

WPA 4312 of 2015
Md. Tarif Hossain-vs-State of West Bengal & Ors.

11.12.2024

ct.25, sl.1

sk

Md. Manuwar Ali
Ms. Moumita Karmakar
...for the petitioner .

Mr. Milon Maity
...for the State respondent.

This writ petition is directed against the order of the respondent/Commissioner of School Education, West Bengal dated May 6, 2014. By dint of the same, the State respondent has turned down the writ petitioner's prayer for grant of higher scale of pay pursuant to his improving to his qualification to the Master Degree and directed that the petitioner's pay shall be fixed in a scale of pay as per his qualification mentioned by the West Bengal School Service Commission in the recommendation letter.

The said respondent in the impugned order as mentioned above has relied on the notification No. G.O. No. 155 SE (B)/10M-102/98 dated July 13, 1999.

The writ petitioner was appointed as an Assistant Teacher in died-in-harness category through the West Bengal Service Commission in the respondent School. His service was approved with effect from July 11, 2001. Since 2001, the petitioner has been working as

an Assistant Teacher in Language group in the said School.

Later on by virtue of the prior permission granted by the Managing Committee, the petitioner enrolled himself in the Master Degree course and completed the final examination thereof on September 18, 2004.

Thereafter, the petitioner has prayed for grant of higher scale of pay to him meant for the post graduate qualified teachers in relevant subjects with effect from September 20, 2004. The relevant documents of the School Managing Committee forwarded to the District Inspector of Schools, Secondary Education, Murshidabad/respondent no. 3 and from his office to the Commissioner of School Education/respondent no. 2. The respondent no. 2 has passed the impugned order on May 6, 2014, thereby rejecting the petitioner's prayer as above.

Being aggrieved the petitioner has filed the present writ petition.

Learned advocate appearing for the petitioner has submitted on the basis of the judicial pronouncement of this Court as mentioned above that the G.O.No. G.O. No. 155 SE(B)/10M-102/98) dated July 13, 1999 would not be applicable in case of the writ petitioner. Insofar as the same has already been quashed and set

aside by this Court reported in 2004(2) CLJ 493 Partha Chatterjee –vs- State & Ors.

The judgments referred to as follows:-

He would submit further that the judgment delivered by the Court in Partha Chatterjee's case(supra) has read in its finality and later on in its order dated December 6, 2016 in the case of Subhas Chandra Murmu(supra). The Court has relied on the judgment of Partha Chatterjee(supra) and turned down the decision of the respondent authority therein which was found on the Memo No. G.O. No. 155 SE(B)/10M-102/98 dated July 13, 1999. He would further refer to the judgment of the Hon'ble Division Bench of this Court in Nita Dey Chandra's case (supra). He submits that in a similar case where the appellant improved her qualification. The Court was pleased to allow her benefit of a ROPA 1999 Clause 12(3) therein.

Mr. Maity, learned advocate appearing for the State respondent. He has raised strong objection as to the contentions and prayer of the petitioner on the ground that the writ petitioner being appointed from the West Bengal School Service Commission recommendation. The respondent authority has rightly applied the provisions under Government Notification No. 155 SE(B)/10M-102/98 dated July 13, 1999 in the said

impugned order and that there would not be any necessity for this Court to interfere therewith.

Undoubtedly and admittedly in the case of Partha Chatterjee(supra) the Notification G.O. No. 155 SE(B)/10M-102/98 dated July 13, 1999 was nought by quashing the same.

The relevant portion of the above judgment be quoted as hereinbelow:

“Fixation of different scales of pay for teachers of the same or different aided schools, with the same qualifications, who perform the same duties and functions and are hence equally circumstanced violates principles of equal work for equal pay and offends Article 14 of the Constitution of India, more so in the absence of specific rules prescribing the requisite educational qualifications for teachers of different classes”.

The G.O. No. 155 SE(B)/10M-102/98 having been set aside and the order of the Court in Partha Chatterjee’s case(supra) have reached to its finality, there would not have been further scope for the said respondent authority to apply on the provisions there under in case of the writ petitioner. Since the respondent no. 2 has decided in the impugned order dated May 6, 2014 only on the basis of the said

notification, his decision as above is perverted and illegal.

On the other hand, the Court finds in the case of the writ petitioner the provisions under ROPA 1999 would be applicable and as per ROPA 1999 Clause 12(3), the writ petitioner shall be entitled for grant of higher pay scale since he has duly qualified. He has been qualified in the relevant subject of teacher with the higher degree.

Let the relevant portion be quoted as hereunder:-

“On February 12, 1999 West Bengal Government issued an order being No. 25-SE(B)/IM-102/98 at page 63 of the compilation and the relevant portion of the said Clause 12(3) reads as under:-

“(3) All teachers including Physical Education Teachers and Librarians of Secondary Schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualification, whichever is later”.

On the discussion as above, the Court finds that the impugned order being not in conformity with the rules applicable in case of the writ petitioner and thereby violating his vital rights of guaranteed under

the Constitution, the Court finds the same to be not maintainable and liable to be set aside.

Hence, this writ petition is allowed with the following directions:-

- (i) The impugned order dated May 6, 2014 is set aside.
- (ii) Let the respondent no. 3 immediately extend the benefit of higher pay scale to the writ petitioner commensurate to his Master Degree Course qualification and with h effect from subsequent date of the last date of his examination.
- (iii) The entire exercise as above shall be concluded by the said respondent within a period of four weeks from the date of communication of copy of this order.

The writ petition is disposed of.

Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)

