
(1989) 04 CAL CK 0023
In the Calcutta High Court
Case No : C.R. No. 2821-26 (W) of 1981

Krishna Pada Ghose

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Citation : (1989) 04 CAL CK 0023

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : S. Samanta, for the Appellant; D.P. Mukherjee and Mr. A.P. Sircar, for the Respondent

Judgement

Susanta Chatterji, J.—C.R. No. 2821-26(W)/81 are taken along with CR. No. 417-21(W)/79.

2. Similar points are involved in all the cases. By referring the writ petitioners filed by the respective parties it appears that they have common grievances as to the promotion to the post of Head Teacher of the respective schools. It appears that the petitioners prayed for issuance of a writ of Mandamus commanding the opposite parties to forbear from giving effect to the impugned Government order marked as Annexures "B", "C" and "D" respectively to the writ petition and direct the concerned respondents particularly the District School Board, Howrah to consider the applications of the petitioners for appointment of the Head Teacher and also for Head Teacher's allowance. It appears from the materials on record that the annexure "B" to the writ petition refers to the Government's order dated 16th February, 1977 as to the revision of qualification for the post of Head Teacher of Primary Schools passed under Memo No. 173-Edn(P) | 10P-3/76. Similarly annexure "C" refers to Memo No. 912-Edn(P) | 10R-3/76 dated 22nd August, 1977 and Annexure "D" refers to the Memo No. 986 Edn(P) | 10R-3/76 dated 12th May, 1978 which relates to the qualification for the post of Head Teachers in primary schools and right to obtain the allowances. It is stated in details that under Rule 2(a) of the Rules framed under the Bengal (Rural)

Primary Education Act, 1930 the minimum qualification for the appointment of Head Teacher is School Final Pass (or equivalent) and training with five years" continuous service as a School teacher and the requirement of 5 years" continuous service could be relaxed With the approval of the Director of Public Instructions, West Bengal. It is stated that the aforesaid Rule was amended on October 22, 1971 and again it was amended on February 16, 1977 by directing pending amendment of the relevant Rules, the requisite qualification for the Head Teacher has been laid down. It is the grievance of the petitioners that pending amendment of the Rules in question the Government's order is otherwise contrary to and inconsistent with the statutory Rules. It is also the grievance of the petitioners that although they have secured the requisite qualification and fulfilled the conditions for the post of Head Teacher and to obtain the special pay and allowances they are deprived of the same in view of the alleged Government order and for the alleged preparation of panel by the respective District School Board.

3. Mr. Samanta appearing for the petitioners has strongly argued that the Government's order provides for the requisite qualification to become Head Teacher and Teacher of the School and to obtain necessary Special Pay and Allowance. Although the petitioners have fulfilled all the conditions as per Rule and as well as in terms of the Government Order they are being deprived of getting the order of posting and vis-a-vis special pay and allowance as admissible under the law.

4. Mr. A. P. Sircar appearing for the respondent has very fairly submitted that strictly speaking the Government order cannot be supported in law. While the Rule holds the Geld there cannot be any Government Order pending amendment of the Rule. He has further submitted that within the scope of the existing provision of law there is no Rule for preparation of any panel for the post of Head Teacher separately and for obtaining their special pay. He has further submitted that if the petitioners have fulfilled the conditions as regards the necessary qualification to be applicable to the post of Head Teacher and to obtain the Special Pay and allowance there is no bar and/or impediment to grant the same.

5. Having heard the Learned Advocates of both sides it appears that the impugned Government's order has no force. The Government orders are inherently defective. It appears before this Court that the pending the amendment of the Rule the Government is not free to make any order affecting the right of the petitioner. It is submitted by both Learned Advocates for the respective parties that the impugned Government orders copy of which is annexures "D", "E" and "F" to the writ petition are without having any statutory force. The Rule does not permit the preparation of a second panel for Head Teacher and to grant the relief as prayed for by the petitioner but at the same time the relief as sought for by the petitioner cannot be denied.

6. Considering all the aspects of this matter, the Rule is disposed of by quashing and/or setting aside the Government order, copy of which is annexures "D", "E"

and "F" to the writ petition as indicated above. The District School Board and/or the concerned respondents are directed to consider the pending application of the petitioner within four weeks from the date of communication of this order by giving them an opportunity of hearing and to consider the granting of their necessary relief for posting as Head Teacher and for payment of their special pay and allowance as admissible under the law and dispose of the same as aforementioned by passing a speaking and reasoned order.

7. There will be no order as to costs.

8. Pending the disposal of the application status quo as on today will be maintained by the parties. This order will govern C.R. No. 417-21(W)/79.