

05.09.2022

WPA 34687 (W) 2013

Achintya Sahu vs. State of West Bengal @ Ors.

Mr. Rabilal Maitra

Mr. Chandan Mishra

Ms. Sarda Sha

..For the petitioner.

Mr. Binoy Kumar Das

..For the respondent no. 5.

Mr. Debasish Ghosh

..For the State.

The petitioner has prayed for setting aside the order dated September 13, 2013 passed by the D.I. of Schools (S.E), District – 24 Parganas(North) and the portion of the order dated October 31, 2005 in so far the date of effect of the transfer order is concerned.

The petitioner claims to have passed the Bachelor of Arts (Hons.) Examination in Bengali in the year 1988 and subsequently obtained the Master Degree in the said subject in the year 1992 and have also passed the B.Ed. Examination in the year 1995. The petitioner after being successful in the written examination conducted by the West Bengal School Service Commission participated in the interview and was ultimately given appointment as an Assistant Teacher in Rajibpur Anglo Vernacular High School (for short “the school”). The petitioner claims that since he acquired the post graduate qualification prior to the date of his appointment as an Assistant Teacher of the said school, he is entitled to the post graduate scale of pay with effect from the date of his appointment. The petitioner claims that though his appointment was as a B.A, B.Ed candidate but having

performed the duties of a teacher having post graduate degree in the said school by taking classes in the higher secondary section with effect from the date of his appointment, he is entitled to the post graduate scale of pay from the date of his appointment. The D.I. of Schools (S.E), 24 Parganas (North) by a Memo dated October 31, 2005 transferred the petitioner from the Normal Section to the Higher Secondary Section with effect from the date of issuance of the said memo. The petitioner claims that the concerned District Inspector of Schools allowed him to draw post graduate scale with effect from 31.10.2005 and the petitioner accepted the benefits extended to him by the said memo without prejudice to his rights and contentions and he subsequently applied before the authorities to grant him the post graduate scale of pay from the date of his appointment which was ultimately denied by the D.I. of Schools (S.R), 24 Parganas (North) by the memo dated September 13, 2013.

Mr. Maitra, learned senior counsel appearing for the petitioner submits that the Government Order No. 865-SR (Secondary)/10M-9/94 dated December 6, 1994 allows conversion of post of Assistant Teachers from the normal section of Higher Secondary section. He submits that since the authorities have transferred the petitioner from the normal section to the Higher Secondary section and he was taking classes in the Higher Secondary section including the classes in the normal section with effect from the date of his appointment, he is entitled to the benefits of the post graduate scale with effect from the date of appointment. He

further contends that the authorities having extended the benefits of the post graduate scale to the petitioner recognizing his right to get such scale cannot deprive the petitioner of such scale with effect from the date of his appointment as he passed the post graduate degree at the time of his appointment.

Mr. Ghosh, learned counsel appearing for the State submits that the issue as to whether a teacher can claim higher scale of pay having acquired higher qualification is pending consideration before a Full Bench of this Court. He thus submits that this Court, at this stage, should refrain from deciding the instant writ petition and the same should await the decision of the Full Bench on such issue.

On merits, Mr. Ghosh submits that the petitioner having accepted the benefits of the post graduate scale with effect from October 31, 2005 is estopped from claiming the benefits of the said scale with effect from the date of his appointment as granting such relief to the petitioner would amount to treating the petitioner having been appointed to the post in question as a post graduate candidate. He further submits that the petitioner having suppressed his Honours and post graduate qualification at the time of appearing at the examination conducted by the School Service Commission cannot be favoured with such relief at this stage. He further submits that the petitioner not having raised the issue as to his entitlement of post graduate scale with effect from the date of his appointment when he approached this Hon'ble Court by filing WP 12519 (W) of 2005, cannot raise

such issue in this writ petition as the same is barred by the principles of constructive res judicata.

Learned advocate representing the School submits that since the date of his appointment the petitioner is taking classes in the higher secondary section in addition to the classes of normal section and the petitioner is entitled to the post of graduate scale of pay with effect from the date of his appointment.

In reply, Mr Maitra, learned counsel submits that the pendency of the matter before the Full Bench cannot a ground for adjournment of hearing of this writ petition as the issue involved in this writ petition is not identical with that pending before the Full Bench.

Heard learned advocates appearing for the parties and considered the materials placed. Since a point has been raised on behalf of the State that a similar issue is pending consideration before the Full Bench, it would be relevant to extract the order dated July 25, 2019 by virtue of which the Hon'ble Apex Court after formulating the questions have requested the High Court to expedite the hearing of the matter before the Full Bench. The points formulated by the Hon'ble Supreme Court are as follows:

“(a) Whether, in view of the fact that acquisition of higher qualification or qualifications during the service career of an individual is his right advancement as well as acquiring a higher status of academic brilliance, can such a person be forced to stagnate on lower status perennially and forced to continue to work on a lower scale of pay which is not

commensurate to the high qualification(s) acquired subsequent to his appoint?

(b) Whether, in view of Question No. (a) above, should it not be held that the ratio decided in Tarak Chandra Roy's case supra, read with the provisions of Section 14 and 20 of "The West Bengal School (control of Expenditure) Act, 2005", amount to creating an unreasonable embargo upon an individual's freedom and right to acquire higher educational qualification(s) and therefore, runs counter to the provisions of Article 14 of the Constitution of India?

© If the answer to Question No. (a) is in the negative and to 'Question No. (b) in the affirmative, then should it not be held that the provisions of section 14 and 20 of "The West Bengal School (control of Expenditure) Act, 2005", are ultra vires the relevant provision of the Constitution of India referred to above?

(d) Whether, in view of the aforesaid, should it not be held that the ratio decided in Tarak Chandra Roy's case supra, holding that "the category clearly therefore, cannot get the benefit of his post graduate qualification" is not the proposition is the one that has been decided in Sauvik Ghosh's case supra, holding, inter alia in Para 35 therein that "If,.....the Government Order dated 13th July, 1999 were to mean initial fixation would be on the basis of the educational qualifications mentioned in the recommendation of the school "Service commission, and a teacher appointed on the recommendation of school service commission would be bound by the qualification for all time to come and even an

enhancement of qualification the teacher would not be entitled to the higher scale of pay Only because the School Service Commission had mentioned a different qualification in its initial recommendation, the Government Order would have to be struck down as totally arbitrary, discriminatory and violative of Article 14?”

After going through the questions formulated in the said order, it appears to this Court that the issue referred to the Full Bench is whether a person is entitled to claim benefits of higher scale of pay for acquisition of higher qualification subsequent to the date of his appointment. In the case on hand, the petitioner acquired the post graduate qualification much prior to the date of his appointment and therefore the issues involved in this writ petition is not identical with that referred to before the Full Bench.

In view thereof, this Court is unable to accept the submission of Mr. Ghosh that the hearing of this writ petition should await the decision of the questions referred to before the Full Bench. Furthermore, it appears from the materials on record that the petitioner was allowed the benefits of post graduate scale with effect from 31.10.2005.

The only issue that falls for consideration before this Court is whether the petitioner is entitled to the post graduate scale of pay from the date of his appointment.

The Government Order dated 06.12.1994 permits the authorities of Integrated Higher Secondary Schools to send proposal to the School Education Department for conversion of posts of Assistant Teachers from Normal

Secondary Section to the Higher Secondary Section. Upon such proposal being forwarded by the School, the competent authority in the Education Department after taking into consideration the need of the school and upon being satisfied that the proposed conversion is necessary in the academic interest of the students may approve its proposal for such conversion.

Record reveals that in terms of the said Government Order, the managing committee of this school adopted a resolution dated September 14, 2004 for transfer of the petitioner from the normal section to the higher secondary section for the interest of the school. Pursuant to such resolution the D.I. of Schools (S.R), 24 Parganas (North) transferred the petitioner from the normal section to the higher secondary section in terms of G.O dated December 6, 1994 with effect from 31.10.2005 with the direction that the petitioner will have to take additional classes in normal section in addition to the normal duty in higher secondary section. The petitioner accepted the said order dated October 31, 2005. The petitioner thereafter prayed for reconsideration of the decision to allow him the post graduate scale of pay with effect from 31.10.2005 and prayed for granting him such benefits with effect from the date of his appointment i.e. 15.01.1999.

The petitioner approached this Hon'ble Court by filing a writ petition being WP 11596 (W) of 2007 since no decision was taken by the authorities on his prayer for the consideration. Pursuant to the order dated 29.11.2012

passed by the Co-ordinate Bench of this Court, the D.I. of Schools passed an order dated September 13, 2013 thereby rejecting the prayer of the petitioner.

From the letter of recommendation dated 14.12.98, which has been annexed to the affidavit-in-opposition, it is evident that the recommendation for appointment of the petitioner was as an Assistant Teacher as a B.A, B.Ed candidate as he opted for appointment as a pass decree holder. His appointment as an Assistant Teacher with B.A, B.Ed qualification was approved with effect from the date of appointment on 15.01.99. Since the petitioner was appointed as a Pass Degree Holder, he was entitled to the graduate scale of pay with effect from the date of his appointment which was commensurate to his status at the time of appointment.

The right of the petitioner to get the post graduate scale accrued upon his transfer from the Normal Section to the Higher Secondary Section. The petitioner was transferred to the Higher Secondary Section with effect from 31.10.2005 in terms of G.O. dated 06.12.1994. The petitioner's right to get the post graduate scale accrued on and from the date of his transfer to the Higher Secondary Section.

This Court is, therefore, of the considered view that the petitioner is entitled to the benefits of the post graduate scale with effect from the date of his transfer from the normal section to the higher secondary section and not from the date of his initial appointment.

Furthermore, the petitioner consciously opted for

the post of the Assistant Teacher as a B.A, B.Ed candidate for reasons best known to him. The petitioner having opted for appointment as a pass decree holder cannot be permitted to turn around and claim the post graduate scale of pay with effect from the date of his initial appointment as an Assistant Teacher of the said school.

The petitioner having accepted the order of transfer cannot challenge a portion of such order wherein the date of effect of such transfer order was stipulated. The said order being a transfer order cannot be segregated and a portion of the same is not open to challenge when the substantive portion thereof is not under challenge.

For the reasons as aforesaid, this Court hold that the orders dated October 31, 2005 and September 13, 2013 both issued by the D.I. of Schools (S.E), 24 Parganas (North) do not suffer from any infirmity warranting interference under Article 226 of the Constitution of India.

The writ petition accordingly fails and the same is dismissed without however any order as to costs.

Urgent photostate certified copy of this order be given to the parties on usual undertaking.

(Hiranmay Bhattacharyya, J.)