

**(2013) 04 CAL CK 0020**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 21909 (W) of 2012**

Raghunath Mondal

APPELLANT

Vs

State of W. Ben.

RESPONDENT

**Date of Decision :** 03-04-2013

**Acts Referred:**

**Citation :** (2013) 3 CHN 626 : (2013) 3 WBLR 556

**Hon'ble Judges :** Debasish Kar Gupta, J

**Bench :** Single Bench

**Advocate :** Ekramul Bari and Syed Mansur Ali, for the Appellant; Susmita Biswas Chowdhury, for the State, for the Respondent

## Judgement

Debasish Kar Gupta, J.—This writ, application is directed against an order dated April 10, 2012 passed by the respondent No. 3. By the impugned order the respondent No. 3 rejected the claim of the petitioner for granting post-graduate scale of pay in his favour in connection with his service as an assistant teacher in Social Science group (in History) of Ariapara High School H.S.), district South 24-Parganas. The appointment of the petitioner was approved by an order dated March 11, 1998 with effect from November 3, 1997 in the, post of Assistant Teacher with academic qualification of B.A.-Honors in History, B.Ed. At the time of appointment the petitioner possessed the qualification of Master degree in History. The above qualification was also recorded in the Employment Exchange card issued in favour of the petitioner. The name of the petitioner was sponsored by the concerned Employment Exchange for participating in the selection process for the post in question.

2. Since the prayer of the petitioner for granting post-graduate scale of pay was not considered by the respondent authorities, he filed an application under Article 226 of the Constitution of India and the same was disposed of by an order dated February 1, 2012 passed in the matter of Raghunath Mondal vs. The State of W. Ben. & Ors. (In Re: W.P. 8231 (W) of 2010). In compliance of the above order, the impugned order was passed.

3. Having heard the learned Counsel appearing for the respective parties as well as after considering the facts and circumstances of this case, I find that the claim of the petitioner was rejected by the respondent No. 3 taking recourse to a departmental circular issued under ? Memo. No. 670-SE(S)/IM-14/98 dated September 4, 1998. According to the respondent No. 3, the staff pattern of the school under reference did not permit the appointment of assistant teacher in Social Science more than one. According to him, one assistant teacher in Social Science group with post-graduate qualification was already discharging the function of assistant teacher in Social Science in the school in question.

4. For proper adjudication of the issue involved in this case the provisions of sub-Rule (3) of Rule 12 of W. Ben. Non-Government Educational Institutions' Employees (Revision of Pay and Allowance), Rules, 1999 are required to be considered and the above provisions are set out below:-

(3) All teachers including Physical Education Teachers and Librarians of Secondary Schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from, the 1st January, 1996 or the date of improving qualifications, whichever is latter.

5. The provisions of the clause 2 of the departmental circular No. 670-SE(S)/IM-14/98 dated September 4, 1998 hereinafter referred to as "ROPA, 1998" are also quoted below:-

2. For High School/High Madrasah/Higher Secondary (Normal Section):-

(a) Language group--For posts (Two pass degree & two Hons./Master degree).

(b) Science & Mathematics--Three posts (one pass degree & two Hons./Master degree.)

(c) Social Science--Two posts (one pass degree & one Hons./Master degree.)

(d) Work Education, Physical and Social Service - Two posts. They must be having qualifications as mentioned in the procedure 14-SE(S) dt. 8.1.98.

(e) Headmaster/Headmistress--One. He/She must be having qualifications as mentioned in the procedure 14-SE(S)dt. 8.1.98.

6. After perusing the aforesaid provisions of the said ROPA, 1998, I find that the same entitles the petitioner who was appointed with higher qualification to enjoy the benefit of the post-graduate scale of pay with effect from January, 1996 or the date of improving the qualification, whichever was earlier. With regard to the provisions of Clause 2 of departmental circulars No. 670-SE(S)/IM-14/98 dated September 4, 1998, I find that the same was in operation in a different field which prescribed the staff strength in a particular group of teaching having no nexus with the scale of pay of the assistant teachers of that school. After further scrutiny of the above departmental circular I find that the two groups of assistant

teachers namely, for Pass Degree and Honours/Master degree were prescribed in the departmental circular. The petitioners belonged to the group of Honours/Master degree. Therefore, the claim for granting post-graduate scale of pay in accordance with provisions of aid ROPA, 1998 cannot be rejected taking recourse to the departmental circular under reference.

7. That apart it is the settled principle of law that when a departmental circular is competed with statutory rules, the rule should prevail. Reference may be made to the decision of C.L. Verma Vs. State of M.P. and another, Paragraph 6 of the aforesaid judgement is quoted below:-

6. The question which arose for consideration in the writ petition before the High Court at the instance of the appellant was whether in the face of the mandate in Rule 29 the administrative order could operate. It is not the stand of the State Government that the order dated May 15, 1981, is one under the proviso to Rule 29. In fact, the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employees. An administrative instruction cannot compete with statutory rule and if there be contrary provisions in the rule the administrative instructions must give way and the rule shall prevail. We are, therefore, of the view that the appellant, in terms of Rule 29, ceased to be a Government employee on his attaining the age of 58 years, two days prior to the order of dismissal. In view of the fact that he had already superannuated, government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The ratio of the decision in R.T. Rangachari vs. Secretary of State for India in Council supports the position.

8. Therefore, in view of the discussion and observation made hereinabove I find that the decision making process of the respondent No. 3 in passing the impugned order cannot be sustained in law and the same is quashed and set aside. The respondent No. 3 is directed to extend the benefit of post-graduate scale of pay to the petitioner in accordance with provisions of sub-rule (3) of Rule 12 of the said ROPA, 1998 within a period of two months from the date of communication of this order.

9. The writ application is, thus, disposed of.

10. There will be, however, no order as to costs. Urgent Photostat certified copy be supplied to the parties, if applied for, on priority basis.