

09.01.2023

WPST 86 of 2022

Court : 04
Item : 39
Matter : WPST
Status : DO
Transcriber: NANDY

Kishore Chandra Mukherjee
Vs.
The State of West Bengal & Ors.

Mr. Kashiswar Ghosal, Advocate

.....for the Petitioner

Mr. Tapan Kumar Mukherjee, Learned AGP

Ms. Saheli Mukherjee, Advocate

.....for the State

The affidavit-in-opposition and the reply filed by the respective parties are taken on record.

The petitioner approached the Tribunal for a direction upon the authorities to grant higher scale of pay, payment of arrears of salary and other consequential benefits attributable to the service rendered by the petitioner to the post held by him. It is not in dispute that the petitioner was appointed as 'Khalasi' in terms of the order dated October 27, 1979 issued by the Officer on Special Duty (Superintending Engineer), Irrigation & Waterways Directorate. The petitioner was appointed as temporary Gauge Reader in the work charged establishment on February 10, 1983. There was dispute amongst such employees relating to the benefit under the West Bengal Services (Revision of Pay & Allowances) Rules, 1981 and some of the similarly circumstanced employees approached the Court by filing CO 7590 (w) of 1995. The said writ-petition was disposed of directing the authorities to consider the representation of those writ-petitioners by passing a reasoned order within a specified time. Ultimately the Department extended such benefits to those writ-petitioners and since the present petitioner was not a party to the said writ-petition, he was denied such benefits.

In the course of hearing, it transpires that the minimum educational qualification for extending such benefit is Madhyamik Pass and since the petitioner did not produce relevant documents before the authority, he was denied such benefits.

The aforesaid position has not been disputed by the petitioner as well. According to the petitioner if he has not passed the Madhyamik Examination, then the case stands on a different footing that of the other writ-petitioner who approached the Court in 1995. At the time of hearing of the tribunal application, the petitioner disclosed the document i.e. the Admit Card and Marksheet wherefrom it appears that the petitioner could not obtain requisite marks in some of the subjects which led the Tribunal to hold that the petitioner have not passed the Madhyamik Examination and, therefore, is not entitled to claim the benefits on the ground of parity.

Obviously, the aforesaid findings of the Tribunal cannot be said to be infirm and/or illegal in view of the undisputed stand taken before it. However, in the instant writ-petition the petitioner includes the certificate issued by the West Bengal Board of Secondary Education relating to School Final Examination wherefrom it appears that the petitioner did not obtain the requisite marks in some of the subjects but it appears from another certificate issued by the West Bengal Board of Secondary Education that the petitioner as a supplemental candidate passed the School Final Examination (Supplementary) by obtaining the requisite marks and, therefore, the petitioner cannot be regarded as Madhyamik Fail.

Though the petitioner has produced those documents before the authority belatedly yet such delay

cannot be projected affront to deny the legitimate claim of the petitioner. Our attention is further drawn to the extract of the service book appended in affidavit-in-reply filed before us, wherefrom it appears that the claim pertaining to educational qualification is filled up with the note that the petitioner has passed School Final Examination in the year 1975.

The moment the certificate has been produced and annexed with the writ-petition; we do not feel that too strict interpretation is invited in the instant case. The moment the similarly circumstanced persons were granted benefit and the petitioner stand on the same pedestal that of the other writ-petitioners, the same should be extended to him also. The discriminatory act is viewed seriously and the action of the authority must be impartial as equality being hallmark of dispensation of justice.

Solely on the above ground, the order of the Tribunal is set aside.

The writ-petition being **WPST 86 of 2022** is **disposed of** directing the concerned authority to extend the benefit to the present petitioner as has been extended to the writ-petitioners of CO 7590 (w) of 1995 and shall see that such benefit is given to the petitioner within six weeks from the date of communication of this order.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

