

13.06.2024
Court No.13
Item No. 23
ap

WPA 13157 of 2024

**Tapas Kumar Majhi
Vs.**

The State of West Bengal and Ors.

Mr. Bhagbat Chaudhuri,
Mr. Monojit Chatterjee,
Mr. N. A. Zinna.

... For the Petitioner.

Ms. Sumita Sen

... For the DPSC, Birbhum.

Mr. Ratul Biswas,
Mr. Kaushik Chowdhury.

...For WBBPE.

Mr. Pankaj Halder,
Mr. Salauddin Ahamed,
Mr. Sanatan Panja.

....For the State.

1. Affidavit of service filed by the petitioners be taken on record.

2. The issue to be decided here is, from which date are the petitioner entitled to 'A' category pay scale.

3. The petitioner is working teachers who entered the service of the DPSC Birbhum without a valid PTTE qualification. He undertook the course to obtain the qualification during his employment.

4. Admittedly each of the petitioner underwent a one year PTTE course with the sanction of the DPSC at institutes recognised by the West Bengal Board of primary Education (WBBPE).

5. The DPSC, Birbhum represented by Ms. Sumita Sen, has advanced several arguments in support of the

contentions that the petitioner should be entitled to 'A category' pay scale only after the next day of the last date of examination of the teachers training course undergone by the petitioner.

6. Reliance is firstly placed by the Counsel for the DPSC on a decision of a Division Bench of this Court in ***Tulsi Baksi Vs. State of West Bengal and Ors.*** reported in **(2008) 4 CHN 789**. The proceeding was a Public Interest Litigation.

7. The issue in the ***Tulsi Baksi case (Supra)*** was that, since the NCTE prescribed and recognized only two year PTTE courses and the Institutes concerned where the petitioner undertook the course were not recognized by the NCTE, whether the courses undergone, inter alia, by the petitioner constituted a valid PTTE or not.

8. In the PIL it was ultimately held that since the institutes and the courses, were not recognized by the NCTE the courses undergone by the writ petitioner could not be accepted. The institutes were directed to refund the fees paid by the writ petitioner. It also follows as a corollary that the courses being only for one year were even otherwise not recognizable by the NCTE.

9. The petitioner appears to be caught between the devil and the deep sea. He had undergone the one year course on the basis of its recognition and the recognition of such institutes offering such course by the WBBPE

and with the permission of the DPSC. Such one year course was invalid as per the high court and the NCTE. The petitioner wasted an year of his career and life.

10. The Board/State/DPSC having realized its error in misleading the teachers approached the NCTE for a solution. The solution arrived at was that, as a onetime measure, inter alia, the petitioner would be allowed to undergo a “Bridge Course” for one further year in addition to the one year course already undergone by them. The teachers would then be deemed to be lawfully qualified.

11. It is only thereafter that the examination for the one year course held in 2005-06, was held in the year 2011. It is from the day after the last day of the said examination, according to the DPSC that the petitioner is entitled to ‘A’ category pay scale. Therefore even the DPSC has not taken the one year bridge course as a condition precedent for the ‘A’ category pay scale to the petitioner.

12. Learned Counsel for the writ petitioner referred to the circular dated 4th March, 2013 issued by the Joint Secretary, School Education Department, Elementary Education Branch from which there could be an interpretation that the actual qualification of PTTE and the consequent ‘A category’ was referring to only a one year course as recognized by the Board.

13. The teachers have now also completed the one year bridge course. They however claim 'A' category pay scale from the day of completion of the original one year PTTE course i.e. June 2006, which they joined at the instance of the DPSC and the WBBPE.

14. Ms. Sumita Sen, learned counsel for the DPSC, Birbhum referred to a decision of a Full Bench in the case of ***Utpal Kanti Karan Vs. State of West Bengal and Ors.*** which was heard in APO 343 of 2013 along with several other writ petitions dated 7th February, 2024 and the circular of the Education Department, Budget Branch of the Government of West Bengal dated 17th September, 1984. It was held therein that the benefit of a higher scale of pay upon acquiring a higher qualification accrues only from the last date of such examination. The law followed across the country and in the State is as such.

15. The said principle, however, may not apply in the peculiar facts and circumstances of the case of the writ petitioner. The petitioner believed in and relied upon the Board and the DPSC and undertook the one year course, and legitimately expected to get the 'A' category pay scale after one year in June 2006.

16. The Board and the DPSC are, therefore, estopped from going back on their representation that the petitioner was be undergoing a valid training course.

The writ petitioner must be understood to have altered his position irretrievably and has acted upon the same.

17. The said decision of the ***Tulsi Bakshi case (Supra)*** must be deemed to have been eclipsed since after the Board, as a special case, allowed the petitioner not only to sit in the final examination conducted by the said unrecognized institute but also to subsequently undergo a one year bridge course.

18. By reason of this argument, the right of the petitioner under the circular dated 4th March, 2013 (supra) would revive automatically. In effect, the petitioner would be entitled to 'A' category pay scale upon the expiry of the one year course in 2005 – 2006 when as the final examinations were to be conducted in June 2006.

19. The DPSC has itself argued that, upon successful completion of examination in the one year albeit held after 5 years in 2011, the petitioner would be entitled to the 'A' category pay scale. The subsequent undergoing of the one-year bridge course, therefore need not be counted, if completed successfully. The petitioner therefore cannot be penalized for the delay of 5 years in the holding of the exam for the course of 2005-06.

20. The legitimate expectation, on the part of the petitioner, of 'A category' pay scale accruing in June

2006 crystallized and matured into promissory estoppel with the subsequent steps taken by the Board.

21. Undergoing the examination in the year 2011 of a course complete in June 2006 and the subsequent one year bridge course constitutes an ex post facto regularization, of what can be at best categorized as an irregularity in the one-year course undertaken by the petitioner for no fault on his part. Such irregularity must be deemed as having occurred solely at the instance of the Board.

22. The issue as raised by the DPSC, Birbhum does not appear to have been raised before by any DPSC in the State. Some orders recognizing the entitlement of the petitioner to 'A category' pay scale from June 2006 are:-

Order dated 12th December, 2014 passed in WP 11809(W) of 2013 (Aswini Kumar Sahoo Vs. State of West Bengal & Ors.) where the State had accepted and acted upon.

Order dated 29th February, 2024 in WPA 30676 of 2014 (Madan Kumar Ray & Ors. Vs. The State of West Bengal & Ors.).

Order dated 8th February, 2024 in WPA 13194 of 2019 (Shibram Debnath & Ors. Vs. The State of West Bengal and Ors.). The said Shibram Debnath & Ors. (supra) was accepted and

implemented by a clarification sought by the State on 20th February, 2024.

Order dated 2nd April, 2024 in WPA 8298 of 2024 (Parameswar Kisku & Ors. Vs. The State of West Bengal and Ors)

Order dated 3rd April, 2024 in WPA 9201 of 2024 (Swapn Kumar Sarkar & Ors. Vs. The State of West Bengal & Ors.).

Order dated 28th February, 2024 in WPA 4378 of 2024 (Menoka Murmu Vs. The State of West Bengal & Ors.).

23. Each of the aforesaid orders appear to have been implemented by the concerned DPSCs.

24. In the backdrop of the above, the contention of the DPSC Birbhum advanced today, appears to be an afterthought.

25. For the reasons stated above, it is directed that the 'A category' pay scale shall be given to the petitioner with effect from June 2006, when the petitioner completed the one year teacher training course when final examination ought to have been held initially.

26. With the aforesaid directions, the writ petition is disposed of.

27. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)