
(2013) 04 CAL CK 0060
In the Calcutta High Court
Case No : Writ Petition No. 4762 (W) of 2012

Nibir Kumar Som

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 3 WBLR 856

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Ekramul Bari and S.M. Ali, for the Appellant; Suprobhat Bhattacharya for the State, for the Respondent

Judgement

Debasish Kar Gupta, J.—Affidavit-of-service filed on behalf of the petitioner in Court be kept on the record. This writ application is filed by the petitioner assailing an order dated July 27, 2011 passed by the respondent No. 3 rejecting the prayer of the petitioner for extending the benefit of post-graduate scale of pay in connection with his services as an Assistant Teacher of Sagardighi S.N. High School, District-Murshidabad.

2. Having heard the learned Counsel appearing for the respective parties as also after considering the facts and circumstances of this case I find that the grounds for rejecting the prayer of the petitioner were as follows:--

- i) The petitioner did not obtain prior permission from the respondent No. 3 in terms of the provisions of G.O. No. 548-SE(S) dated June 24, 2007;
- ii) In accordance with 50% norms of the Staff patter of the said school no such vacancy in Social Science group is lying vacant; and
- iii) The petitioner is not entitled to get the post-graduate scale of pay in accordance with the provisions of G.O. 593-SE(B) dated November 27, 2007.

3. The first ground for rejection has already been settled by a Division Bench of this Court by a judgment dated October 16, 2012 delivered in the matter of Asim

Kumar Adgiri v. State of West Bengal & Ors. (In Re: MAT 1459 of 2012 with CAN 8487 of 2012) and the relevant portions of the above decision are set out below;--

The District Inspector of Schools concerned in spite of receipt of the aforesaid communication did not refuse the prayer made on behalf of the appellant/petitioner or the school authorities for allowing the said appellant to undergo post-graduate studies in Mathematics.

The appellant/petitioner admittedly completed M.Sc. Course in Mathematics from Netaji Subhas Open University and, thereafter, claimed the benefit of higher scale of pay in view of improving the academic qualification. The aforesaid objection raised on behalf of the District Inspector of Schools for not seeking prior permission in terms of Para 3 of the Circular dated 27th November, 2007 is not factually correct since the appellant/petitioner through the managing committee has submitted an application seeking permission from the said District Inspector of Schools and the managing committee specially forwarded such application together with the resolution passed by the managing Committee of the said school in this regard. The said District Inspector of Schools did not refuse the prior permission to the appellant herein for undergoing the higher studies.

4. It is revealed from the materials on record that the petitioner approached the School Authority for obtaining prior permission and the above prayer was forwarded to the respondent No. 3 with a forwarding letter dated October 24, 2008 (at page 28 of this writ application), therefore, first ground is not sustainable in law.

5. So far as the second ground is concerned I find that the Departmental Circular No. 670-SE(S) dated September 04, 1998 deals with the staff pattern. The above staff pattern was introduced for the purpose of equitable distribution of the available post so as to enable pass degree holders to also compete for appointment as Assistant Teacher. Once a teacher with pass degree is appointed, the object for which such Government Orders were introduced is sub-served. The above Government Order did not lay down any restriction on a teacher from enhancing his educational qualification. It has to be remembered that enhancing of educational qualification by a teacher serves two fold purposes:--(i) The likelihood of hike in pay in the absence of available channel of promotion a teacher encourages to enhance his qualification and thereby the prospect of stagnation in service is averted; and (ii) To some extent at least the students to whom lessons are imparted are benefited by the knowledge the teacher has derived after successfully obtaining the Master's Degree. In view of the above the above staff pattern had no bearing on enhancing scale of pay of the petitioner.

6. The third ground for rejecting the claim of the petitioner was the provisions of G.O. 593-SE(B) dated November 27, 2007. But the petitioner obtained Master

degree in History in the year 2004 at the material point of time the above Government Order was not in existence, it has not retrospective effect. Therefore the above ground cannot be sustained in law.

7. In view of the above the impugned order is quashed and set aside.

8. I direct the respondent No. 3 to extend the benefit of post-graduate scale of pay to the petitioner within a period of two months from the date of communication of this order in accordance with law.

9. This writ application is, thus, disposed of. There will be, however, no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, subject to compliance with all necessary formalities.