

(2018) 10 CAL CK 0084
In the Calcutta High Court
Case No : Writ Petition No.2250 (W) Of 2009

Jaladhar Maji @APPELLANT@Hash State of West Bengal & Ors

Date of Decision : 11-10-2018

Acts Referred:

Citation : (2018) 10 CAL CK 0084

Hon'ble Judges : Arindam Mukherjee, J

Bench : Single Bench

Advocate : Ekramul Bari, Syed Mansur Ali

Final Decision : Allowed

Judgement

The grievances of the petitioner is that the petitioner while serving in Narsamuda J.K.S. High School, P.O. Asansol, District " Burdwan (presently

Paschim Burdwan), obtained higher qualification i.e., M.A. in History, upon being permitted by the Managing Committee of the said school vide Reso.

No.4 (b) dated 15th February, 1984. The result of M.A. History of Rajasthan University wherefrom the petitioner has obtained such qualification was

published on 21st July, 1986. Since 21st July, 1986, the petitioner has been enjoying the Post Graduate scale of pay, which will appear from pages 25,

26 and 27n of the writ petition. The option form submitted by the writ petitioner has been provisionally approved by the District Inspector of Schools

(Secondary Education), Burdwan and only thereafter such pay scale was given.

The writ petitioner says that he joined the said school on 16th November, 1972 and retired therefrom on 30th November, 2007. It is the case of the

writ petitioner that between 21st July, 1986 to 30th November, 2007, he had been continuously given the Post Graduate scale of pay. However, after

his retirement the benefits have not been either calculated or given on the basis of the writ petitioner holding Post Graduate degree.

It appears from the memo dated 13th March, 2007, annexed to the affidavit-in-opposition, being Clearance Cum Observation Sheet, issued by the

Deputy Director of Accounts (S.E. Deptt.), Burdwan, that eight queries have been raised. Query no.4 speaks of higher scale approval of D.I.S. (S.E.)

w.e.f. 21st July, 2007, is to be submitted.

The writ petitioner also relies upon a memo dated 25th May, 2007, issued by the Additional District Inspector of Schools (S.E.), Asansol Sub- Division,

Burdwan, to the Director of School Education, West Bengal, wherein the said Additional District Inspector of Schools (S.E.), sought for a decision

from the Director of the School Education as to whether he can issue any order (on post facto basis) approving the writ petitioner higher scale of pay

(M.A. Scale of pay) w.e.f. 21st July, 1986.

The writ petitioner also relies upon the memo issued by the Director of School Education, West Bengal, dated 3rd/10th of July, 2008, being the

impugned memo wherein the Director of School Education, West Bengal, held that higher scale of pay (P.G. Scale) will not be under consideration

without prior approval from the competent authority as per para no.3 of G.O.No.593-SE(B) dated 27th November, 2007. The petitioner says that the

impugned memo is not only bereft of reasons but also takes into consideration irrelevant facts. The advocate appearing on behalf of the respondent

submits that the writ petitioner has to satisfy the queries raised in the memo dated 13th March, 2007 in order to get pensionary benefit on Post

Graduate scale.

After considering the material on record and the submissions made on behalf of the respective parties, following appears:-

i) On the basis of provisional approval given by the District Inspector of Schools (SE), the Post Graduate pay scale has been granted to the writ

petitioner.

i) After having granted such Post Graduate pay scale since 1986, the concerned authority while granting pension cannot seek for any higher scale

approval of District Inspector of Schools (SE) w.e.f. 21st July, 1986, as has been sought vide memo dated 13th March, 2007.

i) It is obvious that unless there was any approval from the concerned District Inspector of Schools, Post Graduate pay scale could not have been

allowed to the writ petitioner since 21st July, 1986. If the approval of the

concerned District Inspector of Schools is not available, it will be the laches on the part of the office of the District Inspector of Schools to which the writ petitioner cannot be blamed.

That apart, the prior approval from the competent authority as per para no.3 of G.O.No.593-SE(B) dated 27th November, 2007, is of prospective

application and not applicable retrospectively. Moreover, the said Government Order speaks of prior approval from District Inspector of Schools needs

to be obtained at the time when a person goes for obtaining higher qualification. This in any effect cannot be applicable in case of writ petitioner, who

has obtained such higher qualification as far back on 21st July, 1986 when there was requirement of prior approval from D.I.S (SE).

In the facts and circumstances, as aforesaid, the memo dated 3rd/10th July, 2008, being the annexure P-4 to the writ petition clearly appears to be

unsustainable and is set aside. The Director of School Education, being the respondent no.2, is directed to consider the writ petitioner's case as

regards the other requirements to be fulfilled as mentioned in the memo dated 13th March, 2007, for getting pensionary benefit on the basis of Post

Graduate pay scale without insisting upon any post-facto approval of the concerned District Inspector of Schools as to Post Graduate pay scale. In the

event the respondent no.2, finds that the petitioner is otherwise eligible to get pensionary benefit on the basis of Post Graduate pay scale, he should

pass a reasoned order within a period of three months from date, either allowing or disallowing such pensionary benefit to the writ petitioner on the

basis of Post Graduate pay scale but after giving the petitioner a reasonable opportunity of hearing.

The respondent no.2, should also take into consideration that the petitioner on his retirement on 30th November, 2007, became entitled to the benefits

and if he finds that pensionary benefits are to be allowed on the basis of Post Graduate pay scale, he should consider the issue of awarding interest on

the petitioner's claim. The writ petition is accordingly allowed to the extent as aforesaid, without there being any order as to costs. Urgent

photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.