

(2012) 01 CAL CK 0068
In the Calcutta High Court

Case No : W.P.No. 21521 (W) of 2010 with CAN No. 9039 of 2011

Subhasis Naskar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 2 CALLT 282 : (2012) 4 CHN 372

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Ekramul Bari, for the Appellant; Subrata Dutta and Mr. Sahidul Islam, for the Respondent

Judgement

Harish Tandon, J.—Let the application being CAN No. 9039 of 2011 be treated as on day's list. The petitioner has prayed for an order to grant post-graduate scale of pay due to improvement of qualification in the relevant subject.

2. It is a specific case of the petitioner that the petitioner after joining the school and with the permission of the managing committee enhanced his qualification by obtaining Master degree in English subject. He applied before the concerned authority for grant of the higher scale because of such enhancement of qualification. But the said prayer was not entertained by the authority concerned. This Court directed the District Inspector of School (S.E.) to file a report as to the steps taken by him in relation to the representation and/or application submitted by the petitioner. During the pendency of the writ petition, the District Inspector of School rejected the said representation on two-fold grounds. Firstly, that the enhancement of qualification was not done with prior permission of the District Inspector of School (S.E.). Secondly, after the introduction of (West Bengal Schools Control of Expenditure Act 2005) the same is not permissible. By filing an application being CAN 9030 of 2011 the writ petitioner brought to the notice of this Court such subsequent event with the further prayer for cancellation and/or withdrawal of the said decision of the District Inspector of School (S.E.).

3. A point is taken by the learned advocate appearing for the State that the order passed by the District Inspector of School gives fresh cause of action and the same is not amenable to be challenged and/or assailed in the instant writ petition.

4. According to the petitioner, the ground on which the representation of the petitioner is rejected has been found to be not tenable by the Coordinate Bench in the case of Pampa Das v. State of West Bengal &Ors. (W.P.2167 (W) of 2011 decided on 06.09.2011).

5. The relief which was initially claimed becomes inappropriate by virtue of a subsequent event, the Court shall mould the relief in order to render complete and effective determination of the disputes. Furthermore, the Court cannot shut eyes to a subsequent event which cropped up during the pendency of litigation if such event has a material bearing on the ultimate decision to be taken in a proceeding. There is no doubt that a decision has been taken during the pendency of the writ petition. Thus, this Court finds no impediment in considering such event and allowing the petitioner to assail and/or challenge the said decision in the instant writ petition.

6. It is strenuously contended by the State respondent that the circular which was relied upon by the District Inspector of School (S.E.) has not been quashed and set aside by this Court. But considering such submission, it would be relevant to take notice of the coordinate Bench decision rendered in the case of Pamapa Das (supra) wherein it has been held that higher scale of pay cannot be denied on the ground that no prior permission was obtained for acquiring higher qualification from the concerned District Inspector of School (S.E.). Thus, the aforesaid circular relied upon by the State-respondents runs counter to the law enunciated by the Coordinate Bench which has a binding effect upon this Court. Even if the particular circular is not quashed and set aside but the judgment rendered by the Court makes it inapplicable, then the circular losses its efficacy and applicability. The other ground taken by the concerned authority regarding the applicability of the West Bengal (School Control of Expenditure) Act 2005 is concerned, it appears that the same came into operation on 26th December 2005 whereas the claim was made by the petitioner prior to coming in force of the said Act and it has also been held in the case of Pampa Das (supra) that such Act cannot be applied to a claim filed prior to coming in force of the said Act. Thus, on both the grounds the decision rendered by the District Inspector of School (S.E.) is not sustainable.

7. The concerned authority is directed to grant the higher scale of pay to the petitioner from the date following the last date of the Master degree examination in which he appeared and coming out successfully. The entire exercise shall be completed by the concerned authority within 8 weeks from the date of communication of the order.

8. The writ petition thus disposed of. Consequently the application being CAN

9030 of 2011 is also accordingly disposed of.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties.