

(2023) 04 CAL CK 0056
In the Calcutta High Court
Case No : WPA No. 22053 Of 2017

Md. Nizam Uddin

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2023) 04 CAL CK 0056

Hon'ble Judges : Rabindranath Samanta, J

Bench : Single Bench

Advocate : Amales Roy, Mousumi Bhowal, Aman Gupta, Ishan Bhattacharya, Sirsanya Bandopadhyay, A.K. Nag

Final Decision : Disposed Of

Judgement

Rabindranath Samanta, J

1. Aggrieved by the inaction on the part of the State authority to fix the proper scale of pay according to his post, the petitioner has preferred this writ petition.
2. The background facts which are necessary for adjudication may be adumbrated as under:

Basirhat Re-Life Handicapped Welfare Society is a Government sponsored and Class-VIII standard educational institution. This institution is governed and regulated by the Rules and Regulations framed by the Mass Education Extension Department, Government of West Bengal.

By an order being No. 530-Edn(MEE)/3'S'-13/99 dated 31st March, 1999, academic recognition was accorded to the institution without any financial involvement to it. After such sponsorship was conferred on the institution, the petitioner was initially appointed as the Organizing Assistant Teacher (Visually Handicapped) in the institution and subsequently, he was appointed to the post of Craft Instructor (Visually Handicapped) vide appointment letter dated 29th

April, 2002.

Subsequently, after conducting an inspection, the District Mass Education Extension Officer, North 24 Parganas submitted a report to the authority concerned vide memo dated 23rd August, 2006 recommending sponsorship of the institution. In the inspection report, the name of the petitioner figured at serial no. 5 as a Craft Teacher having the qualification of B.A. (two year pass). Ultimately, by a memo no. 102-MEE/Sectt/3S-66/2000 dated 7th February, 2007 issued by the Joint Secretary, Mass Education Extension Department, Government of West Bengal, sponsorship was accorded to the institution. As instructed in the memo dated 7th February, 2007, the authority of the institution submitted a list of organizing teaching and non-teaching staff of the institution including the name of the petitioner as the Craft Instructor (Visually Impaired) to the Director of Mass Education Extension for absorption. By an order dated 4th April, 2007 issued by the Director of Mass Education Extension, West Bengal, appointment of the petitioner as the Craft Instructor (V.I.) was approved. In the order dated 4th April, 2007, it was mentioned that the petitioner had no training and he would have to complete the relevant training course within three years. The petitioner obtained a two year Post Graduate Diploma in Art and Craft Examination from Rabindra Bharati University in the year 2011. Besides, he also obtained the Certificate of Bridge Course.

3. By notification dated 20th April, 1995 issued by the Mass Education Extension, Government of West Bengal, Rules and Procedures for recruitment to the post of teaching and non-teaching staff of various Government institutions for the handicapped have been prescribed. As per these recruitment rules, the requisite qualification for appointment to the post of Craft Instructor is school final and certificate in Craft. In terms of a memorandum dated 30th March, 1999 issued by the Mass Education Extension Department, the scale of pay for the Craft Instructor has been prescribed as Rs. 1040/- - Rs. 1920/- (For matriculate) = Rs. 3500/- - Rs. 6325/- and Rs. 980/- - Rs. 1775/- (For others) = Rs. 3150/- - Rs. 5680/-. The petitioner who, having degree in graduation, is entitled to be placed in the unrevised scale of pay of Rs. 3350/- - Rs. 6325/- but, he has wrongly been placed in the unrevised scale of pay of Rs. 3150/- - Rs. 5680/-.

4. In such context, it may be noted that the appointment of one Sukhendu Bishal, Madhyamik Pass, in the post of Craft Instructor in Mahadebdas Handicapped Children, North 24 Parganas was approved with effect from 1st April, 2001 in the scale of pay of Rs. 3350/- - Rs. 6325/- by order dated 8th August, 2003 issued by the Director of Mass Education Extension, Government of West Bengal.

5. Under the aforesaid circumstances, the petitioner by a letter dated 29th November, 2013 issued through his learned advocate, sought for the grant of the benefit of unrevised scale of pay of Rs. 3350/- - Rs. 6325/- with effect from 1st April, 2006 and its corresponding revised scale of pay subsequent thereto from the Director of Mass Education Extension as well as the other authorities, but to

no effect. Hence, the petitioner, by preferring this writ petition, seeks direction upon the concerned authorities to place the petitioner in the revised scale of pay of Rs. 3350/- - Rs. 6325/- with effect from the date of approval of his appointment as the Craft Instructor of the institution and its corresponding revised scales subsequently thereto and disburse the outstanding arrear of dues accrued to him.

6. By an order dated 10th November, 2017, a Coordinate Bench directed the respondents to file affidavit-in-opposition within six weeks from date and reply thereto within two weeks thereafter. But the office report shows that no affidavit-in-opposition and reply thereto has been filed by either of the parties.

7. It is evident from Annexure-P/3 i.e. a Government memorandum dated 31st March, 1999 issued by the Mass Education Extension Department, Government of West Bengal that academic recognition without any financial involvement was accorded to the institution namely, Basirhat Relief Handicapped Welfare Society, an institution for hearing impaired, visually handicapped and mentally retarded children at Basirhat, North 24 Parganas with effect from the then academic session. After the recognition was conferred upon the institution, the petitioner Md. Nizam Uddin was initially appointed as an Assistant Teacher (V.I.) by the Secretary of the institution. It is not in dispute that subsequently, the petitioner was appointed to the post of Craft Instructor (Visually Handicapped) in the institution. Admittedly, the District Mass Education Extension Officer, North 24 Parganas, after conducting an inspection submitted a report to the Director of Mass Education Extension recommending sponsorship for the institution and in the report, the name of the petitioner figured at serial no. 5 as a Craft teacher having qualification of B.A. (two years pass). Thereafter, by a memorandum dated 7th February, 2007 issued by the Joint Secretary, Mass Education Extension Department, Government of West Bengal, sponsorship with financial involvement was accorded to the institution. As desired by the State authority in the memo dated 7th February, 2008, the institution authority submitted a list of organizing teaching and non-teaching staff of the institution including the petitioner as Craft Instructor (V.I.) to the Director of Mass Education Extension for absorption. Undisputedly, the appointment of the petitioner as the Craft Instructor (V.I.) was approved by the Director of Mass Education Extension vide order dated 4th April, 2007, wherein, the petitioner has been shown as a Craft Instructor having qualification of B.A., but untrained and he was placed at the scale of pay of Rs. 3150/- - Rs. 5680/-.

8. As the notification being no. 553-Edn(MEE)/3S-23/41 dated 20th April, 1995 issued by the Mass Education Extension Department, Government of West Bengal enjoins, for recruitment to the post of Craft Instructor, a candidate should have essential qualification of school final and certificate in Craft (as specified by the appointing authority) from a recognised institution. By virtue of a memorandum dated 30th March, 1999 issued by the Mass Education Extension Department, Government of West Bengal, Revision of Pay and Allowances Rules, 1998 relating

to the employees of handicapped institutions was notified. According to this notification, a Craft Instructor possessing degree of Madhyamik pass or Matriculation is entitled to get unrevised scale of pay of Rs. 1040/- - Rs. 1920/- corresponding to the scale of pay of Rs. 3350/- - Rs. 6325/- under ROPA, 1998. This memorandum also provides that Craft Instructor who does not possess the degree of Madhyamik pass or Matriculation is entitled to get the unrevised scale of pay of Rs. 980/- - Rs. 1755/- corresponding to the scale of pay of Rs. 3150/- - Rs. 5680/- according to ROPA, 1998.

9. Learned counsel appearing for the petitioner submits that the petitioner's appointment as Craft Instructor (V.H.) was approved by the Director of Mass Education Extension as an organizing staff. Referring to the order dated 4th April, 2007 issued by the Director of Mass Education Extension, learned counsel submits that the appointment of the petitioner was engaged on the condition that since the petitioner had no training, he would have to complete the relevant training course within three years from the date of approval, otherwise, his increment would be stopped. Learned counsel fairly submits that the petitioner completed the required training course, but he completed it in the year 2011, i.e., after three years. According to learned counsel, the petitioner should be placed at the pay scale of Rs. 1040/- - Rs. 1920/- corresponding to Rs. 3350/- - Rs. 6325/- as per the ROPA, 1998 as he possesses the degree of Matriculation / Madhyamik pass. Learned counsel further submits that one Sukhendu Bishal, whose appointment was approved by the same Director of Mass Education Extension vide memo dated 18th August, 2003 as the Craft Instructor of a handicapped school, was placed at scale of pay of Rs. 3350/- - Rs. 6325/- under the ROPA, 1998 on the same condition that no increment would be granted to him on his failure to obtain the requisite training from the recognised training centre within three years from the date of his approval of appointment. Learned counsel argues that the petitioner who stands on the same footing as that of Sukhendu Bishal has been discriminated by the State authority in violation of the golden doctrine of equality. Learned counsel further argues that since the petitioner was denied his legitimate pay by the concerned authority, the wrong committed by the concerned authority is a continuing wrong and as such, the claim of the petitioner, even if made belatedly, is entertainable by this Writ Court. On such score, the learned counsel submits that the petitioner be placed at the proper scale of pay and the arrear pay be disbursed to him. In support of his contention, learned counsel places reliance on two decisions – one, in the case of *M.R. Gupta vs. Union of India and Others* reported in (1995) 5 SCC 628 and the another in the case of *Union of India and Others vs. Tarsem Singh* reported in (2008) 8 SCC 648.

10. On the other hand, learned counsel appearing for the State respondents submits that after the appointment of the petitioner was approved by the concerned authority he was placed at the pay which was admissible to him. The petitioner accepted such pay and he is now debarred from challenging the pay. In support of his submission, learned counsel has referred to a decision in the

case of Kali Shankar Barman & Ors. vs. State of West Bengal & Ors. reported in (2003) 4 CHN 365.

11. What I perceive, the Recruitment Rules published vide notification dated 20th April, 1995 prescribes the minimum qualification of a candidate to be recruited for teaching and non-teaching staff of a handicapped school. As these Rules say, to recruit a Craft Instructor, a candidate should possess essential qualification of school final and certificate in craft from a recognized institution. But, as regards approval of appointment of an organizing teacher by way of absorption, these Recruitment Rules are not strictly followed. As the approval of appointment of the petitioner and the approval of appointment of Sukhendu Bishal, Craft Instructor of a handicapped school indicate, the appointment of an organizing Craft Instructor shall be approved if he/she possesses a minimum qualification of Madhyamik pass, but he would have to complete the training from the recognized training centre within three years from the date of his appointment, otherwise no incremental benefits would be allowed to him/her. I feel that such relaxation is given to an organizing staff on consideration of the factors that the institution to which he/she belongs has been developed by his hard work and the experience he/she gathered for a considerable length of time to run the institution.

12. In the decision in the case of M.R. Gupta vs. Union of India and Others reported in (1995) 5 SCC 628, the Hon'ble Apex Court has held at paragraph 5 as under:

"5. ...In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

13. In the case of Union of India and Others vs. Tarsem Singh reported in (2008) 8 SCC 648, the Hon'ble Apex Court at paragraph 7 has postulated as under:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong

creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

14. As held above, the petitioner was entitled to be placed at the pay scale of Rs. 3350/- - Rs. 6325/- under the ROPA, 1998. But, the authority concerned, while approving his appointment, placed him at the scale of pay of Rs. 3150/- - Rs. 5680/-. This fixation of pay is a wrong done by the concerned authority and such wrong, in view of the decision *supra*, is continuing one.

15. This Court in the decision in the case of *Kali Shankar Barman & Ors. vs. State of West Bengal & Ors.* reported in (2003) 4 CHN 365 dealt with the issue on conferring incremental pay to the petitioners on undergoing a training course of fourteen days instead of mandatory regular training course for six months. Since the petitioners did not complete the training course for six months, the incremental benefit was denied to them. Such facts in *Kali Shankar Barman & Others* are quite distinct from the facts of the matter on hand. Therefore, the decision cited by the learned counsel appearing for the State respondents is not applicable.

16. As an order dated 18th August, 2003 issued by the Director of Mass Education Extension annexed to the writ application at page 75 evinces, the appointment of an organizing staff namely, Sukhendu Bishal, Madhyamik pass, working as a Craft Instructor in a handicapped school was approved on absorption but his pay was fixed at Rs 3350/- - Rs. 6325/-. The petitioner, though stands on the same footing as that of Sukhendu Bishal, has been placed at a lesser pay as indicated above which is discriminatory and violative of the golden doctrine of equality under Article 14 of the Constitution.

17. Since the petitioner has been denied the proper fixation of his pay at the aforesaid scale of pay according to ROPA, 1998, the authority concerned has been doing wrong since the approval of appointment was accorded in his favour. In view of the decision in *M.R. Gupta (supra)*, the petitioner should be placed at the appropriate scale though he may come to the Court belatedly.

18. However, as directed by the Hon'ble Apex Court in the decision in *Union of India and Others vs. Tarsem Singh* reported in (2008) 8 SCC 648, the

consequential relief relating to the claim of arrear pay of the petitioner shall be restricted to a period of three years prior to the date of filing of the writ petition.

19. By order dated 4th July, 2007 issued by the Director of Mass Education extension relating approval of appointment of the petitioner it was mandated that the petitioner would had to complete the relevant training course within three years from the date of approval, otherwise his increment would be stopped. The petitioner completed the required training in the year 2011. That being so, the petitioner is not entitled to get the incremental benefit of his pay.

20. Having heard learned counsels for the parties and in view of the observations as recorded above, I am of the view that the writ petition may be disposed of by passing the following order:

21. The state respondents are directed to place the petitioner in the scale of pay of Rs. 3350/- - 6325/- under ROPA Rules 1998 with effect from the date of approval of his appointment as a Craft Instructor (V.I.) of Basirhat Re-Life Welfare Society and grant the corresponding revised scale of pay subsequent thereto to him within six weeks from the date of communication of this judgement and order. The state respondents are further directed to disburse the outstanding/arrear pay to the petitioner on re-fixation of his pay under ROPA Rules 1998 and subsequent ROPA Rules with effect from 08.08.2014 within four weeks from the date of re-fixation of his pay.

22. With the aforesaid directions, the writ petition stands disposed of.

23. Parties may act on Server Copy of this judgment and order duly downloaded from the Official Website of this Court.

24. Urgent Photostat/ certified copies of this judgment and order, if applied for, be given to the parties upon compliance with all requisite formalities.