

11.08.2022
Court No.13
Item No.01
pk

WPA 3971 of 2010

Tilak Chand Adhikari
Vs.
State of West Bengal and others

Mr. Biswarup Biswas,
Mr. Prahlad Chandra Ghosh,
Mr. Subir Hazra,
Mr. Sukumar Sarkar
... for the petitioner

Mr. Bhaskar Prasad Vaisya,
Mr. Sagnik Chatterjee
... for the State.

The petitioner is aggrieved by an order dated 22nd November, 2005 passed by the D. I. of Schools(S.E.), Paschim Midnapore. By the impugned order, the petitioner was denied post graduate pay scale, by applying the Circular of the State being No. 155-SE(B) dated 13th July, 1999.

The brief facts relevant to the case are that the petitioner acquired postgraduate degree in Bengali in the year 1994 from the University of Burdwan. He participated in the recruitment process to the post of Assistant Teacher and succeeded. On 3rd August, 1998, he was appointed as a teacher in Bengali in Palashchabri Nigamananda High School (H.S.), Paschim Midnapore on 19.04.1999.

Armed with the rights conferred under ROPA 1998 from 12.02.1999, the petitioner applied for higher pay scale based on his existing postgraduate

degree. Admittedly, ROPA 1998 permitted such entitlement.

The School Education Department of the State wide Memo dated 13th July, 1999 being no. 155-SE however brought into force an amendment to the provisions of ROPA 1998. By the amendment particularly Clause 3 thereof any claim for higher pay scale on the basis of a postgraduate qualification stood negated since it was stipulated in the amendment that the Assistant Teacher should be entitled to pay scales only as prescribed by the West Bengal School Service Commission.

The D. I. of Schools(SE) in the impugned order relied upon such amendment and disallowed the petitioner's claim.

Mr. Biswas, learned counsel for the petitioner would argue that the amendment having come into force from 13th July, 1999 cannot have retrospective effect since the petitioner was appointed on 19th April, 1999. In this regard, reliance is placed on a decision of a Division Bench of this Court in the case of **Shyamal Paul Vs. State of West Bengal and others** reported in **2014 (3) CHN 160**. At paragraph 10 of said judgement it has been clarified that the said amendment to Rule 12(3) of ROPA 1998 cannot be applied to the Assistant Teachers, who were appointed after

coming into force of ROPA 1998 i.e. from 12.02.1999 and prior to 13th July, 1999. The Hon'ble Division Bench held that the amendment cannot have retrospective effect.

This Court is bound by the decisions of the Division Bench in the case **Shyamal Paul (supra)**.

Mr. Vaisya, learned counsel for the State, has advanced two-fold arguments. Firstly, by reference to Circular No. 57-SE Dated 27.01.1995 it is argued that the petitioner for the purpose of laying a claim for higher pay scale is required to teach/take at least six periods per week in the said subject. The petitioner not having done so, is not entitled to the benefits of higher pay scale. It is also argued that the amendment itself should date back to the original date of enforcement of ROPA 1998 i.e. February 12, 1999. Time is also sought to ascertain as to whether the **Shyamal Paul decision (supra)** has been interfered with or is still good law.

This Court has carefully heard the arguments of both sides. The Circular dated 27.01.1995 would not apply to the petitioner since it is aimed at addressing those teachers who were appointed in subjects other than in which they had obtained post-graduation degree or even for that matter the initial graduation degree.

In the instant case, the petitioner was Hons. Graduate in Bengali and also obtained a post graduate degree in the same subject from the university of Burdwan. The petitioner, in view of the Division Bench judgement in **Shyamal Paul case (supra)**, would therefore be entitled to a postgraduate scale of pay. The judgment of the Division Bench is binding on this Court.

The impugned order is, therefore, set aside.

The D. I. of Schools (SE), Paschim Midnapore shall therefore grant post graduate scale of pay to the petitioner from the year 2005.

The aforesaid direction is given in the particular facts and circumstances of the case, since the petitioner filed the first writ petition being W. P. 14321 (W) of 2005. The said writ petition was filed after the success of another teacher on the same issue in order dated 16th June, 2004 passed in **W. P. No. 8542 (W) of 2004 (Tapan Sarkar Vs. The State of West Bengal and others)**. The petitioner was fence sitting.

All arrears shall be paid to the petitioner after taking into consideration all increments and benefits within a period of three months from the date of communication of a copy of this order. The pay and emoluments of the petitioner shall stand revised accordingly. Relevant changes shall be

made in the service book of the petitioner in accordance with the aforesaid order. All of the indicated actions must be taken within a period of 3 months from the date of communication of a copy of this order.

Needless to mention that in the event the view of the Division Bench of **Shyamal Paul case (supra)** has been interfered with or appealed against, the fate of the petitioner's case shall also abide by any such interference. The State may take suitable steps in accordance with law.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)