

ORDER SHEET

OD-1

WPO 998 OF 2016
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

DILIP KUMAR GHOSH
VS.
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA ROY

Date: 15th July, 2022

Mr. Syed Shamsul Arefin, Adv.
Miss Maniz Kulsum, Adv.
For petitioner
Mr. Sirsanya Bandopadhyay,
Jr. Standing Counsel
Ms. Tapati Samanta, Adv.
For State

The Court : The writ petition has been filed assailing a decision/order dated July 8, 2016, **Annexure P14 to the writ petition**, passed by the third respondent, whereunder the petitioner was declined from receiving the higher scale.

The petitioner at the relevant point of time was appointed and had been working as an **Assistant Teacher** in the **Work Education Stream** at **Bhandarhati B.M. Institution** (for short, the said school) since November 3, 1997 with the approval from the third respondent dated May 8, 1998. The petitioner had qualified **Masters of Commerce (M.Com)** from university of Burdwan and the **B.P.Ed.** and **Semister Examination 1990**. The petitioner was appointed as a **Work Education Teacher** in the normal section i.e. Class (V) to (X). In view of the paucity of teachers, at the request of the relevant school authority of the said school, the petitioner used to take commerce classes for classes (XI) and (XII). The routine by which petitioner's

classes were fixed was also made known to the Concerned District Inspector of School, **Annexure P-7** to the writ petition. Though the petitioner used to take several classes for classes (XI) and (XII) in commerce stream, yet the petitioner, despite repeated requests and representations made by him, did not receive the higher scale commensurating with his Masters degree.

This is the third round of writ petition on the issue, as this Court has been told. Previously pursuant to the directions made by a co-ordinate Bench representations were considered but on one or the other plea the prayer of petitioner was rejected for granting the higher scale. Lastly, the prayer of the petitioner for higher scale was rejected by the decision/order dated July 8, 2016 passed by the third respondent, which is impugned herein.

Mr. Syed Shamsul Arefin, learned Counsel with Miss Maniz Kulsum, learned Advocate appearing for the writ petitioner submits that, the service condition of the petitioner, who was appointed in 1997 as Assistant Teacher was governed under the provisions of the **West Bengal Services (Revision of Pay and Allowance) Rules, 1990 (ROPA 1990)**. Career Advancement Scheme and related issues are provided under Rule 16 of the ROPA 1990. In terms of such provision, the petitioner claims that he deserves the higher pay scale, since he had acquired a higher qualification though not in the subject for which he was appointed as an Assistant Teacher.

Referring to **Annexure P-11** to the writ petition which is a circular containing administrative instruction issued by the Department of School Education dated January 27, 1995 (for short, the said 1995 Circular), he submitted that, by the same the career advancement scheme was further

promoted following the said ROPA 1990 guidelines. He submits that, the said circular provides that even if an Assistant Teacher who was appointed for a particular subject if possessed a higher and proper qualification on any other different subject, subject to the compliance with the formalities, as mentioned in the said 1995 Circular, the teacher would be allowed and eligible to take classes in the higher section, on such subject in which he had acquired the higher qualification other than the subject for which he was appointed. He submitted that, this was not an unknown territory of the respondent State Authorities rather was a permitted territory.

Referring to **Annexure P-12** to the writ petition, he submits that, similarly circumstanced candidates had received the higher pay scale, as such, the claim of the petitioner was also justified and lawful. By refusing to grant such higher pay scale to the petitioner, who was a candidate similarly placed to those mentioned in **Annexure P-12**, the principle of equal pay for equal work was violated and as such, there was a violation of Article 14 of the Constitution of India.

Referring to **Annexure P-7** to the writ petition, learned counsel for the writ petitioner submits that, this class routine permitting the petitioner to take Commerce classes in the higher section was within the knowledge of the concerned District Inspector of Schools as it contained the seal of the same. In support, learned Counsel relied upon a judgment of a co-ordinate Bench of this Court **in the matter of: Partha Chatterjee Vs. State of West Bengal & Ors reported at 2004(2) CLJ 493.**

Mr. Sirsanya Bandopadhyay, learned junior standing Counsel appearing for the State, referring to sub-paragraph 3 to paragraph 16 of

ROPA 1990 submits that, this provision specifically provides for higher qualification of an Assistant Teacher in the subject or group relevant to his/her teaching/appointment, were entitled to get a higher scale of pay apropos to their qualifications. Since the petitioner was appointed as an Assistant Teacher for the subject of Work Education being the group relevant to his teaching/appointment and possessed higher qualification in the commerce branch and ultimately taught the students of commerce in the higher section, was not eligible to get such higher pay scale, as the petitioner claimed.

The learned junior standing Counsel referring to the said 1995 Circular, **Annexure P-11** to the writ petition, submits that, this circular specifically provided for a prior permission which was necessary to be obtained from the concerned District Inspector of Schools and strictly in accordance with the actual need of the individual school. For the petitioner, no such prior permission was obtained by the relevant school. In absence of such prior permission, the said 1995 Circular was of no support to the claim of the petitioner.

The learned junior standing Counsel further refers to paragraph 14 from his client's affidavit-in-opposition and demonstrates that his client has duly denied that the said 1995 Circular would apply to the petitioner and further contends that no such prior permission was granted by the concerned District Inspector of Schools.

After hearing the learned Counsel for the parties and on perusal of materials on record, it appears to this Court that, it is an admitted case by both the parties that provisions under ROPA 1990 are the applicable

provisions for regulating the service of the petitioner, who was appointed as an Assistant Teacher in 1997.

The relevant provision of ROPA 1990 is quoted below:-

“16. Career Advancement Scheme & related issues :

.....

(3) All teachers and librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subject or group relevant to their teaching/ appointment shall get higher scale of pay appropriate to their qualifications with effect from the 1st January, 1986 or the date of improving qualification whichever is later.

This principle shall apply mutatis mutandis to the teachers/librarians of other institutions/organisations as mentioned in Annexure-I.”

From a close scrutiny of the provisions quoted above, it is clear that all the teachers which includes an Assistant Teacher being the petitioner in the instant case, of secondary schools who had improved/would improve their qualifications or who were appointed with ***higher qualification in the subject or group relevant to their teaching/appointment should get higher scale of pay*** apropos to their qualifications. Admittedly the petitioner’s empanelment and appointment was for the post of Assistant

Teacher in the subject of Physical Education, in which he had the qualification of **B.P.Ed.**, which was a bachelor degree. It is equally admitted that the petitioner qualified in Masters of Commerce (M.Com) which was a higher qualification but in a different subject other than Physical Education for which he was appointed. Thus it is clear and evident, the petitioner though had taken classes in the higher section in the commerce branch, since his original appointment was for the subject Physical Education he could not and cannot claim any higher pay scale as claimed in his writ petition.

Then comes the 1995 Circular.

The relevant portion of the 1995 Circular is quoted below:-

“i) Approved Assistant Teachers of non-Government Secondary Schools and Madrasahs who will take classes in subjects relevant to their respective higher qualification, though appointed/approved respectively in different group/subject other than the aforesaid teaching subject shall, henceforth be allowed to draw pay according to their respective higher qualification, as prescribed by the State Government provided such Assistant Teacher take individually at least six such periods for week as officially allotted by the authorisation of the respective schools to such Assistant Teacher within the normal work load upon the written consent of the concerned teacher and with the prior permission of the concerned District Inspector of Schools and strictly according to the actual academic need of the individual school. If there is more than one Asstt. Teacher in a school with

relevant higher qualification agreeable to this arrangement, preference shall be in order to seniority. If any school has already effected such an arrangement in its academic interest, the same has to be got approved by the concerned D. I. of Schools subject to eligibility for the purpose of drawal of qualification pay by the concerned teacher.”

From a close scrutiny of the above provision of the 1995 Circular, it is clear that for allotment of classes of a higher section to an Assistant Teacher for a subject where he possesses a higher qualification than the subject for which his appointment was made as Assistant Teacher, a prior permission of the concerned District Inspector was mandatory and a pre-requirement. From the records it does not appear that the relevant school had asked for any such prior permission for allotment of classes to the petitioner in the higher section in commerce subject. As submitted on behalf of the writ petitioner that the class routine of the higher section, **Annexure P-7** to the writ petition, got the approval of the District Inspector of Schools, since the same bears the seal and signature of the relevant authority, is not acceptable to this Court. The expression ‘**prior permission**’ as used in the said 1995 Circular must be read in the light of the entire circular as a whole coupled with the relevant provisions under ROPA 1990. The provisions made in the said 1995 Circular was an exception to the provisions laid down in ROPA 1990 as discussed above. This was the reason, that the **prior permission** was required from the relevant District Inspector of Schools which also was dependent upon various other factors as mentioned in the said circular.

After considering all such factors mentioned in the said 1995 Circular and on a meaningful reading thereof, this Court is of the firm opinion that the relevant District Inspector of Schools who was empowered to issue the said prior permission, must do so upon application of mind. This is not merely a ministerial job. As such, the submissions made on behalf of the writ petitioner on the basis of **Annexure P-7** to the writ petition, as discussed above that prior permission was obtained by the said school and classes were allotted to the petitioner in the Higher Section, is not acceptable to this Court.

It is not a case of violation of Article 14 of the Constitution of India at all. It is a case of non compliance of the relevant mandatory statutory provisions, which were the guiding factors for the case of the writ petitioner. Thus, the question of violation of Article 14 would not arise in the facts and circumstances of this case.

The writ petition is devoid of any merit. The impugned order dated July 08, 2016 suffers from no infirmity either procedural or legal. The impugned order is a well versed and reasoned. The said decision/order dated July 08, 2016 stands affirmed.

In view of the foregoing discussions and reasons, the writ petition being **WPO 998 of 2016** stands dismissed.

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

(ANIRUDDHA ROY, J.)