
(2016) 05 CAL CK 0102
In the Calcutta High Court
Case No : W.P. No. 27966 (W) of 2006

Swapan Kumar Mandal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

Citation : (2016) 4 CalHCN 500

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Mr. Ekramul Bari and Mr. Syed Mansur Ali, Advocates, for the Petitioner; Mr. Kamalesh Bhattacharya and Ms. Bratati Roy Chowdhury, Advocates, for the State

Final Decision : Disposed Off

Judgement

Debangsu Basak, J.—The petitioner has sought Honours Graduate pay scale from February 9, 1999 being the date of his joining in the post of Assistant Teacher and consequential reliefs with regard thereto.

2. Learned Advocate for the petitioner has submitted that, the petitioner was appointed as an Assistant Teacher with effect from February 9, 1999. The petitioner was selected through a selection process where the same examination was taken for an Honours and a Pass Graduate. As a Pass Graduate, the petitioner had taken the same examination as that of an Honours Graduate, since at that point of time the authorities did not differentiate between a Pass and an Honours Graduate for the purpose of examination or selection. He has referred to 2004 Volume 2 Calcutta Law Times page 610 (Partha Chatterjee v. State of West Bengal and others) and has submitted that, the Government Order bearing No. 155(SE) dated July 13, 1999 has been declared as invalid. He has referred to 2015 Volume 1 Calcutta Law Journal page 24 (Smt. Nita Dey Chandra v. The State of West Bengal and others) and has submitted that, the Division Bench in similar circumstances had allowed higher pay scale. He has relied upon an unreported decision dated July 15, 2015 passed in W.P. No. 13286(W) of 2014

(Selina Yeasmin v. The State of West Bengal and others) and has submitted that in similar facts relying upon Smt. Nita Dey Chandra (supra) higher pay scale was granted.

3. Learned Advocate for the State has submitted that, the petitioner was appointed as an Assistant Teacher to a post after the evaluation by the State with regard to the requirement of the member and quality of teacher at the concerned school. The State makes a budget for appointment of teachers at different schools depending upon the requirement. The State takes into consideration the requirement of a Pass and an Honours Graduate teacher of the school. Once the school has earmarked a post of a teacher for a Pass category candidate such post cannot be converted to an Honours Graduate post by seeking higher pay scale. If such a migration is allowed to be taken the budgetary allocation of the State would go haywire.

4. I have considered the rival contentions of the parties and the materials made available on record.

5. The petitioner had participated in the selection process for filling up of the post of assistant teacher. The petitioner was successful therein. The petitioner was empanelled. By a memo dated January 15, 1999 the petitioner was given the appointment. The petitioner had joined on February 9, 1999. Approval to the appointment was given by the memo dated April 7, 1999. At the time of joining, the petitioner claims to be an Honours Graduate. He had made a representation on March 12, 2005 before the school authority for higher pay scale. The school authority by a writing dated May 17, 2005 had forwarded the representation to the District Inspector of School who had by the impugned memo dated April 5, 2006 rejected the same.

6. The petitioner appears to be similarly situated and circumstanced as that of Selina Yeasmin (supra). Smt. Nita Dey Chandra (supra) was followed in Selina Yeasmin (supra).

7. In view of the petitioner being similarly situated and circumstanced as that of Selina Yeasmin (supra), the same directions are issued. The District Inspector of School (S.E.), Barrackpore is directed to take steps for disbursement of higher scale of pay in favour of the petitioner from the date when the petitioner had acquired the higher qualification relevant to the subject and group. It is expected that the entire process is completed within eight weeks from the date of communication of this order.

8. W.P. No. 27966 (W) of 2006 is disposed of. No order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.