

OD 4

WPO 2395 of 2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RAJASHREE CHAKRABARTI MULLICK AND ORS.
VERSUS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble Justice RAJASEKHAR MANTHA

Date : 11th August, 2022.

APPEARANCE:

Mr. Anjan Bhattacharya, Adv.

Mr. Saktipada Jana, Adv.

Mr. Subvhojyoti Das, Adv.
...for the school

Mr. Santanu Kumar Mitra, Adv.

Mr. Subhabrata Das, Adv.
...for State

The Court:- The writ petitioners are aggrieved by an order dated 19th July, 2022 passed by the D.I. of Schools, Kolkata. By the impugned order, the incremental benefit that was allowed by the State and school to untrained teachers that was also being enjoyed by the petitioners, was found to be illegal. The recovery order by the school was, in essence, upheld.

The facts of the case are already recorded in the impugned order and are not repeated in detail here. Suffice it to say that the three

petitioners were appointed in the Maheswari Balika Vidyalaya in the 2000-2001. They completed their BEd training/degree in the year 2008.

Challenging the recovery the petitioners relied upon the circulars of the school education department of the Government of West Bengal bearing nos. 149 dated 19th February, 1979, 19th February, 1979, 12th February, 1999 and 8th October, 2009 to argue that the State had permitted increments of certain teachers recruited without a B.Ed degree, to allow them time to obtain the same. The increments would be approved if they acquire the B.Ed degree within a specified period of time.

The reason behind the benefit being allowed by the State was that a large number of teachers in the State could not obtain B.Ed degrees by reason of pending litigation and institutions awaiting approval of the NCTE.

Given the date of appointment of the petitioners, i.e. 2000 and 2001 and the year on which they acquired the B.Ed degree, i.e. 2008, clearly disentitles them from seeking the benefit of the circular dated 19th February, 1979 and 12th February, 1999. In fact, the petitioners do not even come under the scope of the circulars dated 12th February, 1999.

Mr. Anjan Bhattacharya, learned Counsel for the petitioner would argue that the circular dated 30th July, 2009 read with the circular dated 29th March, 2010 and 16th February, 2018 should be applied to the

petitioners retrospectively. According to him, the circular does not stipulate that it is only prospective and not retrospective.

It is now well settled that unless specifically indicated in any rule, bye-law or statute or in any order passed by any authority with power conferred under statute, the same is prospective and continues to be so. It is only in exceptional circumstances or situations that this rule does not apply, where clarifications are given ex post facto to a rule, that it could be applied retrospectively.

It is clear and explicit from the said circulars referred to in the impugned order that they are, 'stand alone' orders and intended to specifically apply to a class and/or category of teachers. Given the date of appointment of the petitioners and the date on which they obtained the B.Ed degree, none of the said circulars can be applied to them.

The school as well as the D.I. are absolutely justified in recovering the amounts drawn by the petitioners toward incremental benefit, in the facts of the case.

The impugned order calls for no interference.

The writ petition fails and is hereby dismissed.

No order as to costs.

(RAJASEKHAR MANTHA,J.)