

05. 02.08.2022
BD Ct.15

W.P.A. 12101 of 2019

Golam Faruque & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Sobhan Majumder

Mrs. Kalpita Paul

... for the petitioners.

Ms. Chaitali Bhattacharya

Mr. Subhendu Roy Chowdhury

... for the State.

Mr. Shamim Ul Bari

... for the DPSC, Malda.

The matter relates to grant of “A” category scale of pay in favour of the petitioners who admittedly were appointed as primary teachers prior to 3rd September, 2001. The claim of the petitioners for grant of “A” category scale was not considered by the State respondents which triggered the first writ petition being WPA 6028 of 2016 (Golam Faruque & Ors. -vs- State of West Bengal & Ors.) which was disposed of vide order dated 4th January, 2019 by a co-ordinate Bench directing the State respondents to take decision on claim of the petitioners.

Pursuant to such direction of the co-ordinate Bench the issue was considered by the Commissioner, School Education, West Bengal, being respondent no. 2 and an order was passed on issuance of Memo dated 24th May, 2019 whereby claim of the petitioners for sanction of “A” category scale of pay was spurned on applying Clause (iii) of

the Government Circular dated 4th March, 2013 issued by the Joint Secretary, School Education Department, (Elementary Education Branch). Such decision of the respondent no. 2 is questioned in the present writ petition by the petitioners in pursuit of getting benefit of “A” category scale of pay.

While questioning the decision of the respondent no. 2 the attention of this Court has been drawn to said Clause (iii) of the Government Circular dated 4th March, 2013 whereby it has been provided that the teachers who have attained one/two years of diploma in elementary education from the State recognised institutions and appointed as teachers on or before 31st December, 2005 shall be treated as trained teachers.

It has been contended on behalf of the petitioners that all of them were appointed prior to 3rd September, 2001 and obtained one year diploma in elementary education upon enrolling themselves for the academic sessions 2005-2006 and the examination was held in 2011. Therefore, according to the petitioners said Clause (iii) of the circular dated 4th March, 2013 should not create impediment in granting “A” category scale of pay in their favour.

In addition thereto, reliance has been placed on the following decisions of the Hon’ble Division Bench reported in:-

- (i) (2015) 2 CHN 206 paragraphs 19 and 20 (Bishnupada Ghosh & Ors. –vs- State of West

Bengal & Ors.);

(ii) An un-reported decision dated 13th January, 2020 passed on an intra-Court appeal being FMA 804 of 2019 (Chairman, District Primary School Council, Nadia. –vs- Tapan Kumar Halder & Ors.).

In addition thereto, reliance has also been placed on two orders of the co-ordinate Benches one dated 10th March, 2015 on a writ petition being WPA 29429 of 2014 (Surja Kanata Roy & Ors. –vs- The State of West Bengal & Ors.) and another dated 8th September, 2015 passed on a writ petition being WPA 11817 of 2015 (Prem Kumar Basak & Ors. – vs- The State of West Bengal & Ors.).

Ms. Chaitali Bhattacharya, learned senior Government advocate, appears on behalf of the State respondents and has opposed vehemently the prayer of sanction of “A” category scale of pay in favour of the petitioners and has defended the decision of the respondent no. 2 dated 24th May, 2019 whereby the claim of “A” category scale of pay has been turned down by the State respondents.

Ms. Bhattacharya, in support of such decision of the respondent no. 2 has submitted in reference to Clause (iii) of the circular dated 4th March, 2013 that it has been contemplated therein that in order to be eligible to get benefit of “A” category scale of pay a primary teacher has to be appointed before 31st December, 2005. According to the State respondents petitioners have failed to fulfil the requirement in terms of said Clause (iii) since petitioners though were appointed prior to 3rd

September, 2001 but obtained diploma in elementary education in 2011. Therefore according to Ms. Bhattacharya there is no anomaly in the order passed by the respondent no. 2 while denying the claim of the petitioners.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record. In the present case the petitioners were appointed prior to 3rd September, 2001 and got themselves enrolled in the course for obtaining training qualification for the academic session 2005-2006 and ultimately obtain such training qualification and such facts need to be assessed in consideration of the contemplation made in Clause (iii) of the circular dated 4th March, 2013.

On mere reading of said Clause (iii) it appears that there are two requirements which would make the primary teacher eligible to enjoy benefit of “A” category scale of pay - one is teacher concerned has to be appointed prior to 31st December, 2005 and obtain one or two years diploma in elementary education from the State recognised institution. In consideration of such requirement as contemplated under Clause (iii) it appears to this Court that the petitioners have fulfilled these conditions specially in view of the issue decided by the Hon’ble Division Bench in **Bishnupada Ghosh** (supra) and **Tapan Kumar Halder** (supra). This Court finds it apt to quote paragraphs 19 and 20 of **Bishnupada Ghosh** (supra) below:-

“ 19. The State Government also by issuing a Government Order dated 13th August, 2012 clarified that the teachers appointed prior to 3rd September, 2001 shall go by the State Government norms and they need not have to upgrade their qualifications. The State Government, further, clarified that the teachers who were appointed between 3rd September, 2001 and 31st December, 2005 possessing academic qualification as per the State Government norms and completed one-year/two year teacher training course from State recognised institutions are not required to enhance their qualification as per note 2 under first schedule to the NCTE (Determination of minimum qualifications for Recruitment of Teachers in Schools) Regulation 2001 dated 4th September, 2001 published in terms of F.No. 9-2/2001/NCTE dated 3rd September, 2001. By issuing a subsequent Government Order on 4th March, 2013; it was notified by the State Government that the teachers who being attained one-year/two-year Diploma in Elementary Education from State recognised institution and appointed as teacher on or before 31st December, 2005 shall be treated as “Trained teacher”.

20. If the provision of the Right of Children to Free and Compulsory Education Act, 2009 and the Central Government Notification dated 25th

August, 2010 are read along with the Government Order issued by the State Government on 13th August, 2012 and 4th March, 2013 then we have no hesitation to hold that the untrained teachers who were appointed prior to 3rd September, 2001 and those teachers who were appointed between 3rd September, 2001 and 31st September, 2005 possessing academic qualification as per the State Government norms and completed one-year/two-year teacher training course from State recognised institutions are eligible to be considered for the post of Head Teacher in the primary school as they are all treated at par with the trained teachers appointed as per the norms prescribed in the notifications issued under the Central Act of 2009.

(emphasis supplied)

In addition thereto while deciding the identical issue in **Tapan Kumar Halder** (supra) the Hon'ble Division Bench upheld the decision of the learned Single Judge by which in similar circumstance the learned Single Judge granted relief to the primary teacher upon directing the authorities to sanction "A" category scale of pay; I was a party to the Division Bench which decided the issue in **Tapan Kumar Halder (supra)**.

In addition thereto there are two other unreported decisions of the co-ordinate Benches one dated 8th September, 2015 in Prem Kumar

Basak (supra) and another dated 10th March, 2015 Surja Kanata Roy (supra), in both the decisions coordinate Benches decided the issue in favour of the petitioners for sanction of “A” category scale of pay.

During course of hearing this Court posed query to Ms. Bhattacharya representing the State respondents whether the State respondents have preferred appeal questioning the two separate decisions of the Hon’ble Division Benches one dated 1st September, 2014 and another dated 13th January, 2020. The answer on behalf of the State respondents is negative which leads to the conclusion of the decisions of the Hon’ble Division Bench on the aforesaid issue have attained finality.

In view of the aforesaid scenario this Court directs the concerned State respondents to grant “A” category scale of pay in favour of the petitioners by passing necessary order within a period of four weeks from the date of communication of this order. Accordingly the decision of the respondent no. 2 dated 24th May, 2019 stands set aside.

With the above 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.)

