

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

FMA 538 of 2020
With
I.A. No. CAN 2 of 2019(Old No. CAN 9035 of 2019)

**The State of West Bengal and Anr.
Vs.
Bakul Kumar Sing and Ors.**

For the Respondent/ : **Ms. Santi Das**
Writ Petitioners **Ms. Satabdi Das**

Harish Tandon, J.:

At the relevant point of time, there were divergent opinions expressed by the several Benches of this Court on the core issue, some of the views which were taken on the entitlement of the teacher acquiring a higher scale

of qualification to be governed by the provision contained in the West Bengal Control of Expenditure Act, 2005; whereas the other views were that in the event the higher qualification is acquired prior to coming into force the said Act, in absence of any expressed intention, it cannot operate retrospectively. Because of the uncertainty prevailed at the relevant point of time, the other Benches referred the matter to the Hon'ble Chief Justice to constitute a Larger Bench by framing questions to be answered so as to bring uniformity and/or certainty in law. On the other hand, some of the matter approached before the Hon'ble Supreme Court where notices were issued and upon being apprised of the fact that a Larger Bench is constituted to answer the identical or connected issues, the same may be decided by the Larger Bench. Ultimately, the Larger Bench in a lead case (***Utpal Kanti Karan vs. State of West Bengal & Ors. reported in (2024) SCC Online Cal 2274***) along with the several other writ petitions answered the references on February 7, 2024.

The Counsel for the State as well as the respondent are uniform in their submissions that once the Larger Bench has decided the references one of which is a question involved in the instant appeal, the instant appeal can be disposed of on the basis thereof. In order to find out whether the question involved in the instant appeal is one of the questions being a reference before the Larger Bench it would be apposite to narrate salient facts and the point involved in the instant appeal.

The respondent herein acquired the Graduate degree in B.Sc (Bio) Pass in the year 1995 and further successfully completed the B.Ed degree

course in the year 1997. Subsequently, he acquired a B.P. Ed degree from Banipur under Calcutta University in 1998 and further acquired a Master Degree in Physical Education (M.P. Ed) in the year 2000-01 which was a regular 2 years course. Pursuant to the advertisement published by the School Service Commission for recruitment to the post of an Assistant Teacher in Physical Education, the Respondent no. 1 offered his candidature and was selected for appointment in Ganeswari Devi Hemangini School (HS) as an Assistant Teacher in Physical Education. The said appointment which was initially provisional was duly approved by the District Inspector of School. In the year 2001, the respondent made a representation to the School Authority for study leave between the period from 1st March, 2001 to 30th March, 2001 which was duly accorded and the resolution in this regard was also sent to the District Inspector of School. After obtaining the Post-Graduate Degree in Physical Education, a representation was made to grant him the Post-Graduate scale of pay which was rejected by an order dated 3.9.2014. The Respondent no. 1 approached this Court by filing a writ petition and the Single Bench held that since the respondent acquired the Master Degree qualification in the year 2001 much prior to coming in force of the West Bengal Control of Expenditure Act, 2005, the authorities cannot reject the prayer for higher scale of pay in commensurate with the Master Degree and directed the authorities to extend such benefit on and from the last day of the examination for higher qualification.

As indicated above because of the uncertainty in the several decisions rendered by this Court, the State challenged the said order in the instant appeal.

One of the points involved before the Special Bench was whether a teacher who has been appointed through the West Bengal School Service Commission in Pass category can get the benefit of a Post-Graduate qualification for the purpose of getting Post-Graduate scale of pay. Before coming in force of the Control of Expenditure Act, 2005, the Government issued an order no. 735-SE(S)/SP-132/202 on 3rd June, 2002 clarifying such situation to the effect that the teacher who have obtained Post-Graduate Degree in subject relevant to their appointment prior to their date of joining in the schools/madrasahs or who have completed their course of studies at Post-Graduate level in the special reliefs to their appointment or have appeared at the examination but result of that examination was not published till the date of their joining, may be allowed higher scale of pay w.e.f., the date of joining or the date following the last date of examination (both theoretical and practical) whichever is later.

Subsequently, the said circular/order as indicated above was revised by a further Circular no. 134-SE(S) dated 3rd November, 2004 in the following:

“Upon due consideration of the above facts the Government in School Education Department has decided that Hons. Graduate teachers of Hons./Post Graduate category of Non-Govt. Secondary Schools including Madrasahs appointed through West Bengal S.S.C. who obtained post graduate degree in subject relevant to their appointment prior to their joining in school/madrasahs shall be eligible for Post Graduate scale of pay from the date of joining. The Hons. Graduate teachers of Hons/Post Graduate category who have completed their examination before joining but results were published after joining

shall be deemed to have been eligible to get the Post Graduate scale of pay from the date of publication of results of such Post Graduate degree relevant to their appointment. The Hons. Graduate teachers of Honours/Post Graduate category of Non-Govt Secondary aided schools including Madrasahs appointed through S.S.C and who have improved or will improve qualification after joining the posts with due permission from the authority competent to issue such permission, be eligible for Post Graduate scale on successful results of the last examination leading to the Post Graduate degree relevant to their appointment from the day following the last date of the examination (both theoretical and practical). The other paragraphs and sentences of the G.O. remain unchanged. This will come into force with immediate effect.”

(emphasis supplied)

The Special Bench held that the Control of Expenditure Act, 2005 cannot have any retrospective operation nor will stand as a bar in extending the benefit of a higher scale of pay in the event the permission was granted by the managing committee and the staff pattern permits the teacher having such higher qualification in the relevant subject on the basis of the order dated 3rd June, 2002 as revised in Circular dated 3rd March, 2004.

The Special Bench thus answered the said point in the following:

“273. On the basis of the aforesaid discussion we answer the reference in the manner following:

a). Enhancement of pay on acquisition of higher qualification during the service career is dependent upon the relevant rules operating at the time of acquisition of higher qualification and cannot be claimed as a matter of right in absence of Rules.

For example, a teacher joined the school with a pass graduate degree and during his service career the teacher enhanced his qualification and claimed higher scale of pay on the basis of the said degree. The said claim has to be decided on the basis of the relevant rules existing at the time of his acquiring higher qualification. If he has joined the school with a pass graduate degree after the government circular dated 12th February, 1999 he would not be entitled to post graduate scale of pay unless the teacher is covered by the Government Order No. 735-SE(S)/SP-132/2022 as revised by the Circular No. 134-SE(S) dated 3rd November, 2004. Any other interpretation would encourage a back door entry. A teacher upon acquiring higher qualification can always compete in the recruitment process for a post commensurate with the higher qualification and therefore the question of stagnation does not arise. However, the State shall formulate a scheme for incentives to teachers who may have joined the school with a pass graduate degree but enhanced his/her qualification with the permission of the Managing Committee and the D.I irrespective of the staff pattern as such incentive would encourage teachers to perform better and it will act as a cushion against stagnation.

b). We answered the question in the negative.

c). Vires of Section 14 and 20 of the West Bengal School (Control and Expenditure, Act), 2005 is not under challenge. The ground of challenge was that persons who have received benefits earlier under court orders or by the government, could they have been denied similar benefits to persons similarly placed. In absence of pleading to the effect that the said Rules are ultra vires this issue cannot be decided. [see Union of India v. E.I.D. Parry (India) Ltd. (2000) 2 SCC 223].

d). We are of the view that Tarak Chandra Roy (supra) has been correctly decided. We are of the view that Tarak Chandra Roy (supra) has to be read along with the Government Order dated 3rd June, 2002. However, the said judgment has to be read with the Order No. 735-SE(S) SP-132/2002 as revised by the Circular No. 134-SE(S) dated 3rd March, 2004. The said judgment has also to be read in terms of the interpretation of the said two government orders in this judgment.

e). The reference of Nirmaledu (supra) is answered in the negative with the qualification as provided in answers to question (a) and (d) above.

f) In respect of Anupam Santra (supra) and Chandra Bhusan Dwivedi (supra) we are of the view that the date of convocation is not relevant for the purpose of entitlement to higher scale of pay. The relevant date would be the declaration and/or publication of results and the teacher should be entitled to draw pay of post graduate teacher category in terms of Government Order No. 1595-SE(S) dated 26th December, 2005.

g). If a teacher has partially completed higher study before entering service he/she would come under purview of G.O. No. 1595-SE(S) dated 26th December, 2005 and the question of taking permission from DIS-SE concerned would not arise.

h). With regard to the effect of omission of Clause/Rule 12(5) of Government Order No. 25-SE(B)/IM-102/98 dated 12th 187 February, 1999 in G.O. No. 46/SE(B)/1/2009 dated 27th February, 2009 cannot operate retrospectively and take away the benefits available under the Rule/Rules in force at that time. The said Rule cannot be given effect to invalidate benefits granted to the employees under Clause 12(5) of the Government Order dated 12th February, 1999. However, with regard to the benefits to be enjoyed under the Government Order dated

12th February, 1999 vis-à-vis the Government Order dated 27th February, 2009 the ratio in Mala Sanyal (supra) shall be followed.”

In view of the judgment a Special Bench as quoted above we find that the case of the appellant comes within the purview of the aforesaid order/circular as discussed hereinabove and, therefore, such entitlement cannot be defeated taking course to the provisions contained under the Control of Expenditure Act, 2005 as it has no retrospective operation.

We, thus, do not find any infirmity and/or illegality in judgment of the Trial Court of the Single Bench.

The appeal is dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)