

61 15.02.2022
rkd Ct.15

W.P.A. 4993 of 2016
(Through Video Conference)

Lenin Nandi
-vs-
State of West Bengal & Ors.

Mr. N. I. Khan,
Mr. Amlan Kumar Mukherjee

....for the petitioner.

Mr. Jahar Lal Dey,
Ms. Smita Das Dey

....for the State.

Matter relates to sanction of postgraduate scale of pay in favour of the petitioner who was appointed in the post of assistant teacher in Science group on the recommendation of the West Bengal School Service Commission vide Memo dated 27th September, 2002. As per such recommendation memo, it appears that the petitioner was recommended for appointment in the post of assistant teacher in Science group possessing educational qualification of B.Sc. (Pass) B.Ed. The concerned school authority on acting on such recommendation appointed the petitioner on 5th October, 2002 and the concerned District Inspector Schools (SE), Bankura, respondent no.3 granted approval of appointment and fixed the pay of the petitioner in pass graduate scale of pay.

After appointment of the petitioner in the said post he enhanced his qualification in M.Sc. in Physics in 2012 through corresponding course from Madurai Kamraj University and thereafter approached the respondent no.3 for sanction of postgraduate scale of pay. Failure on the part of the respondent no.3 to take decision on such prayer, led the petitioner to file a writ petition being WPA 18182(W) of 2015 which was disposed of by a coordinate Bench vide order dated 10th September, 2015 directing the respondent no.3 herein to consider the representation of the writ petitioner claiming higher scale of pay and to pass a reasoned order. Pursuant to such direction of the coordinate Bench dated 10th September, 2015 the respondent no.3 issued Memo dated 26th February, 2016 whereby the prayer of the petitioner for grant of postgraduate of scale of pay was spurned.

This Court has perused the decision of the respondent no.3 and the same is reproduced below:

“Hence in view of the above stated facts and circumstances and taking into account the relevant Government orders/ Circulars it is observed that:-

1) Lenin Nandi, the petitioner joined as an Assistant Teacher on

05.10.2002 at Ashurali Jatish Chandra High School, Bankura in the pass-graduate scale of pay with the qualification B.Sc (Pure) pass through School Service Commission.

2) His appointment was duly approved by the D.I of Schools (S.E.) Bankura w.e.f 05.10.2002 in the pass graduate of pay vide Memo No. 3995/S dated 31.12.2002.

3) He, obtained M.Sc degree in Physics in the year 2013 through distance mode of Education from Madurai Kamraj University by taking permission from the Managing Committee of the School.

4) At the time of obtaining higher qualification by the petitioner, the West Bengal Schools (Control of Expenditure) Act 2005 was in force. Section 14 (2) of the said Act vividly stated as:

“Every teacher of a school shall, if appointed in the post of Graduate teachers category be entitled to draw pay in the scale of pay in which he is appointed and shall not be entitled to claim any additional increment of higher scale of pay for acquiring any qualification other than the qualification specified for such post. “As the petitioner appointed as an Assistant teacher with the qualification B.Sc (Pure) Pass as specified in the recommendation of the S.S.C., hence in terms of the

section 14 (2) of the said act as stated above, he is not entitled to claim any additional increment of higher scale of pay for acquiring higher qualification.

5) *Para-4 of the G.O. No. 593-Sc (B) dated 27.11.2007 issued by the School Education Department, Government of West Bengal, vividly states as:- “Provided further no such permission can be granted on any ground to any teacher who has entered the service/joined the school with Graduate Degree and with a Graduate Scale of pay. (Any Managing Committee of any school recommending such case and of any District Inspector of Schools granting such prayer will be treated as offender under the West Bengal Schools (Control of Expenditure) Act, 2005.*

In this matter the petitioner joined as Assistant teacher with Graduate Degree and with a Graduate Scale of pay so, as per above stated G.O. the Managing Committee of the said school could not be accorded any permission to the said pass Graduate teacher (Petitioner). But the M.C of the school accorded permission to the petitioner who joined as an Assistant teacher with Pass Graduate degree should be treated as ‘offender’ as per the said Government Order”.

Hence considering the above stated observations and in compliance with the

order dated 10.09.2015 passed by the Hon'ble Justice Samapti Chatterjee against W.P. No. 18182 (W) of 2015, Lenin Nandi -Vs- The State of West Bengal & Ors., the claim of the petitioner is considered and rejected.

The matter is thus disposed of."

The respondent no.3 has refused the prayer of the petitioner on applying sub-Sections (2) and (3) of Section 14 of the West Bengal Schools (Control of Expenditure) Act, 2005 as well as relevant provisions of the Government Circular dated 27th November, 2007 being No.593-SE(B).

This Court does not find fault with such decision taken by the respondent no.3 on the entitlement of the petitioner to get the benefit of postgraduate scale of pay in view of acquiring higher qualification.

In addition thereto, it does not escape notice of this Court that initially on promulgation of Revision of Pay and Allowances Rules 1998 (ROPA 1998) vide Memorandum dated 12th February, 1999, under Clause 12(3) an assistant teacher is also entitled to get the benefit of postgraduate scale of pay on acquiring of higher qualification in the

relevant subject, subject to fulfillment of condition relating to staff pattern. Subsequently, vide Memo dated 13th July, 1999 being No.155-SE(B) said Clause 12(3) of ROPA 1998 was substituted to the extent indicated below:

**3. For the existing sub-para (3) of para 12 substitute the following sub-para:-*

“(3) All teachers, including Physical Education teachers and Librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualification, whichever is latter, provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of that school, if such teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission”.

On mere perusal of substituted Clause 12(3) of ROPA 1998, it appears that if the teacher is appointed through West Bengal School Service Commission, his pay will be fixed in the scale of pay as per his qualification mentioned by the West Bengal School Service Commission. In the present case it is indisputable that petitioner was recommended by the School Service Commission vide Memo dated 27th September, 2002 as a candidate having B.Sc. (Pass) B.Ed. qualification and accordingly his pay was fixed in pass graduate scale as a result thereof on acquiring postgraduate qualification petitioner is estopped from claiming postgraduate scale of pay.

Furthermore, it is submitted by Mr. Khan, learned advocate representing the petitioner that at a time on his appointment in 2002 he was having honours graduate qualification. It appears to this court that such qualification was not disclosed before the authorities of West Bengal School Service Commission while offering his candidature as a candidate having pass graduate qualification. It was left open to the petitioner to offer his candidature as a candidate possessing honours graduate qualification but on his own volition he

chose to be selected under the pass graduate category.

In above conspectus, this writ petition does not merit consideration and the same stands dismissed.

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.)