

(2017) 02 CAL CK 0011
In the Calcutta High Court
Case No : 24037 (W) of 2012

Sasti Charan Ghosh

APPELLANT

Vs

The State of West Bengal & Ors.

RESPONDENT

Date of Decision : 21-02-2017

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions

Citation : (2017) 02 CAL CK 0011

Hon'ble Judges : I.P. Mukerji

Bench : SINGLE BENCH

Advocate : Mojib Ali Laskar,?Zamirul Alam

Judgement

1. The writ petitioner was appointed as an Assistant teacher in Kaliagunj Parbati Sundari High School, Uttar Dinajpur. The recommendation of the Selection Committee appointing him had been approved by the District Inspector of Schools (SE) Uttar Dinajpur by his communication dated 14th July, 1995. It stated that the writ petitioner was appointed with effect from 6th June, 1995 as an Assistant Teacher. His qualification was noted to be B.A (Hons. in Sanskrit). He would get pass graduate scale only.

2. The writ petitioner relies upon two Memoranda dated 22nd November, 1993 and 13th July, 1999 issued by the School Education Department, Government of West Bengal inter alia to the effect that teachers who had been appointed with higher qualification would get higher scale of pay appropriate to their qualification with effect from 1st January, 1996.

3. The petitioner, being aggrieved that the honours scale of pay (Sanskrit) was not sanctioned in his favour had made several representations before the respondent authorities. Ultimately on 16th February, 2001 the District Inspector of School(SE) Uttar Dinajpur wrote to the Secretary of the School that the petitioner was sanctioned honours scale of pay (Sanskrit) of Rs.5500-11325/-

with effect from 1st February, 2001.

4. Now, the writ petitioner was dissatisfied with this sanction. He wanted honours scale of pay from 1st January, 1996 as per the said notifications.

5. He filed a writ application in this Court (WP 16829 (W) of 2009) claiming the honours scale of pay from his date of joining the service. On 7th December, 2009 the writ application was disposed of by Mr. Justice Dipankar Datta, directing the District Inspector of Schools to consider the petitioner's representation in this behalf in accordance with law.

6. The District Inspector of Schools made the consideration by a decision dated 28th December, 2010, at page of 43, 44 of the petition. The reason given by the District Inspector of Schools was most extraordinary. He said that on examination of the staff pattern of the School it was seen that on 1st March, 1996 there were 10 teachers in the language group out of whom more than 50% enjoyed post graduate scale of pay. Hence, the writ petitioner could not be granted this scale of pay as "it will not be justified as per existing staff pattern".

7. The notification dated 13th July, 1999 said that the teachers who joined with higher qualification would get higher pay from 1st January, 1996. The only condition was higher qualification at the time of appointment in that particular subject or group. There was no condition regarding staff pattern or the maximum number of teachers in a school who would get honours graduate scale of pay. The District Inspector of Schools has clearly introduced extraneous considerations, which he ought not have done.

8. The respondents have utilised the services of the petitioner without any protest. The service of the petitioner was indeed required in the school. Now, having utilised the services of the petitioner, the respondents cannot say that his service was not required or that he was a surplus teacher in the honours scale category. As Justice Indira Banerjee observed in Partha Chatterjee vs. State of West Bengal & Ors. reported in (2004) 2 Cal Lt 610 (HC) that the Government could not have teachers with the same qualifications but with different salary structures in different schools. It was violative of Article-14 of the Constitution and resulted in unequal pay for equal work. I read some paragraphs from that judgement:

"23. In the circumstances, the question which arises for determination in this court is whether two sets of teachers, possessing the same educational qualifications and performing the same work and hence similarly circumstanced whether working in the same school or different Government aided schools, can be treated differently in the matter of fixation of salary only because the minimum requisite educational qualification fixed by the District Inspector for the post in question is lower.

24. fixation of different scales of pay for teachers of the same or different aided schools, with the same qualifications, who perform the same duties and functions

and are hence equally circumstanced violates principles of equal work for equal pay and offends Article 14 of the Constitution of India, more so in the absence of specific rules prescribing the requisite education qualifications for teachers of different classes.

25. In this context, it may be relevant to record, as pointed out by learned counsel appearing on behalf of the petitioner, the prescribed minimum requisite qualification for the post of Assistant Teacher of Physical Education is a Bachelor of Physical Education.

26. Accordingly, the Government Order dated 22nd November, 1993 was issued clarifying that Physical Education teachers with Masters degree in physical education from recognised Universities would be entitled to get higher scale of pay notwithstanding the fact that post graduate degree in Physical Education was not necessary for appointment as Assistant Teacher of Physical Education.

27. The Government Order dated 22nd November, 1993 is a specific order which pertains to Assistant Teachers of Physical Education. It is doubtful whether the Circular dated 13th July, 1999 which is a general Circular can supersede a specific circular with regard to Assistant Teachers of Physical Education which has not till date been withdrawn, rescinded, cancelled or superseded. On the other hand the said Government Order has been clarified by an order No. 417-SE (S)/5P 33/98 dated Calcutta 8th March 2000 the relevant portion whereof is extracted herein below:

"2. Now in clarification of para-3 of Government Order No. 759- Edn (S) dt. 22.11.1993 the undersigned is directed to say that the benefit of higher scale of pay is admissible to those Physical Education teachers only who have obtained such degree on completion of two years regular course from a recognised University.

This order will take effect from the date of issue of this notification."

28. The petitioner who possesses the post graduate degree of Physical Education being his relevant teaching subject at the time of appointment would be entitled to the scale pertaining to his post graduate qualification irrespective of the qualification mentioned by the School Service Commission and irrespective of the minimum requisite qualification for the post.

This writ application is accordingly allowed. The petitioner shall be entitled refixation of his salary in the post graduate scale of pay from the date of his application and other consequential reliefs including arrears."

9. For all those reasons, this writ application is allowed by quashing the impugned decision dated 28th December, 2010. The fixation of pay of the writ petitioner in the Honours graduate scale of pay w.e.f. 1st January, 1996 is to be made within two months of communication of this order and all arrear monetary benefits under this order be released to the writ petitioner within a further period of one month. This writ application is accordingly allowed.

10. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.