

49 18-01-2023
AKG
Ct. 238

WPA 14989 of 2021
Sri Tarun Kumar Ray
Vs.
The Union of India & Ors.

Mr. Subhrangsu Panda,
Ms. Mithu Singha Mahapatra
...for the Petitioner
Mr. Anil Kr. Gupta
...for UGC
Mr. Swpan Kumar Datta
...for the State
Mr. Abhishek Halder,
Mr. Swadesh Misra,
Mr. Madhurima Basu
...for the Respondent Nos. 7 & 8

In this writ petition, the petitioner has challenged an order dated August 6, 2021 passed by the Director of Public Instruction, Government of West Bengal. By the said order, the Director of Public Instruction opined that there was no scope for extending the benefit of hardship under Clause 2.8.0 of UGC Regulations, 2000 in favour of the petitioner. The prayer of the petitioner was, therefore, rejected.

The writ petitioner prays that he should be promoted on attaining his Ph.D qualification subsequent to his appointment following the said Clause 2.8.0 of UGC Regulations, 2000 which runs as follows :-

“If the number of years required in a feeder cadre are less than those stipulated in this notification, thus entailing hardship to those

who have completed more than the total number of years in their entire service for eligibility in the cadre; may be placed in the next higher cadre after adjusting the total number of years.

This situation is likely to arise as in the earlier scheme, the number of years required in a feeder cadre were much more than those envisaged under this notification.”

Mr. Panda, learned advocate appearing for the petitioner submits that the issue involved in this writ petition is no more res integra in view of the judgment delivered by a Co-ordinate Bench of this Court in W.P. 21949(W) of 2015 (Dr. Sachindra Nath Paul Vs. State & Ors.).

The University Grant Commission was directed to file an affidavit disclosing its stand in an identical matter being WPA 13791 of 2021 (Dr. Jhantu Das Vs. The State of West Bengal & Ors.) with regard to the prayer of the petitioner therein. The relevant part of the affidavit filed by the UGC in the said case is quoted below :-

“It is stated that since the Petitioner has obtained his Ph.D. degree on 11.11.2009 i.e., within nine years of service calculated from his date of his appointment as Lecturer i.e., on 28.03.2001; his next career advancement to the post of Reader should be considered on the basis of the total length of his service from the date of his appointment as Lecturer. The hardship Clause 2.8.0 stated above provides for such an eventuality.,

In view of the same it is stated that Petitioner is entitled to be promoted to Stage 1 to Stage II after completion of four years of service on attainment of Ph.D. qualification subsequent to his appointment taking recourse to Clause 2.8.0 of UGC Regulations, 2000 regarding “Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Colleges.

It is further submitted that obtaining

higher qualification subsequent to the appointment to one post would not impede the career advancement. Rather, it would assist in the career advancement by allowing the period of service spent taken into consideration.”

The Co-ordinate Bench in the judgment delivered in Dr. Sachindra Nath Paul (Supra) has held, inter alia, as follows :-

“Clause 2.8.0 is the hardship Clause. The hardship Clause seeks to ameliorate the grievance of a person who obtains a higher qualification subsequently. It recognizes that in such as a situation the entire period of service of such person would be taken into consideration for the purpose of considering the grant of promotion of such person to the next post.

A Lecturer to move into the post of Lecturer (Senior Scale) would require a Ph.D degree within four years, a person with a M. Phil degree will have Lecturer (Senior Scale) post in five years, while a person with other level of qualification will require six years time. However, the hardship Clause takes into account that a person may obtain a Ph.D. or a M.Phil in the interregnum. The obtaining of the higher qualification subsequent to the appointment to one post would not impede the career advancement. Rather it would assist in the career advancement by allowing the period of service spent to be taken into consideration. Without the hardship Clause coming into operation, and if the interpretation of the State is to be accepted, then a Lecturer with a m.phil and without a Ph.D. degree has to wait for 5 years to move to Lecturer (Senior Scale) and not to be advanced to the post of Reader on Promotion at all. However, such person may obtain a Ph.D degree 5 years subsequent to his appointment as a Lecturer. Then, in terms of the hardship Clause, he would be given the appointment of a Lecturer (Senior Scale) on the date of obtaining of his Ph.D degree as he had till the date of his obtaining the Ph.D. spent more time than required under the U.G.C. Regulation in the post of Lecturer to advance to the post of Lecturer (Senior Scale). His next career

advancement to the post of Reader would be considered on the basis of the total length of his service from the date of his appointment as a Lecturer. The hardship Clause provides for such an eventuality. The hardship Clause also notifies that the previous notification of U.G.C. had prescribed other periods of time for career advancement. Therefore, to bring about an uniformity in career advancement and in order to prevent hardship to the persons affected, the hardship Clause has been introduced.”

In view of the aforesaid findings of the Co-ordinate Bench and also the stand of the UGC as quoted above, the petitioner should be given the similar benefit.

Accordingly, this writ petition being WPA 6698 of 2021 is allowed. Order dated August 6, 2021 passed by the Director of Public Instruction, Government of West Bengal is set aside. The Director of Public Instruction shall grant the promotion and all consequential financial benefits to the petitioner in the light of the judgment dated September 17, 2019 rendered in W.P. 21949(W) of 2015 (Dr. Sachindra Nath Paul Vs. State & Ors.) within one month from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)