

Item-26. 28-08-2023

MAT 1337 of 2016
CAN 2 of 2016 (old CAN 9028 of 2016)

sg Ct. 8

The State of West Bengal & Ors.
Versus
Md. Ashraf Ali & Ors.

Mr. Tapan Kumar Mukherjee, Adv.
Mr. Somnath Naskar, Adv.
...for the State/appellants
Md. Sarwar Jahan, Adv.
Mr. Maidul Islam Kayal, Adv.
...for the writ petitioner

1. We have heard the learned Counsel for the parties and considered the judgment passed by the Hon'ble Division Bench in the case of **Ashim Kumar Adgiri vs. State of West Bengal & Ors.** reported in **2013 (2) CHN (Cal) 568** and an unreported decision of a coordinate Bench in State of **West Bengal & Ors. vs. Gousul Ajam & Anr.** dated 5th June, 2017. The learned Single Judge allowed the writ petitioner following the decision in *Ashim Kumar Adgiri* (supra).
2. Briefly stated, the petitioner joined in Lalnagar High School, Murshidabad in the year 1979 under Bio-Science Group on 17th April, 1979. The appointment of the petitioner as an Assistant Teacher under Science group was approved by the concerned District Inspector of Schools (S.E.) with effect from 17th April, 1979. Subsequently, the petitioner duly completed M.A. in History in the year 1986 with due permission granted by the school authority. The last date of M.A. Part-II Examination was 5th April, 1986 in the non-relevant subject i.e. History. He applied before the D.I. for

grant of post-graduate scale for his enhanced qualification in M.A. in History in the non-relevant subject. But the District Inspector of Schools (S.E.), Murshidabad refused to comply with the prayer of the writ petitioner.

3. The learned Single Judge relied upon the Circular No. 400-Edn.(B)/IM-45/91 dated 10th September, 1991 and the judgment being *Ashim Kumar Adgiri* (supra) and held that the petitioner is entitled to enjoy the post-graduate pay scale and after expiry of five years from the date of acquiring M.A. in History.
4. The learned Counsel for the writ petitioner has fairly submitted that a subsequent Division Bench in ***Gousul Ajam*** (supra) decided on 5th July, 2017 that interpretation of the said clause has denied higher scale of pay on the ground that the higher qualification was acquired after 1981. In ***Gousul Ajam*** (supra), the coordinate Bench considered G.O. 400 and G.O. 401. Presently, we are considering the G.O. 400-Edn.(B) dated 10th September, 1991 by which clause B was circulated on 1st April, 1981 was granted in order to appreciate the nature of the amendment. It is necessary to raise to both the relevant clauses. The Memorandum no. 372-Edn.(B) dated 31st July, 1981 in the foot note referred to three clauses after referring to the revised scale of pay. The said clause are reproduced below:

“All existing Secondary School teachers will be allowed annual increments in the revised scales of pay provided that untrained teachers will have to get themselves trained within 5 years from April, 1981 failing which their increment will be stopped till they get themselves

trained.

(2)(a) All existing Secondary school teachers who have improved their qualifications relevant to their teaching subjects will get the higher scale on qualification without any restriction;

(b) All existing Secondary School teaches who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on qualification basis after five years' teaching counting from the date on which higher qualification was obtained.

(c) In future, Secondary school teachers will be allowed higher pay scale on qualification basis only when they obtain such higher qualification in the subject relevant to their teaching/appointment."

5. Clause B was granted by the Circular No. 400-Edn.(B). the said memorandum is reproduced below:

"MEMORANDUM

The Governor is pleased to make, with effect from the 1st day of April, 1981, the following amendment in the Annexure 1 (hereinafter) referred to as the said Annexure to this Department Memo No. 372-Edn.(B) dated the 31st July, 1981 (hereinafter referred to as the said Memorandum);

AMENDMENT

In the said Annexure to the said memorandum, for sub-paragraph (b) of the paragraph (2) under "N.B. viz" (b) All existing Secondary School teaches who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale o qualification basis after five years' teaching counting from the date on which higher qualification was obtained. "the following shall be substituted:

(b) "All existing Secondary School Teachers who were

appointed with higher qualifications in subjects not relevant to their teaching or who improved their qualification subsequent to their appointment in subjects not relevant to their teaching will be allowed the higher scale on qualification basis with effect from the 1st April, 1981 or after five years' teaching counting from the date on which higher qualification was obtained, whichever is later."

6. It is clear from the said memorandum that by reason of clause B, the teachers who were appointed with higher qualifications in subject not relevant to their teaching subjects are being treated at par with those teachers who had improved their qualifications subsequent to their appointments in subjects not relevant to their teaching on or before the Notification dated 31st July, 1981, clause C was not amended.
7. It appears that the judgement of *Ashim Kumar Adhigir* (supra) was not placed before the subsequent Division Bench. In *Gousul Ajam* (supra) however it appears from the judgment in *Ashim Kumar Adhigir* (supra) that clause C was not considered. It is true that the amendments have not been properly drafted but it is clear from the entry of the amendments that the said Rule was not intended to give benefit to the teachers who improved their qualifications not in the relevant Division Bench judgment. The observation relevant to the issue of the coordinate Bench in *Gousul Ajam* (supra) is reproduced below:

"In our considered view, reading of G.O. 400 and G.O. 401 without reference to the parent orders (G.O. 372 and G.O. 33) would produce undesirable and inappropriate results.

For the present purpose, interest of justice would be sufficiently served if we extract the relevant portion of G.O. 372, reading as follows:

“N.B. (1) All existing Secondary School teachers will be allowed annual increments in the revised scales of pay provided that untrained teachers will have to get themselves trained within 5 years from April, 1981 failing which their increment will be stopped till they get themselves trained.

(2)(a) All existing Secondary school teachers who have improved their qualifications relevant to their teaching subjects will get the higher scale on qualification without any restriction;

(b) All existing Secondary School teaches who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on qualification basis after five years’ teaching counting from the date on which higher qualification was obtained.

(c) IN future, Secondary school teachers will be allowed higher pay scale on qualification basis only when they obtain such higher qualification in the subject relevant to their teaching/appointment.”

Sub-clause (b) of clause (2) supra was sought to be amended by G.O. 400. The original sub-clause (b) was substituted by the following sub-clause;

“All existing Secondary School Teachers who were appointed with higher qualifications in subjects not relevant to their teaching or who improved their qualification subsequent to their appointment in subjects not relevant to their teaching will be allowed the higher scale on qualification basis with effect from the 1st April, 1981 or after five years’ teaching counting from the date on which higher qualification was obtained, whichever is later.”

It is clear that the words “who were appointed with higher qualifications in subjects not relevant to their teaching” were incorporated by amendment. The effect of the amendment is now required to be considered.

A careful reading of G.O. 400 reveals that the same did not materially alter the position hitherto before existing qua the writ petitioner and consequently, did not confer on him any benefit, far less and right, since he had not been appointed as a teacher in Science group with higher qualification i.e. the Master's degree. Sub-clause (c) of clause (2) of G.O. 372 made the position clear that in future i.e. post 31st July, 1981, no secondary school teacher would be allowed higher scale of pay on qualification basis unless he obtains such higher qualification in the subject relevant to his teaching/appointment. The writ petitioner after his appointment in 1979 did not acquire the Master's degree in the non-relevant subject prior to 31st July, 1981. The position of the rules as it stood on 31st July 1981 and as applicable to the writ petitioner was the same even on 10th September, 1991 when G.O. 400 was issued introducing amendment and, therefore, there was/is no question of extending to him the benefit of higher scale of pay based only on consideration of G.O. 400.

Since the learned Judge did not advert to G.O. 372 in its material aspects and proceeded to grant relief only on the basis of a reading of the amendment introduced thereto by G.O. 400, we are of the considered view that G.O. 400 could not have come to the aid of the writ petitioner in claiming higher scale of pay on the basis of Master's degree in a subject not relevant to his teaching/appointment. There has been a clear error in the exercise of jurisdiction by the learned Judge whereby a teacher who was not entitled to higher scale of pay on qualification basis was made entitled thereto without plausible justification."

8. In view of the aforesaid, the writ petitioner is not entitled to higher scale of pay. The appeal fails.
9. However, we must record our appreciation for the assistance rendered by Mr. Sarwar Jahan, learned Advocate representing the writ petitioner. We also record our

appreciation for referring to the judgment of the coordinate Bench in Gousul Ajam (supra) against the interest of the writ petitioner.

10. The appeal and the connected application are accordingly dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)