

MAT 76 of 2024
with
IA No. CAN 1 of 2024
(Shikha Ghosh Roy Vs. State of West Bengal & Ors.)

Mr. Tulsi Das Maiti
Mr. Pradip Kumar Ghosh
..... For the appellant

Mr. Moniruzzaman
Mr. Swapan Kumar Chatterjee
..... For the State

Mr. Bhaskar Prasad Vaisya, Ld. AGP
Mr. Nilay Baran Mandal
.... For the DPSC

The present appeal has been preferred challenging an order dated 30th November, 2013 passed by the learned single Judge in a writ petition being WPA 17640 of 2023. By the said order, the writ petition was dismissed since, according to the Court, the demand towards refund of an amount, as challenged by the appellant, involves disputed question of facts.

Mr. Maiti, learned advocate appearing for the writ petitioner/appellant submits that the appellant after passing the Madhyamik Examination in the year 1978 and the Higher Secondary Examination in the year 1981, took admission in Junior Basic Training Course (in short, JBT) and emerged to be successful in the final examination conducted by the Directorate of School Education in the year 1986. Considering the qualification acquired, the appellant's name was sponsored by the Employment Exchange as a trained candidate for appointment to the post of assistant teacher in a primary

school. The said recruitment process was thereafter conducted by the Kolkata Primary School Council (in short, KPSC) in the year 2006. The panel pertaining to the said selection process was published in the year 2009 and the appellant was empaneled and granted appointment to the post of assistant teacher in a primary school in the scale of pay of Rs.5,400/- – 25,220/- plus Grade Pay of Rs.2,600/- which was the trained category scale of pay, as would be explicit from the Revision of Pay and Allowance Rules, 2009.

He further submits that since such appointment, the appellant discharged her services satisfactorily and attained the age of superannuation on 20th February, 2023. Surprisingly thereafter, she was served a memo dated 7th July, 2023 issued by the respondent no. 6 asking her to submit a declaration for the deduction of an overdrawn amount of Rs.1,47,054/- from the gratuity or to refund the same in TR Form No. 7 for further process of the pension file since an objection has been raised by the DPPG and PSA in terms of government order dated 4th March, 2013 regarding 'A' category scale.

He contends that the appellant was appointed and allowed to discharge her services till the date of her retirement without raising any objection whatsoever. It is only after cessation of employer-employee relationship on 28th February, 2023, the impugned memo dated 7th July, 2023 was illegally issued and disbursement of the due

retiral benefits had been withheld. Such arguments, as urged, were glossed over by the learned single Judge and no findings were returned and the appellant's claim was rejected by a cryptic order.

Per contra, Mr. Moniruzzaman, learned advocate appearing for the State respondents submits that the National Council for Teachers Education (in short, NCTE) prescribed the qualification of the teachers in schools, as referred to in the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the Act of 2009), *vide* memo dated 23rd August, 2010. On the basis of the same, a memo dated 28th March, 2012 towards requisite qualifications of primary school teachers was issued by the Principal Secretary, School Education Department stating, *inter alia*, that the notification has been '*issued in the interest of and for information of all Primary Teachers in the State who have been duly appointed to any Govt./Govt. Aided/Sponsored Primary Schools in the State*'. Subsequent thereto, a memo dated 4th March, 2013 was issued by the Joint Secretary, School Education Department granting permission to the in-service teachers, who were appointed after 31st December, 2005 to complete one year bridge course through NCTE recognized institution. The memo also reads that in the event the bridge course is successfully completed, the incumbent would be allowed 'A' category scale of pay from the date of his/her joining

the post or the date of attainment of the qualification whichever is earlier. In compliance of such directive, the appellant subsequently participated in the bridge course. The appellant was thus not entitled to the trained category scale of pay from the date of her joining and accordingly, the refund of Rs.1,47,054/- was claimed *vide* memo dated 7th July, 2023 and there is no infirmity in such decision.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the appellant's name was sponsored by the Employment Exchange treating her as a trained candidate for participating in the recruitment process for appointment to the post of primary teacher of the year 2006. The appellant participated and was empaneled in the year 2009. Thereafter, she was appointed to the post of primary teacher by a memo dated 19th May, 2011. On and from the date of appointment she was granted the pay scale of trained teacher which is the 'A' category scale of pay.

The issue which arises for consideration, is as to whether on the basis of the memo dated 20th February, 2013 and 4th March, 2013, the respondents can direct the appellant to refund the amount of Rs.1,47,540/-, since in compliance of the same, the appellant had participated and completed the one year bridge course.

The appellant's name was sponsored by the Employment Exchange as a trained candidate for the recruitment process of the year 2006, i.e., prior to issuance of the NCTE guidelines and promulgation of the said Act of 2009. No objection whatsoever was raised at any juncture till the date of the appellant's retirement as regards her entitlement to the 'A' category scale of pay. There had been no suppression of fact on the part of appellant and it is also not a case that she had practised fraud to avail the said scale of pay.

The argument of Mr. Moniruzzam that as the appellant had participated in the bridge course, she accepted the conditions imposed by the memo dated 28th March, 2012 and 4th March, 2013 and that as such she was not entitled to the 'A' category scale of pay from the date of her appointment till the date she passed the bridge course, is not acceptable to us. It is not a case that upon passing the bridge course, the appellant was granted any higher scale of pay. It is also not a case that there was any condition in the recruitment process to pursue any bridge or there was any deficiency in the appellant's qualification at the time of appointment. The memo dated 4th March, 2013 *inter alia* refers to teachers, who had completed one year Diploma in Primary Teacher Training Course.

Furthermore, the DPPG is not the authority competent to decide the admissibility and approval of a

scale of pay. Computing authorities cannot direct refund. Pension is a matter of right and such right is in the nature of a property in the hands of the employee and not a bounty. The appellant had not suppressed her qualification and had not practiced any fraud whatsoever to avail the pay scale which was granted to her. In the said conspectus, it would be iniquitous and harsh to direct refund of the amount of Rs. 1,47,054/- or to deduct the same from the gratuity amount of the appellant.

For the reasons discussed above, the order impugned in the present appeal as well as the impugned memo dated 7th July, 2023 issued by the respondent no.6 are set aside and the respondents are directed to disburse all the pensionary benefits of the petitioner including gratuity and the provident fund dues and to commence disbursement of monthly pension within a period of 8 (eight) weeks from the date of communication of this order along with a copy of the writ petition.

The appeal and the connected application are, accordingly, disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)