
(2000) 04 GAU CK 0028
In the Gauhati High Court
Case No : Writ Petition (C) No. 454 of 1999

Sitesh Bhattacharjee

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 GLT 410

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : B. Das and S. Chakraborty, for the Appellant; U.B. Saha, T.D. Majumdar and J. Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Shri B. Das, learned senior Counsel, assisted by Mr. S. Chakraborty, learned Counsel for the Petitioner and Mr. U.B. Saha, learned Govt. Advocate, assisted by Mr. T.D. Majumdar and Mr. J. Majumdar, learned Counsel for the Respondents.

2. The Petitioner, Shri Sitesh Bhattacharjee was appointed as a School Teacher on ad-hoc basis in the year 1970 and thereafter, his services were regularised as Assistant Teacher. The Petitioner was a Bachelor of Science at the time of joining the service and he was provided with graduate scale of pay. Later on the Petitioner passed B. Ed. examination and also obtained Master degree in Bengali from Calcutta University in 1984, the result of which was published in the year 1986.

3. On 7th December, 1992, the Government of Tripura, Finance Department vide Office Memorandum No. F.4(62)-Fin(PC)/92 issued certain directions on the subject of grant of benefit of higher pay scales in the appropriate grade and also grant of higher pay scales on acquiring higher qualification in the respective trade/subject, to the Assistant Teachers and some other categories of employees

under Education Department. On the basis of the said Office Memorandum, the Petitioner was given a higher pay scale of Rs. 700-3980 meant for the Master degree holders w.e.f. 1.1.1988. On 10.9.1998 the Petitioner was, however, informed that he is not entitled to the pay scale of Master Degree holders in view of the above Office Memorandum and as such his basic pay which was fixed at Rs. 2640 was reduced to Rs. 25,70 and it was further provided that a sum of Rs. 24,271/- was drawn in excess by the Petitioner and the same shall be recovered by instalments at the rate of one-third of the basic pay.

4. In this writ petition under Article 226 of the Constitution, the Petitioner has challenged the said letter (Annexure-B) and has prayed for quashing the same and for necessary directions.

5. The case of the Respondent State is that the Petitioner was appointed as a Science Teacher, he being a bachelor in Science. The Petitioner acquired Master Degree in Bengali and as such the benefits granted by the said Office Memorandum are not available to the Petitioner as he has not acquired higher qualification in the respective trade/subject. The case of the Respondents is that the Head of Office and drawing and Disbursing Officer (i.e. D.D.O.) Charilam Higher Secondary School (Respondent No. 4) had wrongly allowed the Petitioner higher pay scale w.e.f. 1.1.1998 with reference to Office Memorandum dated 7.12.1992 through oversight/mistake. After detection of such mistake/wrong the Respondent No. 3 has rightly instructed the Respondent No. 4 vide his letter No. F.28(7-192)/DSE/90(L-1) dated 10.9.1998 to re-fix the pay of the Petitioner w.e.f. 1.1.1988 in the appropriate pay scale and make recovery of the over payment made to the Petitioner w.e.f. 1.1.1992 onward. As the Petitioner is not entitled to the benefit allowed by the aforesaid Memorandum (Annexure-A to the writ petition) but was allowed by way of mistake of the Respondent No. 4, therefore, the Petitioner has no right to claim such benefit, as such the writ petition filed by the Petitioner is liable to be dismissed.

6. The broad facts of the case are not in dispute. The Petitioner admittedly joined as an Assistant teacher while he possessed a degree in Bachelor of Science. He also obtained Master Degree in Bengali from Calcutta University, result of which was published in 1986. The point of determination is whether under the aforesaid Office Memorandum dated 7.12.1992, hereinafter referred to as O.M., the Petitioner is entitled to the benefit of higher pay scale. The Petitioner has filed a copy of the O.M. along with his writ petition, but certain portions of the same have been omitted/left blank. The learned Govt. Advocate has produced a copy of the entire O.M. The relevant provisions are at serial No. (G) and these are reproduced below:

(G) FOR THE TEACHERS AND OTHER CATEGORIES OF EMPLOYEES MENTIONED AT (F) ABOVE, WHO ACQUIRED HIGHER QUALIFICATION IN THE RESPECTIVE TRADE/SUBJECT TO WHICH THEY ARE ATTACHED, ON OR AFTER 1.1.1992 (THE DATE OF PUBLICATION OR RESULT):

(i) Such employees shall be granted one advance increment in the existing scale enjoyed by them, w.e.f. 1.1.1992 or the date of publication of result, whichever is later. Date of next increment shall fall due on the date of their earning periodical increment as usual.

Those who have already reached the maximum of the scale on that date, the increment shall be granted at the rate of last amount drawn;

(ii) Such benefit shall be restricted only for the Graduation/Graduation with Honours/Post Graduation Degree (Not Diploma/Certificate) in the particular trade/subject to which the particular incumbent belongs to;

(iii) The said benefit shall be admissible for only twice in the entire service life of the concerned incumbent.

7. From the above, it is apparent that the benefit has been extended to the teachers and employees who have acquired higher qualification in the respective trade or subject to which they are attached. In case of employees like Librarian, Coach, Music Teacher etc., the higher qualification would be required in the field of Library Science, the concerned sports, the music etc. and the case may be. It, therefore, implies that a librarian or Music teacher who has obtained Master Degree in Science will not be entitled to the benefits of higher pay scale as per the provision O.M. Likewise, in the case of teachers also the higher qualification should be in the respective subject. The specific case of the Respondents is that the Petitioner was appointed as a Science Teacher as he was a Bachelor in Science. As admitted, the Petitioner did not obtain any Master Degree in Science or any of the subjects of Science, but he obtained Master degree in Bengali only. The learned Counsel for the Petitioner submits that in the appointment letter of the Petitioner there is nothing to show that the Petitioner was appointed as a Science Teacher. The Petitioner has filed two copies of appointment letter, Annexures-C and D regarding the appointment. He has, however, not filed any document to show that his appointment was for teaching Bengali in the School. Annexures-C and D do not disclose anything. But from Annexure-B, it is seen that as per the entries made in the Service Book, considering science subject at his graduation level, thg Petitioner was appointed on regular basis for imparting lessons in Science subjects to the students of middle/high stage school. In the writ petition, the Petitioner has nowhere specifically averred that he used to teach Bengali to the students in the School. The Petitioner, however, has stated that he is an examiner of English and Bengali in the Madhyamik Examination and Higher Secondary Examination. The factum of examiner in those examination is beyond the point and not relevant.

8. Not to speak of appointment, the Petitioner has also not produced any material or evidence to show that at any point of time as an Assistant Teacher in the school he was attached to the subject of Bengali. Heading of Clause (G) as stated above, clearly states that the benefits have been given to the teachers who have acquired higher qualification in the respective subject to which they

are attached. In absence of any material on record, it cannot be held that the Petitioner was attached to the subject of Bengali as Assistant Teacher. I, therefore, held that the Petitioner is not entitled to any benefit as provided under the above O.M.

9. The Respondents have candidly admitted that the benefit was extended/given to the Petitioner under wrong impression by the Headmaster of the School and when it was detected, the impugned order was passed for rectifying the mistake.

10. The learned Counsel for the Petitioner further submits that even if it is admitted that the higher pay scale was erroneously given to the Petitioner, there was no connivance on the part of the Petitioner and as such it should not be recovered. The learned Counsel has relied on the observation of the Apex Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, wherein considering the facts and circumstances of the case, the Apex Court held-

it shall only be just and proper not to recover any excess amount which has already been paid to them.

The above relief was granted considering the facts and circumstances of the above case and no ratio was laid down as such.

11. The learned Govt. Advocate on the other hand, has submitted that the Petitioner was given increment to which he was not entitled and the Petitioner is still in service and the same should be recovered. The learned Govt. Advocate has drawn the attention of this Court to the case of V. Gangaram Vs. Regional Joint Director and others, where the excess amount was directed to be recovered from the pension payable to the Appellant. In a given case, the Court may be reluctant to order recovery from the employee, but that does not mean that any amount paid under any misapprehension cannot be recovered. In the present case, the Petitioner is still in service and the recovery has been ordered in instalment only. I, therefore, hold that there is no scope to interfere with the impugned order.

12. In the result, the writ petition is dismissed. Costs easy.