
(2011) 04 CAL CK 0123
In the Calcutta High Court
Case No : Writ Petition No. 20600 (W) of 2010

Kabita Dam

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

West Bengal Schools (Control of Expenditure) Act, 2005 — Section 14, 14(2), 20

Citation : (2011) 04 CAL CK 0123

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : E. Bari and Tanuja Basak, for the Appellant; K.M. Yusuf and Tapasi Sinha, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The Petitioner herein was appointed as an assistant teacher in the subject of Bengali under Language Group in Coopers Colony High School in the District of Nadia with effect from 10th February, 1993. The appointment of the Petitioner in the said school was approved by the District Inspector of Schools (Secondary Education), Naida on 16th March, 1993 and such approval was communicated by the said District Inspector of Schools to the School Authority under Memo No. 437/Gen/AC dated 16th March, 1993. The educational qualification of the Petitioner was B.A.B.T. at the time of her appointment as assistant teacher in the said school. The said qualification of the Petitioner was mentioned in the approval letter issued by the District Inspector of School. Subsequently, the Petitioner wanted to improve her education qualification. The Additional District Inspector of School, Ranaghat Sub-Division, granted permission to the Petitioner to appear in the M.A. examination (Bengali) from Burdwan University in 2 correspondence course without hampering her normal duties in the school. Grant of such permission was communicated by the said Additional District Inspector of School, Ranaghat Sub-Division to the School Authority by his letter under Memo No. 30/RS/SE dated 25th January, 2002.

After grant of such permission, the Petitioner herein completed her studies in Master of Arts (Bengali) and with the approval granted by the West Bengal Board of Secondary Education to the proposal for sanctioning the study leave, she appeared in the M.A. examination. She passed M.A. Part I examination in 2004. She also passed M.A. final examination, 2005 in Bengali from the University of Burdwan. Though the last date of holding M.A. final examination of 2005 under the said University in which she appeared, was 15th September, 2005 but the result of the said examination was published by the University on 4th January, 2006.

2. After acquiring the Master Degree in Bengali she claimed higher scale of pay commensurate with her educational qualification. The Petitioner's prayer for higher scale of pay was rejected by the Director of School Education by the impugned order being Annexure P/7 to this writ petition at page 40 thereof. The said order was communicated to the Petitioner by Memo issued by the Director of School Education on 7th June, 2010. The Director of School Education rejected the Petitioner's prayer for higher scale by referring to Section 14(2) of West Bengal School Service (Control of Expenditure) Act, 2005 (hereinafter referred to as the said Act) which came into effect from 27th December, 2005. According to the Director of School Education, the Petitioner is not entitled to get higher scale of pay as the result of her Post Graduate final examination was published on 4th January, 2006 which was after the cut-off date i.e. 27th December, 2005 when the West Bengal School Service (Control of Expenditure) Act, 2005 came into operation having overriding effect on any other law for time being in force containing any provision contrary to the said Act or any contract, customs or usages to the contrary. The Director of School Education was of the view that in view of Section 14 read with Section 20 of the said Act, the benefit which the Petitioner could have obtained for her enhanced qualification as per ROPA 1998, cannot be granted to her as she obtained Master Degree on 4th January, 2006 when her result in final M.A. examination was published.

3. The propriety of the said order is under challenge in this writ petition at the instance of the said assistant teacher.

4. Heard Mr. Bari, learned advocate for the Petitioner and Mr. Yusuf, learned advocate for the State Respondents. Considered the Materials on record including the impugned order.

5. Let me now consider as to how far the Director of School Education was justified in passing the impugned order in the facts of the instant case.

6. Admittedly, permission was granted to the Petitioner by the concerned Additional District Inspector of School, for improving her education qualification in the relevant subject. It is also an admitted fact that the Petitioner appeared in both Part I and final M.A. examination under the Burdwan University after obtaining study leave from the West Bengal Board of Secondary Education. She passed M.A. Part I examination in 2004. She appeared in the M.A. final

examination in 2005 under the said University. Last date of holding M.A. final examination, 2005 under the said University was 15th September, 2005. Thus the entire episode right from the grant of permission for allowing the Petitioner to improve her educational qualification in the relevant subject up-to her appearance in the final M.A. examination, were all concluded before the West Bengal Schools Service (Control of Expenditure) Act, 2005 came into operation. Admittedly, the said Act came into operation on 27th December, 2005. The result of M.A. final examination was published on 4th January, 2006. Thus the result of the M.A. final examination was published after the West Bengal Schools Service (Control of Expenditure) Act, 2005 came into operation. If the result of the M.A. final examination would have published prior to 27th December, 2005, then nobody could have refused to grant the relief which the Petitioner claimed for her higher qualification.

7. Now the question is as to how far the right of the Petitioner to claim higher scale for her improved qualification can be denied in the facts of the instant case?

8. In order to find out answer to the said question, this Court is required to consider the effect of Section 20 of the West Bengal School Service (Control of Expenditure) Act, 2005. Though it is rightly pointed out by Mr. Yusuf, learned advocate, appearing for the State Respondents that by virtue of Section 20 of the said Act, the provision contained in the said Act has an overriding effect over any other law for the time being in force which contains a contrary provision therein. It has also been pointed out by him that with the enforcement of the said Act on 27th December, 2005, the relief which the Petitioner could have obtained for her enhanced qualification cannot be granted to her in view of Section 14 read with Section 20 of the said Act as she could not improve her qualification prior to the cut-off date i.e. 27th December, 2005 when the said Act came into operation. Mr. Yusuf further relied upon the Government Order dated 27th November, 2007, which, according to him, gives further support to the impugned order. Mr. Yusuf thus supported the impugned order passed by the Director of School Education.

9. Mr. Bari, learned advocate, appearing for the Petitioner, invited my attention to a Government Order issued on 17th September, 1984 under Memo No. 253-Edn. (B)/IM. 12/84, wherein earlier G.O. No. 372-Edn.(B) dated 31st July, 1981 was clarified on the subject of revision of pay scale of the teachers of the Educational Institution of Non-Government/Aided/Sponsored Educational Institutions under ROPA Rules of 1991. On perusal of the said Government order, this Court finds that while granting higher scale of pay to the Secondary School teacher on qualification basis after enhancement of qualification, a question was raised as to the date since when the benefit of ROPA 1981 regarding grant of higher scale of pay for the enhanced qualification will be given to the teachers of such educational institution. In other words, the question was as to whether such teacher can claim the benefit of higher scale from the date of publication of the result of the examination or from the date following the last date of holding the

said examination in which he/she appeared.

10. The said problem was ultimately resolved with the pleasure of the Governor by issuing of the said clarificatory Government order whereby it was clarified that "the date of obtaining higher qualification will count from the date following the last date of examination both theoretical and 5 practical - subject to the condition that the incumbent concerned comes out successful in the said examination."

11. If the said Government order is taken note of, then this Court finds that the date of obtaining higher qualification by the Petitioner should be counted from the last date of M.A. final examination in which she appeared. I have already indicated above that the last date of M.A. final examination, 2005 was 15th September, 2005 which was before the cut-off date i.e. 27th December, 2005 when the West Bengal School Service (Control of Expenditure) Act, 2005 came into operation. Though the said Government order was issued in the context of ROPA 1981 but the same principle is being all throughout followed by the State Respondents in granting financial benefits to the teacher who has enhanced his/her educational qualification with prior permission of the District Inspector of school, under the subsequent ROPA of 1998.

12. Thus, by applying the said Government order dated 17th September, 1984, this Court holds that the Petitioner is entitled to get the benefit of ROPA 1998 notwithstanding the fact that the result of M.A. final examination, 2005 was published after the cut-off date i.e. 27th December, 2005 as the last date of holding the said examination was 15th September, 2005 which was before the cut off date.

13. Under such circumstances, this Court holds that the impugned order cannot be retained on record. The impugned order passed by the Director of School Education, being Annexure P/7 to this writ petition at page 40 thereof stands quashed. The Director of School Education is, thus, directed to grant the benefit of the ROPA 1998 to the Petitioner for her Master Degree which she acquired with the prior permission of the Additional District Inspector of School in the relevant subject.

14. The concerned Respondents are, thus, directed to complete the entire exercise, in this regard, so that the benefits of the ROPA Rule of 1998 regarding revision of the pay scale of the Petitioner for her Master Degree qualification can be given to the Petitioner within eight weeks from the date of the communication of this order.

15. The writ petition, thus, stands allowed.

16. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.