
(2015) 05 CAL CK 0067
In the Calcutta High Court
Case No : Writ Petition 11883 (W) of 2014

Zeaur Rahman

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Citation : (2015) 05 CAL CK 0067

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Biswaroop Bhattacharya and Golam Mohiuddin, Learned Advocates, for the Appellant; Amitesh Banerjee and Somraj Dhar, Learned Advocates, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Samapti Chatterjee, J.—Affidavit of service filed in Court be kept on record.

2. The petitioner joined on 1st November, 2008 as Assistant Teacher in Arabicunder language and Literacy Group, Dist. Malda. His service was approved on 30th December, 2008. The petitioner acquired Mumtazul Muhaddethin degree from the West Bengal Board of Madrasah Education in the year 2007. On the basis of the notification dated 30th January, 2009 passed by the Joint Secretary, Government of West Bengal Minority Affairs and Madrasah Education Department the Scale of Pay for teacher holding qualification of Fazil and MM was upgraded to the scale of Rs. 6000-227=7800-250-9800-275-12000+ with effect from 1st February, 2009. It was also mentioned in the said circular under serial No. "e" that the persons who have acquired MM degree after 1995 onwards, they will come under the purview of this notification to enjoy the scale with effect from 1st February, 2009. The said notification dated 30th January, 2009 is quoted below:

"WHEREAS an expert Committee was constituted by the Govt. vide notification No. 25-MD dated 8.1.2008 the equivalence of Kamil and MM concerned studies related issue in connection with Senior Madrasah.

AND WHEREAS the committee after detailed deliberates have furnished recommendations and the Govt. have accepted the same.

The scale of pay for teachers holding qualification of Fazil, Kamil and MM will be as follows w.e.f. 1.2.2009.

This has the concurrence of Finance Deptt. Vide U.O. No. 1879 Group P (Pay) dated 29.1.09.

By order of the Governor Sd/- Joint Secretary Date : 30.1.2009"

Though the petitioner acquired MM degree prior to his appointment in spite of that fact petitioner was placed in scale of Rs. 3800/-7775/- instead of Rs. 6000/- Rs. 12,000/- even after 1st January, 2009, therefore by virtue of this notification dated 30th January, 2009 the petitioner was very much entitled to enjoy the scale as prescribed under the said notification with effect from 1st February, 2009.

Therefore, the petitioner was compelled to a the writ petition being W.P. 30186 (W) of 2013 before this Hon"ble Court to ventilate his grievance for getting higher scale of pay as recommended by the notification dated 30th January, 2009. On 3rd October, 2013 the said writ petition was disposed of by this Hon"ble Court by directing the respondent No. 2 inter alia to consider and dispose of the case of the petitioner within a specific period.

Pursuant to the said order a hearing was held. Thereafter, on 11th March, 2014 petitioner"s representation was rejected by the concerned authority holding inter alia that the petitioner is entitled to enjoy pass graduate scale of pay in terms of G.O. No. 298-MD dated 27.02.2009 and G.O. No. 960-MD dated 16.06.2010, and not entitled to enjoy the scale of Rs. 6000/- Rs. 12,000/-.

3. Challenging the said order dated 11th March, 2014 petitioner filed the present writ petition.

4. Mr. Biswaroop Bhattacharya, Learned Advocate appearing for the petitioner, submits that no administrative order or circular can be given retrospective effect. Therefore, the circular dated 31st March, 2010 has no effect in respect of the petitioner"s case as the petitioner"s case is governed by the circular dated 30th January, 2009 and the petitioner made a representation to enjoy higher scale of pay as indicated in the circular dated 30th January, 2009. The circular dated 31st March, 2010 which was considered at the time of rejecting the petitioner"s representation by the concerned Authority has no bearing in respect of the petitioner"s case, as no administrative circular or Govt. memo cannot be given retrospective effect, it should be given prospective effect unless specifically mentioned in the said circular. Therefore, the petitioner"s claim should be governed by the circular dated 30th January, 2009 where it is indicated that the candidate who has been possessing MM degree after 1995 onwards will be entitled to enjoy the pay scale of Rs. 6000-12000/- with effect from 1st February, 2009.

5. In support of his contention Mr. Biswaroop Bhattacharya, learned Advocate appearing for the petitioner, relies on one Supreme Court decision reported in Govind Prasad Vs. R.G. Parsad and Others, (1994) 68 FLR 8 : (1993) 6 JT 233 : (1994) 1 LLJ 943 : (1993) 4 SCALE 343 : (1994) 1 SCC 437 : (1993) 3 SCR 555 Supp where it was held by the Hon"ble Apex Court that every administrative circular/Government Order should be given prospective effect not retrospective effect. Therefore, Mr. Bhattacharya submits that the petitioner's case should be considered as per the circular dated 30th January, 2009.

6. Mr. Bhattacharya further submitted that other candidates who have been possessing MM degree on and from 1995 have been allowed to enjoy higher pay scale i.e. Rs. 6000-12000/- with effect from 1st February, 2009 barring the petitioner.

7. Before parting with his argument Mr. Bhattacharya submitted that this writ petition should be allowed by quashing and setting aside the impugned order dated 12th June, 2014.

8. Having heard the submissions advanced by the learned Advocates appearing for the respective parties and after meticulously perusing the records, I am of the view that any administrative circular or Government order can not be given effect retrospectively. Unless it is specifically mentioned in the Government order. Every circular or Government order should be given prospective effect, which is well settled law by the catena of decisions of the Hon"ble Apex Court. I also cannot shut my eyes that the notification dated 30th January, 2009 where it is specifically stated that the persons who are possessing MM degree with effect from 1995 onwards are very much entitled to enjoy the higher scale of pay of Rs. 6000-12000/- with effect from 1st February, 2009.

9. I also cannot ignore the submission advanced by Mr. Bhattacharya that in the advertisement no entry qualification was mentioned for the post of Assistant Teacher in respect of the Madrasah concerned. Therefore, I find some substance in the argument of Mr. Bhattacharya that other candidates who have acquired MM qualification on and from 1995 onwards have been allowed to enjoy the higher pay scale i.e. Rs. 6000-12000/- pursuant to the notification dated 30th January, 2009.

10. That being the position, I have no hesitation to hold that the impugned order dated 11th March, 2014 passed by the Director of Madrasah, West Bengal cannot be sustained. Therefore, the same should be quashed/set aside.

11. Accordingly, the impugned order dated 11th March, 2014 passed by the District Inspector of Schools (S.E.) Malda is hereby quashed. In my opinion justice would be sub-served if the Director of Madrasah, West Bengal is directed to consider the petitioner's representation afresh in the light of the observation, as indicated above and in accordance with law, after giving an opportunity of hearing to the petitioner within a period of eight weeks from the date of communication of this order and the decision of the hearing would be

communicated upon the petitioner within two weeks thereafter.

12. With this direction and observation the writ petitioner is disposed of.

13. There will be no order as to costs.

14. Urgent certified xerox copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.