
(2012) 09 CAL CK 0016
In the Calcutta High Court

Case No : M.A.T. No. 633 of 2012 with C.A.N. No. 4434 of 2012

Samir Kumar Saha

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Citation : (2013) 2 CHN 565

Hon'ble Judges : Tarun Kumar Das, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Ekramul Bari, K.M. Hossain, Shamim-ul Bari, S.M. Ali and Tanuja Basak, for the Appellant; Kamalesh Bhattacharyya and Bidhan Biswas, for the Respondent

Final Decision : Allowed

Judgement

C.A.N. No. 4434 of 2012

1. This application has been filed in connection with the appeal preferred from the order dated 21st March, 2012 whereby and whereunder a Learned Judge of this Court was pleased to dismiss the writ petition upon approving the order passed by the authority concerned namely the Director of School Education, West Bengal. From the records we find that the Director of School Education, West Bengal by a reasoned order dated 9th August, 2011 rejected the claim of the appellant/petitioner for higher scale of pay.

2. The appellant/petitioner herein improved his qualification by acquiring postgraduate degree in History and applied before the Director of School Education concerned for granting higher scale of pay.

3. The aforesaid claim of higher scale of pay was rejected mainly on the ground that the appellant/petitioner did not take permission from the competent authority prior to enroll his name in the correspondence course for acquiring the post-graduate degree.

4. Mr. Bari, learned Advocate representing the appellant/petitioner submits that benefit of higher scale of pay cannot be denied to a teacher for improving the academic qualification through correspondence course without obtaining prior permission.

5. Mr. Kamalesh Bhattacharyya, learned Advocate representing the State-respondents, however, submits that the teacher concerned cannot claim the benefit of higher scale of pay for improving the qualification through correspondence course without obtaining prior permission from the Director of School Education concerned.

6. Mr. Bhattacharyya referred to a circular bearing No. 548-SE (F) dated 24th June, 1997.

7. The aforesaid circular is set out hereunder:

8. The aforesaid circular relates to recognition of correspondence courses conducted by the Department of University of India and not relating to grant of any benefit for improving the academic qualification through correspondence course.

9. Furthermore, in the aforesaid circular, it has been mentioned that the Managing Committee of the school concerned while sending the case for approval should also mention the relevance of the subject of higher studies and also such studies are likely to affect the duties of the teacher in the school.

10. In the present case, it has never been alleged that the teacher concerned conducted the higher studies through correspondence course affecting and/or ignoring the duties in the school. The teacher concerned improved his qualification in History subject which is a relevant subject in the said school.

11. Needless to mention that the teacher with improved qualification helped the students of the school in the concerned subject namely History and thus the students of the school concerned also benefited by the improved qualification of the teacher.

12. The aforesaid circular does not stand on the way to grant the benefit of higher scale of pay to a teacher on acquiring higher qualification through correspondence course.

13. The other objection raised on behalf of the Director of School Education to deny the benefit of higher scale of pay under the provisions of West Bengal Schools (Control of Expenditure) Act, 2005.

14. We fail to understand how the provisions of West Bengal Schools (Control of Expenditure) Act, 2005 can be made applicable in respect of the appellant/teacher.

15. The appellant/teacher admittedly improved his qualification through correspondence course through the correspondence course in the year 1998 and

the West Bengal Schools (Control of Expenditure) Act, 2005 came into operation on 26th December, 2005.

16. In the aforesaid circumstances, the claim of the appellant/petitioner for higher scale of pay for improving the academic qualification in the relevant subject through correspondence course cannot be denied by referring the aforesaid Act of 2005.

17. The Learned Single Judge, unfortunately failed to appreciate the illegality and/or irregularity of the findings of the Director of School Education, West Bengal while rejecting the claim of higher scale of pay of the appellant/petitioner herein.

18. For the aforementioned reasons, we quash the impugned decision of the Director of School Education, West Bengal as communicated under impugned order dated 9th August, 2011 and also set aside the order under appeal passed by the Learned Single Judge.

19. In the aforesaid circumstances, both the application as well as the appeal stands allowed upon treating the said appeal as on day's list.

20. Since a considerable time has already been passed, we direct the respondent authorities including the Director of School Education, West Bengal to take immediate appropriate steps to sanction the benefit of higher scale of pay to the appellant/petitioner herein for acquiring the post-graduate degree in History through correspondence course and disburse the necessary amount to the said appellant/petitioner without any further delay but positively within a period of six weeks from the date of communication of this order.

21. Needless to mention that the appellant/petitioner will be entitled to receive the benefit of higher scale of pay of improving the qualification from the last date of appearing at the post-graduate examination in terms of the Circular being Memo No. 1583 dated 19.09.2005.

22. In the facts of the present case, there will, however, be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the parties on the usual undertakings.