay scale of Headmaster. The relevant

portion of the letter of District Inspector of School, Siliguri, is quoted hereinbelow:

Government of West Bengal

Office of the District Inspector of Schools Siliguri

Memo No..... dated, Siliguri, the.....

From: The District Inspector of Schools, Siliguri.

To: The Director of School Education, West Bengal

Sub: Sanction of Provisional Pension and Gratuity in Favour of Sri Deb Kamal Mukherjee, Retired Teacher of Matigara Harasundar High School. P.O. Matigara, Dist. Darjeeling.

Ref: Memo No. 4/HTA/HS/PG/97 dt. 30.7.97 of the Secretary.

Sir,

With reference to the subject cited above I am to furnish the following facts for your information and solicit your kind instruction in respect of sanction of Provisional Pension and Gratuity etc. in favour of Sri Deb Kamal Mukherjee of Matigara Harasundar High School, P.O. Matigara who has retired from school on 31.8.96.

1....

2. That the academic qualification of Sri Mukherjee is B.A. (Spl. Hons"), B.T.;

3. That Sri Deb Kamal Mukherjee rendered service as an approved Headmaster of Junior High School w.e.f. 4.1.1963 and rendered service from 1.1.1969 to 31.8.1996 and enjoyed Headmasters" scale of pay sanctioned time to time without any formal approval of Headmaster of the High School;

4. That the service of Sri Mukherjee has not been approved as Headmaster of Matigara Harasundar High School but enjoyed pay scale of Headmaster;

5. That if the service of Sri Deb Kamal Mukherjee is not approved as Headmaster, the pay of Sri Mukherjee will be fixed at Rs. 2,095 on 1.4.1986 in the time scale as per ROPA "90 dated 7.3.90 (while he drew @ Rs. 4,100/- in the scale of Rs. 2200 - 4000/-) and his last pay would have been Rs. 2,815/-;

6....

It is further appears from the Memo No. 913 dt. 22.8.74 of the D.I. of Schools, Darjeeling that Sri Mukherjee was allowed to get the scale of Headmaster of a High School (copy enclosed). Copy, of the I.P.F. of ROPA "81 and ROPA"90 reveal that the Basic pay of Sri Mukherjee were approved by the D.I.S. in ROPA"81 and ROPA"90 as Headmaster of the High School, (copy enclosed.)

Under the circumstances explained in the forgoing paras it is evident that Sri

Mukherjee was always granted the benefit of Headmaster of High School just from the date upgradation by High School till his retirement. Necessary order may therefore be issued to this office enabling to accord approval as Headmaster to him in order to save the interest of the suffering retired Headmaster whose case of settlement of pension is pending for a long time.

Sd/- S. Samanta

District Inspector of Schools, Siliguri.

9. In the Affidavit-in-Opposition for the first time the Respondents has annexed the decision as reached by Director of School Education, West Bengal, which was communicated under Memo No. 2045-TA dated December 22, 1999 only to the District Inspector of Schools (SE) Darjeeling whereby the reference dated October 29, 1997 of the District Inspector of Schools concerned was answered against the Petitioner holding that Petitioner was not eligible to hold the post of Headmaster for enjoyment of the pay scale due to his qualification of Special Honours degree. Accordingly it was decided to grant only 20 per cent of the basic pay in the grade of Assistant Teacher for such functioning of the Petitioner in the post of the Headmaster and directed to deduct the excess amount as enjoyed by the Petitioner with effect from January 1, 1969 to August 31, 1996, in terms of the pay scale of Headmaster. This Memo has been challenged in Affidavit-in-Reply by the Petitioner, on contending, inter alia, vehemently, that no opportunity of hearing was given to the Petitioner prior to passing such decision which has caused civil consequence to the Petitioner, that the decision as reached was against the judgment of the Apex Court Bhagwan Shukla(Supra) and further contending that once the Respondents concerned released the pay scale of the Petitioner in the post of Headmaster as per revised pay scale introduced from time to time, after retirement Petitioner cannot be penalized by way of such a direction whereby deduction of the amount was allowed to be made, by the Director of School Education, West Bengal from the retirement benefits, gratuity, pension etc. It is strongly contended by the learned Advocate appearing for the Petitioner that it is highly arbitrary, unfair and unreasonable action.

10. From the Circular Letter of Education Department dated March 12, 1974, it appears that the graduates with Special Honours appointed after December 24, 1966 were allowed- to be regularized in the pay scale of the Headmaster of fulfillment of the conditions as stipulated in cl, 5(a) of the said Circular Letter. Said cl. 5(a) provides the following conditions:

- (i) Their work has been satisfactory ;
- (ii) Appointment was approved by the appropriate authority had the training qualification and five years teaching experience at the time of initial appointment as Headmaster;
- (iii) Have been in position for a continuous period of three years prior to the 1st April, 1970.

11. From the records it appears that there was no allegation of non-fulfillment of conditions with reference to the conditions (i) and (ii) above. From the records it appears that Petitioner's service as Headmaster of Junior High School was approved with effect from January 4, 1963. Petitioner was appointed with retrospective effect from January 1, 1969 in the post of Headmaster in the Secondary School when already Petitioner acquired six years teaching experience as well as experience as Headmaster in a Junior High School. There was no whisper that Petitioner's service was not satisfactory. Hence, for regularization of service of the Petitioner in terms of the Circular Letter of March 12, 1974, two conditions were fulfilled except the condition No. (iii) that Petitioner was not holding the post of Headmaster of Secondary School for a continuous period of three years prior to April 1, 1970. Admittedly Petitioner was appointed with retrospective effect from January 1, 1969, hence, Petitioner did not fulfill such condition. Hence, in terms of the Circular Letter, Petitioner was holding the position of Headmaster for a continuous period of one year three months as on April 1, 1970 whereas Circular Letter provides three years continuous service. So, the only question is, whether due to such lack of experience to hold the post of Headmaster of a Secondary School, Petitioner would be deprived of from getting his approval of service in the post of the Headmaster of Secondary School and enjoyment of the pay scale of the Headmaster in terms of the Grant in Aid Rules as introduced time to time.

12. In the impugned decision of the Director of School Education, West Bengal was passed ex-parte without hearing the Petitioner and thereby there was gross violation of principle of natural justice. Only reason has been assigned that since Petitioner was qualified with Special Honours degree, accordingly was not eligible to enjoy the pay scale of Headmaster of a Secondary School. In the normal course, since, the impugned decision of Director of School Education annexed in the Affidavit-in-Opposition was passed without hearing the Petitioner, who suffered a civil consequence, after quashing the same, the matter surely would have been referred to the said authority for adjudication after hearing the Petitioner but in the instant case, since, it appears that the Petitioner has already retired from the service long back in the year 1996 that is more or less five years, hence at the present moment it will not be fair to refer the matter back. Applying the doctrine of fairness, since, the Respondents in the Affidavit-in-Opposition has assigned the reason for such non-grant of pay scale to the Petitioner relating to his past service of a Headmaster of a Secondary School and argued the case at length, without referring back the matter, the Court is adjudicating the issue, so that the retired man does not suffer further in such adjudicating process. Hence only point to be decided as to whether Petitioner would be deprived of from enjoyment of the retirement benefits in terms of the pay scale of the Headmaster and more particularly as per to the last Pay Certificate issued by the School Authority, in view of the only fact that the Petitioner was lacking roughly one year nine months experience of continuous service in the post of the Headmaster of the Secondary School in terms of

Circular Letter dated March 12, 1974 to have regularization in the post. From the letter and spirit of the Circular Letter dated March 12, 1974 it appears that the government decided to regularize the service of certain categories of Headmasters, who were lacking specified qualification in terms of Finance (Audit) Department Memo No. 666-F dated March 1, 1971 read with G.O. No. 1332-Edn dated December 24, 1996. Memo No. 666-F dated March 1, 1971 provides that only trained graduates with Honours degree or with Masters degree securing not less than 40 per cent marks at M.-A./M. Sc. examination plus five years teaching experience would be entitled to enjoy the pay scale of the Headmaster in a recognized Secondary School. This Government Order further provides "graduates with Special Honours shall not be treated as Honours graduate for this purpose". Under Note 5 of the said Memo dated March 1, 1971 it appears that only as a temporary measure under qualified person can be appointed in the post of Headmaster of a Secondary School, in the event of exigency of service and such under qualified persons were entitled to work in the post of Headmaster/ Headmistress only for six months. Beyond six months, a fresh approval retaining service was required to be taken from the Director of Public Instruction on the condition that they would be allowed only working allowance of 20 per cent of basic pay in his grade according to qualification. In addition to that a special pay of Headmaster was admissible according to numbers of streams. The relevant provision under Note 5 is quoted hereinbelow for effective adjudication of the matter:

(5). No under-qualified persons should be appointed as Headmasters/ Headmistresses except as a purely temporary measure. If it is necessary to continue the services of such Headmasters/Headmistresses beyond six months in the interest of the Schools, fresh approval for their retention beyond six months should be obtained from the Director of Public Instruction, West Bengal. Such a Headmaster/ Headmistress may be allowed a working allowance not exceeding 20 per cent of his/her grade according to qualifications. In addition, he/she will be entitled to draw the special pay of Headmaster/Headmistress as is admissible according to the number of streams.

13. From the records and documents of this case, it appears that with effect from January 1, 1969, the School was upgraded to a Secondary School and Petitioner was retained in the post of Headmaster as usual as he was holding the post of Headmaster of Junior High School, which got upgradation. Finance Department Memo No. 666-F dated March 1, 1971 was given effect to from April 1, 1970 whereas Petitioner was holding the post of Headmaster with effect from January 1, 1969 when the School got upgradation order.

14. Hence, to adjudicate the Petitioner's case, the Memo No. 666-F dated March 1, 1971 has no applicability as Petitioner was holding the post of a Headmaster of a Secondary School with effect from January 1, 1969. In the present case, a situation arose when a Junior High School was upgraded to a High School with effect from January 1, 1969 upon retaining the Headmaster of the Junior High

School in the same post. By the Memo No. 942-Edn. (s) dated April 2, 1968, Deputy Secretary, Education Department, Secondary Branch, Government of West Bengal issued the Circular Letter contending that no under qualified Headmaster would be allowed to retain the post of Headmaster of High School after upgradation of such Junior High School and necessary instruction was directed to be issued to the School Authority to appoint a Headmaster qualified to hold the post of Headmaster of a High School upon transferring the existing Headmaster of Junior High School, who was not qualified to hold the post of headmaster of a High School in the post of Assistant Teacher. The said Circular Letter dated April 2, 1968 reads as follows:

Government of West Bengal

Education Department,

Secondary Branch

No. 942-Edn (S) Calcutta, the 2nd April, 1968.

To: The Director of Public Instruction, West Bengal.

Sub: Scale of pay for under-qualified Headmasters/Headmistresses of aided High/ Higher Secondary Schools.

The undersigned is directed to say that in Government Order No. 1332-Edn (S) dated the 24th December, 1966, the under qualified Headmasters and Headmistresses viz., B.A., B.T. or B. Sc, B.T. or B. Com., B.T., as existing in recognized aided High Schools on the 31st March 1962 and approved on a temporary basis on the initial of the old scale have been allowed to draw the initial of the revised scale of pay introduced from 1st April, 1966.

2. To guard against the appointment of under-qualified Headmasters and Headmistresses, in recognized aided High Schools the Education Directorate should at the time of conversion of a Junior High Schools into a High or Higher Secondary Schools, issue instruction to the effect that the existing Headmaster/ Headmistress of the Junior High School, if under-qualified, would not be permitted to continue as Headmaster/Headmistress of the upgraded school. He may, however, be retained as an Assistant teacher and a duly qualified person may be appointed as Headmaster/Headmistress of the upgraded school.

Sd/-

J.C. Talapatra, Deputy Secretary.

15. From the records as well as the Affidavit-in-Opposition it appears that nowhere it was stated by the Respondents that when this present school was upgraded with retrospective effect from January 1, 1969, such instruction, was given by the District Inspector of Schools concerned directing the posting of the Petitioner as Assistant Teacher in lieu of the post of Headmaster and directing the School Authority to appoint a Headmaster qualified to be a Headmaster of High

School. At the relevant time when Petitioner was appointed in the post of Headmaster of High School the pay scale of the Headmasters of High Schools was required to be fixed under Circular. Letter of Education Department No. 1332-Edn. (s)/5P-23/66 dated December 24, 1966. In terms of the said Circular Letter under Note 4, a similar contention was made in terms of Note 5 of Memo No. 666-F: dated March 1, 1971. In terms of Memo No. 1332-Edn dated December 24 1966 it appears that the Petitioner's service was required to be approved for a limited period of six months and thereafter subject to the approval of Director of Public Instruction, West Bengal such period could be extended with the condition of grant of 20 per cent of basic pay in the grade of Assistant Teacher as working allowance for the post of Headmaster including special pay as admissible to the Headmaster. In the instant case, admittedly the Respondents concerned did not take any steps to terminate the service of the Petitioner from the post of Headmaster "and thereby to transfer him in the post of Assistant Teacher. Furthermore the Respondents never took any steps to appoint a qualified Headmaster in place of the Petitioner in terms of the Circular Letters of the Government. When a question was cropped up regarding grant of pay scale of Headmaster of a High School to the Petitioner, the District Inspector of School concerned by his Letter dated August 22, 1974 directed the Managing Committee of the School to grant such subject to the fulfillment of conditions of Government Order dated March 12, 1974. Hence, it appears that it was within the knowledge of the Respondents, the Government Authorities, that Petitioner qualified with Special Honours degree was holding the post of Headmaster of a High School, which subsequently elevated to a Higher Secondary School and by this process they allowed the service of the Petitioner to hold the post of Headmaster with effect from January 1, 1969 to August 31, 1996, the date of retirement. Hence, in all practical purposes it will be deemed that Petitioner's service in the post of Headmaster was approved de-facto. Furthermore, since the Petitioner was allowed to enjoy the pay scale of Headmaster of a High School and special pay for so many years from the date of initial appointment till the date of retirement that is for the year 1969 to 1996, it is now ill saying in the mouth of the Government Authorities to contend that Petitioner was entitled to only working allowance of 20 per cent of his grade as per qualification for holding the post of Headmaster only for the reason that Petitioner was qualified with Special Honours degree.

16. Though in the instant writ application, no point has been taken that the deprivation of Headmaster's pay scale to a Headmaster who is holding a Special Honours degree is arbitrary but for adjudication of the issue, the Court is considering that point also. As per the curriculum of the University, there is Pass Course for three years as well as the Honours Course for three years in graduation level. In a Honours Course, a student is required to take one Honours subject along with two other pass subjects whereas in the Pass Course, a student is required to appear in three subjects in pass course. As for example, a student of Mathematics Honours in graduation course is required to take eight subjects of

Mathematics in Honours Course of 800 marks along with pass subjects of Physics and Chemistry each 300 marks. University introduced a Special Honours Course of two years duration where a pass graduate was eligible to read.. Hence, in the Special Honours Course only the one subject is required to be taken after being qualified with such subject in pass course. As for example, a candidate who passed B. Sc. in Pass Course with Physics, Chemistry and Mathematics is entitled to undergo a Special Honours Course after passing such Pass Course by taking any one subject in the Special Honours Course namely Mathematics or Physics or Chemistry. Hence, from the duration of the course a person who completes a Special Honours Course, is required to study for five years, three years in the pass course and two years in the Special Honours course whereas a candidate of regular Honours in the graduation level is studying the Honours subject along with the Pass subject for the period of three years. After passing the Special Honours course, a candidate is entitled and eligible to read the the M. Sc. or "M.A. course and in all purposes he is considered as Honours Graduate. Hence, in the instant case, the Court is not finding any reason as to why a candidate qualified with Special Honours would not be entitled to enjoy pay scale of Headmaster when a Honours graduate is eligible to enjoy such pay scale of the Headmaster of a High School. An incumbent holding the post of Headmaster either of a High School or of a Junior High School, is required to function in two ways, one administrative function another teaching function. It is not understood that a teacher who has already got the experience of a Headmaster of a Junior High School for so many years and was allowed to retain such post even after upgradation of such Junior High School to a High School, would be less qualified to enjoy the pay scale of Headmaster when for all practical purposes, the incumbent had run the School so long for a long period from the year 1969 to the year 1996 that is for 27 years. Further it is not understood that when the Respondents failed to perform their supervisory duty by directing the appointment of a Honours graduate as master degree holder in the School in question as Headmaster in lieu of the service of the Petitioner and when the said authority allowed the Petitioner to continue in the said post for 27 years, such type of stand can be taken after retirement of the gentleman. As soon as a School is upgraded from Junior High to High School, the incumbent holding the post of Headmaster being under qualified to hold the post of Headmaster of a High School is allowed to hold the post of Headmaster of a High School as upgraded, as teacher in charge, with necessary direction of enhancement of his qualification within three years from the date of such upgradation. In the instant case, admittedly, no such direction was given. Furthermore, as already observed that there is no basic difference so far as the academic performance is concerned in between a person holding Regular Honours degree and a Special Honours degree qua his post as science teacher in a High School or Higher Secondary School. There is no justification to deny such pay scale more particularly when the Education Department issued a Circular Letter on March 12, 1974 to regularize such type of appointments. In terms of the said Circular Letter, Petitioner when has fulfilled all conditions of cl.5(a) except a condition of

continuous service for three years as already observed holding that Petitioner was lacking to such service experience only for one year and nine months whereas Petitioner had experience of so many years being a Headmaster of a Junior High School, the impugned decision on the special facts and situation of this case as issued by the Director of School Education, West Bengal annexed in Affidavit-in-Opposition is not a decision, which to be termed as fair and reasonable. Furthermore, the Apex Court judgment as relied upon by the learned Advocate of the Petitioner namely in the case Bhagwan Shukla(Supra), same is exactly a case regarding fixation of the pay scale identical to this case. In the said judgment while dealing with the matter, the Apex Court observed that after long time of enjoyment of a particular pay scale, such pay scale could not be reduced without giving any opportunity of hearing to the person concerned. In the instant case, the facts and situation is more stronger in favour of the Petitioner than the facts and situation as has been dealt with by the Apex Court. Petitioner was allowed to continue in the post of Headmaster of a High School being qualified with Special Honours degree and was allowed to enjoy the pay scale of Headmaster since 1969 to the year 1996, a decision was passed in the year 1974 by the District Inspector of Schools concerned directing the Managing Committee to fix the pay scale in terms of Circular Letter of March 12, 1974, no steps were taken in between this 27 years directing the Petitioner to step down from the post of Headmaster or disallowing the enjoyment of the pay scale of the Petitioner in terms of the revised scale of pay for the Headmaster of High School, but all on a sudden even long after the retirement when pensionary benefits were being calculated, despite recommendation by the District Inspector of Schools concerned to accord approval of appointment of the Petitioner in the post of Headmaster of a High School on granting such pay scale, a decision has been taken by the Director of School Education, West Bengal rejecting such recommendation of the District Inspector of Schools concerned and that too without hearing the Petitioner who ultimately had suffered a "civil consequence". The impugned decision accordingly is highly arbitrary besides being unfair and unreasonable. At this age when the Petitioner sifter long service of 27 years as Headmaster, already has retired from service, cannot be allowed to suffer such rigour.

17. Since, in the different High Schools in the West Bengal, there are so many persons holding the post of Headmaster without being qualified with Honours degree or Master degree securing 40 per cent marks and their cases have been regularized, under the special situation of this case, it was a fit case to apply the Circular Letter dated March 12, 1974 to regularize the service of the Petitioner. In that view of the matter, the impugned decision reached by the Director of School Education, West Bengal dated December 22, 1999 annexed at page 9 annexure A1 of Affidavit-in-Opposition is hereby set aside and quashed. It is declared that Petitioner was entitled to enjoy the pay scale of Headmaster of a High School as approved Headmaster and his pensionary and retirement benefits to be calculated on the basis of the last pay as drawn by the Petitioner as certified by

the School Authority. Point No. (a) is accordingly answered in favour of the Petitioner.

18. The point No. (b) is also answered in favour of the Petitioner in view of the aforesaid reasoning as made in point No. (a).

19. Regarding point No. (c), the decision as taken by the Director of School Education, West Bengal to deduct the excess amount of pay as drawn by the Petitioner while holding the post of headmaster is not legally sustainable and the decision of the Director of School Education has already been quashed to answer the point No. (a). Hence, the point No. (c) is also answered accordingly in favour of the Petitioner.

20. So far as the point No. (d) is concerned, on the basis of the Apex Court judgment in Bhagwan Shukla(Supra) it is held that Petitioner has suffered seriously and there is flagrant violation of principle of natural justice.

21. Having regard to the aforesaid observations and finding, the impugned decision of Director of School Education dated December 22, 1999 being annexure A1 of the opposition hereby set aside and quashed. Petitioner is entitled to get all retirement benefits as per the last pay certificate issued by the School Authority appearing at page 28 of the writ application that is in the Basic Pay of Rs. 4,100.00. Respondents are directed to release the Petitioner's all retirement benefits in terms of the said basic pay as enjoyed by the Petitioner on the date of retirement from service within two months from this date positively. The concerned Respondents will take all necessary steps to release all retirement benefits and pension, arrear as well as current to the Petitioner within the period as mentioned and continue the pensionary benefits. Writ application is accordingly allowed but no order as to costs.

22. Let xerox Certified copy of this order, if applied for, be given the learned advocate for the Petitioner expeditiously.