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10.02.
2021
Ct. No.12

MAT 1620 of 2019
With
IA No: CAN/1/2020 (Old No. CAN/1040/2020),
CAN/2/2020 (Old No. CAN/2/1041/2020)

The State of West Bengal & Ors.
Vs
Uttam Manna & Ors.

Mr. Joytosh Majumdar
Mr. Raja Saha
Mrs. Sucharita Paul
.....For the Appellants
Md. Nure Zaman
Mr. Jahangir Badsha
.....For the Respondent No.1

With the consent of both the parties the appeal and applications are taken up and disposed of by a common order.

The appeal is directed against the order dated 6th September, 2018 passed by the learned Single Judge of this Court whereby directing the concerned respondents to grant higher scale of pay to the writ petitioner/respondent in accordance with law within a period of four weeks in acknowledging his Post Graduate qualification.

The writ petitioner/respondent challenged the order passed by the Secretary, Government of West Bengal, School Education Department on 2nd June,

2014 in connection with a representation made by the writ petitioner before the said authority on the basis of the direction passed by a learned Single Judge while disposing of the earlier writ petition on 20th March, 2014 for consideration of higher scale of pay of the writ petitioner by reason of acquiring higher qualification after he was appointed as an assistant teacher with the Pass Graduate Degree. The said representation was disposed of by the Secretary after taking into consideration Clause 12 (3) of ROPA 1998. The relevant portion of the said order, namely, paragraphs 4, 5, 6 and 7 are stated below.

“4. The petitioner submitted that he was appointed as an Assistant Teacher of Pratapnagar Ramanimohan Vidyanyketan, District – Hooghly against a Pass Graduate Vacancy in Language Group on recommendation of the West Bengal School Service Commission (Eastern Region) while he was pursuing study in M. A. course in English.

5. The representative of the District Inspector of Schools (S.E.), Hooghly submitted that at the time of selection, the petitioner possessed B.A. (Hons.) in English qualification. Since, he competed for pass graduate category vacancy, he is entitled to pass graduate scale of pay. Subsequent enhancement of qualification does not render any automatic right for post graduate scale of pay. The post graduate scale

would be admissible if he had been successful in the competition among the Hons./Post Graduate candidates conducted by the West Bengal School Service Commission. One should take pain of the acid test of competition, i.e. selection test for the appropriate category held by the West Bengal School Service Commission among the Hons./Post Graduate candidates to gain higher scale of pay for one's enhanced qualification.

6. The Headmaster of the school submitted that the case may be disposed of as per the existing policy of the State Government in School Education Department.

7. Having considered the facts and circumstances of the case. I find that with the introduction of the West Bengal School Service Commission Act, 1997, vacancies of the aided recognized secondary schools are filled on recommendation of the said Commission. The Commission holds selection test for two categories of posts i.e. – Pass Graduate Vacancy and Hons/Post Graduate vacancy upon maintaining medium, caste-category, subject and gender etc. There is no scope to allow Hons./Post Graduate scale of pay to a candidate who has been selected for Pass Graduate Vacancy. Hence, no relief can be given to the petitioner. The matter is disposed of.

All concerned be informed accordingly.”

Matter relates to entitlement of the writ petitioner to enjoy Post Graduate scale of pay upon acquiring higher qualification subsequent to his appointment in the post of assistant teacher on the recommendation of the School Service Commission.

The facts of the case of the writ petitioner is that he was appointed as an assistant teacher with effect from 2nd December, 2002 in consideration of his educational qualification of B. A. (Pass), B. Ed and such appointment was approved by the concerned Additional District Inspector of Schools, Arambagh, Hooghly, vide Memo dated 13th December, 2002 sanctioning Pass Graduate scale of pay. The writ petitioner was appointed as it has been stated earlier on the recommendation of the School Service Commission wherein petitioner was treated as a candidate having Pass Graduate qualification. Subsequently the petitioner enhanced his educational qualification upon acquiring Post Graduate degree in English and such degree was conferred to the writ petitioner in the year 2006. It is also the case of the writ petitioner that such acquisition of degree by him was with the permission of the concerned school authority and upon completion of all other formalities which are required to be completed prior to enrolment of his name for higher studies.

Now question arises if a teacher who has been recommended by the School Service Commission for appointment of assistant teacher under Pass Graduate category can be sanctioned Post Graduate scale of pay upon acquiring Post Graduate qualification subsequent to his date of appointment. While appraising the case made out by the writ petitioner as well as appeal preferred on behalf of the State Government we have come across Clause 12 (3) of Revision of Pay and Allowances Rules 1998 (in short ROPA 1998) as well as Section 14 (3) of the West Bengal Schools (Control and Expenditure Act, 2005 (in short Act of 2005). On perusal of Clause 12 (3) of ROPA 1998 it appears that initially the benefit of higher scale of pay was sanctioned in favour of the teacher who was appointed with the higher qualification or who had improved subsequent to his appointment qualification, subject to permissibility in terms of the provisions relating to staff pattern. Thereafter on implementation of the School Service Commission Act after 1997 the said Clause 12(3) of ROPA 1998 had undergone clarification vide Government Order No. 155-S.E. (B) dated 13th July, 1999. Upon such clarification being made by the Education Department it has been added to the parent provision of Clause 12(3) of ROPA 1998 in respect of the teachers who are appointed on the

recommendation of the School Service Commission, their pay is required to be fixed in terms of the educational qualification which is mentioned by the School Service Commission in the recommendation order.

We have also considered Section 14(3) of the Act of 2005 where it has been specifically provided the assistant teachers having Honours Graduate degree receiving Honours scale of pay are entitled to get the sanction of pay in Post Graduate scale, subject to compliance of formalities and the manner which is to be prescribed by the Education Department subsequently. However, there is no approval in terms of the relevant provisions of the said Act of 2005 in favour of the assistant teachers who were appointed with Pass Graduate qualification to get the benefit of higher pay scale on acquiring higher educational qualification.

In the present case the fact situation is that the writ petitioner was appointed on 2nd of December, 2002 on the recommendation of the School Service Commission in the category of assistant teacher having pass graduate degree and he improved his educational qualification upon obtaining M. A. in English in the year 2006. Considering this we find that the Section 12 (3) of ROPA 1998 as well as Clause 14 (3) of the Act of 2005 are squarely

applicable in the case of appreciation of entitlement of the writ petitioner to enjoy Post Graduate scale of pay. As per clause 12 (3) of ROPA 1998 and Section 14 (3) of the Act of 2005 we find that the writ petitioner is prevented from enjoying the said benefit of Post Graduate scale of pay on acquisition of qualification of Post Graduate Degree in the year 2006.

In course of submission the learned advocate appearing on behalf of the respondent no.1 has relied upon a judgement reported in 2015 (1) CLJ (Cal) (Smt. Nita Dey Chandra Vs. The State of West Bengal & Ors.) delivered by a coordinate Bench decided in favour of the concerned teacher in the matter of sanctioning Post Graduate scale of pay upon acquiring higher qualification. The said judgement dealt with Clause 12 (3) of ROPA 1998 in favour of the concerned teacher although the said teacher was recruited by the School Service Commission upon considering the said teacher as a candidate having Pass Graduate Degree. The State apparently aggrieved by the interpretation of the aforesaid Clause and preferred a review of the said decision being R.V.W. 100 of 2015 whereupon a coordinate Bench in its order dated March 15, 2019 in paragraph 11 had clarified that 12 (3) ordains that the scale of pay of a teacher has to be fixed in terms of the qualification

mentioned by the School Service Commission and accordingly allowed the review petition and remitted the appeal for early disposal on the basis of such interpretation of Clause 12 (3) of ROPA 1998.

The interpretation of Clause 12 (3) of ROPA 1998 also came for consideration before this Bench on February 9, 2021 in the case of The District Inspector of Schools (S.E.), Murshidabad & Ors. Vs. Md. Mainul Islam & Ors., MAT No. 1119 of 2018 and we have taken the view that was earlier taken by a coordinate Bench while reviewing the order dated 4th December, 2014 in the case of Smt. Nita Dey Chandra (supra)

In addition thereto we find it is apposite to observe that if a teacher is permitted to upgrade his pay scale based on higher qualification obtained after his appointment which is on recommendation of the School Service Commission; it will indulge candidates to resort to unfair means to get enriched by higher scale of pay bypassing the method of selection meant for appointment of teachers under post graduate/honours graduate category. This appears to be the reason for amending 12(3) of ROPA 1998.

In view of the above conspectus, the order under appeal is set aside. The appeal and all connected applications are allowed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)