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IN THE HIGH COURT AT CALCUTTA
Constitution Writ Jurisdiction
ORIGINAL SIDE
(VIA VIDEO CONFERENCE)

W.P.O. No. 189 of 2020

ABHIJIT SAHA
Versus
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 25th November, 2020

Appearance:
Mr. Anjan Bhattacharya, Adv.
Ms. Anita Shaw, Adv.
...for the petitioner

Mr. Subhabrata Datta, Adv.
...for the respondents

The Court : The writ petition has been filed on the allegation that the petitioner, who is an Honours Graduate, was recommended to fill up a regular vacancy at the Honours Graduate scale of pay as recommended by the concerned school (annexure P7 at page 28 of the writ petition). The District Inspector of School (SE), Kolkata, however, approved the appointment of the petitioner merely on the basis of his pass course qualification, thereby fixing April 1, 2018 as the notional date of giving effect to the appointment, with the remarks that the same will be financially effective from the date of issuance of the Memo i.e., September 19, 2019.

Learned counsel for the petitioner argues that several wrongs were committed thereby against the petitioner.

First, in view of the concerned school, having regard to the vacancy, recommended the petitioner to be appointed in place of an assistant teacher having educational degree requisite for the Higher Secondary Section, at an Honours Graduate scale of pay, the District Inspector exercised jurisdiction not vested in him by any statute and/or authority in placing the petitioner in the pass course arbitrarily.

Secondly, the financial effect of the appointment could not have been given from the date of the Memo i.e., September 19, 2019, but ought to have been given from April 1, 2008. It is argued that, even as admitted in the affidavit-in-opposition, as per the Memo No. 1691-SE (S) dated September 20, 2001 of the Education Department of the State Government, such teachers working beyond the sanctioned strength should be placed, whenever any vacancy arises within the sanctioned strength, in strict adherence to the norms of the Staff Pattern in case of Normal Section (V-XO). In case of Higher Secondary Section, only those teachers who possess Honours/Masters Degree in the subject in which the vacancy arises should be considered.

Learned counsel appearing for the respondents-authorities submits that, as elaborated in Clause-III of paragraph 3 of the affidavit-in-opposition, the school authorities placed the petitioner's service under Normal Section (Science Group) and as such, the petitioner is not entitled to the Honours Graduate pay

scale. It is, thus, submitted that the appointment made by the school itself restricts the pay scale of the petitioner to the pass course level.

It is seen from the recommendation of the school, (annexed at page 28 of the writ petition), that the petitioner was appointed in the place of Shri Arun Kr. Tiwari, Assistant Teacher (HS), with pay scale commensurate with (Hons. Graduate) recommended for the petitioner. The date of confirmation of the petitioner was categorically indicated to be April 1, 2008.

As per Memo No. 1691-SE (S) dated September 20, 2001, undoubtedly, the Staff Pattern of the Normal Section does not attract the clause pertaining to Higher Secondary Section, the latter requiring only teachers possessing Honours/Master degree in the subject, in the present case, there is nothing to substantiate the plea taken in the affidavit-in-opposition that the petitioner's service is under Normal Section. The argument of the respondent-authorities, that no affidavit-in-reply was used by the petitioner to controvert such averment made in the paragraph 3 (III) of the affidavit-in-opposition, is not justiciable, in view of the documents annexed to the writ petition themselves speaking to the contrary.

Since the school was specific in its recommendation as regards the petitioner being appointed in the science group in general, without restricting the same to the normal category, and in view of the pay scale having been fixed by the school, in the recommendation, at the Honours Graduate level and since the school disburses the salary and the State Government only pays the Dearness Allowance of the teacher, it was beyond the authority of the District Inspector to

bye-pass such recommendation and approve the petitioner merely at the pass course pay scale, by ignoring the Honours degree of the petitioner.

Consequentially, the financial effect of the approval had to relate back to that of April 1, 2008, as recommended by the school itself.

Circumstantially, it is also seen that the petitioner was appointed in place of an Assistant Teacher having Higher Secondary teaching qualifications who, in fact, went on to become the headmaster of the school.

In such view of the matter, it is evident that the approval of the petitioner as per the Memo No. 1823/M dated September 19, 2019 was in contravention of the law and *de hors* the recommendation of the school.

Accordingly, W.P.O. No. 189 of 2020 is allowed, thereby modifying Memo No. 1823/M dated September 19, 2020 to the effect that the petitioner, namely Abhijit Saha, who is a Bachelor of Science having an Honours Degree in Chemistry, as reflected in his certificate, annexed at pages 13A and 14 of the writ petition, shall be shown to hold such Honours degree in the first column of the chart given in the impugned memorandum, which mentions the qualification of the incumbent.

Secondly, the column reflecting the date from which the approval is effective shall record the effective date to be April 1, 2008 and the expression “(notional)” shall be removed.

In the second last column of the chart given in the memorandum dated September 19, 2019, which reflects the scale of pay of the petitioner, the

expression "Honours Graduate" shall be included by deleting the present recording, "Pass Graduate".

Lastly, in the appropriate column of the said chart, it will be reflected that the said appointment was financially with effect from April 1, 2008, by deleting the present words appearing therein.

The respondent no. 3 is directed to re-issue the approval for such appointment of the petitioner, duly corrected in accordance with the above observations, within a fortnight from date, and a copy of the same shall be sent to the petitioner at the earliest thereafter. The petitioner is given the liberty to approach the District Inspector of Schools personally and obtain a copy of such approval of appointment, if the respondent no. 3 intimates the petitioner to that effect.

There will be no order as to costs.

Urgent certified photostat copy if applied for, be supplied to the parties subject to the compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)