
(2012) 07 CAL CK 0122
In the Calcutta High Court
Case No : W. P. No. 3272 (W) of 2004

Smt. Lakshmi De

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Citation : (2012) 07 CAL CK 0122

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Mitali Bhattacharjee, for the Appellant; Tapabrata Chakraborty for SSC and Mr. Subrata Talukdar for State, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Justice Debasish Kar Gupta

1. This writ application is filed by the petitioner for issuing a writ of mandamus commanding the respondent no.5 to approve scale of pay of the petitioner at No. 5500-11325 and to fix the pay of the petitioner in the aforesaid scale as Assistant Teacher in Work Education in Manbhum Victoria Institution and payment of all arrears on the basis of the aforesaid scale of pay. The backdrop of this case in a nutshell is as under:-

2. The petitioner participated in the selection process for appointment to the post of Assistant Teacher Work Education held by the West Bengal Regional School Service Commission, Western Region. The name of the petitioner was recommended by the West Bengal School Service Commission, Western Region against a vacancy of Assistant Teacher in Work Education in Manbhum Victoria Institution, district-Purulia (hereinafter referred to as the said school) at a graduate scale of pay of No. 1420-3130. By virtue of a communication dated December 4, 1998 issued by the said school the petitioner was appointed against the above vacancy. The above appointment of the petitioner was approved by the respondent no.5 under his memo no.317(4) dated March 8, 1999.

3. On September 21, 1999 the petitioner submitted a representation to the Secretary of the said school alleging that she had obtained B.Sc (Agriculture) (Hons) degree in 1992 but it was not considered by the West Bengal Regional School Service Commission, Western Region at the time of recommending the name of the petitioner for appointment in the said school. The petitioner further submitted a representation dated August 3, 2002 to the respondent no.5 for granting post graduate scale of pay in connection with the aforesaid service of the petitioner. Ultimately, the petitioner submitted a representation dated May 9, 2003 to the West Bengal School Service Commission, Western Region to the effect that the petitioner had obtained B.Sc(Agriculture) Honours degree and as such she was entitled to the higher scale of pay.

4. It is submitted by Ms. Mitali Bhattacharya, learned advocate appearing for the petitioner, that B.Sc(Agriculture) Honours degree was higher than pass course degree and she was entitled to higher scale of pay. It is also submitted on behalf of the petitioner that post graduate scale of pay was granted to a similarly circumstanced Assistant Teacher of Kishore Nagar S. S. Sadan School district Midnapore. Drawing the attention of this court towards a final order dated November 5, 2003 passed in the matter of Debarati Pal Vs. State of West Bengal(in re: W.P.1464(W) of 2001) it is submitted on behalf of the petitioner that in a similar circumstances higher scale of pay was granted to another Assistant Teacher. According to the petitioner this is case of discrimination.

5. The learned counsel appearing for the petitioner relies upon the decisions of Ajay Jadhav Vs. Government of Goa and Others, reported in 2008 (1) CLJ(Cal) 810, Dibyandu Bhattacharya Vs. Steel Authority of India Ltd., reported in 2008(4) CHN 232 and Kashi Nath Bose Vs. State of West Bengal, reported in 2011(2) CHN (Cal) 536 in support of the above submissions.

6. On the other hand it is submitted by Tapabrata Chakraborty, learned counsel appearing on behalf of the respondent nos.3,4, that the petitioner participated in the selection process against the vacancies for Assistant Teacher with graduate scale of pay. As a result, the respondent no.4 considered the candidature of the petitioner in respect of that vacancy. According to him there was no error in recommending the name of the petitioner against the vacancy carrying graduate scale of pay. The petitioner also joined the above service without raising any objection. According to him, candidature in respect of a vacancy for Assistant Teacher with graduate scale of pay could not be considered for awarding higher scale of pay. Drawing the attention of this court towards revision of Pay and Allowance Rules, 1998 relating to the employees of West Bengal Recognised non-governed aided educational institutions(hereinafter referred to as the ROPA Rules, 1998), it is submitted by Mr. Chakraborty that the scale of pay of a graduate Assistant Teacher with Physical Education degree or Work Education degree was fixed at No. 1420-3130 having its notional effect from January 1, 1996 and actual effect of April 1, 1997. As a result, the above scale of pay was prescribed for recommending the name of the petitioner for appointment to the

said school. It is further submitted by Mr. Chakraborty that the aforesaid provisions of ROPA Rule, 1998 were not taken into consideration at the time of disposal of the writ application bearing W.P. No. 1464 of 2001. Therefore, according to him no relief can be granted to the petitioner on the basis of the above decision in respect of another Assistant Teacher.

7. The above submissions made on behalf of the respondent nos. 3 and 4 have been adopted by Mr. Subrata Talukdar, learned advocate appearing on behalf of the state respondents.

8. I have heard the learned counsels appearing for the respective parties at length and I have considered the facts and circumstances of this case carefully. The petitioner participated in the selection process on the basis of an advertisement no. 1/1998 (at page 20 to the writ application). It appears from the above advertisement that vacancies were declared for the post of Assistant Teacher in Work Education for graduate degree holders(pass). There was no vacancy earmarked for the post graduate/Honours degree holders. Clause(3) of the above advertisement prescribed the essential qualification for the alleged candidates as follows:

Essential: Bachelor degree with PGED or Bachelor degree with Work Education as Method Subject at B.Ed level or Technical degree or diploma such as L.M.E.L.C.E. or diploma in 3 yr. Degree Course in Home Science or B.SC(Ag). Or S.F./Madhamik/Higher Secondary with degree or diploma in Art and Craft recognised by the State Govt. or University or Bachelor degree along with Certificate in Tailoring/Lady Brabourne needle work (3yr. Degree course)/diploma in Art or Craft training recognised State Govt.

9. The petitioner participated in the above selection process. Her name was recommended against the vacancy of Assistant Teacher (pass graduate) in the said school. Her appointment was approved by the respondent no.5 for the post of Assistant Teacher(pass graduate) by virtue of order issued under memo no.317(4) dated March 8, 1999 (at page 26 to this writ application).

10. After considering the provisions of ROPA Rules, 1998(at page 30 to this writ application) I find that the scale of pay of No. 1420-3130 was prescribed for the aforesaid post. I find that the scale of pay for graduate teachers with physical education degree or work education degree was prescribed at No. 1420-3130.

11. In view of the above neither there was existence of any vacancy for Assistant Teacher in Work Education in any recognised non-governed aided school within the jurisdiction of the respondent no.4 for post graduate/Honours graduate degree holders nor the petitioner participated in the selection process under reference against such a vacancy. Therefore, this writ application is misconceived.

12. Nothing is available on record to show that the writ petitioner in W.P. no. 1464 of 2011 namely Debarati Pal participated against the vacancy for assistant teacher having graduate degree. Therefore, the ratio of the above decision is not

applicable in this case.

13. The decision of Ajay Jadhav((supra) is an authority in respect of the proposition of equal pay for equal work. Therefore, no relief can be granted to the petitioner on the basis of the ratio laid down of the above decision. The decision of Sauvik Ghosh(supra) is an authority for awarding post graduate scale of pay to an assistant teacher on the occasion of obtaining post graduate qualification after appointment due to distinguishable facts and circumstances of this case the above ratio is not applicable in this case. Similarly, the decisions of Dibyandu Bhattacharya(supra) and Kashi Nath Bose(supra) is an authority on the proposition of equal work for equal pay. It is not the issue involved in this case.

14. In view of the discussions and observations made hereinabove this writ application stands dismissed.

15. There will be, however, no order as costs. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.