
(2016) 02 CAL CK 0107

In the Calcutta High Court

Case No : R.V.W. No. 299 of 2015 with C.A.N. No. 12241 of 2015 with W.P. No. 34322(W) of 2013

Nihar Ranjan Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Citation : (2016) 3 CalHCN 516 : (2016) 2 CalLJ 438 : (2016) 3 CalLT 38

Hon'ble Judges : Mr. Debangsu Basak, J.

Bench : Single Bench

Advocate : Ekramul Bari and Syed Mansoor Ali, Advocates, for the Appellant; Mr. Bhaskar Baishya, Advocate, Mr. Kalimuddin Mondal, Sr. Advocate and Mr. Jayak Kumar Gupta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Debangsu Basak, J.—Re : RVW 299 of 2015.

1. The petitioner seeks review of my order dated March 11, 2015 passed in W.P. 34322 (w) of 2013.
2. The writ petitioner had sought Category "A" pay scale for primary school teacher in view of his obtaining diploma in elementary education in terms of a Government circular dated March 4, 2013.
3. By my order dated March 11, 2105 I had dismissed the writ petition.
4. In this review petition, reliance has been placed on a judgement and order dated September 1, 2014 passed in MAT 474 of 2014 (CAN 3422 of 2014) (Bishnupada Ghosh & Ors. v. State of West Bengal) in support of the contention that similar provisions including the Government order dated March 4, 2013 were taken into consideration by the Division Bench and Their Lordships have found that an untrained teacher who was appointed prior to September 3, 2001 and teachers who were appointed between September 3, 2001 and September 31,

2005 possessing academic qualification as per State Government norms and completing one-year/two-year teachers training course from State recognised institutions to be eligible for consideration of the post of head teacher in primary school. It is contended that, a head teacher could only be appointed from out of teachers who receive Category "A" pay scale. Consequently, the Division Bench has permitted payment of Category "A" pay scale in respect of persons covered by March 4, 2013 Government circular. The petitioner herein was appointed as a teacher on July 20, 2000. He therefore, comes within the concerned period and therefore is entitled to Category "A" pay scale.

5. On the point that a review petition is maintainable reliance has been placed on All India Reporter 1967 Calcutta 518 (Tinkari Sen & Ors v. Dulal Chjandra Das & Ors.) and Amarjit Kaur v. Harbhajan Singh, 2003 (10) Supreme Court cases 228.

6. The State and the Primary Council authorities are represented. It is submitted on behalf of both the State and the Primary School Council that in a similar writ petition I had asked for a report in the form of an affidavit. I should make it clear that the order passed in this writ petition should not affect rights of the parties in such other writ petition.

7. I have considered the rival contentions of the parties and materials made available on record.

8. In Tinkari Sen (supra) it has been held that, overlooking a proposition of law well-settled beyond controversy furnishes a good ground for review as it is an error apparent on the face of the record.

9. In Amarjit Kaur (supra) the Supreme Court set aside the order of dismissal of a review petition on the ground that the Court did not express any view on the decision brought to the notice of the Court.

10. In the present case, a Division Bench judgement, which is a binding precedent on me, was not brought to my notice at the time of disposal of the writ petition. Consequently, I had taken a view in my order dated November 16, 2015, which is contrary to the view expressed by the Division Bench. In such circumstances, there is an error apparent on the face of the order dated November 16, 2015. In such premise, I find the review petition to be maintainable.

11. The Division Bench by Their Lordship's judgement and order dated September 1, 2014 has held that:

"If the provision of the Right to Children to Free and Compulsory Education Act, 2009 and the Central Government Notification dated 25th August, 2010 are read along with Government Order issued by the State Government on 13th August, 2012 and 4th March, 2013 then we have no hesitation to hold that the untrained teachers who were appointed prior to 3rd September, 2001 and those teachers who were appointed between 3rd September 2001 and 31st September 2005 possessing academic qualifications as per the State Government norms and

completed one year/two-year teacher training course from the State recognised institutions Are eligible to be considered for the post of Head Teacher in the primary school as they are all treated at par with trained teachers appointed as per the norms prescribed in the notifications issued under the Central Act of 2009."

12. A Head Teacher enjoys Category "A" pay scale. A Head Teacher can be appointed from out of persons enjoying category A pay scale. A Head Teacher can be appointed out of teachers who were appointed prior to September 3, 2001 and teachers appointed between September 3, 2001 and September 31, 2005 possessing academic qualification as per the Government norms and completing one-year/two-year teachers training course from the State recognised institutions. The petitioner herein was appointed on July 20, 2000. Consequently, the petitioner will be entitled to Category A pay scale.

13. W.P. 324322(W) of 2013 is allowed to the extent as stated herein-above. The decision of the authorities communicated by the Chairman District Primary School Council dated August 26, 2013 by which the Category A pay scale was rejected is set aside. The authorities will pay Category A pay scale to the petitioner in accordance with law.

14. The review application being RVW 299 of 2015 is allowed without any order as to costs.

Re: CAN 12241 of 2015

15. In view of disposal of the review application, the CAN 12241 of 2015 is also allowed.

16. Urgent photostat certified copy of this order be given to the parties on priority basis after compliance of all formalities as to costs.