

17.08.2023
Item No.98
Crt.No.22
b.r.

WPA 14427 of 2019

Soumya Adhya
-vs-
The State of West Bengal & Ors.

Mr. Debabrata Roy
Mr. Gazi Faruque Hossain
Ms. Priyanka Mondal
Ms. Sarbani Mukhopadhyay
Mr. Samik Mondal
..... for the petitioner.

Mr. Supriyo Chattopadhyay
Ms. Tapati Samanta
..... for the State.

Affidavit of service filed in Court today be retained with the record.

This is a hearing matter upon affidavits.

By virtue of an appointment letter dated **February 28, 2002 annexure p-2 at page 31** to the writ petition issued by the **Ramkrishna Mission Blind Boy's Academy, Narendrapur, Calcutta (for short, the School)** the petitioner was appointed as **Musical Instructor (Sitar)** temporarily on probation for two years with effect from **April 16, 2002** under the terms and conditions mentioned therein. **Clause 6** of the said appointment letter specified the pay scale for the petitioner was in sync with **Clause 10** of the **Revision of Pay and Allowances for Handicapped Institution Sponsored/Aided by Mass Education Extension**

Department (for short, the Pay Structure), annexure p-11 at page 75 of the writ petition. The said Clause 10 to the said pay structure specifically provided for the class of employee under the nomenclature **“Music Teacher/Instructor (Tabla/Violin/Sitar)”**. The petitioner still has been enjoying the said pay structure in terms of Clause-6 of his appointment letter. The petitioner has been receiving the necessary pay revision under the said pay structure.

The employment of the petitioner stood approved pursuant to a communication **dated September 16, 2002** issued by the appropriate **State Authority annexure p-3 at page 33** to the writ petition for the post of **Instructor (Sitar)**.

The qualification of the petitioner at the time of his appointment and joining at the said school was **Master of Arts (MA) in Instrumental Music (Spl.-Sitar) annexure P-1 page 29** to the writ petition. The relevant school also accepted that the petitioner was possessed with such master degree at the relevant point of time of appointment as would be evident from **annexture P-4 at page 34 to the writ petition**.

Claiming higher pay scale commensurating with his Master Degree, the petitioner submitted a representation **dated May 2, 2019 annexure P 12 at**

page 78 to the writ petition before the **respondent no.2.**

The **respondent no.2** considered the said representation and rejected the claim of the petitioner by the impugned communication **dated June 20, 2019 annexure P-13 at page 88** to the writ petition. The relevant observation of the respondent no.2 while rejecting the claim of the petitioner is quoted below :-

“in inviting a reference to the subject cited above the undersigned is to state that the responsibility of the post of ‘Teacher’ is higher than that of ‘Instructor’. Thus, the doctrine of “Equal pay for equal work”, as stated in the application, doesn’t hold good here and its equipollent value can not be put into the same axil.”

The said decision dated **June 20, 2019** is impugned in the instant writ petition.

Mr. Debabrata Roy, learned counsel for the petitioner submitted that the ground for rejection of the claim of the petitioner was that a **‘Teacher’** stands on a higher pedestal than that of **“Instructor”**. Learned counsel for the petitioner referring to the said appointment letter and specifically **Clause-6** thereunder and with a further reference to **Clause-10** from the said pay structure **annexure p-11 at page 76** to the writ petition submitted that, all along the

petitioner was enjoying and still enjoying the same pay scale as that of a **Music Teacher**. The State employer accepted the petitioner's appointment as Music Teacher by granting the same pay scale as there was no other pay scale mention for "**Music Instructor**". He further submitted that the school is also aware of at all material time, that the petitioner possesses with the **Master Degree qualification MA- Instrumental Music (Spl.- Sitar)**. Thus the learned counsel for the petitioner contended that the petitioner is eligible to receive a higher pay scale commensurating with his **Master Degree**.

Referring to the said impugned order, Mr. Roy, learned counsel for the petitioner submitted that, the same is totally a cryptic order and did not touch the issue relating to the claim of the petitioner as to whether the petitioner shall be eligible to receive the higher pay scale as claimed by him. There is no reason for rejection of such claim. He submitted that, the impugned order cannot be sustained in law and should be set aside and the salary and other allied employment benefits of the petitioner should be re-fixed commensurating with this Master Degree qualification. Referring to **annexure P 10 at page 57** to the writ petition learned counsel contended that, an identically and similarly placed candidate whose

appointment was for the post of Music Teacher, a co-ordinate Bench by its order dated **September 14, 2018** passed in **WP 12909(W) of 2017, annexure p-9 at page 61** granted identical relief to him, as claimed by the petitioner herein, as would be evident from the reasoned order passed by the **respondent no.2** dated **November 1, 2018, annexure p-10 at page 65** to the writ petition. He therefore claimed that the petitioner shall also be granted the identical relief as claimed by the petitioner.

Ms. Tapati Samanta, learned State Counsel led by Mr. Supriyo Chattopadhyay, learned Additional Government Pleader submitted that the relief as referred to by the petitioner would appear **at page 65** to the writ petition was granted to a **teacher** whose appointment was as **“Music Teacher”** and not a **“Music Instructor”**. In the facts of this case, the appointment of the petitioner was a **“Music Instructor”**. Therefore, the impugned order is sustainable in law and was passed rightly by the **respondent no.2.**

Considering the rival contentions of the parties and considering the materials on record, it appears to this Court that, though the appointment letter dated **February 28, 2002** read with the approval issued in favour of the petitioner dated **September 16, 2002**

provide for the appointment of the petitioner for the post of **“Instructor”** but no such provision is therein in the **Recruitment Rules, 1995**. On a plain and meaningful reading of **Clause 6** of the appointment letter read with **Clause 10** of the said pay structure at **page-76** to the writ petition and on a harmonious construction thereof, this Court is of the firm view that, the said pay structure provided the scale for **music instructor**, and the same pay scale was granted to the petitioner since his appointment, as would be evident from Clause 6 of the appointment letter. The **Recruitment Rules of 1995** has not created any special class under the nomenclature **“Music Instructor”**.

On the contrary, the said pay structure at **page 76** to the writ petition specified the pay scale for **“Music Instructor”** along with the **Music Teacher (inter alia, Sitar)**. Since the issuance of appointment letter, the approval of service of the petitioner and till date the petitioner was paid with the same pay scale as that of a **music Teacher**, which is in sync with Clause 10 of the said pay structure at **page 76** to the writ petition, the State employer has unconditionally granted the said pay scale to the petitioner. The State employer therefore unequivocally accepted the class and status of the petitioner is identical and/or similar

and/or same as that of the class of the Music Teacher. The State Authority therefore cannot take any view contrary thereto. The petitioner shall be treated as he is being treated all through for the scale of **Music Teacher** and with all the employment benefits to which a **Music Teacher** is eligible to receive.

In view of the foregoing discussions and reasons, this Court is of the considered view that the said impugned order dated **June 20, 2019 annexure p 13 at page 88** to the writ petition cannot sustain as the very decision making process suffers from a basic infirmity while passing the said impugned order.

Accordingly, the said impugned order dated **June 20, 2019 stands set aside and quashed.**

Considering the intricacy in the matter, the **Secretary, Department of Mass Education Extension & Library Services, State of West Bengal** shall revisit the representation of the petitioner **dated May 2, 2019 annexure p-12 at page 78** to the writ petition **in the light of this order**, upon issuing a prior notice of at least seven days to the petitioner and after hearing the petitioner either by himself or through his duly authorised representative shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise as directed above shall be carried out and completed by the concerned **Secretary** positively within **a period of six weeks from the date of communication of this order. The concerned Secretary shall communicate his reasoned order to the petitioner within a further period of two weeks from the date of the reasoned order to be passed. The concerned Secretary shall decide the issue on the basis of the existing materials on the basis whereof the impugned order was passed.**

The petitioner shall be at liberty to urge whatever points he wishes to urge by relying upon whatever documents and records he wishes to rely upon including any judgement and order he wishes to place before the concerned Secretary, but the same shall not travel beyond the scope of the representation dated **May 2, 2019 annexure p-12 at page 78** to the writ petition.

While deciding the issue, the **concerned Secretary** shall consider this order passed by this Court and the observations made therein. This order shall not create any equity in favour of the petitioner save and except the observations made by this Court in this order.

In the event, the reasoned decision goes in favour of the petitioner then the **respondent no.2** and

the **respondent no.6 shall give immediate effect thereto positively within a period of six weeks from the date of communication of the said reasoned order.**

On the above terms and with the above observations, this writ petition being **WPA 14427 of 2019** stands **disposed of**, without any order as to costs.

Parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Aniruddha Roy, J.)