

13.09.2023
SL No.9
Court No.8
(gc)

AST 117 of 2014
ASTA 1 of 2014 (Old No: ASTA 88 of 2014)
ASTA 2 of 2014 (Old No: ASTA 89 of 2014)

The State of West Bengal & Ors.
Vs.
Satyabrata Mahapatra & Ors.

Mrs. Tapati Samanta,
...for the State appellants.
Mr. Sakti Pada Jana,
Mr. Subhajyoti Das,
...for the Respondent/Writ Petitioner.

1. Mrs. Tapati Samanta, learned Advocate appearing for the State has given an undertaking to file Vakalatnama by tomorrow, i.e. 14th September, 2023.
2. On the basis of such undertaking, we permit Mrs. Samanta to make her submission.
3. In view of the fact that the writ petitioner acquired the Doctor of Philosophy in Science from the Jadavpur University on 4th July, 2005 and was awarded the degree in December, 2005 in the convocation, he is entitled to the benefits as rightly decided in favour of the writ petitioner by the learned Single Judge. Moreover, it makes it clear from the judgment of a Coordinate Bench in ***State of West Bengal Vs. Chandra Bhusan Dwivedi*** reported at **2019 (3) CHN (CAL) 221** that Rule 12(5) of ROPA Rules, 1998 would not

stand in the way of the writ petitioner getting the benefit in view of the fact that the said Rule ceased to exist on and from 1st January, 2006 by which time, the writ petitioner has obtained degree in the convocation.

4. We are of the view that the judgment passed by the former Hon'ble the Chief Justice Jyotirmay Bhattacharya in WP 4532(W) of 2012 relying upon the decision of the Punjab and Haryana High Court in order to declare that the classification which has been made by the Government between the teachers, acquiring Ph.D. Degree prior to 18th August, 2005 and the teachers acquired Ph.D. Degree after 18th August, 2005 is also arbitrary and irrational and such classification has no nexus with the object sought to be achieved does not call for any interference. The said decision was rendered in the context of the Government Order dated 5th January, 2012 that was made applicable in order to deprive the incremental benefits to the writ petitioner as he acquired the degree after 18th August, 2005. The relevant observations of the Hon'ble the Chief Justice in this regard are reproduced below:-

“In this context, this Court is required to consider the rationality for imposition of such a cut-off date to exclude the claim of such teachers who acquired Post-Doctoral

Degree after the said cut-off date. The said cut-off date, i.e. 18th August, 2005 was selected by the Government as the Control of Expenditure Act, 2005 came into force with effect from the said date, under an impression that the grant of incremental benefit to the teachers who acquired Doctoral Degree after the said Act came into operation, is prohibited under the said Act.

As such, this Court is now required to consider as to whether the Control of Expenditure Act, 2005 imposed any such ban on grant of incremental benefit to the teachers acquiring Doctoral Degree after 18th August, 2005.

Section 14 of the said Act deals with the pay scale of the teachers. Section 14(1) of the said Act deals with the pay scale of the teachers who are appointed in the post of under-Graduate teacher category. Similarly, sub-section 2 of Section 14 deals with the pay scale of the teachers who are appointed in the post of Graduate-teacher category. Section 14(3) of the said Act deals with the pay scale of the teachers who are appointed in the Honours-Graduate or Post-Graduate teacher category.

Since the petitioner was appointed in the post of Honours Graduate teacher category, the provision contained in Section 14(3) of the said Act is relevant for the present purpose. As such, the provision contained in Section 14(3) of the said Act is set out hereunder.

Section 14(3) – Every teacher of a school shall, if appointed in the Honours Graduate or Post Graduate

teacher category, be entitled to draw pay of Post-Graduate teacher category, upon acquiring Post Graduate Degree in the manner as may be specified by the order.

The said provision indicates that when a teacher having Honours Degree is appointed in the Honours Graduate/Post Graduate Degree teacher category, he will get the pay scale admissible to the Post-Graduate teacher, if he enhances his qualification by acquiring Post Graduate Degree in the manner as may be specified by the order.

Thus on plain reading of the said provision, this Court does not find any restriction whereby ban was imposed on the grant of incremental benefits to a teacher who acquired the Doctoral Degree in the relevant subject, after 18th August, 2005. In fact, neither Section 14, nor any other provision of the Act deals with the consequence of the Doctoral Degree, acquired by any teacher, either before or after the enactment of the said Act of 2005.

As a matter of fact, the Joint Secretary in his letter dated 1st September, 2011 addressed to the Director of School appearing at page 28 of this writ petition also expressed his view that no section of Control of Expenditure Act, 2005 can stand in the way of grant of drawal of such additional increments to an Assistant Teacher who acquired the Ph.D. Degree in the relevant subject in terms of Clause 5 Rule 16 under Career Advancement Scheme, laid down in ROPA, 1998.

Thus, when the Act does not impose any restriction and/or ban on grant of such incremental benefit to the teachers who acquired the Doctoral Degree, the Government by issuing the Government order dated 5th January, 2012 cannot impose such restriction on grant of two additional increments to certain group of teachers having Ph.D. Degree by selection a cut-off date of its choice as imposition of such ban will create sub-classification amongst the teachers who acquired Ph.D. Degree prior to the cut-off date and the teachers who acquired the Ph.D. Degree after the said cut-off date which is not only arbitrary and irrational but also has no nexus with the object to be achieved.

In fact, Punjab & Haryana High Court in the case of State of Haryana etc. – vs.- Smt. Nirmala Mittal, reported in 2008(5) SLR, page 177 did not approve the Government's idea for giving two different scales of pay to the teachers appointed with Ph.D. Degree and teachers acquired Ph.D. Degree after getting appointment by creating sub-classification amongst the teachers standing on the same footing only by referring to the date of confinement of Doctoral Degree on them. Such classification was held to be arbitrary and irrational as it has no nexus with object to be achieved.

Thus, by following the principle laid down by the Punjab & Haryana High Court in the said decision, this Court has no hesitation to hold that the classification which was been made by the Government between the teachers, acquiring Ph.D.

Degree prior to 18th August, 2005 and the teachers acquired Ph.D. Degree after 18th August, 2005 is also arbitrary and irrational inasmuch as, such classification has no nexus with the object to be achieved. As such, the Government Order dated 5th January, 2012 whereby ban was imposed on the grant of incremental benefits to the teachers acquiring Ph.D. Degree after 18th August, 2005 cannot be retained on record. The said Government order dated 5th January, 2012 is, thus, quashed.”

5. In the instant case, he was qualified on 4th July, 2005 prior to 18th August, 2005 which is a relevant consideration ignored by the Government Order dated 5th January, 2012.
6. We record our concurrence with the reasons and the observation made by Justice Bhattacharya in WP 4532(W) of 2012 decided on 4th July, 2012 in the facts of the case.
7. Accordingly, the appeal and the application stand dismissed.
8. However, there shall be no order as to costs.
9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.) (Soumen Sen, J.)