

(2008) 01 CAL CK 0070

In the Calcutta High Court

Case No : Writ Petition No. 14319 (W) of 2003, C.R. No. 11204 (W) of 2001 and M.A.T. No. 568 of 2007

Tarak Chandra Roy

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

West Bengal Schools (Control of Expenditure) Act, 2005 — Section 14, 16, 20

Citation : (2008) 2 CALLT 240 : (2008) 2 CHN 973

Hon'ble Judges : Surinder Singh Nijjar, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : P.K. Munshi, for the Appellant; Tapabrata Chakraborty, Abhijit Basu and Kumaresh Dalal, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh Nijjar, C.J.—We have heard the learned Counsel for the parties.

2. The matter has been referred to a Division Bench by the learned single Judge by order dated 1st December, 2005. The question specifically posed by the learned single Judge is as follows:

After the School Service Commission Act, 1997 came into force would the appointees get the benefit of the higher scale of pay despite being interviewed and selected in pass category.

3. The petitioner is a post graduate degree holder in Physical Education. In 1998 the West Bengal School Service Commission conducted a selection test for Physical Education teachers. It appears from the advertisement that - there was no vacancy in the post of Honours Graduate/Post Graduate teacher. There had been a selection test only in pass category. The petitioner appeared in the said examination and got employment in pass category. The petitioner accepted such appointment. Thereafter, in 2003 the petitioner again appeared in another Regional Level Selection Test in pass category as he was not happy with his

posting. The petitioner was again selected and was given appointment. The petitioner now claims the postgraduate scale.

4. The learned single Judge after considering the entire matter has come to the conclusion that after the Act of 1997 came into force there had been different categories for appointment and extension of benefit of higher scale of pay because of improvement of qualification is no more permissible. Therefore, it has been held that the petitioner would not be entitled to higher scale of pay despite the post graduate qualification. However, it would appear that the counsel for the petitioner relied upon an unreported decision of this Court in W.P. 2461(W) of 2003. In that judgment it has been held that the petitioners therein having the postgraduate qualification were entitled to post-graduate scale in terms of the Government Circular Memo No. 795 - Edn. (S) dated 22nd November, 1993 as modified by a further Memo No. 417 -SE(S)/5P -33/98 dated March 8, 2000.

5. Unable to agree with the aforesaid view, the learned single Judge has made the reference under consideration.

6. We have heard the learned Counsel for the parties.

7. The petitioner was appointed on 23rd March, 1999 as an Assistant teacher in Physical Education. The appointment was duly approved by the District Inspector of School. On 27th September, 2001 the petitioner made a representation to the District Inspector of Schools for grant of Masters Degree scale of pay. The representation was not decided which led the petitioner to file the writ petition being W.P. 449(W) of 2003. This writ petition was disposed of by this Court on 15th January, 2003 by directing the Secretary, Managing Committee of the school for passing a reasoned order after hearing. A resolution was passed by the Managing Committee of the school on 22nd February, 2003 recommending the claim of the petitioner for higher pay scale to the District Inspector of Schools. However, the claim of the petitioner was again rejected. Although there was no indication to that effect the petitioner, however, filed the writ petition on the hypothesis that the claim had been rejected. Be that as it may, the fact remains that the recommendation of the Managing Committee has not been accepted. The petitioner claims the higher pay scale on the ground that he holds Masters Degree in Physical Education having passed the same before qualifying in the School Service Commission in 1999. The petitioner claims the higher pay scale in terms of Government Order No. 417 -SE(S)/5P-33/98 dated 8th March, 2000. This order provides that the higher scale of pay would be admissible to those Physical Education teachers who have obtained such higher post-graduate degree on completion of two years" regular course from a recognized university. The petitioner having completed the postgraduate qualification from a recognized university claims to be entitled to the higher pay scale under the aforesaid circular. This circular has been issued in modification of the earlier circular, i.e. G.O. No. 796 - Edn. (S)/5P-78/93 dated 22nd November, 1993 wherein the benefit of higher scale of pay to the Physical Education teachers of the Secondary School and Junior High Schools including those of Madras as of various types

having Masters Degree in Physical Education from a recognized University was allowed, the petitioner claims to be qualified under both the Circulars for the higher pay scale.

8. Learned Counsel for the petitioner submits that since the petitioner had acquired the higher qualification earlier to being selected, the respondents have illegally withheld the higher pay scale. It is also submitted that the promulgation of the enactment of the West Bengal Schools (Control of Expenditure) Act, 2005 would not be applicable as the vested rights of the petitioner could not be taken away.

9. The respondents have filed affidavit-in-oppositions. It is stated that the Circular dated 22nd November, 1993 has no manner of application in respect of the Assistant Teacher of the Physical Education appointed on the recommendation of the Commission subsequent to the promulgation of the West Bengal School Service Commission Act, 1997. Similarly Circular dated 8th March, 2000 has no manner of application as it is merely clarificatory of the Circular dated 22nd November, 1993. It is, however, pointed out that the petitioner participated in the selection test of 1998 in pass graduate category. He was appointed as an Assistant Teacher in the pass category. He again participated in another selection test in the year 2002. His name was again recommended on the basis of the fresh recommendation. He again joined in the same post but at a different school. This appointment was also approved on 21st April, 2003. The petitioner's scale of pay had been fixed in terms of the Government order dated 12.2.1999 and 13. 7.1999 and the later categorically provides that if a teacher is appointed through the Commission his pay will be fixed in the scale of pay as per his qualification as mentioned by the said Commission. The petitioner having been appointed in the pass category clearly, therefore, cannot get the benefit of his post-graduate qualification.

10. We have considered the submission made by the learned Counsel. In our opinion, the petitioner being an appointee subsequent to the promulgation of the West Bengal Service Commission Act, 1997 cannot be given the benefit of Circular dated 22nd November, 1993 and 8th March, 2000. Petitioner having been appointed as Assistant Teacher pass category can only get the pay scale specified by the commission for that post. Even otherwise the benefit of Circular dated 22nd November, 1993 and 8th March, 2000 would not confer any vested right upon the Assistant Teachers. No such right has been protected under the West Bengal Schools (Control of Expenditure) Act, 2005.

11. In view of Section 14 of the 2005 Act no graduate category teacher is entitled to claim any additional increment for acquiring any qualification than the qualifications specified for such post. The provision in Section 16 would not be applicable to aid the claim of the petitioner as by virtue of Section 20 of the 2005 Act the Circulars and orders existing previously stand abrogated. That being the position of law, the petitioner would not be entitled to claim higher scale of pay. We, therefore, dismiss the writ petition.

Jayanta Kumar Biswas, J.

12. I agree.