

(2013) 06 CAL CK 0016
In the Calcutta High Court
Case No : Writ Petition No. 11147 (W) of 2005

Samaresh Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2013) 4 WBLR 899

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Tapan Chakraborty and Abdul Alim, for the Appellant; J.L. De and S.K. De for the State, for the Respondent

Judgement

Sanjib Banerjee, J.—The petitioner complains of the District Inspector of Schools having rejected the petitioner's request for a higher scale of pay despite the petitioner having obtained a master's degree in the subject relevant to the petitioner's appointment. There appear to be conflicting judgments of this Court in the case of Tarak Chandra Roy Vs. The State of West Bengal and Others, and the case of The State of West Bengal and Others Vs. Sauvik Ghosh and Others in the sense that two apparently similarly-placed teachers fared differently in the two cases. It is, however, the judgment in Sauvik Ghosh (supra), that is the more detailed and it recognised a teacher who had obtained higher qualifications subsequent to the appointment to be entitled to a higher scale of pay on the basis of a government notification notwithstanding the appointment being through the School Service Commission.

2. In Sauvik Ghosh, the relevant teacher was successful at a selection test conducted by the School Service Commission in 1999. At the time when the letter of appointment was issued to such teacher on March 16, 2001, the teacher had appeared for the master's examination, but the results had not been published. The teacher was allotted the graduate scale of pay. The results of the master's examination were published in September, 2001. The teacher obtained the post-graduate degree; made a representation for a higher scale of pay; the

application was rejected; the writ petition challenging the decision succeeded; and, in the appeal arising therefrom, the Division Bench held that, in the circumstances, the teacher was entitled to the higher scale of pay.

3. The detailed judgment in *Sauvik Ghosh (supra)*, however, does not appear to have noticed a circular of June 3, 2002 which the petitioner has relied on here as the basis for the petitioner's claim. The circular provides, inter alia, that honours graduate teachers, who had obtained postgraduate degrees in the subjects relevant to their appointments prior to their dates of joining or had completed their course of studies at the postgraduate level or had appeared at the examination but the results of that examination were not published till the dates of their joining, may be allowed the higher scale of pay.

4. The *Souvik Ghosh (supra)* case can be seen to be in furtherance of the circular of June 3, 2002 since the teacher in that case had taken the master's examination at the time of joining the post but the results were published subsequently.

5. In the present case, the petitioner appears to have joined the post on or about January 28, 1999 and the petitioner cleared the master's examination in Bengali, which is relevant to her appointment, in the year 2002. Clearly, the petitioner's case is not covered by the circular of June 3, 2002 for the petitioner to claim a higher scale of pay. Indeed, in such circular conferring the benefit of a higher scale of pay to the several classes of teachers specified therein, it has to be inferred that the benefit cannot be claimed by others.

6. In view of the apparent conflict between the Division Bench judgments in *Tarak Chandra Roy (supra)* and in *Sauvik Ghosh (supra)* and since the petitioner's case appears to be squarely covered by the negative inference as apparent in the circular of June 3, 2002 which is not referred to in the judgment of *Sauvik Ghosh (supra)* it does not appear that the petitioner is entitled to the higher scale of pay as sought.

7. The order of the District Inspector of Schools dated May 22, 2005 does not suffer from any apparent infirmity. W.P. No. U147(W) of 2005 is dismissed but without any order as to costs.