

(2015) 07 CAL CK 0031
In the Calcutta High Court
Case No : WP 22280 (W) of 2012

Pannalal Mahato

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 07 CAL CK 0031

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Ekramul Bari and T.P. Halder, for the Appellant

Final Decision : Disposed off

Judgement

Arijit Banerjee, J—This writ petition is directed against Memo No. 26/1(2)/LS/PRL dated 21st August, 2012 issued by the District Inspector of Schools (SE), Purulia who is the respondent No. 3 in the present application. By the impugned memo the prayer of the petitioner for grant of post graduate scale of pay in connection with his service, as an Assistant Teacher in History at the Hutmura High School (Higher Secondary), District Purulia, was rejected.

2. The petitioner was appointed as an Assistant Teacher in Work Education Group in Hutmura High School (in short the "said School") on 27th October, 1984. At that time his educational qualification was L.C.E.

3. In the year 2003 the petitioner passed BA (Honours) in History. It is submitted that the school authority not only granted him prior permission to improve his educational qualification but also granted him study leave for the period 22nd June, 2000 to 8th July, 2000. It is submitted that even prior to publication of the BA (Honours) result, at the request of the school authority, the petitioner started to take classes in History.

4. After publication of the result and after he obtained BA (Honours) degree in History, the petitioner approached this school authority for grant of higher scale

of pay.

5. It is submitted that the school authority made more than one representation to the office of the District Inspector of Schools for granting higher scale of pay to the petitioner in view of his enhanced qualification. All necessary documents were also submitted to the office of the District Inspector of Schools. However, by a memo dated 20th May, 2005 the office of the District Inspector of Schools rejected the petitioner's prayer for grant of higher scale of pay.

6. The petitioner challenged the said memo by filing a writ petition being WP No. 12502 (W) of 2005 in this Court. By a judgment and order dated 6th July, 2005 the said memo was quashed. The Additional District Inspector of Schools (SE) Sadar, Sub-Division, Purulia, was directed to grant the benefit of higher scale of pay to the petitioner for enhancement of his qualification after granting necessary approval to the recommendation of the Managing Committee of the said School. The authority was also directed to re-fix the salary of the petitioner in accordance with the higher scale of pay for enhanced qualification from the date of the petitioner improving his qualification together with other consequential reliefs including the arrears.

7. Pursuant to the said order of this Court, by a memo dated 5th October, 2005 the office of the District Inspector of Schools extended the benefit of higher scale of pay to the petitioner for enhancement of his qualification with effect from 17th February, 2003.

8. In the year 2010 the petitioner passed M.A. examination in History from the Netaji Subhas Open University which is recognized by the University Grants Commission.

9. In November, 2010 the petitioner approached the Secretary of the said School for taking necessary steps to extend the benefit of post graduate scale of pay to the petitioner with effect from 1st February, 2010 being the date following the last date of examination.

10. After receiving the request from the petitioner, the Head Master of the school forwarded all the papers and the resolution of the Managing Committee dated 22nd December, 2010 to the Additional District Inspector of Schools (SE), Sadar, Sub-Division, Purulia for the purpose of granting M.A. scale of pay to the petitioner.

11. After receiving the request from the school authority, the Additional District Inspector of Schools issued a memo dated 12th April, 2011 addressed to the Secretary, Hutmura High School asking for submission of the attested Xerox copy of the prior permission accorded by the Additional District Inspector of Schools regarding enhancement of qualification of the petitioner.

12. Upon receipt of the said memo from the Additional District Inspector of Schools the Head Master of the school issued a letter dated 20th May, 2011 whereby he submitted all necessary data and documents.

13. After receiving the letter dated 20th May, 2011 submitted by the Head Master of the said school, the Additional District Inspector of Schools took no steps for granting M.A. scale of pay in favour of the petitioner. A reminder dated 29th June, 2011 sent by the Head Master of the school also remained un-responded.

14. Subsequently, the Additional District Inspector of Schools issued a memo dated 8th July, 2011 asking the Secretary, Managing Committee of the School to submit prior permission granted by the District Inspector of Schools for enhancement of the petitioner's qualification for according post graduate scale of pay to the petitioner. The Secretary, Managing Committee of the school replied to the said memo vide memo dated 5th August, 2011. Thereafter, there was complete silence on the part of the Additional District Inspector of Schools.

15. The petitioner wrote a letter dated 2nd August, 2011 to the Additional District Inspector of Schools but there was no response to the same.

16. In view of the in-action on the part of the Additional District Inspector of Schools, the petitioner filed a writ petition in this Court being WP No. 14374 (W) of 2011 which was disposed of by an order dated 24th April, 2012 by directing the Additional District Inspector of Schools to take a decision in relation to granting higher scale of pay to the petitioner after giving hearing to the petitioner and the school authority.

17. Upon service of the said order by this Court on the respondent authorities, the District Inspector of Schools called the petitioner for a hearing in his chamber on 30th July, 2012. The petitioner attended the hearing and submitted all necessary papers and documents as were required by the District Inspector of Schools.

18. By a memo dated 21st August, 2012, the District Inspector of Schools rejected the petitioner's request for grant of post graduate scale of pay. It is this memo that is under challenge in the present writ application.

19. I have heard the Ld. Counsel for the petitioner.

20. None appeared on behalf of the respondents in spite of service.

21. Referring to the impugned memo dated 21st August, 2012, Ld. Counsel for the petitioner submitted that the grounds on which the petitioner's request for grant of post graduate scale of pay was rejected are not tenable in law. The grounds for rejection as would appear from the impugned memo were as follows:--

"(a) That the petitioner improved his qualification without obtaining prior permission of the District Inspector of Schools as per GO 593/SE(B) dated 27th November, 2007.

(b) The West Bengal Board of Secondary Education had not sanctioned study leave in favour of the petitioner relating to the improvement of qualification

through distance mode of education.

(c) The petitioner completed his master degree without observing the procedure laid down in the West Bengal Schools (Control of Expenditure) Act, 2005. He did not take prior permission of the Competent Authority nor was study leave sanctioned by the Competent Authority.

(d) The existing staff pattern of the school did not permit another master degree teacher as there already was one Assistant Teacher with a master degree."

22. Having heard the Ld. Counsel for the petitioner in extenso, I am of the view that none of the grounds for rejection of the petitioner's prayer for grant of higher scale of pay is sustainable in law.

23. As regards the first ground as indicated above, it has been held by this court in the case of Santanu Saha v. State of West Bengal reported in 2009 (1) CLJ 639 and also in the case of Maleka Khatun Vs. State of West Bengal and Others that the authorities cannot deny a teacher, higher pay scale only on the ground that no prior permission was obtained by such person for acquiring higher qualification. It is the consistent view of this court that irrespective of obtaining prior permission, a teacher who acquires higher qualification, cannot be denied the benefit of higher scale of pay. Further, factually also, it appears that the first ground for rejection is not tenable. This is because it will appear from the copies of documents annexed as P-11 to the writ petition that the Managing Committee of the school considered the prayer of the petitioner for granting prior permission to study M.A. in History in its meeting held on 16th August, 2003 and granted such prayer. It would also appear from the said documents that the Managing Committee of the school unanimously took a decision in its meeting held on 4th December, 2007 to grant study leave to the petitioner for the purpose of preparation for the M.A. part-I and part-II examination. Hence the first ground for rejection of the petitioner's prayer for grant of higher scale of pay is also factually erroneous and unsustainable.

24. As regards the second ground for rejecting the petitioner's prayer, I am of the view that it was the Management of the school which was the proper authority for sanctioning study leave to the petitioner and, in fact, the school authority did sanction such study leave. I am of the view that the West Bengal Board of Secondary Education could not have any say in that matter. In the case of Santanu Saha v. State of West Bengal (supra) the Managing Committee of the school had referred the matter of sanctioning study leave to the Board. The Board informed the school authority that the Managing Committee of the school was competent enough to sanction such leave. In other words, total liberty was given to the Managing Committee for sanctioning study leave in favour of the teacher. In my view, to sanction study leave to a graduate teacher who aspires to acquire higher qualification would not be within the purview of power, duty or function of the West Bengal Board of Secondary Education. In that view of the matter, the second ground for rejection of the petitioner's prayer is also

unsustainable.

25. Coming to the third ground for rejecting the petitioner's prayer for higher pay scale, in my opinion, the petitioner having obtained the higher qualification by way of passing M.A. examination (History) by obtaining prior permission from the authority concerned, the petitioner cannot be denied the higher pay scale on the ground that the same cannot be granted in view of the provisions of the West Bengal School (Control of Expenditure) Act, 2005. This is also the view that was expressed by this court in the case of Santanu Saha v. State of West Bengal (Supra). It has already been observed above that not obtaining prior permission of the Competent Authority for enhancing educational qualification is no ground for denying higher scale of pay to a teacher. In any event, in the instant case, the petitioner had obtained prior permission of the School Authority and study leave had also been granted to him by the School Authority. Benefit of higher scale of pay should be extended to a teacher who acquires higher qualification and which benefits the educational institutions and students. Non-recognition of such efforts of the teachers would cause travesty of justice and would have a spiralling adverse effect on the entire educational system. Hence, the third ground for rejection of the petitioner's prayer is also not tenable in law.

26. As regards the fourth ground i.e. the existing staff pattern of the school does not permit another master degree teacher as there is one Assistant Teacher having M.A. qualification, the same also cannot be sustained. The staff pattern of a school is determined by the District Inspector of Schools. The staff pattern, in my view, cannot determine a teacher's pay scale. If a teacher acquires higher qualification and is accordingly entitled to the benefit of a higher scale of pay as per the extant rules and regulations, the staff pattern of the concerned school cannot come in the way and be an impediment to such benefit being extended to the teacher concerned. This view of mine finds support from the decision of this court in the case of Raghunath Mondal Vs. State of W. Ben., (2013) 3 CHN 626 : (2013) 3 WBLR 556 .

27. The impugned order in the present writ petition was passed on 21st August, 2012. As on that date there appears to have been another teacher in the said school who had M.A. qualification and the District Inspector of Schools stated in the memorandum under challenge that the "existing staff pattern of the school does not permit another master degree teacher." However, it appears from the certificate issued by the Head Master of the Hutmura High School on 22nd July, 2014, copy whereof is annexed to the supplementary affidavit filed on behalf of the petitioner that Sri Bhimsen Mahato, the other teacher holding M.A. degree, retired from his service on 30th November, 2013. It is further stated that there has been no appointment in the place and stead of Sri Mahato. In that view of the matter the fourth ground for rejection of the petitioner's prayer loses force completely and the same cannot be a reason for not granting higher scale of pay to the petitioner.

28. Apart from the aforesaid, it appears from the supplementary affidavit filed by

the petitioner that one Muktipada Gorain was initially appointed as an Assistant Teacher of Hutmura High School in the social science group having educational qualification B.A. (Honours) in Geography with B.Ed. degree in September, 1997. Subsequently, he improved his qualification and passed the M.A. examination in Geography in the year 2013 without obtaining prior permission from the concerned District Inspector of Schools. However, subsequently, the District Inspector of Schools, Purulia, granted post facto permission in favour of Sri Gorain to enhance his qualification and thereafter he was allowed post graduate scale of pay with effect from 25th July, 2013 that is the date following the last date of examination. Thus, the petitioner and the said Sri Muktipada Gorain are similarly situated and there can be no reason for treating the petitioner in a different manner as that would amount to discrimination. The acts/omissions of the respondent authorities are violative of Article 14 of the Constitution of India and cannot be supported.

29. In view of the aforesaid, the memo dated 21st August, 2012 issued by the District Inspector of Schools (SE), Purulia is set aside and quashed. The respondent authorities and in particular the District Inspector of Schools being the respondent No. 3 is directed to grant post graduate/M.A scale of pay to the petitioner with effect from 1st February, 2010 that is the date following the last date of M.A. examination together with all consequential benefits including the arrear salary. The arrears be paid to the petitioner positively within a period of three months from date.

30. WP No. 22280 (W) of 2012 is accordingly disposed of.