

WPA 18149 OF 2014

Anup Saha

-vs.-

State of West Bengal & Ors.

Mr. Sudipta Dasgupta
Ms. Kasturi Tarafdar
Ms. Riya Chatterjee.

... For the Petitioner

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee.

... For the State

Affidavit-in-opposition, filed on behalf of the State respondents and the affidavit-in-reply, filed on behalf of the petitioner today, are taken on record.

The petitioner is presently working in the post of Head Master in a school in West Bengal which is affiliated to West Bengal Board of Secondary Education. Prior to such appointment, the petitioner rendered service for the period from 21st July, 1997 to 11th May, 2010 as an Assistant Teacher in a school in Meghalaya which was affiliated to Meghalaya Board of School Education.

Mr. Sudipta Dasgupta, learned advocate representing the petitioner has submitted that he offered his candidature for appointment in the post of Head Master in a Government aided recognised school in West Bengal based on the notification issued by the West Bengal Central School Service Commission (for short

“Commission”) in this regard. On appraisal of his candidature and past service which he rendered in a school in Meghalaya, he was found eligible to be appointed in the post of Head Master by the Commission and accordingly he was appointed as Head Master with effect from 12th May, 2010. On joining the said post of Head Master being recommended by the Commission, his monthly pay was fixed by the State respondents without considering his past service which he rendered in Meghalaya which prompted the petitioner to approach the concerned respondent authorities for re-fixation of his monthly pay on reckoning his past service. Ultimately such prayer of the petitioner, seeking pay protection on reckoning his past service, was spurned by the Joint Secretary, School Education Department being the respondent no.2 vide Memo dated 26th July, 2013/12th August, 2013 whereby the proposal of extending the benefit of pay protection, as forwarded by the Commissioner of School Education, West Bengal, was negated. Such communication of the respondent no.2 vide Memo dated 26th July, 2013/12th August, 2013 is the subject-matter of challenge in the present writ petition.

Mr. Dasgupta, has submitted that eligibility criteria for being appointed on the post of Head Master in a Government aided high school has been delineated under schedule to the West Bengal School Service Commission

(Selection of persons for Appointment to the Post of Teachers) Rules, 2007 (for short “Rules of 2007”). From the relevant part of the said schedule it appears that apart from fulfilling the required educational qualifications a candidate must possess 10 years’ continuous teaching experience in approved service in a higher secondary/high school/high madrasah and so on. While appraising the candidature of the petitioner by the Commission for being appointed in the post of Head Master, the Commission must have found the petitioner as an eligible candidate in recognition of his past service which he rendered in a school in Meghalaya for the period from 21st July, 1997 to 11th May, 2010 and accordingly he was selected for filling up the post of Head Master. Accordingly, the petitioner joined the said post of Head Master on 12th May, 2010 on being recommended by the School Service Commission. It has been argued on behalf of the petitioner that when he was found fit on the anvil of requirement of having 10 years’ continuous approved service in consideration of his past service in a school in Meghalaya, then he should be extended the benefit of pay protection on joining the post of Head Master and such prayer cannot be refused by the concerned respondent authorities. Accordingly, on such ground challenge has been thrown to the said impugned communication dated 26th July, 2013/12th August, 2013 of the respondent no.2.

In addition thereto, reliance has also been placed on the judgment of the Hon'ble Division Bench reported in **(2008) 4 CLT 390 (H.C.) [Shri Pradip Kumar Kotal – vs.- The State of West Bengal & Ors.]**, paragraph 37 wherein the Hon'ble Division Bench has decided that the classification made by the parties in between teachers working in schools, recognised by the West Bengal Board of Secondary Education and the Central Board of Secondary Education is impermissible on applying the principle as enshrined in Article 14 of the Constitution of India.

Mr. Arindam Chattopadhyay, learned advocate appears on behalf of the State respondents and has defended the decision of the respondent no.2 as contained in the communication dated 26th July, 2013/12th August, 2013. It has been submitted that the State respondents can only consider the past service of the teachers appointed on the post of Head Master if such service is rendered in a school in the State of West Bengal which is affiliated to the West Bengal Board of Secondary Education. In addition thereto, it has also been submitted that the DCRB Scheme does not recognise the past service of a teacher rendered in a school beyond the State of West Bengal. Therefore, according to Mr. Chattopadhyay there is no anomaly in the decision of the respondent no.2.

This Court has considered the rival contentions of the parties and also considered the relevant documents and pleadings available on record.

On perusal of the impugned communication of the respondent no.2 dated 26th July, 2013/12th August, 2013 it appears that the respondent no.2 unnecessarily referred to DCRB Scheme which is not at all applicable in the case where an approved Head Master of a high school is claiming pay protection. In addition thereto, on behalf of the State respondent nothing has been shown before this Court which prevents the petitioner from getting the benefit of pay protection on being appointed in the post of Head Master on the recommendation of the School Service Commission specially when the School Service Commission in accreditation to the service rendered by the petitioner in a school in Meghalaya found him fit and eligible to man the post of Head Master in a recognised school in West Bengal.

On perusal of the relevant part of schedule to Rules of 2007 it appears that one of the essential criteria for being appointed in the post of Head Master is the candidate must possess 10 years' approved continuous teaching experience.

In the present case, since the petitioner rendered service in a school in Meghalaya which is affiliated to the Meghalaya Board of School Education for more than 10 years, he was selected and was recommended for the post

of Head Master. That being the position, this Court does not find any impediment in granting the pay protection to the petitioner in consideration of his past service rendered in the school in Meghalaya.

It also appears from the impugned communication dated 26th July, 2013/12th August, 2013 of the respondent no.2 that such issue was not delved into by the said respondent while considering the prayer of the petitioner.

Accordingly, the impugned decision of the respondent no.2, as contained in the communication dated 26th July, 2013/12th August, 2013, stands set aside and the matter is remanded to the Secretary, School Education Department to re-look at the entire issue objectively and taking into consideration the observation made by this Court hereinabove.

The Secretary, School Education Department being the respondent no.1 is directed to take a reasoned decision within a period of eight weeks from the date of communication of this order after granting an opportunity of hearing to the petitioner and the school authority where the petitioner is serving as Head Master and the decision to be taken by the respondent no.1 shall be communicated to the petitioner within one week thereafter.

It will be open to the petitioner to rely upon all the relevant issues including the judgment of the Hon'ble Division Bench as reported in **(2008) 4 CLT 390 (H.C.)**.

With the above direction, the writ petition is disposed of. There shall be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously on usual undertaking.

(Saugata Bhattacharyya, J.)