

D/L
Item No. 728
16.08.2022
KOLE

WPA 23584 of 2016

Bikash Chandra Majumdar
-Vs.-
The State of West Bengal & Ors.

Mr. Dilip Kumar Sinha,

...for the petitioner.

Mr. N. G. Dastidar,

...for the State.

The petitioner is aggrieved by the order dated 28th January, 2016 passed by the District Inspector of Schools (in short the 'DI'), Nadia. By the impugned order the petitioner's prayer for higher scale of pay based on post-graduate qualification, has been rejected. The brief facts of the case is that the petitioner joined the Belpukur High School as Assistant Teacher on July 5, 1995. He already had a post-graduate degree in Sanskrit prior thereto in the year 1985.

The petitioner was appointed in the compassionate employment category.

In the year 2000, the Belpukur High School was upgrade to a Higher Secondary School. The petitioner was teaching Sanskrit in the Higher Secondary section which is Post-Graduate honours post. The school, however, never applied for conversion of the petitioner service from that of a graduate teacher to a post-graduate teacher.

The petitioner continued to teach in the higher secondary section in Sanskrit since from 2016 and even till date.

The DI of Schools in the impugned order found that the School not having approached the Board for conversion, of his post from graduate to a post graduate teacher, he is not entitled to such post graduate scale of pay. It is also found that the petitioner's claim was hit by G.O. No. 593-SE dated 27th November, 2007.

This Court has carefully considered the pleadings in the records. It is found clear that the petitioner's appointment having been made in the year 1995, he was not appointed under the School Service Commission Act, 1997. He is also not hit by the provisions of the Control of Expenditure Act, 2005. The G.O No. 593-SE dated 27th November, 2007 was issued by the State pursuant to the authority conferred on in terms of Section 14 of the Control of Expenditure Act, 2005. Such circular, therefore, can have no manner of application to the petitioner.

The reliance placed on a Division Bench of this Court in the case of **Smt. Nita Dey Chandra-vs.-The State of West Bengal** reported in **2015 1 C.J.L (Cal) 24** is act and appropriate. In the said decision, the Hon'ble Division Bench has relied upon the circular dated 13th July, 1999 being No. G.O. 155-SE which otherwise entitles the persons appointed prior to the School Service Commission Act and the Control of Expenditure Act, to benefit from the provisions of ROPA-1998. Such ROPA, entitles the Assistant

Teacher, who already have a post graduate degree or in fact, obtained the same subsequently, to higher scale of pay even without prior consent or approval of the school.

The petitioner's case for Post-Graduate scale is strong and supported by the law. He is better placed than the petitioner in the **Nita Dey case (supra)**. He has been teaching Sanskrit, in the higher secondary section since the year 2000. A higher secondary teaching post is a post graduate post. The HS students and the school have benefitted from the teaching of the petitioner in the post graduate post from the year 2000. The State has consequently been benefited. The petitioner cannot, therefore, be deprived of a post graduate scale of pay.

In the above circumstances, the impugned order dated 28th January, 2016 shall stand quashed to set aside. The petitioner shall be entitled to post graduate scale of pay with effect from 5th July, 1995.

All arrears from 5th July, 1995 being due from the graduate scale of pay to the post graduate scale of pay shall be released to the petitioner within a period of three months from date positively and mandatorily. The petitioner shall be entitled to all increments, re-fixation of his pay and allowance after taking into consideration of all allowances, increments and any other benefits in accordance with law.

The petitioner shall be paid post graduate scale of pay from September, 2022 in the usual course. The entire service records of the petitioner shall stand corrected and

rectified by the DI of Schools and shall be noted in the school in question.

In the facts and circumstances of the case, the court is not inclined to interfere to grant any interest to the petitioner.

The writ petitioner is, accordingly, disposed of.

There will, however, be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Rajasekhar Mantha, J.)