

S/L 3
30.6.2022
Court No.13
pk

WPA 3085 of 2009

Satyajit Pal
Vs.
State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Saktipada Jana
Mr. Sk. Imitaj Uddin

...for the Petitioner.

Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal
...for the State

The writ petitioner was appointed by the order issued by the D.I. of Schools (S.E.) dated 24th May, 2005. At the relevant point of time, the West Bengal Schools (Control of Expenditure) Act, 2005, was not in force. It came into force in November, 2005. The petitioner joined a post in the Hetampur Raj High School, Birbhum in a post requiring B.A. in Honours and M.A. in Geography, preferably trained. The petitioner was already enrolled and had completed Part-I of M.A. Examination at the time when he joined the post.

The petitioner was permitted to appear in the Part-II M.A. examination by a communication dated 17.1.2007. A prayer was made for sanction of higher pay scale which was approved by the School and forwarded to the office of the D.I. of Schools. The D.I. by the impugned order dated 5.1.2009 rejected the application since neither the petitioner nor the school took prior permission of the D.I. for acquiring the Post-Graduate qualification. The DI also found that the

provisions of the Control of Expenditure Act, 2005 particularly 14(3) thereof, according to the D.I. was not strictly followed.

In support of the impugned order, Mr. Chattopadhyay, Learned Counsel appearing for the State, has relied upon firstly the Memo of the State being No. 593 dated 13th November, 2007, issued under Section 14(3) of the West Bengal Control of Expenditure Act, 2005 that prior permission of the D.I. is necessary for the purpose of undergoing Post-Graduate course and claiming of Post-Graduate pay scale.

This Court is of the view that Memo No 593 cannot be applied to the petitioner or since the petitioner had acquired his M.A. qualification before it came into force.

Mr. Chattopadhyay next relies upon Circular No. 155-S.E. dated 13th July, 1999, issued by the School Education Department. It is mandated under Clause 3 of the said Circular that teachers would be entitled to only such pay scale as prescribed for the post by the West Bengal School Service Commission under the Act of 1997. However, as pointed out by Mr. Bari, Learned Advocate for the petitioner, the said Memo came to be further clarified by another Memo No. 735-S.E. dated 3rd June, 2002, where notwithstanding the provision of the School Service Commission Act, 1997 in certain categories of cases where post-graduate degrees are acquired by the teacher concerned, post-graduate pay-scale would still be permitted. It follows clearly from the above,

that the stipulations and restrictions under the School Service Commission Act of 1997 against any claim for higher pay scale pursuant to acquiring post graduate qualification, have been substantially watered down.

In the backdrop of the above, it is necessary to take note of Section 14(3) of the Control of Expenditure Act, 2005. Section 14(3) on a plain reading is a stand-alone provision conferring rights on a teacher appointed in a Graduate Honours/Post Graduate post, and acquiring a Post Graduate degree after joining the post could claim a post-graduate pay scale subject to any procedure that may be prescribed in any order.

Clearly, the aforesaid provisions confer a right to the petitioner to claim a post graduate scale of pay after enhancing his qualification even after joining the post in question. The existing rules under the School Service Commission Act, Memoranda and Circular published thereunder being 155 of 1999 and 735 of 2002 respectively published thereunder, would be hit by the non-obstante clause under Section 20 of the Control of Expenditure Act, 2005.

The only other question that remains for consideration is the interim order dated 16th July, 2019 passed by a Co-ordinate Bench in this matter. The writ petition was left to be decided after the pending decision of the Full Bench of this Court, directed to be constituted by the Order of the Hon'ble Supreme Court in Civil Appeal No.

3040-3041 of 2017. The question referred to the Full Bench for consideration have already been set out in the Coordinate Bench's Order dated 16th July, 2019.

This Court is of the clear view that since the petitioner has already been seen as entitled to a post-graduate scale under the existing provisions of the Control of Expenditure Act, 2005 i.e. Section 14(3) thereof, the pendency of the matter before the Special Bench cannot stand in the way of disposal of the writ petition and granting relief to the petitioner.

In those circumstances, the impugned order shall stand set aside.

The petitioner shall be entitled to post-graduate scale of pay from the date of publication of result in M.A. The scale of the writ petitioner shall be refixed by the D.I. of Schools. All arrears to the petitioner shall be released within a period of four months from this date.

In the facts and circumstances of the case, this Court is not inclined to grant any interest to the petitioner.

The writ petition is disposed of.

There shall be no order as to costs.

(Rajasekhar Mantha, J.)