

OD-1

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/157/2021
WITH
WPO/158/2019
IA NO: GA/1/2021
GA/2/2021

THE STATE OF WEST BENGAL AND ORS.
VS
BHUNESHWAR CHOUBEY AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
And
The Hon'ble JUSTICE UDAY KUMAR
Date : 3rd October, 2023.

Appearance:
Mr. Somnath Ganguly, Adv.
Mr. Vivek Basu, Adv.
Mr. Shoumya Samanta, Adv.
...For the State

Mr. Biswarup Biswas, Adv.
Mr. Subrata Bhattacharyya, Adv.
...For the Respondent No.1

Mr. Saktipada Jana, Adv.
...For the School Authority

The Court : After hearing the learned Advocate for the appellant State and perusing the application for condonation of delay, we find sufficient cause is shown for not preferring the appeal within the period of limitation. Accordingly, the application (IA No: GA/1/2021) for condonation of delay is allowed.

The appeal and the application are taken up together and disposed of by this order.

The appellant is aggrieved by an order 8th April, 2019 by which the District Inspector of School was directed to approve a post graduate scale of pay in favour of the writ petitioner in connection with his service as Assistant Teacher in the Social Science Group in the concerned school with effect from 26th November, 2010.

The ground of challenges is that the said order is in conflict with Section 14(3) of the Control of Expenditure Act, 2005.

The school concerned is a D.A. getting school. The relevant consideration is the staff pattern this is required to be taken into consideration which is clear from the Circular dated 4th September, 1998 that for school having additional teaching post in any group distribution of teaching group (Honours/Master Graduate) shall be limited to 50% of that group. The petitioner was appointed against the vacancy created by the retirement of Jain Shankar Singh. He was a permanent Assistant Teacher having post graduate degree and drawing post graduate scale of pay. Initially the post was not approved for which the writ petition was filed in which an order was passed on 26th November, 2010 directing the DI of School to consider and decide the claim of the petitioner for approval of a service in accordance with law.

In terms of the said order the D.I. has approved the post of the petitioner in the pass graduate scale of pay. An Office Memorandum dated 1st February, 2011 states that from the staff pattern it appears that out of the existing sanctioned post in Social Science Group, the petitioner can be

approved and allowed a pass graduate scale of pay in light of G.O. No.670 S. E. dated 4th September, 1998 read with G.O. No.1691 S. E. dated 20th September, 2001.

The Commissioner of School Education by an order dated 17th October, 2016 rejected the prayer of the petitioner for post graduate scale of pay upon consideration of G.O. No.670 dated 4th September, 1998 and G.O. No.1691 dated 20th September, 2001. The other reasons for rejecting the prayer of the petitioner appears to be that the petitioner is not entitled to a post graduate scale in the approved vacant post as per staff pattern of existing sanctioned post in Social Science group as on 1st February, 2011. The Circular dated 4th September, 1998 and Clause 2(c) permits two posts (one pass graduate and one Honours/ Master degree in Social Science). Clause 3 of the said G.O. further provides that for school having additional teaching posts in any group, the distribution of teaching post for Honours/Master degree holders shall be limited to 50% of that group. The communication of the principal of the school to the District Inspector of School dated 10th July, 2012 also shows, *inter alia*, that according to the staff pattern as on 1st February, 2011, the school had four sanctioned post of Assistant Teachers in Social Science Groups and out of the four, three teachers are working and one post is vacant. Out of the three teachers who are presently working, one teacher, namely, Sanjay Dubey is enjoying post graduate scale and R.P. Singh was not entitled to a post graduate scale since he has a graduate degree. The letter dated 5th January, 2016 forwarded to the Commissioner of School Education also highlighted that the total number of sanctioned post as on 1st February, 2011 is identified in

the Social Science Groups and only one out of the three teachers who are working, namely, Sanjay Dubey is enjoying post graduate scale with History.

Having regard to the staff pattern and Clause 2(C) read with Clause 3 of the Circular dated 4th September, 1998, there is no reason for denying the petitioner post graduate scale of pay particularly when one of the other three teachers is already enjoying such benefit (Sanjay Dubey) and R.P. Singh is not entitled to by way of his qualification.

In such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.

Accordingly, the appeal (APOT/157/2021) and the connected application for stay (IA No. GA/2/2021) also stand dismissed.

(SOUMEN SEN, J.)

(UDAY KUMAR, J.)