
(2019) 11 CAL CK 0110

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 10573 (W) Of 2011

Shyamapada Pati

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Citation : (2019) 11 CAL CK 0110

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Subir Sanyal, Sumouli Sarkar, Chaitali Bhattacharya, Kartik Ch. Kapas

Final Decision : Disposed Of

Judgement

Shampa Sarkar, J

The petitioner is working as an approved teacher in the Science and Mathematics Group in the Kharagpur South Side High School (H.S.), since May 23, 1985 against a substantive post. The petitioner desired to improve his qualification in the relevant teaching subject and group. He made an application before the school authority on August 26, 2000 for issuance of No Objection Certificate to pursue an M.Sc. course. The petitioner completed the post graduation in 2003 and made a prayer before the concerned respondents for grant of post graduate scale of pay. The school authority forwarded the claim of the petitioner to the District Inspector of Schools (S.E.), Paschim Medinipur (hereafter referred to as the said D.I.). The said D.I. by Memo dated September 13, 2004 sought for certain clarifications from the school authority with regard to the prior permission and the school authority by a letter dated September 24, 2004 clarified the queries of the said D.I. Thereafter an administrator was appointed in the school and by an order dated January 20, 2006 the administrator approved the post graduate scale of pay in favour of the petitioner and the headmaster of the school was requested to submit relevant papers along with the application of the petitioner to the Additional District Inspector of Schools (S.E.) Kharagpur Sub-

Division. The documents were forwarded to the concerned Additional District Inspector of Schools by the school authority on February 8, 2006. Thereafter no steps were taken by the authorities for grant of higher scale of pay to the petitioner. The petitioner by a letter, issued through his learned advocate dated February 25, 2010, demanded justice before the said D.I. as the prayer for higher scale of pay of the petitioner was not considered by the authority.

Being aggrieved by the inaction on the part of the said D.I., the petitioner preferred a writ petition before this Court being numbered as W.P. 17080(W) of 2010. The said writ petition came up for hearing before a coordinate Bench of this Court. By an order dated September 2, 2010, His Lordship directed the District Inspector of Schools (S.E.), Paschim Medinipur to dispose of the pending applications of the petitioner as also the school authorities with regard to the higher scale of pay to the petitioner.

By an order dated March 9, 2011, the District Inspector of Schools (S.E.), Paschim Medinipur considered and disposed of the representation of the petitioner by rejecting the claim for higher scale of pay on the ground that G.O. No. 548-SE(S) dated June 24, 1997 was a bar and declined to grant higher scale of pay to the petitioner. The said G.O. provided that the teachers of different

State aided schools would have to take prior permission from the concerned D.I. through the managing committee/administrator if they wished to enroll themselves and appear for examinations conducted through correspondence/distance mode of education from a university recognised by the University Grants Commission.

The petitioner has impugned the said reasoned decision of the District Inspector of Schools (S.E.), Paschim Medinipur on the ground that Memo No. 548-SE(S) dated June 24, 1997 did not have any manner of application in this regard, inasmuch as, the claim of the petitioner is based on paragraph 12.3 of the G.O. dated February 12, 1999. Paragraph 12.3 reads as follows:

"Rule 12(3)- All teachers including Physical Education Teachers and Librarians of Secondary Schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualifications, whichever is latter, provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of other schools, if said teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission."

Admittedly, the sole ground for rejection of the claim of the petitioner was that the petitioner had not obtained prior permission from the respondent no. 3 before enrolling and/or appearing at the post graduate examination.

The only point for consideration, in this case, is whether in terms of G.O. No. 548-SE(S) dated June 24, 1997, the petitioner was required to take prior permission from the respondent no. 3 before admitting himself to the M.Sc. Course.

This point has been decided by two Hon'ble Division Benches of this Court. First, by an order dated September 25, 2012, in MAT No. 633 of 2012, reported in 2013 (2) CHN (CAL) 565 [Samir Kumar Saha v. State of West Bengal], the prayer for higher scale of pay from the last date of examination was granted and it was further held that the West Bengal Schools (Control of Expenditure) Act, 2005 would not apply as the petitioner therein had improved his qualification prior to coming into effect of the said act.

Similar point was referred to an Hon'ble Division Bench of this Court when two learned Single Judges differed on the issue in the matter of W.P. 14760 (W) of 2004 [Rabi Kanta Barman v. District Inspector of Schools (SE) & ors.]. The Hon'ble Division Bench held that G.O. No. 548-SE(S) dated June 24, 1997, did not have any manner of application. Although the said G.O was in operation prior to promulgation of G.O. No. 25-SE dated February 12, 1999, the Government of West Bengal did not incorporate the condition imposed by G.O. No. 548-SE(S) dated June 24, 1997 while issuing G.O. No. 25- SE dated February 12, 1999 which was introduced after the promulgation of the ROPA 1998 but allowed teachers to claim higher scale of pay upon enhancement of qualification in terms of paragraph 12 (3).

The case of the petitioner herein is completely covered by this judgment and there is no reason to deny the same in view of the points already decided by the Hon'ble Division Bench of this Court.

The contention of Ms. Bhattacharya that the petition was barred under the West Bengal Schools (Control of Expenditure) Act, 2005, is not applicable. The issue has been settled in this case. Reference is made to the judgments already discussed hereinabove. The other contention of Ms. Bhattacharya that there has been delay on the part of the petitioner to approach this court, is also not accepted, inasmuch as, despite several communications in the interim period the matter was kept pending by the concerned District Inspector of Schools and thereafter by an order dated September 2, 2010 this Hon'ble Court directed the concerned respondent to take a decision in the matter. The decision was taken on March 9/10, 2011 and this writ petition impugning such decision was filed in June 2011. Memo Nos. 593-SE and 548-SE do not apply in this case. The petitioner is eligible under G.O. No. 549-SE as the qualification has been obtained by distance mode from Vidyasagar University which is a recognised university.

It is also seen that the school authorities had forwarded the paper to the District Inspector of Schools in 2003 for obtaining permission.

Under such circumstances this writ petition is allowed. The order dated March 9/10, 2011, issued by the respondent no. 3, is quashed and set aside. The petitioner will be entitled to higher scale of pay on and from August 22, 2003.

The pay of the petitioner be revised and fixed accordingly. Arrear, if any, to be paid to the petitioner within six months from date. The revised current salary should be issued month by month with effect from January 2020.

The writ petition is thus disposed of. There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible upon compliance of usual formalities.