
(2016) 01 CAL CK 0076
In the Calcutta High Court
Case No : W.P. No. 19734 (W) of 2005.

Saswati Majhi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Citation : (2016) 4 CalHCN 279 : (2016) 2 CalLT 417 : (2016) 6 SLR 386

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Ekramul Bari, Saurindra Mahapatra, Dibyendu Chatterjee and Siddhartha Roy, Advocates, for the Appellant; Amal Kumar Sen and Lal Mohan Basu, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Subrata Talukdar, J. - Sri Ekramul Bari, Learned Counsel appears for the petitioner and submits that by Office Memorandum (for short O.M) dated 7th of September, 2004 issued by the District Inspector of Schools (SE), Howrah-1 which is impugned in this writ petition, the claim of the writ petitioner to a higher scale of pay upon improving her qualification to Masters in Physical Education (for short M.P.Ed) has been erroneously refused.

2. Taking this Court to the O.M dated 7th of September, 2004 appearing at pages 29 to 32 of the writ petition, Sri Bari argues that the claim of the writ petitioner was refused on three counts. First, that the writ petitioner did not take any prior permission from the Managing Committee (for short M.C) of the said school before improving her qualification. Second, the staff pattern of the school does not reflect the need of the petitioner to be granted the opportunity to improve her qualification. Third, the petitioner did not obtain her M.P.Ed decree from a recognised University and therefore, G.O. No. 417-SE (S) dated 8th of March, 2000 is a bar.

3. Sri Bari argues that the issue of taking prior permission and the further issue

of the staff pattern being a bar to improving the qualification of a teacher in a school are no more res integra considering several judgments of this Hon'ble Court. In support of his submissions Sri Bari relies upon the decisions of this Hon'ble High Court In Re Trilochon Jana v. State (2008) 2 WBLR (Cal) 913 and, In Re Raghunath Mondal v. State (2013) 3 WBLR (Cal) 556.

4. With regard to the third point taken by the District Inspector of Schools (SE), Howrah-1, Sri Bari argues that the G.O. dated 8th of March, 2000 (supra) cannot have any retrospective effect. The petitioner improved her qualification in the year 1996 and at that point of time the G.O. dated 8th of March, 2000 (supra) had no existence.

5. Therefore, Sri Bari argues that the District Inspector of Schools (SE), Howrah-1 committed a gross error in law by refusing the claim of the petitioner to higher pay scale upon improvement of her qualification to M.P.Ed.

6. Per contra, Sri Amal Kumar Sen, Learned Senior Government Advocate appears and submits that although the point of prior permission and staff pattern being a bar to grant of higher pay scale is not urged on behalf of the State-respondents at the hearing today, however, the third point connected to the petitioner failing to obtain a degree from a recognised University is germane to the present lis.

7. Sri Sen takes this Court to the circular applicable at the time the writ petitioner improved her qualification which is the Circular No. 795-Edn. (S) dated 22nd of November, 1993. The said G.O. No. 795-Edn. (S) (supra) reads as follows:-

"No. 795-Edn. (S) Dated: Calcutta, the 22nd Nov., 1993.

Sub: Higher Scale of Pay to the teachers of Physical Education.

The Undersigned is directed to say that it has come to the notice of this Department that higher scale of pay is not being granted to Physical Education teachers having higher qualification of Master Degree in Physical Education. This is presumably due to nonexistence of any provision for post-Graduate teacher in Physical Education in terms of the staff pattern laid down in G.O. No. 772-Edn. (S) dated the 8th July, 1974.

In this Department Memo No. 372-Edn. (B) dated the 31st July, 1981 read with Memo No. 33-Edn. (B) dated the 7th March, 1990 the higher scale of pay to the teachers of Secondary Schools having higher qualification has already been granted.

It is now clarified that all such Physical Education teachers including those of Madrasahs of various types having Master Degree in Physical Education from recognised Universities will be entitled to get higher scale of pay in relaxation of the above noted staff pattern.

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

All concerned have been informed

Sd/- Illegible, (Assistant Secretary)."

8. Therefore, Sri Sen argues that even under the circular applicable in the year 1996 which was the circular dated 22nd of November, 1993 (supra) the petitioner was required to obtain a degree from a recognised University and having failed to do so cannot claim higher scale of pay. Sri Sen further submits that the G.O. No. 795-Edn. (S) dated 22nd of November, 1993 (supra) was further refined as G.O. No. 417-SE (S) dated 8th of March, 2000 which made it obligatory upon Physical Education teachers to obtain degrees from recognised Universities to claim higher scale of pay against enhanced qualification.

9. Having heard the parties and considering the materials on record this Court finds that it is required to address the issue of the petitioner purportedly not having enhanced her qualification from a recognised University. On a plain reading of the G.O. No. 795-Edn. (S) dated 22nd of November, 1993 (supra) this Court finds that the clarification pertaining to grant of higher scale of pay is made applicable to all Physical Education teachers including (emphasis supplied) teachers who have obtained degrees from recognised Universities.

10. To the mind of this Court the manner of the use of the word "including" is indicative of a canon of construction which brings within its ambit all teachers who have enhanced their qualification to M.P. Ed. from non-recognised Universities, including teachers who have obtained their degrees from recognised Universities for enjoying the benefit of the higher pay scale.

11. To the further mind of this Court the use of the word "including" in the G.O. dated 22nd of November, 1993 (supra) does not exclude other teachers, such as the writ petitioner, who have obtained their degrees from non-recognised Universities. In other words, this Court is of the view that the language of G.O. No. 795- Edn. (S) dated 22nd of November, 1993 does not exclude the writ petitioner from the genus of teachers who are eligible to receive a higher scale of pay including the species within the genus of teachers who have obtained their degrees from a recognised University.

12. In support of the above discussed view, this Court usefully relies upon a decision of the Hon'ble Apex Court in Delhi Development Authority v. Bhola Nath Sharma (dead) by Lrs. and Ors. reported in (2011) 2 SCC 54. Paragraphs 25, 26, 27 and 29 of the said decision read as follows:-

"25. The definition of the expressions "local authority" and "person interested" are inclusive and not exhaustive. The difference between exhaustive and inclusive definitions has been explained in P. Kasilingam v. P.S.G. College of Technology in the following words: (SCC p. 356, para 19)

"19?. A particular expression is often defined by the legislature by using the word "means" or the word "includes". Sometimes the words "means and includes" are used. The use of the word "means" indicates that "definition is a hard-and-fast

definition, and no other meaning can be assigned to the expression than is put down in definition". (See *Gough v. Gough* (1891) 2 QB 665 (CA)); *Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court* (1990) 3 SCC 682, SCC p. 717, para 72.) The word "includes" when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions".[See *Dilworth v. Commr. of Stamps* 1899 AC 99 (Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.* (1989) 1 SCC 164, SCC p. 170, para 11.] The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of "college" is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."

26. In *Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union* (2007) 4 SCC 685, this Court again considered the difference between the inclusive and exhaustive definitions and observed: (SCC p. 695, para 23)

"23. ? when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition ? it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. ? On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in [the definition of "banking company" in] Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

27. In *N.D.P. Namboodripad v. Union of India* (2007) 4 SCC 502, the Court observed: (SCC p. 509, para 18)

"18. The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have

as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of".

(emphasis in original)

29. Undisputedly, DDA is an authority constituted under Section 3 of the 1957 Act for promoting and securing development of Delhi according to plan and for this purpose it has the power to acquire, hold manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage, etc. Therefore, it is clearly covered by the definition of the expression "local authority".

13. This Court is also of the opinion that having improved her qualification in 1996 the petitioner cannot now be discriminated against in comparison to her peers who have also improved their qualification and are receiving the higher scale of pay.

14. Additionally, this Court is informed that the petitioner has received her M.P.Ed. degree from Amarayati University which is considered to be a recognised University.

15. For all the above reasons the order impugned of the District Inspector Schools (SE), Howrah-1 dated 7th of September, 2004 stands set aside. The petitioner is directed to be accorded the benefit of higher scale of pay in accordance with law from the last date of completing her post-Graduate Examination within and not later than a period of eight weeks from the date of communication of this order.

16. At this stage this Court is required to consider the submission of Sri Sen that the grant of higher pay scale to the petitioner can be considered to be notionally fixed from the date of completing her post graduate examination and real-time benefits be extended to the petitioner with effect from 7th of September, 2004, which is the date of the order impugned passed by the District Inspector of Schools (SE), Howrah-1 assuming that the order would have ultimately gone in favour of the writ petitioner. Otherwise, Sri Sen argues, the State exchequer would be stretched and such contingency may be avoided.

17. Although the submission of Sri Sen appears attractive on the face of it, this Court cannot also lose sight of the fact that the present writ petition was filed in the year 2005 and the petitioner has waited for more than a decade for adjudication of her right. Assuming that the writ petition would have been decided close to a time frame after it was filed in the year 2005, the contingency

mentioned by Sri Sen as noted above, would not have arisen and the petitioner would have been eligible to receive the real-time benefits of the higher pay scale from the date of completing her post graduate examination.

18. Therefore, in the light of the above discussion this Court is of the considered view that denial of real-time benefits to the writ petitioner for no fault of her and particularly when, she was vigilant enough to approach this Court in the year 2005 not long after the impugned order of rejection in the year 2004, denial of real-time benefits to her at this stage will cause deep prejudice to the writ petitioner.

19. Accordingly, this Court holds that the balance of convenience lies in granting real-time benefits in favour of the writ petitioner as directed above. The arrears be paid in favour of the writ petitioner within a period of eight months from the date of communication of this order.

20. W.P. 19734 (W) of 2005 stands accordingly allowed.

21. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.