

Item No.4.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 05.05.2022.

DELIVERED ON:05.05.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 7958 of 2008

**Smt. Manjushree Bose (Ghosh).
VERSUS
The State of West Bengal & Ors.**

Appearance:-

Mr. Tulsidas Ray

.....for the Petitioner

**Ms. Chaitali Bhattacharjee,
Mr. Sanjib Das**

.. for the respondents/State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. This writ petition has been filed for issuance of a writ of mandamus for setting aside the Memo issued by the respondent no. 3 directing the pension sanctioning authority to recast the pay of the petitioner from 1st April, 1980.

2. The petitioner was appointed as Assistant Teacher of Ariadaha Kalachand Primary School. Her service was approved on 8th June, 1966 as category "B" assistant teacher. Thereafter, the petitioner improved her qualification and she also passed the B.Ed. examination in the year 1978 from the University of Calcutta. The petitioner was treated as category "A" assistant teacher after she obtained the B.Ed. degree. She was also allowed category "A" scale of pay with effect from 1st April, 1980 till the date of her superannuation. The petitioner retired from service on superannuation with effect from January 31, 2008. The District Inspector of Schools sanctioned her pension and gratuity and submitted all the relevant papers to the Director of Pension, Provident Fund and Group Insurance for issuing pension payment order. The Assistant Director of Pension, Provident Fund and Group Insurance being the respondent no.3 returned the pension papers requesting the District Inspector of Schools to rectify the defects pointed out and to resubmit the same. The petitioner claims that thereafter the petitioner has been granted pension, by treating her as a category "B" teacher.

3. The grievance of the petitioner is that the respondent authorities could not have treated the petitioner as a category

"B" teacher while granting pension as she is entitled to pension as a category "A" teacher.

4. In the affidavit-in-opposition filed by the State, the Memo No.117-Sc/P dated 8th January, 1972 has been relied upon, which states that the primary teachers desirous of undergoing any Secondary Teachers' Training course may apply to the employers for sanction of leave as per the Rules. It was further stated therein that Assistant Director, DPPG directed the pension sanctioning authority to recast the pay of the petitioner from 1st April, 1980 to 31st January, 2008 and the pension file was thereafter sent to the respondent no. 3 after recasting the pay of the petitioner in terms of the said direction.

5. The Learned Advocate for the petitioner submits that after petitioner acquired training in the year 1978, she was treated as a category "A" teacher and was extended all the benefits including the pay scale applicable to a category "A" teacher. He relies upon the circular of the School Education Department, Primary Branch, Government of West Bengal being No.352-SF(Pry) dated 31st May, 1996 and submits that since the petitioner obtained the training certificate prior to 1st July, 1996, the

case of the petitioner is to be decided in terms of the memo dated 7th February, 1967 of the D.P.I., West Bengal. The Learned Advocate for the petitioner placed reliance upon a decision of the coordinate Bench of this Hon'ble Court in the case of **Niharkana Saha Sikder - Vs. - State & Ors.** reported at **(2008) 3 WBLR (Cal) 843** and submits that after retirement of the petitioner, the concerned authorities could not have recasted the pay of the petitioner by treating her as a category "B" assistant teacher.

6. Ms. Bhattacharjee, learned Advocate appearing for the State, submits that since the petitioner acquired the training certificate after 1972, the circular dated January 8, 1982 shall be applied in the instant case and the petitioner cannot take advantage of either the memo dated 7th February, 1967 or 31st May, 1996. She further submits that no document could be produced by the petitioner to show that the authorities permitted the petitioner to claim the benefits of category "A" teacher. She further submits that the petitioner is enjoying pension which she is entitled to and as such, no interference is called for by this Court under Article 226 of the Constitution of India. Mr. Bhattacharjee tried to distinguish the judgment in the case of

Niharkana Saha Sikder (supra) by contending that in the said case, the petitioner was permitted to pursue her B.Ed. course but in the instant case, no permission was granted to the petitioner to pursue the B.Ed. Course.

7. Heard the learned advocates for the parties and perused the materials placed. From the service book, it is evident that the petitioner was initially approved as a category "B" assistant teacher. After taking note that she passed B.Ed. examination in the year 1978, the concerned Sub Inspector of School made an endorsement in her service book that she was given "A" category pay scale. It is also evident from the records that she enjoyed the benefits of "A" category Assistant Teacher till her superannuation. Thus, the submission of Mr. Bhattacharjee that the petitioner was not permitted to enjoy the benefits of category "A" assistant teacher is without any basis.

8. The memo dated 31st May, 1996 specifically states that the cases of the primary school teachers, who have obtained B.Ed. degree before 1st July, 1996 may be decided in terms of the said Memo dated 7th February, 1967 by the D.P.I., West Bengal. Admittedly, the petitioner obtained her B.Ed. degree prior to 1st

July, 1996. As such, the said memo is squarely applicable to the case of the petitioner and the petitioner would be entitled to the "A" category scale of pay. The coordinate Bench in **Niharkana Saha Sikder (supra)** after taking note of para 4 of the circular dated 31st May, 1996 held that in case the primary teacher completed B.Ed. before 1st July, 1996, he will be deemed to have become entitled to "A" category scale of pay on the basis of circular dated 7th February, 1967 read with the circular dated 31st May, 1996. The said reported decision is squarely applicable to the case of the writ petitioner. The authorities after treating the petitioner to be under category "A" and extending her all the benefits of category "A" teacher till her retirement cannot now reopen such issue after the retirement of the petitioner from service in view of **Niharkana Saha Sikder (supra)**. Furthermore the Memo dated 8th January, 1972 is not applicable to the case on hand as it relates to deputation of Graduate Primary School Teachers to secondary teachers training.

9. The circular dated 7th February, 1967 do not lay down any condition for making an application to the employers for sanction of leave as per the Rules, which is a condition laid down in 8th January, 1972. Since the circular dated 8th January,

1972 is not applicable to the case of the petitioner, the condition for applying before the employer for sanction of leave is not a pre-condition for enjoyment of benefits as a category "A" teacher by the writ petitioner, who is governed by the Memo dated 1st July, 1996. Moreover record reveals that the school authority permitted the petitioner to undergo B.Ed. course.

10. In view thereof, the decision taken by the respondent authorities treating the petitioner as a category "B" teacher while sanctioning pension is set aside. The audit observations indicated in Memo No. 943/1(1)/RM dated 23rd August, 2007 issued by the Assistant Director, Pension, Provident Fund & Group Insurance, Government of West Bengal are also set aside and quashed. Since the petitioner is receiving pension at present at the rate which the "B" category assistant teacher is entitled to, the District Inspector of Schools (Primary Education) being the respondent no.5 herein is directed to re-calculate the amount of pension as well as other terminal benefits which the petitioner may be entitled to as category "A" teacher as well as the differential amount which she may be entitled to in terms of this order after calling for necessary papers and documents from the school authorities and pass necessary orders in this regard.

The petitioner is directed to render all cooperation to the authorities in this regard. The District Inspector of Schools shall complete all formalities and send the necessary papers to the Director of Pension, Provident Fund and Group Insurance being the respondent no.2 herein within a period of four weeks from the date of communication of this order. The respondent no.2 shall issue a revised pension payment order within a period of four weeks from the date of receipt of the papers and documents from the District Inspector of Schools (Primary Education).

11. The writ petition, accordingly, stands allowed without, however, any order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

NAREN, AR(Ct.)