
(2016) 09 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition No. 22400 (W) of 2014

Manas Mandal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2016) LIC 4012

Hon'ble Judges : Shivakant Prasad, J.

Bench : Single Bench

Advocate : Mr. N. I. Khan and Mr. Amlan Kumar Mukherjee, Advocates, for the Petitioner; Mr. Jayotosh Majumder, Mr. S. N. Bhattacharya, Mr. Pinaki Dhole Mr. Asit Baran Mukherjee, Advocate, for the State

Final Decision : Dismissed

Judgement

Shivakant Prasad, J.—The petitioner was selected against regular vacancy in the post of Assistant Teacher in Geography (Pass) in the Talit Goureswar High School as per Section 9(1) of the WBSSC Act, 1997 read with Rule 17(2) of the West Bengal School Service Commission (Selection of Persons for Appointment of Teachers) Rules, 2007 and was appointed as Assistant Teacher (Geography) pass graduated in the said School and his appointment as an Assistant Teacher in Geography (Pass) was approved by the D. I. of School on a salary as admissible under the rules with effect from 06.8.2010 on usual terms and conditions.

2. The petitioner has been taking classes in Geography in the Higher Secondary Section as the Geography teacher of Higher Secondary Section, after resigning joined another school as Headmaster. It is stated that the petitioner made a representation dated 27.2.2013 before the District Inspector of Schools (SE), Burdwan intimating the aforesaid facts and prayed to give necessary permission to the school authority to absorb him in the post Graduate post in Geography as per the judgment of the Hon'ble High Court, Calcutta.

3. It is submitted that in a similar and identical matter, this Hon"ble Court held that there could be no justification in discriminating against employees appointed through the School Service Commission and denying them with all practical purposes of the benefit of higher scale upon improvement of qualification in a relevant teaching subject and the Government order dated 13.7.1999 being prospective, the same discriminates between Assistant Teachers appointed to aided and non-governmental schools before 13th July, 1999 and those appointed after 13th July, 1999 and also between Assistant Teachers of such schools who improved their qualifications before 13th July, 1999. The Hon"ble Court further held that the Government order dated 13th July, 1999 in so far as the same purports to amend paragraph 12(3) of the Government order dated 12th February, 1999 is discriminatory, violative of article 14 and of no effect.

4. The Managing Committee of the said school in its meeting dated 09.3.2013 resolved to move the District Inspector of Schools (SE), for grant of higher post graduate scale of pay to the petitioner keeping intact the post of Geography Pass as the petitioner is regularly taking classes in Geography in the higher secondary section.

5. It is contended that the petitioner is the only teacher in Geography in the higher secondary section of the said school and it is evident from the staff pattern that none other teachers are teaching in the same subject and as per the Government circulars and orders issued in this regard, the petitioner is certainly entitled to get higher post graduate scale of pay as the students of the said school are immensely benefited for such higher education acquired by the petitioner.

6. That being aggrieved with the inaction on the part of the respondent authority to accord higher post graduate scale of pay to the petitioner for attaining higher qualification in the relevant subject, the petitioner moved a writ petition being W. P. No. 13371(W) of 2013 and Single Bench of this Hon"ble Court by order dated 8.5.2013 directed the District Inspector of Schools (SE), Burdwan to take a decision in the matter by passing a reasoned order in accordance with law within a period of two months from the date of communication of the order and to communicate such decision to the petitioner within a week thereafter. In compliance thereof, the District Inspector of Schools (SE), Burdwan, passed a reasoned order dated 27.1.2014 and rejected the claim of the petitioner for grant of higher scale of pay on the ground that his prayer cannot be considered as per para 14(2) of the West Bengal Schools (Control & Expenditure) Act, 2005 since the petitioner was empanelled as a candidate for appointment in a vacant post meant for pass degree as per the application of the petitioner for the post of Assistant Teacher meant for pass graduate holder. The District Inspector of Schools (SE), Burdwan further held that a prior permission was issued by the District Inspector of Schools (SE), Burdwan dated 21.12.2009 for the post of Assistant Teacher with Pass Graduate in Geography and the School Service Commission recommended the name of the petitioner for the post of Assistant

Teacher mentioning qualification as pass graduate (Geography pass) vide memo dated 24.7.2010. The petitioner joined as Assistant Teacher as pass graduate in Geography on 06.8.2010 and he applied for higher scale of pay as he is taking classes in higher secondary section in absence of one Suza Ud Dowla (M.A. in Geography) who resigned on 01.8.2012 without approval of the District Inspector of Schools (SE), Burdwan.

7. It is submitted that in several judgment and orders of this Hon''ble Court it has been held that a Teacher who has attained higher qualification in the relevant subject and whose expertise qualification has been utilised by the School authorities and as the students of the school have been immensely benefited due to such attained higher post graduate qualification, cannot be discriminated and deprived of bona fide and legitimate higher scale of pay holding that the post against which he has been appointed is for Pass Graduate.

8. The paragraph 12 of the Government order dated 12.2.1999 has dealt with Career Advancement Scheme and related issues. It is stated that paragraph 12(3) stipulates that all teachers who had improved or would improve their qualification or who were appointed with higher qualification in the subject relevant to their teaching/appointment would get higher scale of pay appropriate to their qualification with effect from January 1, 1996 or the date of their improving qualification whichever would be later, provided that such higher qualified teachers in the relevant subject or group were justified as per the approved staff pattern of the School. Thus paragraph 12(3) of the said Government order confers a right of the teacher for claim of higher scale of pay provided the conditions contained therein are fulfilled.

9. It is further submitted that West Bengal Schools (Control & Expenditure) Act, 2005 is not at all an impediment regarding granting of higher scale of pay to the petitioner and that if Section 14(1) of Section 14(2) of the West Bengal Schools (Control & Expenditure) Act, 2005 is pressed in to service as disentitling a teacher from asking for higher scale of pay, there is likely to be an insurmountable anomaly in applying the same provisions to any teacher who was appointed before the Act came into being and have subsequently enhanced his qualification. I do not agree with such submissions of the learned counsel for the petitioner in view of the specific provision under section 14(2) of the Act which provides that a teacher of a school if appointed in the category of a graduate would not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than the qualification specified for such post. It is understandable that the appointment to the category of a graduate teacher will not be entitled to ask for a higher scale of pay.

10. At the cost of repetition, I find that the petitioner Manas Mandal was appointed as Pass Graduate with Geography as Assistant Teacher of Talit Goureswar High School, District-Burdwan and he was approved as a teacher on and from 6th August, 2010. The petitioner obtained M.A. degree in Geography from Chhatrapati Shahu Ji Maharaj University, Kanpur in 2010. Therefore, the

provision of section 14(2) of the said Act is readily attracted disentitling the petitioner to get higher scale of pay on account of enhancing his qualification as M.A. in Geography.

11. It would be apt to reproduce extract of the reasoned order dated 27.01.2014 passed by District Inspector of Schools (SE) as under-

"On the basis of submission of documents and on verification of records it is observed that (1) a prior permission was issued vide District Inspector of Schools (Sec. Edn.), Burdwan No. 284, dated 21.12.2009 for the post of A.T. with Pass Graduate with Geography, pref. Trained. (2) The School Service Commission recommended Sri Manas Mondal for the post of A.T. mentioning qualification Pass Graduate (Geography Pass) vide No. 1268/1(2) Recom. Dated 24.07.2010. (3) Manas Mondal joined as A.T. Pass Graduate with Geography on 06-08-2010. (4) The petitioner applied for higher scale of pay as he is taking classes in H.S. Section in absence of Sujaud Dollah M.A. Geography resigned w.e.f. 05-03-2013 without any approval of the District Inspector of Schools (Sec. Edn.), Burdwan.

In the instant case, the petitioner applied for the post of A.T. meant for Pass Graduate holder and empanelled as a candidate for appointment in a vacant post meant for pass degree and accordingly recommended by School Service Commission (E.R.), Burdwan.

So the petitioner's claim for higher scale of pay for obtaining M.A. degree in Geography cannot be considered as per Para 14(2) of West Bengal Schools (Control and Expenditure) Act-2005."

12. The petitioner has relied on an unreported decision dated 16.10.2012 being MAT No. 1459/12 wherein the petitioner did not seek prior permission from the District Inspector of School through the Managing Committee of the School for obtaining such higher qualification in the light of the West Bengal Schools (Control & Expenditure) Act, 2005 read with para 3 of G.O. 593-SE(B) dated 27th November, 2007 and also under the provisions as laid down in Circular being No. 548-SE(S) dated 24th June, 1997 which provided that the prior permission may be taken from the District Inspector of School (SE) through the Managing Committee, Ad hoc Committee/Administrator as the case may be if they like to enrol themselves and to appear for the examination conducted through Correspondence/Distance Mode of education from the UGC affiliated universities. It appears that by virtue of the resolution of the Managing Committee and with regard to the permission for his higher studies the petitioner undertook M.A. in Geography but prior permission as required was not taken from the D.I. of School undertaking post graduate examination by the petitioner who was appointed in the year 2010 in the pass category as graduate with Geography. The provision of Section 14(3) of the said Act of 2005 provides that every teacher of School shall, appointed in the Honours Graduate or Post Graduate teacher category, be entitled to draw pay of post graduate teacher category, upon acquiring post graduate degree in the manner as may be

specified by order.

13. The petitioner of the unreported case was appointed in the School as Honours Graduate in Mathematics and B.Ed. Subsequently the said appellant acquired post graduate degree and accordingly, he was held to be entitled to draw pay of post graduate teacher which case is distinguishable from the fact situation of the instant case inasmuch as the petitioner was appointed with pass graduate in Geography and even without permission from the District Inspector of Schools as per the earlier circular of ROPA" 98, which provides for prior permission for prosecuting higher study, ergo, the petitioner having been appointed in the year 2010 when the West Bengal Schools (Control & Expenditure) Act, 2005 was enforce, the petitioner cannot be said to be entitled to claim higher scale of pay based on the provision stipulated in 12(3) of the Career Advancement Scheme vide Government order dated 12.2.1999 upon acquiring post graduate degree in view of the provision under Subsection 1 and 2 of the said Act. Therefore, I do not find the order of the District Inspector of School dated 27.01.2014 being devoid of merit, the petition accordingly is dismissed, however, without any order as to costs.

14. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.