
(2003) 09 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition No. 1987 (W) of 2001

Pradip Kumar Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Citation : 107 CWN 1051

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Asok De, Jayanta Kumar Das, for the Appellant; S.P. Pahari, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—By this writ application, the writ petitioner, an approved Assistant Teacher of the Work Education Group of the concerned school, has prayed for mandamus directing the Managing Committee of the school to recommend the petitioner for the vacant post of Assistant Teacher in language group forthwith and for restraining the State-respondent from filling up the vacancy for the post of Assistant Teacher in language group by appointing private respondent No. 6 to the said post.

The following facts are not in dispute:

The petitioner and private respondent No. 6 are both approved Assistant Teachers in Work Education Group. Of the two, private respondent is the senior one. although both obtained M.A. in Bengali after taking approval from the respondent/authority, the petitioner got such degree in 1998 while the private respondent obtained the same in 1997. Both of them were allotted additional classes in Bengali in view of their enhanced qualification in Bengali and both of them prayed for higher scale of pay consequent to their improved qualification. In the past, school authority recommended the name of private respondent for such higher scale of pay as he was senior to the petitioner and the District

Inspector of Schools concerned approved such recommendation. As a result, the private respondent has been getting higher scale of pay from 1998. In the year 2000 a normal vacancy arose in language group due to retirement of a regular teacher of that group. At this stage, both the petitioner and the private respondent applied for transferring them to the said vacant post of Assistant Teacher in language group in terms of G.O. No. 57 SE (S) dated January 27, 1995 issued by the Government of West Bengal Education (School) Department Secondary Branch. The managing committee of the school, however, has recommended the name of private respondent as he is senior to the petitioner.

Being dissatisfied, the petitioner has come up with the instant writ application.

2. Mr. Das, the learned Counsel appearing on behalf of the petitioner, by relying upon the G.O. No. 57 SE(S) dated January 27, 1995 contends that in view of such circular a teacher cannot be recommended for change of post pursuant to his improved qualification, if, he draws any higher scale of pay in view of his enhanced qualification in a different group. Mr. Das contends that the private respondent having already been conferred benefit in term of first part of the said G. O., he is not further eligible for change of group in terms of the later portion of the said government order.

The aforesaid contention of Mr. Das has been seriously opposed by Mr. De, appearing on behalf of the School Authority and Mr. Pahari, appearing on behalf of the private respondent. According to them, even for the purpose of considering recommendation of an approved teacher to a different group in the vacant post, seniority of such teacher must be taken into consideration. According to them, the private respondent being the senior of the two, should be recommended for the vacant post of assistant teacher in language group, once both of them applied for change of their group.

3. Therefore, the only question that arises for determination in this writ application is whether the managing committee of the school acted without jurisdiction in recommending the private respondent. for the vacant post of language group in violation of G.O. No. 57 SE(S) dated 27th January, 1995.

4. To appreciate the aforesaid question it is necessary to refer to the said G.O. which is quoted below:

"GOVERNMENT OF WEST BENGAL

Education (School) Department

Secondan"" Branch

Bikash Bhavan, Salt Lake. Cal-91

No. 57-SE(S) Dated Calcutta 27th Jan., 1995

From : Shri P. Bhattacharyya,

Asstt. Secretary to the Govt. of West Bengal,

To : The Director of School Education, West Bengal.

Sub : Granting of Pay according to qualification to the Assistant Teachers of Non-Government Secondary Schools.

The undersigned is directed to say that the question of granting higher scales of pay according to qualification to the Assistant teachers of Non Government Jr. High Schools/Jr. High Madrasahs and High Schools/High Madrasahs (including Higher Secondary Schools/Higher Secondary Madrasahs) in this State who have obtained higher qualification in subjects not relevant to their respective subject or group in which they were appointed in the schools but relevant to their respective teaching subject had been under consideration of the State Government for sometime past. Such a situation exists in some secondary schools where, in the academic interest of the students the authorities of the schools have allotted classes on particular subjects to some approved teachers of the schools who were, respectively, appointed for a different subject/ group as per available vacancies. The Education Department also is not in a position always to sanction the required number of additional posts to the schools owing to financial stringencies.

Considering the prevailing situation in the secondary schools in this State as mentioned above, the State Government in the Education Department has decided as follows to cope with the said situation and in the academic interest of the schools:

(1) Approved Assistant Teachers of non-Government Secondary Schools and Madrasahs who will take classes in subjects relevant to their respective higher qualification, though appointed/approved respectively in a different group/subject other than the aforesaid teaching subject shall, henceforth, be allowed to draw pay according to their respective higher qualification, as prescribed by the State Government, provided such Assistant Teachers take individually at least six such periods per week as officially allotted by the authorities of the respective schools to such Assistant Teachers within the normal workload upon the written consent of the concerned teacher and with the prior permission of the concerned District Inspector of Schools and strictly according to the actual academic need of the individual school. If there be more than one Assistant Teacher in a school with relevant higher qualification agreeable to this arrangement, preference shall be in order of seniority, If any school has already effected such an arrangement in its academic interest, the same has to be got approved by the concerned D.I. of Schools, subject to eligibility, for the purpose of drawl of qualification pay by the concerned teachers.

(2) In future, when any clear vacancy of Assistant Teacher occurs in the normal section (Class V to Class X) in a non-Government Secondary School/Madrasah, the authorities of the concerned school may apply to the concerned D.I. of Schools for filling up the vacancy by an existing approved Assistant Teacher of the normal section of that institution who has applied to the school authorities in

writing for being placed in that post and who has the requisite higher qualification for that vacant post but is not drawing pay according to such higher Qualification by reason of his/her appointment/approval in a different group. The concerned D.I. of Schools may permit the school authorities to place the services of such Assistant Teacher in that post, with effect from a certain date to be indicated by the D.I. of Schools if the concerned District Inspector of Schools is satisfied that the arrangement will be beneficial to the students. The Assistant Teacher so transferred to the vacant post will be entitled to draw pay according to his/her higher qualification, prescribed by the State Government from the date of his/her placement in that vacant post. The concerned Assistant Teacher shall have to take classes from that date as allotted to that new post. In that case, the resultant vacancy shall be filled up according to existing rules. If there be more than one eligible applicant Assistant Teachers in a school for one such vacant post, preference shall be in order of seniority. No further approval of appointment will be necessary.

The aforesaid decisions have been taken in conformity with the concurrence of the Finance Department vide their U/O No. 648 Group "J", dated 7.3.1990.

All concerned may please be informed accordingly.

The G.O. No. 22-SE(SECY.) dt. 6.1.95 is hereby cancelled

Sd/- P. Bhattacharyya

Assistant Secretary."

5. There is no dispute that both the petitioner and the private respondent improved their qualification in a group which is not relevant for their respective subject group inasmuch as both of them are teacher of work education group whereas they improved their educational qualification by obtaining M.A. in Bengali which is in language group. However, both were given allotment of additional classes in language group in view of their enhanced qualification and both prayed for grant of higher scale of pay. In the past, school authority decided to give such higher scale of pay in favour of the private respondent in view of the fact that the private respondent was senior to the petitioner. Subsequently, when regular vacancy occurred in language group, again both the petitioner and the private respondent applied for change of their group of teaching by transferring from work education group to language group. The managing committee of the school, however, has not disputed that the petitioner is also eligible for such recommendation but refused to grant such recommendation to the petitioner only in view of the fact that the private respondent is senior to the petitioner.

6. After going through the aforesaid government order it appears that in order to be eligible for such change of group, a teacher must not be drawing any pay according to higher qualification by reason of his appointment or approval in a different group. Therefore, the school authority in clear violation of the said G.O. recommended the name of the private respondent notwithstanding the fact that

he is getting higher scale of pay in view of his improved qualification by reason of appointment in a different group. The petitioner, on the other hand, is not getting such higher. scale of pay although he has enhanced qualification in language group.

I. therefore, find substance in the contention of Mr. Das that the school authority should not have recommended the name of private respondent as he was ineligible.

7. Both Mr. De and Mr. Pahari tried to impress upon this Court that the aforesaid G.O. is not happily drafted and the real intention was to give benefit to the senior most teachers who applied for change of group. I am afraid, such intention is not appearing from the said G. O. In the second part of the said order it is clearly stated that if there are more than one eligible applicant for Assistant Teacher in a school for such vacant post preference shall be In order of seniority. Therefore, unless the private respondent is eligible his prayer cannot be considered. I have already indicated that in view of previous order granting higher scale of pay in favour of the private respondent No. 6, he is not eligible for the post.

8. Mr. De appearing on behalf of the school authority, placed strong reliance upon the decision of the Division Bench of this Court in the case of Sujit Das vs. West Bengal Board of Secondary Education & Ors., reported in 1997 (2) CLJ 497 and contended that the Court can reasonably interpret a particular provision of enactment for giving effect to the real intention of the legislature. In my view, such principle is applicable when there is ambiguity in the enactment but when the same is clear prohibition recommendation in favour of a person who is drawing pay according to higher qualification by reason of his appointment in a different group, the interpretation suggested by Mr. De cannot be adopted. I, thus, hold that the school authority should not have passed order recommending private respondent for the vacant post. The petitioner being the only other applicant and the school authority having found the petitioner also eligible for such post, I direct the school authority to recommend the petitioner, the only other eligible applicant for the vacant post to the District Inspector of Schools concerned.

The recommendation in favour of private respondent No. 6 is thus quashed. The school authority is directed to recommended the name of the petitioner for the said post to the District Inspector of Schools concerned within fortnight from today. The writ application thus succeeds.

In the facts and circumstances, there will be, however, no order as to costs.