

27.09.2023
23-27 & 29
AN/Ct. No.07

WPA 5931 of 2015
(IA No.: CAN 1 of 2017 (Old No.: CAN 6212 of 2017)
(CAN NOT FOUND)

Dharmendra Pandey
versus
State of West Bengal & ors.

with

WPA 5933 of 2015
(IA No.: CAN 1 of 2017 (Old No.: CAN 6219 of 2017)
(CAN NOT FOUND)

Deepak Kumar Singh
versus
State of West Bengal & ors.

with

WPA 5935 of 2015
(IA No.: CAN 1 of 2017 (Old No.: CAN 6220 of 2017)
(CAN NOT FOUND)

Diwakar Khati
versus
State of West Bengal & ors.

with

WPA 5938 of 2015
(IA No.: CAN 1 of 2017 (Old No.: CAN 6210 of 2017)
Om Prakash Das

versus
State of West Bengal & ors.

with

WPA 5940 of 2015
(IA No.: CAN 1 of 2017 (Old No.: CAN 6213 of 2017)
(CAN NOT FOUND)

Sanjit Kumar Roy
versus
State of West Bengal & ors.

with

WPA 5947 of 2015
(IA No.: CAN 1 of 2017 (Old No.: CAN 6211 of 2017)
(CAN NOT FOUND)

Bibhas Saha
versus
State of West Bengal & ors.

Mr. Tanmoy Chakraborty
Mr. Chhandak Dutta

... for the petitioners

Mr. T. P. Halder

... for the Council
(respondent nos. 4, 5 & 6)

Common questions of law and fact are involved in these writ petitions. Accordingly, the writ petitions are heard analogously and are decided by passing a common order.

The petitioners were initially appointed to the post of Assistant Teacher in primary school under the 'B' Category. They were deputed to undergo the Primary Teacher Training Institute Examination (in short, PTTI) from different Primary Teacher Training Institutes in the Session of 2005-06.

The petitioners claim to have appeared for the PTTI Examination held in the year 2011 and obtained the training qualification. The petitioners claim that since they have already attained the requisite qualification for being placed in the 'A' Category in terms of the relevant rules, the petitioners applied before the authority for grant of Category 'A' Scale of Pay. The petitioners were extended the benefits of Category 'A' Scale of Pay but the concerned Sub-Inspector of School, Siliguri Naxalbari Circle issued a Memo dated 10.04.2015 thereby withdrawing the 'A' Category Scale which was extended to the petitioners. By the said Memo the petitioners were directed to deposit the overdrawal amount within the stipulated period. The petitioners have prayed for issuance of a writ of mandamus directing the respondents to consider their candidature for preparation of panel of seniormost primary teacher for

appointment to the post of Head Teacher in the primary school within the jurisdiction of Siliguri Primary School Council. A representation to such effect was also submitted before the concerned authority.

Petitioners have filed these writ petitions for a direction upon the respondents to prepare a panel of seniormost primary teachers for appointment to the post of Head Teacher.

During the pendency of the writ petitions, the concerned Sub-Inspector of Schools issued a Memo dated 10.04.2011 withdrawing 'A' Category benefit and for refund of the overdrawal amount. Petitioners challenged the said Memo by filing supplementary affidavit and have prayed for setting aside the same.

Mr. Chakraborty, learned counsel appearing for the petitioners submits that by virtue of order dated 11.12.2012, the Commissioner of School Education, West Bengal informed the Chairman, Siliguri Primary School Council that the teachers who were appointed before 03.09.2001 and obtained one year PTTI Degree in the Session of 2005-06, they are entitled to get 'A' Category Scale of Pay in terms of the notification of the School Education Department. He submits that the authorities acted illegally and arbitrarily by withdrawing the benefits of 'A' Category Scale of Pay which was rightly extended to the petitioner.

Per contra, Mr. Halder, learned counsel representing the Council placed reliance upon an order of the Secretary, School Education Department dated 19.12.2014 whereby it was observed that there is no provision in the relevant government order to allow the benefit of A' Category Scale of Pay to teachers who have obtained one year PTTI Certificate after 31.12.2005.

Heard learned counsel for the parties and perused the materials placed.

It is not in dispute that the petitioners were all appointed prior to 03.09.2001. Record reveals that the petitioners successfully completed and passed the PTTI Examination 2006 which was held in the month of February, 2011. The Commissioner of School Education, West Bengal issued a Memo dated 11.11.2012 to the Chairman, Siliguri Primary School Council which reads as follows:

*“From: Commissioner, School
Education, West Bengal.*

*To : The Chairman,
Siliguri Primary
School Council,
52, Rashbehari Sarani,
Hakimpara, Siliguri.*

*Sub: Clarification regarding
entitlement of Category ‘B’
to Category ‘A’ scale of
Primary Teachers.*

*Ref : His Memo No. 1210/PSC-Slg.
Dated 30/8/2012*

*With reference to the subject
mentioned above, the undersigned has to*

inform that since the teachers were appointed before 03.09.2001 and obtained one year PTI degree in the session of 2005-06, they are entitled to get 'A' Category scale of pay in terms of the Notification being No. 277-SE(P) dated 26.3.2012 and subsequent order being No. 996-SE (Law) dated 15.06.2012 of the School Education Department."

Upon reading the said memorandum, it is evident that the teachers who were appointed before 03.09.2001 and obtained one year PTI Degree in the Session of 2005-06 are entitled to get A' Category Scale of Pay in terms of notification being No. 277-SE(P) dated 26.03.2012 and a subsequent order being No. 996-SE(Law) dated 15.06.2012 of the Secretary, School Education Department.

A coordinate Bench of this Court by an order dated 10.03.2015 in W.P. 29429(W)/2014 in the case of Surja Kanta Roy & Ors. vs. State of West Bengal & Ors. observed that teachers who have been appointed prior to 03.09.2001 and have completed their training for the Sessions 2005-06 for the Examination held in 2011 are entitled to have 'A' Category Status. The coordinate Bench directed the respondent authorities to give the 'A' Category Status to the petitioner therein and the authority was further directed to give proper pay fixation to the petitioners with effect from last date of examination held in 2011.

Another Coordinate Bench by an order dated 08.09.2015 in W.P. 11817(W)/2015 in the case of Prem Kumar Basak & ors. vs. State of West Bengal & ors. after

considering the issues raised in Surja Kanta Roy (Supra) and upon considering the decision of the Secretary, School Education Department dated 19.12.2014 observed as follows:

“The decision of the Secretary dated December 19, 2014 referred to on behalf of the Council rendered in a fact scenario relating to a writ petition. As a co-ordinate Bench I am faced with the decision rendered by this Court in Surja Kanta Roy (supra). Judicial discipline requires that I should follow Surja Kanta Roy (supra). Moreover, the issue as to whether the writ petitioners had obtained certificates after 2005 or not, is an issue of fact. It cannot be considered as issue of law. No document has been placed either by the Council authorities or the state authorities to suggest that Surja Kanta Roy (supra) did not take into consideration the relevant law.”

The coordinate Bench in the case of Prem Kumar Basak (Supra) directed the respondent authorities to give ‘A’ Category Status to the writ petitioners. Against the order of the coordinate Bench dated 08.09.2015 in W.P. 11817(W)/2015, the Council preferred an appeal being MAT 166/2015. The Hon'ble Division Bench passed an order dated 07.12.2015 in MAT 166/2015 in the case of District Primary School Council, Dakhin Dinajpur & anr. vs. Prem Kumar Basak & ors. taking note of the memorandum dated 11.12.2012 issued by the Commissioner of School Education, West Bengal and the order of the Secretary, School Education Department dated 19.12.2014.

After taking into consideration the aforesaid memorandum dated 11.12.2012 and the order dated 19.12.2014, the Hon'ble Division Bench was pleased to observe that the Secretary while deciding the matter by passing the order dated 19.12.2014, took a view contrary to the clarification made by the Commissioner of School Education, West Bengal. The Hon'ble Division Bench did not accept the contention of the learned counsel appearing for the Council that the clarification issued in the year 2012 is no longer operative.

In view of the observations of the Hon'ble Division Bench, this Court is of the considered view that the clarification of the Commissioner of School Education, West Bengal in the memorandum dated 11.12.2012 is still in force. This Court accordingly holds that the petitioners are entitled to the 'A' Category Status and scale of pay.

Record reveals that the petitioners were treated as A' Category Scale of Pay with effect from 21.02.2011. Since this Court has already held that the petitioner is entitled to the 'A' Category Status as well as the benefits attached to such status, the decision of the Sub-Inspector of Siliguri Naxalbari Circle being Memo no. 12/SN/2015 dated 10.04.2015 insofar as the petitioners are concerned is set aside and quashed.

The learned counsel for the respective parties have uniformly submitted that no recovery of the alleged overdrawal amount as indicated in the memo dated

10.04.2015 has been made. Therefore, no further directions in that regard is required to be passed.

However, insofar as the prayer of the writ petitioners with regard to seniority and empanelment for appointment as a Head Teacher of primary school is concerned, this Court directs the Chairman, Siliguri Primary School Council being the 5th respondent to consider the prayer of the petitioners with regard to their seniority and empanelment for appointment as Head Teachers of the primary schools as contained in the representation dated 07.02.2015 in terms of the relevant rules and to dispose of the same by passing a reasoned order as expeditiously as possible but positively within a period of eight weeks from the date of receipt of the server copy of this order alongwith a copy of the said representation.

With the above observations and directions, all the writ petitions stand **disposed of**. Consequently, connected application, if any, also stands disposed of.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)