

W.P.A. 4057 of 2020

Monoj Kumar Kundu  
Vs.  
The State of West Bengal & Ors.

Mr. Biswarup Biswas  
Mr. D.N. Mukherjee  
Mr. Manik Lal De  
...for the petitioner

Ms. Chaitali Bhattacharya  
Mr. Kartick Chandra Kapas  
...for the State

Petitioner is an Assistant Teacher in Physical Education who was appointed on the recommendation of the School Service Commission with effect from 19<sup>th</sup> March, 2001 and worked in the first school till 15<sup>th</sup> October, 2007 and subsequently joined the second school again on the recommendation of the School Service Commission with effect from 16<sup>th</sup> October, 2007.

Mr. Biswarup Biswas, learned advocate representing the petitioner submits that though initially petitioner was granted pass graduate scale of pay but subsequently, in terms of the order passed by the coordinate Bench on a writ petition being WPA 11184 of 2009 dated 14<sup>th</sup> August, 2015 postgraduate scale of pay was sanctioned in favour of the petitioner by the concerned respondent authority in recognition of his postgraduate qualification in Physical Education.

The grievance which has been ventilated by instituting the writ petition before this Court today on

behalf of the petitioner is on joining the second school with effect from 16<sup>th</sup> October, 2007 anomaly cropped up in fixation of pay of the petitioner and according to the petitioner, pay of the petitioner in the second school was not fixed in consideration of his past service which he rendered in the first school with effect from 19<sup>th</sup> March, 2001.

It has been submitted on behalf of the petitioner that since there is no break in service and subsequently he has been substantively appointed in the post of Assistant Teacher on the recommendation of the School Service Commission he is entitled to get the benefit of his past service which he rendered in the first school in fixing his pay at the time of commencement of his service in the second school.

Ms. Chaitali Bhattacharya, learned senior Government advocate representing the State-respondents submits that the petitioner initiated contempt proceeding on alleged violation of the order dated 14<sup>th</sup> August, 2015 passed by the coordinate Bench and in the order dated 13<sup>th</sup> September, 2019, the coordinate Bench has recorded the submission of the learned advocate representing the alleged contemnors that petitioner was not seeking continuity of service at the material point of time.

It has further been pointed out on behalf of the State-respondents that subsequent appointment of the

petitioner with effect from 16<sup>th</sup> October, 2007 in the second school is fresh appointment. Therefore, petitioner is not entitled to get pay protection as sought for in acknowledging past service in first school.

This Court has heard learned advocates representing the parties and perused the relevant materials available on record.

It appears that petitioner worked as Assistant Teacher on substantive basis in first school with effect from 19<sup>th</sup> March, 2001 and subsequently, started discharging duty as Assistant Teacher in second school with effect from 16<sup>th</sup> October, 2007 and there is no break in service while changing school on the recommendation of the School Service Commission. However, the issue relating to claim of the petitioner for grant of benefit of pay protection in consideration of past service has not yet been formally delved into by the concerned respondent authorities.

Accordingly, this Court directs the Commissioner of School Education, West Bengal, being the respondent no. 2, to take decision on the entitlement of the petitioner to get the benefit of pay protection as sought for in the writ petition within a period of 12 (twelve) weeks from the date of communication of the order after granting opportunity of hearing to the petitioner and the school authorities, if necessary, and communicate such decision to the petitioner within 2 (two) weeks thereafter.

The petitioner shall be at liberty to rely upon all the relevant documents including Circular dated 1<sup>st</sup> August, 2019 being No. 914-SE/S/5P-03/19 which has been placed before this Court in support of his case, before the respondent no. 2 at the time of hearing.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)