

(2013) 07 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 20088 (W) of 2013

Jayanti Basak

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 4 CALLT 343 : (2013) LabIC 3790

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Ekramul Bari and Ms. Tanuja Basak, for the Appellant; Jahar Dutta for State, for the Respondent

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. 641(4), dated June 12, 2013. By virtue of the impugned order, the respondent No. 3 rejected the claim of the petitioner for granting Post Graduate scale of pay in her favour in connection with her service as an Assistant Teacher of Nalagola Hiralal Balika Vidyalaya, District-Malda.

2. This matter has a chequered history. The appointment of the petitioner to the post under reference was approved by the respondent No. 3 under Memo No. 65/1(9), dated January 30, 1989 with effect from January 01, 1989. The petitioner subsequently prayed for a prior permission to enhance her academic qualification. The respondent No. 3 granted prior permission under his Memo No. 506/1(1)/, dated August 16, 2000 with a condition of giving no assurance for extending the benefit of higher scale of pay in case of obtaining Post Graduate qualification by the petitioner. The petitioner obtained M.A. degree in history, the last date of examination was December 10, 2001.

3. On the prayer made by the petitioner for extending the benefit of Post Graduate scale of pay in her favour, the respondent No. 3 passed an order under Memo No. 1292(4) dated August 22, 2012 in compliance of the direction of this

High Court given in W.P. No. 18327(W) of 2007 on June 25, 2012, rejecting the prayer of the petitioner.

4. After perusing the above order, I find-that in third paragraph of the above order, the respondent No. 3 admitted the fact of obtaining prior permission by the petitioner for pursuing higher study, but in sixth paragraph of the above order, the prayer of the petitioner was rejected on the ground of obtaining no prior permission from the competent authority.

5. Again the petitioner had to move an application under Article 226 of the Constitution of India bearing W.P. No. 25894(W) of 2012. The above order passed by the respondent No. 3 was set aside by the Court by an order dated December 17, 2012 relegating the matter to the respondent No. 3 to take a decision afresh. The operative portion of the above order is quoted below:--

On perusal of the impugned order, I am really surprised by the manner the authority has proceeded to dispose of the said claim. In an earlier paragraph of the said order it has been recorded that prior permission was issued to the petitioner for undertaking post graduate degree course but on the very next paragraph it has been recorded that the petitioner could not produce the order of prior permission.

The aforesaid statements are self-contradictory which shows that the authorities have decided the matter with a closed mind.

The order impugned is, therefore quashed and set aside.

The said authority is once again directed to reconsider the matter by passing a reasoned order, after giving an opportunity of hearing to all interested parties, including the parties herein or their authorised representatives, in the light of the applicable circulars and/or notifications and/or enactment.

Entire exercise shall be completed within six weeks from the date of communication of this order.

Since this writ petition has been disposed of at the motion stage without calling for any affidavit, allegations contained in the writ petition shall be deemed not to have been admitted by the respondents.

The writ petition is disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy be supplied to the parties, if applied for, on priority basis.

(Harish Tandon, J.)

6. Thereafter, the impugned order was passed. For ascertaining the full and complete text of the order, the operative portion is quoted below:--

Now, the matter is taken up for giving reasoned order as per direction of the Hon"ble High Court with an open frame of mind in accordance with law.

The Government Order prevalent at the time being was the GO. No. 548-SE(S) dated 24.06.1997 wherein it is held that, henceforth all the teachers teaching in different State-aid schools will have to take prior permission from the District Inspector of Schools (S.E.) through the Managing Committee, Ad hoc Committee/Administrator as the case may be if they like to enroll themselves and to appear for the examination conducted through correspondence/Distance mode of education from the UGC-affiliated Universities.

It appears from the students enrolment card of the petitioner that she enrolled herself in the said M.A. course on 01.02.2000 without having prior permission from the District Inspector of Schools (S.E.)/Malda. Naturally the permission which was accorded to the petitioner for appearing M.A. examination Memo No. 530/G dated 16.08.2000 assigning the condition that it does not guarantee higher scale of pay.

As the petitioner without obtaining prior permission from the District Inspector of Schools (S.E.) concerned enrolled herself in the P.G. course, so in the lights of GO. No. 548-SE(S) dated 24.06.1997 prayer for P.G. scale of pay of the petitioner is hereby rejected in accordance with law.

Hence the matter is disposed of.

All concerned be informed accordingly.

District Inspector of Schools,

Secondary Education, Malda.

Date 12.06.2013.

7. Having heard the learned counsel appearing for the respective parties as also after considering the facts and circumstances of the case, I find that the ground for rejecting the prayer of the petitioner was of obtaining the prior permission with a condition of giving no assurance for extending the benefit of higher scale of pay to the petitioner.

8. The Government has declared a policy of extending the benefit of Post Graduate scale of pay to the Assistant Teachers of Recognized Non-Government Aided Institutions after enhancement of the qualification by the Assistant Teacher concerned. In doing so, the Government accepted the recommendation of the Fifth Pay Commission under Revision of Pay and Allowance Rules, 2009. No option was given to a District Inspector of Schools (SE) concern for giving prior permission with a pre-condition of giving no assurance for extending the benefit of higher scale of pay. That apart a District Inspector of Schools, Secondary Education is not the guardian of the State Government so far as the Financial affairs are concerned.

9. In that view of the above, the concerned District Inspector of Schools (SE), Malda acted without jurisdiction.

10. Before parting with, this Court cannot ignore another wrong doing of the respondent No. 3. His action was censured by this Court on an earlier occasion by an order dated December 17, 2012 passed in respect of the writ application bearing W.P. No. 25894(W) of 2012 at the first instance of the petitioner. But at the time of passing the order afresh in compliance of the above order, the petitioner acted in a manner which gave an impression to the Court that he bent upon violation of the law and that too at the cost of ignoring the observations of this High Court so far as the above order dated December 17, 2012 passed in W.P. No. 25894(W) of 2012 is concerned.

11. In view of the above facts and circumstances, the impugned order is quashed and set aside.

12. I direct the respondent No. 3 to extend the benefit of Post Graduate scale of pay in favour of the petitioner within two months from the date of communication of this order with effect from the date when it was due and payable to the petitioner with an interest @ 9% on the arrear amount. The interest shall be paid from the public exchequer at the first instance and the rate of interest is fixed at 9% p.a. taking into consideration the highest prevailing rate of interest payable on a fixed deposit by a Nationalized Bank and the above interest shall be paid to the petitioner from the public exchequer at the first instance within the period mentioned hereinabove and to be recovered in terms of the direction to be given in the latter part of this order.

13. This writ application is, thus, disposed of.

14. There will be a cost of Rs. 5,000/- to be paid to the petitioner from the public exchequer within the period mentioned hereinabove.

15. The Secretary to the Government of West Bengal, School Education Department is directed to recover the aforesaid interest as also the cost from the salary of the concerned District Inspector of Schools (SE), Malda within six months from the date of communication of this order by way of raising public demand in case of his retirement from the service and to file a report of compliance of this direction before the Registrar General, Appellate Side, High Court, Calcutta. Urgent photostat certified copies of this order, if applied for, be given to the parties on priority basis.