
(2014) 07 CAL CK 0010
In the Calcutta High Court
Case No : W.P. No. 2993 (W) of 2008

Goutam Kumar Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 WBLR 596

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Manuwar Ali and Bratati Dutta, Advocate for the Appellant; Chanchal Kumar Mitra, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Tapabrata Chakraborty, J.

1. The subject matter of challenge in the instant writ application is an order dated 30th of July, 2007 passed by the respondent No. 2 refusing the petitioner's prayer for grant of higher scale of pay on the basis of his qualification as Master of Physical Education. Mr. Ali, learned Advocate appearing for the petitioner, submits that upon emerging to be successful in a selection process, the petitioner was appointed to the post of Assistant Teacher in Work Education and Physical Education at Dhulai R.K.M. Vidyamandir (H.S.) (hereinafter referred to as the said school). Such appointment of the petitioner was approved vide memorandum dated 7th of March, 1995 issued by the respondent No. 3 with effect from 16th of December, 1994.

2. Mr. Ali further submits that for the academic interest of the students at large, the petitioner applied to the school authorities for grant of necessary permission to pursue the Master of Physical Education Degree Course. Such prayer was duly granted by the school authorities and the petitioner, accordingly, pursued, the said course without hampering his normal duties.

3. Mr. Ali further submits that upon acquiring the said higher qualification, the petitioner approached the authorities for grant of postgraduate scale of pay and as such the prayer was not considered, the petitioner was constrained to move this Court under Article 226 of the Constitution of India in W.P. 21882 (W) of 2004. Upon contested hearing, the said application was allowed on 4th of October, 2005 directing the respondent No. 2 to consider the petitioner's claim for grant of post-graduate scale of pay. Pursuant to the said order, the petitioner's claim was considered and rejected by the order impugned in the instant writ application.

4. Mr. Ali submits that perusal of the impugned order would reveal that the petitioner's claim was denied on the following grounds:

(a) The petitioner is not entitled to the higher scale of pay since M.P. Ed. Degree was obtained through summer course.

(b) The Government has taken steps to prefer an appeal against the judgement delivered in the case of Tushar Kanti Gosh v. State of West Bengal and others.

(c) The petitioner did not avail prior permission from the respondent No. 3 for pursuing the concerned course.

(d) The petitioner's claim stands barred under the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005.

5. Mr. Ali submits that on the basis of the ground (a) stated hereinabove, the petitioner's claim cannot be rejected since M.P. Ed. qualification through Summer Course from Nagpur University has been held to be equivalent to regular M.P. Ed. Course. In support of such contention, Mr. Ali places reliance upon an unreported judgement delivered in the case of P.P. Satpati v. State of West Bengal and others (W.P. 2685 (W) of 2008)

6. So far as the ground (b) is concerned, Mr. Ali submits that the Government has already given the benefits of higher scale of pay to Tushar Kanti Ghosh, In support of such contention Mr. Ali relies upon a memorandum dated 23rd of November, 2007 issued by the respondent No. 7. Let the same be kept on record.

7. So far as the ground (c) is concerned, Mr. Ali has relied upon the judgment delivered in the case of Samir Kumar Saha Vs. State of West Bengal, wherein the Hon'ble Court has, inter alia, observed that the circular dated 24th, June, 1997 does not stand in the way towards grant of benefit of higher scale of pay to a teacher on acquiring the higher qualification.

8. Mr. Ali also relies upon the judgement delivered in Samir Kumar Saha (supra), in support of his contention to the effect that the West Bengal Schools (Control of Expenditure) Act, 2005 has not been given any retrospective effect. He also submits that the provisions of the said Act cannot debar the petitioner from getting the higher qualification pay scale on the basis of his higher qualification acquired prior to the promulgation of the said Act of 2005.

9. Mr. Ali further submits that there is no allegation to the effect that by hampering his normal duties, the petitioner has pursued the post-graduation course. In fact, the students at large stood benefitted for such acquirement of post-graduate qualification obtained by the petitioner in the subject relevant to his appointment and teaching.

10. Mr. Mitra, learned Advocate appearing for the State respondents, submits that in the absence of prior permission from the respondent No. 3, the petitioner is not entitled to grant of higher scale of pay.

11. I have heard both Mr. Ali, learned Advocate appearing for the petitioner and Mr. Mitra, learned Advocate appearing for the State respondents and I have considered the materials on record.

12. In the judgement delivered in the case of Samir Kumar Saha (supra), the Hon'ble Division Bench has categorically observed that the said circular dated 24th June, 1997 does not stand in the way towards grant of higher of pay on acquiring higher qualification inasmuch as the said circular relates to recognition of correspondence courses and not relating to grant of any benefit improving, that academic qualification through correspondence course.

13. In the said judgement delivered in Samir Kumar Saha (supra), it has also been held that the provisions of Act of 2005 cannot have any manner of application in respect of post-graduate qualification acquired prior to promulgation of the said Act.

14. For the reasons stated above, the grounds on which the petitioner's claim have been rejected by the respondent No. 2 are not sustainable in law and that as such the impugned order dated 30th of July, 2007 in annexure "P-11" to the writ application is set aside and quashed.

15. The respondents, particularly the respondent No. 3, are directed to take appropriate steps to sanction the benefits of higher scale of pay to the petitioner for acquiring the post-graduate qualification in Master of Physical Education, with effect from the date following the last date of the said M.P. Ed. Examination and to disburse all consequential benefits thereto, within a period of eight weeks from the date of communication of such order.

16. The writ application is, accordingly, allowed.

17. There shall, however, be no order as to costs. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.