
(2011) 03 CAL CK 0171
In the Calcutta High Court
Case No : Writ Petition No. 1077 (W) of 2009

Kingshuk Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Citation : (2011) 03 CAL CK 0171

Hon'ble Judges : Prabhat Kumar Dey, J

Bench : Single Bench

Advocate : Ekramul Bari, for the Appellant; Mitali Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

Prabhat Kumar Dey, J.—The writ Petitioner by way of a writ petition came up before this Court in the matter of inaction on the part of the Respondents in granting necessary two additional increments to the writ Petitioner on completion of his Ph.D. degree.

2. The facts stated in brief are that the Petitioner was appointed as an Assistant Teacher of Kalyani Pannalal Institution since 8th July, 1992. Since 20.04.2004 he was appointed as the Headmaster of the Santipur Municipal High School and the Respondent No. 3 accorded approval to the said appointment. He applied before the concerned authority for granting necessary permission for doing Ph. D. degree in Education and the Respondent No. 4 allowed him to continue the research work of Ph.D. Thereafter, the Petitioner duly qualified in the Ph. D. degree on 27.04.2007 and the same was intimated to the Respondent No. 4 for incorporation of the degree in his service record. The school authority also forwarded the papers of the Petitioner to the Respondent No. 4 for granting two additional increments in favour of the Petitioner, but the Respondent No. 2, the Director of School Education, rejected the prayer of the Petitioner for granting two additional increments on account of his enhancement of Ph. D. degree, hence, this writ petition.

3. It is contended by the learned Advocate, appearing on behalf of the Petitioner that the Petitioner obtained necessary permission for doing Ph. D. research work from the concerned authority and after getting the Ph. D. degree, the matter was intimated to the Respondents concerned for incorporation of the degree in the service record of the Petitioner and a prayer was made for granting him two additional increments for such degree. He has drawn my attention to memo No. 33-Edn (B) dated 07.03.1990, Paragraph 16(5), which provides that "Secondary teachers, Headmaster / Headmistress with Doctorate Degree in the subject taught or in an allied subject shall get two additional increments from the date of the convocation on which such degree is awarded. Provided that those who obtained this degree prior to the date of coming over to the revised scale shall get two additional increments from the date with effect from which they elect to draw pay in the revised scales."

4. The learned Advocate appearing on behalf of the Petitioner has also drawn my attention to memo No. 25-SE (B)/IM-102/98 dated 12.02.1999 issued by the School Education Department, which runs as follows:

Secondary teachers, Headmaster / Headmistress with Doctorate Degree in the subject taught or in an allied subject shall get two additional increments from the date of the convocation on which such degree is awarded. Provided that those who obtained this degree prior to the date of coming over to the revised scale shall get two additional increments from the date with effect from which they elect to draw pay in the revised scales, provided that they have not already got such additional increments in their earlier pay revision and provided further that in the latter case pay should be fixed at least at the stage of the relevant scale of pay.

5. He has also contended that the provision of West Bengal Schools (Control of Expenditure) Act, 2005 has got no application in the present case as the Petitioner, pursuant to the permission, enhanced the Ph. D. degree and as such, the Petitioner is entitled to get two additional increments of pay. In support of his contention, he has referred to decision reported in (2008) 4 CAL LT 251 (HC) (Miss Sonali Kar v. D.I. of Schools (S.E.) Kolkata and Ors Miss Sonali Kar Vs. D.I. of Schools (S.E.) and Others, , (2009) 1 CHN 561 (Milan Kumar Dey v. State of West Bengal and Ors. 2009 1 CHN 561 and 2009(1) CLJ (Cal) 639 (Shantanu Saha v. State of West Bengal 2009 (1) CLJ (Cal) 639).

6. On the other hand, learned Advocate appearing on behalf of the State / Respondent contended that the Petitioner obtained his Ph. D. degree on 27.04.2007, which is long after the coming into operation of the concerned Act, 2005. She has drawn my attention to the memo No. 593-SE(B)/ES/O/B/IM-98/2007 dated 27.11.2007 issued by the Education Department relating to an order by mentioning Paragraph 6 of the said order, which is as follows:

Prayers from teachers who have already secured higher qualification observing the procedure mentioned above and who have submitted his / her claim to

concerned District Inspector of Schools with a complete set of papers like certificate, resolution of Managing Committee etc. before the introduction of West Bengal Schools (Control of Expenditure) Act, 2005 may be considered only by the District Inspectors of Schools (SE) with the approval of Director of School Education, West Bengal only after examining the staffing pattern, vacancy positions etc. of the school concerned.

7. She has also drawn my attention to the notification No. 2053-L dated 19th August, 2005, published in the "Kolkata Gazette" regarding West Bengal Act XIV of 2005 and West Bengal Schools (Control of Expenditure) Act, 2005 of which Paragraph 14(3) states that every teacher of a school shall, if appointed in the Honours Graduate or Postgraduate teacher category, be entitled to draw pay of Postgraduate teacher category, upon acquiring Postgraduate degree in the manner as may be specified by order.

8. She has also submitted that this order came into force since 19th August, 2005 and as such the Petitioner is not entitled to any incremental benefit as claimed.

9. There is no denial of the fact that the Petitioner was appointed as an Assistant Teacher in the concerned school with effect from 7.8.1992 and thereafter he was appointed as the Headmaster of the said school since 20.4.2004. Subsequently he obtained Ph. D. degree with effect from 27.4.2007 after taking necessary permission for such degree from the authority concerned and thereby claimed fixation of pay with two additional increments. In the case of Sonali Kar (supra), the Petitioner was granted Ph. D. degree on 17th May, 2004 and she was given the necessary certificate of Ph. D. degree on 28th April, 2005. In the said case, the Hon'ble Single Judge of this Court held that the memo came into existence long before the Petitioner obtained his Doctorate degree. In the case of Milan Kumar Dey (supra), as the Petitioner acquired higher qualification prior to coming into operation of the said Act, accordingly, the said decision is also not applicable.

10. In the case of Shantanu Saha (supra), the Petitioner obtained higher qualification in the year 1992 and that is long before the West Bengal Schools (Control of Expenditure) Act, 2005 came into operation. The said decision has no application in this case.

11. I am at a great loss as to how these decisions can be of any assistance to the learned Advocate for the Petitioner.

12. It may be pointed out here that the Petitioner got his name registered for Ph.D. in 1997 under the Kalyani University and he obtained necessary permission for doing his research work from the concerned authority. After obtaining the Ph.D. degree in April, 2007 he claimed two additional increments from the authority concerned. But the impugned notification of the Education Department clearly stated that the teachers, who have already secured higher qualification before the introduction of West Bengal Schools (Control of Expenditure) Act,

2005, may be considered by the District Inspector of Schools.

13. On a plain reading of the notification of the West Bengal Schools (Control of Expenditure) Act, 2005, it seems that the said Act came into force since 19th August, 2005 and the Petitioner had obtained his higher degree in 2007, which is long after the operation of the said Act.

14. In view of the facts and circumstances and having heard the learned Advocate for the Petitioner as well as State / Respondents and considering the materials on record, I am of the opinion that the Petitioner is not entitled to any relief as sought for.

15. Accordingly, the writ petition is dismissed.

16. There is no order as to costs.

17. Urgent Xerox certified copy of this order may be supplied to the learned Advocates of the respective parties, if the same is applied for.