
(2014) 07 CAL CK 0040
In the Calcutta High Court
Case No : W.P. No. 36615 (W) of 2013

Ismail Mollah

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Citation : (2014) 3 CALLT 461 : (2014) 3 CALLT 1 : (2014) 5 CHN 480 : (2014) 4 ESC 2233

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Papiya Chatterjee, Advocate for the Appellant; Naren Ghosh Dastidar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioner assailing an order passed by the respondent No. 3 under his Memo No. 125/1(4)/Law dated November 23, 2012. The impugned order was passed in compliance of an order dated July 23, 2012 passed in the matter of Md. Ismail Mollah vs. The State of West Bengal & Ors. (In Re: W.P. No. 5484 (W) of 2012). By virtue of the impugned order the prayer of the petitioner for extending the benefit of postgraduate scale of pay in connection with his service as an Assistant Teacher of Noorpur Panchanan Paik Smriti Vidyalaya, District North 24-Parganas was rejected on the following grounds: (i) Considering the staff pattern of the above school the petitioner was not entitled to get the benefit of postgraduate scale of pay in the light of the Government Order No. 670 SE(S) dated September 4, 1998.

(ii) No prior permission was obtained by the petitioner for enrolment of his name in M.Sc. course.

The first ground of rejecting the claim of the petitioner decided in the matter of Ashim Kumar Khan Vs. The State of West Bengal, and the relevant portions of

the judgment are quoted below: "After perusing the aforesaid provisions of the said ROPA, 1998, I find that the same entitles the petitioner who was appointed with higher qualification to enjoy the benefit of the post graduate scale of pay with effect from January, 1996 or the date of improving the qualification, whichever was earlier. With regard to the provisions of Clause 2 of departmental circulars No. 670 SE(S)/1M 14/98 dated September 4, 1998, I find that the same was in operation in a different filed which prescribed the staff strength in a particular group of teaching having no nexus with the scale of pay of the assistant teachers of that school. After further scrutiny of the above departmental circular I find that the two groups of assistant teachers namely, for Pass Degree and Honours/Master degree were prescribed in the departmental circular. The petitioners belonged to the group of Honours/Master degree. Therefore, the claim for granting postgraduate scale of pay in accordance with provisions of said ROPA, 1998 cannot be rejected taking recourse to the departmental circular under reference."

2. Taking into consideration the order of approval of the above service of the petitioner, I find that he was appointed in the above post after obtaining B.Sc. (Hons.) degree in mathematics and B.Ed. It also appears from the materials on record that the prayer of the petitioner for giving prior permission for enrolment of his name in the above post was forwarded by the authority of the school to the respondent No. 3 with a forwarding letter dated August 24, 2005.

3. In view of the settled proposition of law as decided by a Division Bench of this Court by a judgment delivered on October 16, 2012 in the matter of Asim Kumar Adgiri Vs. State of West Bengal & Ors. (In re: M.A.T. 1459 of 2012) and the relevant portions of the above decision are set out below:

"It is true that a circular cannot override the specific provisions of the Act. In the present case, the appellant/petitioner was admittedly appointed in the school as Honours Graduate with B.Ed degree. As a matter of fact, at the time of joining the school qualification of the appellant was Honours Graduate in Mathematics and B.Ed. Subsequently the same appellant acquired post graduate degree. Therefore, in terms of section 14(3) of The West Bengal Act, XIV of 2005 appellant herein is entitled to draw pay of post graduate teacher. Furthermore, Para 3 of the Office order dated 27th November, 2007 has not been specifically violated in the present case since the appellant also sought for prior permission from the concerned District Inspector of Schools for undergoing post graduate studies through the managing committee of the school and such permission was never denied by the said District Inspector of Schools.

Considering the aforesaid facts, we are of the opinion that the District Inspector of Schools should not have rejected the claim of the appellant/petitioner for higher scale of pay even after acquiring higher qualification i.e. M.Sc in Mathematics.

Accordingly, we set aside and quash the decision of the District Inspector of

Schools, as communicated to the appellant/petitioner, under office memorandum dated 15th March, 2011.

For the identical reasons, we also set aside the impugned order under appeal passed by learned Single Judge."

4. Since none of the grounds mentioned in the impugned order is sustainable in law the petitioner is entitled to get the benefit of postgraduate scale of pay. I direct the respondent No. 3 to extend, the above benefit in favour of the petitioner including arrears together with interest at 9% per annum on the arrears within two months from the date of communication of this order.

5. Let it be recorded that the rate of interest is fixed at 9% per annum taking into consideration the highest prevailing rate of interest payable by a nationalised bank on fixed deposit.

6. The above interest will be paid to the petitioner from the public exchequer within the period mentioned hereinabove at the first instance. The Secretary to the Government of West Bengal, School Education Department is directed to realise the payment of interest from the salary of the concerned District Inspector of Schools (SE) or by way of raising public demand in case of his retirement from the service.

7. Before parting with, it is observed that although both the grounds on which the claim of the petitioner was rejected had been decided by delivering judgment in the matter of Ashim Kumar Khan (supra) and Asim Kumar Adgiri (supra). The conduct of the respondent No. 3 in passing the impugned order ignoring the same is disapproved. The Secretary to the Government of West Bengal, School Education Department is directed to take necessary steps forthwith to stop repetition of this practice by the officers of his department.

8. The petitioner is directed to communicate this order to the Secretary to the Government of West Bengal, School Education Department and he is directed to act on such communication.

9. This writ application is, thus, disposed of. There will be, however, no order as to costs.

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