

(2001) 06 CAL CK 0040
In the Calcutta High Court
Case No : C.O. No. 7564 (W) of 1982

Satya Brata Bhunia

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 CALLT 494

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Mr. S.B. Bhunia and Mr. P.R. Mitra, for the Appellant; Mr. P.K. Basu and Mrs. Sabita Roy, for the Respondent

Judgement

A.K. Banerjee, J.—This is a most unfortunate case where the writ petitioner's grievance could not resolved by this Court for last 19 years. It appears from records that by virtue of an interim order, the writ petitioner was allowed to draw retiral benefits without prejudice to his rights and contentions and only due to intervention of this Court the writ petitioner could get his retiral benefits from the respondent authorities as per their calculation.

2. Today the writ petition has come up before me for final hearing. The main issue involved herein is whether the writ petitioner could be treated as a trained teacher by virtue of Government order dated 28th February 1976 read with another Government Order dated 21st April 1976.

3. The relevant portion of the said two Government orders are relevant for consideration and is quoted below.

"Dated Calcutta, the 28th February, 1975.

Existing untrained teachers of aided Secondary schools above 40 years of age and with five year's experience in a recognised secondary school who were in service on the 1st April 1970 and existing untrained teachers of 40 years of age and below with 10 year's teaching experience in a recognised Secondary school

who were in service on the 1st April 1970 will be treated as trained teachers for the purpose of revised scales of pay. Such teachers will be eligible to draw their first increment from the 1st April, 1971 on completion of one year's service from the 1st April 1970, but the monetary benefit shall be granted from 1.4.1974."

"Dated Calcutta, the 21st April, 1976

In continuation of Government Order No. 166-Edn. (S), dated the 28th February 1975 the undersigned is directed, by order of the Governor, to say that the Governor is pleased to order that the existing untrained teachers of aided secondary schools above 40 years of age and with five years' teaching experience in a recognised secondary school, who were in service on the 1st April, 1975 and existing untrained teachers of 40 years of age and below and with 10 years' teaching experience in a recognised secondary school, who were in service on the 1st April 1975 should be treated as trained teachers for the purpose of revised scales of pay sanctioned in terms of Government Order No. 761-Edn. (S) dated the 6th September 1975. Such teachers shall be eligible to draw their first increment from the 1st April 1976 on completion of one year's service from the 1st April 1975."

4. Relying on the aforesaid two Government Orders, the writ petitioner claimed that although he did not have adequate training, he should have been treated as a trained teacher as he had the requisite age and experience in terms of the said two Government Orders.

5. Mr. P.K. Basu, learned Advocate appearing for the State respondents has opposed the prayer of the writ petitioner principally on the following terms.

(i) The two Government Orders relied on by the writ petitioner are not applicable in as much as the concerned school in which the writ petitioner was working was not "aided school" prior to 1979.

(ii) Assuming that the sated two Government Circulars are applicable. the said two Circulars have been given a go-bye by the subsequent Govt. order date. 14th April 1982 wherein the difference between trained and untrained was abolished and a revised scale of pay has been suggested for the under graduate teachers.

6. Elaborating his submission on the first count, Mr. Basu has drawn my attention on the various paragraphs of the affidavit-in-opposition. According to him prior to 1979 the concerned school was only given aid to the extent of dearness allowances only. Only in the year 1979 the school was brought under the salary deficit scheme. According to Mr. Basu, since the school was getting dearness allowances only, at the relevant time the said two circulars were not applicable as the school was not aided school.

7. On the second grounds Mr. Basu has submitted that the concerned teacher opted for the revised scale of pay suggested by the subsequent circular dated 14th April 1982. It was open for him to stick to the earlier scale of pay and not to

opt for the revised scale of pay. Once he has accepted the revised scale of pay, he is not entitled to contend otherwise, contrary to the subsequent circular. Mr. Basu has further contended that in any event since the difference between the trained and untrained under graduate teachers has been abolished by the subsequent circular, there was not question for giving any special benefit to the writ petitioner by virtue of the subject circulars dated 28th February 1975 and 14th April 1982.

8. In support of his contention Mr. Basu has cited four decisions of the apex Court. The first three decisions cited by Mr. Basu are reported in AIR 1989 SC at pages 19, 29 and 1256. These three decisions have laid down the well-settled proposition of law for equal work. With due respect to Mr. Basu I could not find the applicability of the ratio laid down by the Apex Court in the said 3 decisions in the instant case. As such I do intend to discuss about the three decisions.

9. The last decision cited by Mr. Basu is also an apex Court decision reported in State of Rajasthan Vs. Gopi Kishan Sen, . In the said case the regulation making a distinction in the pay of trained and untrained teachers performing identical duties was questioned. The apex Court turned down such plea on the ground that the additional qualification of being trained is of such a nature as to enable the teacher to do his duty better and for this reason, there cannot be any legitimate objection to the grant of a better scale of pay. With due respect to Mr. Basu, this case does not in any way help him in the facts of the instant case.

10, Although Mr. Basu has strenuously contended that the school was not an aided prior to 1979. I have carefully gone through the affidavit-in-opposition filed by the State respondents wherein I do not find any such assertion. In any event if the statements made in the affidavits are read as a whole, it would draw an inference contrary to the submissions made by Mr. Basu on that score. It was the consistent approach of the deponent of the said affidavit that the said two circulars were not applicable in the case of the writ petitioner on the ground mentioned in the said affidavit and not on the ground which has been canvassed by Mr. Basu from the Bar. With regard to the second grounds I find that there are correspondence to the effect made by the writ petitioner that the option exercised by him subsequently was without prejudice to his rights and contention. Even when the writ petition was moved in the year 1982, this Court by an interim order dated 13th August 1982 permitted the writ petitioner to accept the payment without prejudice to his rights and contention made In the writ petition. More over if the writ petitioner is legally entitled to any particular scale, accepting money as offered by the Government, in my view should not stand in the way in approaching this Court for repressor. The apex Court time and again has said that technicality should not stand in the way of granting relief to a person who is entitled to such relief. The Court is to mould the law in such a fashion which should assist the petitioners who have approached this Court for redressal on the basis of their legitimate right. The Court cannot be a mere on-looker with regard to the non-functioning and/or wrong function of the State

authorities and thereafter taking hyper-technical stand to deny a lawful right of a writ petitioner. In my view the contention raised by the State authority are not at all tenable. The two circulars dated 28th February 1975 and 21st April 1976 have made it categorically clear that any teacher having 40 years" of age and having 10 years" of experience would be treated as a trained teacher and should be treated at par with other trained teachers. Qualification was not a principal subject matter in those two circulars. The writ petitioner should have been treated as a trained teacher and whatever consequence would follow therefrom should have been extended to the writ petitioner.

Hence this writ petition succeeds. The State respondents are directed to calculate the retiral benefits by treating the writ petitioner as trained teacher in terms of the said two circulars and would pay the difference within a period of four weeks from date.

C.O. No. 7564(W) of 1982 is disposed of accordingly. Xerox certified copy. If applied for, be supplied on usual undertakings.

11. Petition succeeds