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23.04.2024
Ct. No. 11
rrc

WPA 10494 of 2012
[Subhra De (Maiti) Vs. State of West Bengal & Ors.]

Mr. Ekramul Bari
Syed Mansur Ali
Sk. Imtiaj uddin
..... For the petitioner

Mr. Pinaki Dhole
Ms. Indrani Nandi
..... For the State

Throwing challenge to the justifiability of the order passed by the District Inspector of Schools under memo. *vide* no. 253/S dated 22nd February, 2011 and praying for a direction upon the respondents to release the salary of the petitioner in terms of the provision of ROPA, 2009, the present writ petition has been instituted.

Before addressing the issue involved in the writ petition, the essential facts which are crucial for the resolution of the issue need to be appreciated.

Through a selection process the petitioner was appointed as an assistant teacher of Vidyasagar Vidyapith Girls' High School (H.S.) [in short, the school]. She joined the school on 8th July, 1987. Her appointment was approved by the jurisdictional District Inspector of Schools *vide* his memo dated 25th September, 1987 with a rider '*that the appointment is approved on condition that she will get the pass graduate scale of pay*'.

The petitioner all along drew pass graduate scale since the date of her joining and enjoyed the subsequent upward

revisions of pay but fixation of her scale of pay as per ROPA Rules, 2009 was withheld for reason not known to her.

On all sudden, the D.I of Schools addressed a letter to the Secretary of the school vide. a memo. *vide.* no. 253-S dated 22nd February, 2011 contending that the petitioner was not entitled to draw post graduate scale of pay and as such, a direction was given to the Secretary to prepare an over-drawal statement and deposit the same to the treasury in proper Head of Account.

The school authority responded to the letter stating that the petitioner was entitled to draw '*Hons. Graduate Scale of Pay*' w.e.f. her date of joining and the then Managing Committee might omit to bring it to the notice of D.I. of Schools and due to omission of the Managing Committee, the petitioner should not be penalized but such response did not produce any fruitful result which promoted petitioner to question the propriety of that order dated 22nd February, 2011 in this writ petition and pray for other ancillary reliefs.

Mr. Bari, learned advocate appearing for the petitioner inviting my attention to the Rule 16(3) of ROPA Rules, 1990 seeks to contend that in terms of this rule, the petitioner was allowed to draw Honours scale of pay. It is sought to be urged by him that incorporation of such condition in the letter of approval cannot thwart the operation of the ROPA Rules, 1990 and he anticipates that such condition was inserted in the letter of approval considering the issue of staff pattern but in repetitive pronouncements of this Court, it has been ruled that staff pattern cannot stand in way of granting higher scale of pay in terms of ROPA Rules. In aid of such

contention, he cited two unreported decisions of this Court, out of which, one was passed by a Hon'ble Division Bench of this Court in MAT 513 of 2014 (State of West Bengal & Ors. Vs. Jayanti Basak & Anr.) and the other was passed by a coordinate Bench in WPA 2933 of 2014 (Bula Mondal Halder Vs. State of West Bengal & Ors.).

In response, Mr. Dhole, learned advocate appearing for the State vehemently opposed such contention of Mr. Bari contending that the petitioner accepted the condition, as imposed while granting approval of her appointment. He argues that the petitioner has never challenged the act of imposition of such condition in any forum. According to him, omission to challenge such condition is akin to waiver of her right to challenge the same. He seeks to urge that at this stage, the petitioner cannot be allowed to agitate such issue.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

There cannot be any quarrel in accepting the fact that the petitioner joined the school with Honours degree in Geography on 8.7. 1987.

The State introduced a 'Career Advance Scheme' in Rule 16(3) of the ROPA Rules, 1990 with an objective to encourage and/or inspire the teachers of the State to improve their qualification on the subject relevant to their teaching to ensure so that a quality education could be imparted to the students. The provision incorporated in 16(3) of ROPA Rules, 1990 would be indicative of such intention of the State. For convenience, it would be apt to reproduce Rule 16(3) which reads thus:-

“16(3) All teachers and librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subject or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications with effect from the 1st January, 1986 or the date of improving qualification whichever is later.

This principle shall apply mutatis mutandis to the teachers/librarians of other institutions/organisations as mentioned in Annexure-1.”

Therefore, 16(3) of ROPA Rules, 1990 confer a substantive right upon a teacher to get higher scale of pay who was appointed with higher qualification in the subject of his/her teaching w.e.f. 1.1.1986. The incorporation of the group of words namely, *‘who were appointed with higher qualification..’* in Rule 16(3) suggests that the legislature was aware of facts that many teachers having joined with higher qualification in the subject relevant to their teachings were being denied higher scale of pay. In two contingencies this could have happened, namely, either the teacher joined in Honours Category with Masters Degree or the teacher concerned joined in pass category with post graduate degree.

Insertion of the condition limiting the petitioner’s pay to pass graduate scale suggests that the petitioner joined the school as an Assistant Teacher in social group under pass category according to staff pattern prevalent at time of her initial appointment but the D.I. of Schools overlooked it that the legislature consciously omitted to incorporate any condition relating to staff pattern in Rule 16(3).

I may usefully refer the decision rendered in case of Partha Chatterjee vs. State of West Bengal & Ors., reported at (2004) 2 CAL LT 610 (HC) [in case of Bula Halder Mondal,

the decision of Partha Chatterjee was referred]. In case of Partha Chatterjee (supra), while dealing with the same issue, a coordinate Bench of this Court observed that where two sets of teachers obtaining the same educational qualification are performing the same work, then the Government authority cannot treat the said teachers differently in the matter of fixation of salary.

Basically, staff pattern was introduced in a school on the basis of the administrative order which has no potential to overrule the statutory rules like ROPA Rules, 1990.

Needless to state that a service is a contract between the employer and employee. The basic principle relating to contract says that if one part of contract is lawful and other is in conflict with law and the lawful part can be severed from the other part of the contract, the lawful part can be given effect to whereas the latter part can be aborted. After promulgation of the ROPA Rules, 1990, the condition inserted in the letter of approval of the petitioner's appointment stood in conflict of the provisions of Rule 16(3) of the ROPA Rules, 1990.

Therefore, in view of the foregoing analysis, the only analogy which can be drawn is that there was no illegality in extending the benefits of higher scale of pay in favour of the petitioner w.e.f. 8.7.1987.

I am informed that in terms of the letter of the D.I. of Schools dated 22.02.2011, the respondents stopped payment of 'Hons. Graduate Scale of Pay' in favour of the petitioner and the petitioner has retired from service in 2021 on attaining the age of superannuation.

In such conspectus, to give a quietus to the dispute, as brewed up between the parties and taking cognizance of the subsequent events, the writ petition is disposed of directing the District Inspector of Schools to release the Honours Graduate Scale of Pay in favour of the petitioner from the date it was stopped, disburse the benefits of ROPA Rules, 2009 and pay the arrears of salary and other admissible dues accrued to the petitioner on the basis of such Honours Scale of Pay.

The school authority and the D.I. of Schools taking a coordinated effort shall forward pension-related papers of the petitioner to the competent authority to ensure that the terminal benefits of the petitioner can be released in her favour without unnecessary delay. It is clarified that the petitioner's last drawn pay, pension and terminal benefits shall be calculated on the basis of Honours Graduate Scale of Pay.

With these observations and order, this writ petition is, thus, 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.)