

(2019) 05 CAL CK 0018

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 20820 Of 2014

Sambhu Nath Patra

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

West Bengal Schools (Control of Expenditure) Act, 2005 — Section 14, 14(2)

Citation : (2019) 05 CAL CK 0018

Hon'ble Judges : Abhijit Gangopadhyay, J

Bench : Single Bench

Advocate : Ekramul Bari, Syed Mansur Ali, Tanuja Basak, Chaitali Bhattacharya, Susmita Chatterjee

Final Decision : Dismissed

Judgement

Abhijit Gangopadhyay, J

The petitioner is a Teacher of Language Group under pass category of a School namely Kishore Vidyapith which is a School recognised by the West Bengal Board of Secondary Education. The petitioner was appointed on recommendation of the West Bengal Regional School Service Commission, Southern Region under Memo dated 17th February 2006. He joined the post on 13th March, 2006. His service was approved by the concerned District Inspector of Schools (Secondary Education), hereinafter referred to as the DI, on 25th August 2006 with effect from his date of joining.

The case of the petitioner is that before his appointment in the School as an Assistant Teacher the petitioner completed M.A. part-I examination in English from Netaji Subhas Open University through correspondence course in the year 2007. The M.A. part-II examination was completed on 22th July, 2007. The petitioner qualified in the M.A. examination. After obtaining M.A. degree i.e. the Post Graduate degree he prayed for higher scale of pay before the Secretary of the Managing Committee and the said Secretary transmitted the prayer of the

petitioner to the DI on 16th July, 2013. As the DI did not take any step in response to the petitioner's prayer, the petitioner filed a writ application being W.P. No. 2372 (W) of 2014 in this Court. This Court directed the DI to consider the application for higher scale of pay. The DI pursuant to the order of this Court heard the petitioner and others on 28th April, 2014 and by his Memo No 157/Law dated 3rd June, 2014 passed a reasoned and speaking order whereby the prayer of the petitioner was rejected. By filing the present writ application he is challenging the said order of the DI. The present writ application has been filed on the grounds that before joining the School the petitioner completed his M.A. Part-II examination. The last date of M.A. Part-II examination was 22nd July, 2007. It is not understood how the petitioner who joined the School on 13th March, 2006 and completed the M.A. Part-II examination in 2007 can say that he completed M.A. Part-II examination before joining School. His other grounds are that the DI relied upon one Government Order No. 155-SE (B) dated 17.01.1999 which had already been quashed and therefore, the Order of the DI was bad. The writ petitioner has pleaded four other grounds which are absolutely of no merit.

The petitioner has relied upon the following three judgments and in the submission has relied upon Revision of Pay and Allowances Rules 1990 and 1998. The three judgments are as follows:

- (i) Smt. Nita Dey Chandra -versus- The State of West Bengal & Ors., reported in (2015) 1 CLJ (Cal) 24.
- (ii) W.P. No. 27966 (W) of 2006, Swapan Kumar Mandal - versus- State of West Bengal, reported in 2016 (4) CHN (Cal) 500.
- (iii) W.P. No. 15866 (W) of 2000, Sampa Sahu (Mondal) -versus- State of West Bengal & ors., reported in (2009) 1CLJ 817.

Before proceeding further the West Bengal Schools (Control of Expenditure) Act, 2005 (said Act, in short.) which came into effect from 19th August, 2005 is required to be taken note of. In this matter Section 14 of the said Act is relevant, which is as follows:

"(1) Every teacher of a school shall, if appointed in the post of Undergraduate teacher category, be entitled to draw pay in the scale of pay in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than the qualifications specified for such post.

(2) Every teacher of a school shall, if appointed in the post of Graduate teacher category, be entitled to draw pay in the scale of pay in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than the qualifications specified for such post.

(3) Every teacher of a school shall, if appointed in the Honours Graduate or Post-graduate teacher category, be entitled to draw pay of post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be

specified by order".

Under Section 14 (2) of the said Act the petitioner as was appointed in the post of graduate teacher category shall not be entitled to claim any higher scale of pay for acquiring any qualification other than the qualifications specified for such post.

It is an admitted position that the petitioner was appointed as a pass category teacher of Language Group in the School. For a pass category teacher Master degree was not essential. It is also found from the writ petition itself that the petitioner joined post on 13th March, 2006 i.e. after the above Act came into effect from 19th August, 2005. Therefore, the claim of the writ petitioner is barred under provision of the statute being Section 14 (2) from claiming higher scale of pay.

Now, the applicability of the judgments relied on by the petitioner is to be discussed.

The judgment of Smt. Nita Dey Chandra relates to acquisition of higher qualification by the petitioner therein on 22.05.2004 which was before the coming into force of the said Act. Therefore, this judgment does not come to the aid of the petitioner. At that point of time the bar created by the said Act was not in existence.

In Swapan Kumar Mandal's case, relied on by the petitioner, the teacher was appointed on 9th February, 1999 though as a pass graduate, he appeared in the selection test conducted by the West Bengal School Service Commission at a time when there was no differentiation between pass and Honours Graduate candidates for the purpose of selection. At the time of joining, the petitioner claimed to be an Honours Graduate and he demanded higher scale of pay on 12th March, 2005 i.e. before the said Act came into effect and also the appointment of the petitioner as an Honours Graduate was before the coming into force of the said Act. The present writ petitioner had joined post after coming into force of the aforesaid Act. Therefore, there is factual difference between Swapan Kumar Mandal's case and the petitioner's case and this case cited by the petitioner also does not help him.

The third case relied upon by the petitioner i.e. the case of Sampa Sahu (Mondal) is also clearly distinguishable on facts. In Sampa Sahu (Mondal's) case the petitioner joined the School on 10th September, 1999 and the petitioner obtained Master of Arts in the subject Bengali in 1990-1991 and obtained M.Phil in the year 1993. Therefore, even before her joining as an Assistant Teacher (On 10th September, 1999) she already had higher qualification and her case was not covered under the said Act. Therefore, this case also does not help the petitioner.

The respondent No. 2 has relied upon three judgments being

(i) 2008 (2) CHN-973 (Tarak Chandra Roy -versus- The State of West Bengal & Ors).

(ii) 2008 (2) CHN-234 (State of West Bengal & Ors. -versus- Md. Sahidullah & Ors).

(iii) 2008 (2) CLJ- 472(Baisali Banerjee -versus- The State of West Bengal & Ors).

In Tarak Chandra Roy's case a Division Bench of this Court held that in view of Section 14 of 2005 no graduate teacher is entitled to claim any additional increment for acquiring any qualifications than the qualifications specified for such post.

In the case of Md. Sahidullah & Ors. The Court dealt with the claim of three writ petitioners. The Court held that though the two petitioners namely Sahidullah and Nirupama did have requisite qualifications being post graduate and Honours, they competed for the pass category hence, it was held, they were not entitled to the benefit of the higher pay of scale. In the case the Court also made a significant observation by recording that if a litigant who has a right knowingly does not contemporaneously exercise such right, cannot complain before the Court that he is not being given the benefit for the right which he did not contemporaneously exercise. In respect of the 3rd petitioner (Shyam Sundar Mahanto) he was allowed to get higher scale of pay as when he participated in the selection process he was pass graduate and he subsequently obtained post-graduate degree for which he took permission. [Mahanto's case was of the year 2003 i.e. before coming into force of the said Act of 2005.

Though the judgment of Baisali Banerjee was referred to by the respondent No. 2 it has not been placed before me nor has it been included in the written notes filed by the respondent.

The claim of the petitioner is barred by the said Act and he cannot get the higher scale of pay. In view of existence of legal bar created as aforesaid by the said Act of 2005 the ROPA Rules of 1990 and 1998 cannot be made applicable. In the factual matrix of this matter it is immaterial whether the DI relied upon the Government Order No. 155-SE (B) dated 17.01.1999.

For the reasons as aforesaid the writ application is dismissed.

No costs.