

Court No. 22
08.01.2024
(Item No. 58)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 11694 of 2012

Mrityunjay Kumar
VS
The State of West Bengal & Ors.

Mr. L. K. Pal
Mr. B. B. Bhula
..... for the petitioner
Mr. K. N. Nabi
Mr. Sandip Chattopadhyay
..... for the State

This is a hearing matter upon affidavits.

The original affidavit-in-opposition is not available in the file. The parties by consent have agreed to proceed on a loco copy of the affidavit-in-opposition filed by respondent No. 3 affirmed on April 11, 2013. The original affidavit-in-reply affirmed on May 14, 2013 is on record.

The petitioner was appointed as an **Assistant Teacher** for language group (Bengali) at one **Surendra Chakravorty Instititution, District – Kolkata (for short, the School)**. He was appointed on **August 1, 1996**. At the time of his appointment he was a Master degree holder. The petitioner then pursue for his doctorate degree (Ph.D.) in Bengali, the relevant subject. On **February 17, 2003, Annexure P-3 at page 23** to the writ petition, the petitioner applied before the Secretary of the Managing Committee of the relevant school to grant prior permission to the petitioner for acquiring Ph.D. The school authority vide communication dated **February 28, 2003**

granted the necessary prior permission in favour of the petitioner, **Annexure P-3** at **page 24** to the writ petition. The petitioner then pursued his Ph.D and obtained the certificate dated **December 24, 2005** from Jadavpur University at **page 25** to the writ petition. By a communication dated **August 20, 2005** at **page 26** to the writ petition the petitioner made a representation before the acting Teacher-in-charge of the school for receiving the additional Two Increments on account of acquiring Ph.D degree.

The issue was taken up by the respondent No. 3 and by its impugned reasoned order dated **May 30, 2006** rejected the claim of the petitioner solely on the ground that, no such additional two incremental benefits could be granted to the petitioner as the petitioner had not obtained permission for completion of Ph.D. course from the competent authority, **Annexure P-6** at **page 27** to the writ petition.

Mr. L. K. Pal, learned counsel for the petitioner submits that, **The Control of Expenditure Act, 2005** which came into effect on and from **December 27, 2005** had and still has no application in the fact of the case of the petitioner, as the petitioner received convocation for Ph.D. and completed the course on **December 24, 2005** which was prior to the date when the said 2005 Act came into force. He submits that, since the petitioner obtained prior permission from the Managing Committee of the school, this was

sufficient to grant the additional two increments to the petitioner owing to acquiring Ph.D. by him. In support, learned counsel for the petitioner had relied upon a judgment of the Hon'ble Division Bench ***In the matter of: Anupam Samanta Vs. State of West Bengal reported at 2017(1) CHN (CAL) 504.***

Mr. Pal further submits that, the rejection of the claim of the petitioner was wholly illegal and wrongful and the petitioner should have been and should be granted the additional two increments on account of his Ph.D. degree. Referring to the two Government instructions dated **June 24, 1997** and **November 27, 2007, Annexure A** at **pages 8 and 9** to the affidavit-in-opposition, learned counsel for the petitioner submits that, under those two Government instructions/circulars the petitioner had already obtained permission from the Managing Committee of the school and then it was the responsibility of the Managing Committee of the school and/or the school authority to transmit the same before the respondent No. 3 to accord its permission to the petitioner for pursuing Ph.D. The respondent No. 3 has not rejected such permission to the notice or knowledge of the petitioner, neither the petitioner is aware of whether the school authority had transmitted all the records before the respondent No. 3 for granting permission.

The learned counsel prayed that, the writ petition shall be allowed by quashing the impugned decision of the respondent No. 3 and the petitioner shall be granted the additional two increments.

Mr. K. N. Nabi, learned State counsel appearing for respondent Nos. 1 to 3 referring to the said two Government instructions at **pages 8 and 9** from the affidavit-in-opposition submits that, at no point of time any permission was obtained from the respondent No. 3 by the petitioner through the school authority as it is required under the law. Hence, in absence of such permission from the respondent No. 3, the authority had rightly rejected the claim of the petitioner for additional two increments.

After considering the rival submissions made on behalf of the parties and after considering the materials on record, at the threshold this Court proceeds to address as to the application of **Control and Expenditure Act, 2005** in the fact of this case. The Hon'ble Division Bench *In the matter of : Anupam Samanta (supra)* had clearly laid down the law to the following effect :

“21. As such, we are of the view that the writ petitioner, in fact, acquired the Ph.D. degree on the date when provisional certificate was issued to him by the University concerned i.e. on 18th May, 2005 which was prior to the date when the West Bengal Schools (Control of Expenditure) Act, 2005 came into effect. Thus, we hold that the West Bengal Schools (Control of Expenditure)

Act, 2005 cannot stand in the way of grant of such incremental benefit to the petitioner.”

The 2005 Act was promulgated and came into effect from **December 27, 2005** whereas the petitioner completed his Ph.D. on **December 24, 2005**, therefore, the 2005 Act will have no manner of application in the fact of this case.

Now come to the question of scrutinizing the impugned order passed by the respondent No. 3 at **page 27** to the writ petition.

The law is well settled that a Court in exercise of its power under Article 226 of the Constitution of India under judicial review shall assess the impugned action of the authority and interfere with the same, only if there is a glaring perversity on the face of it and infirmity in the decision making process. A Writ Court cannot sit on appeal. Neither the Writ Court can go for a fresh appraisal of evidence.

In the light of the law settled above, on a scrutiny of the impugned order, it appears to this Court that, it is not clear from the impugned order whether the records were placed through the school authority before the respondent No. 3 for obtaining permission for the petitioner for acquiring his Ph.D. degree. However, the admitted facts are that, the petitioner applied before the Managing Committee of the school and obtained a prior permission from the Managing Committee of the school to pursue his Ph.D. degree. It is also admitted fact that, the

petitioner acquired Ph.D. on December 24, 2005. The Ph.D. degree acquired by the petitioner cannot be denied, it is only whether the additional two monitory increments can be granted to the petitioner or not depending upon the permission whether obtained by the petitioner from the respondents No. 3. The Administrative directions dated **June 24, 1997 and November 27, 2007** at **pages 8 and 9** to the affidavit-in-opposition made it clear that, the petitioner should obtain a prior permission from the respondent No. 3 through the school authority. Whether the school authority had sent and transmitted records before the respondent No. 3 is not clear from the records. It is also not clear whether after receiving such records from the school authority the D.I. has rejected or kept it pending.

In view of the above discussions and reasons this Court is of the considered view that, the issue needs to be re-visited once again upon proper appreciation of materials by the **Commissioner of School Education, State of West Bengal**.

Accordingly, the order impugned dated **May 30, 2006** at **page 27** to the writ petition stands **set aside** and **quashed**.

The Commissioner of School Education, State of West Bengal (for short, the **Commissioner**) upon issuing a prior hearing notice of at least **seven days** to the petitioner, respondent No. 3 and

respondent Nos. 4 and 5 shall decide the issue on the basis of the materials on record after hearing the parties and then shall pass its reasoned order in accordance with law.

The entire exercise as directed above shall be carried out and completed by the Commissioner within a period of **six weeks** from the date of communication of this order. The Commissioner then shall communicate his reasoned order to the petitioner, respondent No. 3 and the respondent Nos. 4 and 5 within a further period of **two weeks** from the date of the said reasoned order to be passed.

The respondent Nos. 4 and 5 shall place all the records and papers relating to the petitioner involving the issue at the hearing before the Commissioner, the respondent No. 3 shall also place the records and papers lying before him on the basis where of the impugned order was passed before the Commissioner as per the direction and schedule to be framed by the Commissioner at his discretion.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner in any manner and the parties shall be at liberty to urge whatever points they wish to urge by relying upon whatever documents and records before the Commissioner and the Commissioner shall decide the issue independently without being influenced by any observation, if made, by this Court but strictly in

accordance with law by applying all the relevant provisions and notifications.

In the event, the reasoned decision goes in favour of the petitioner, then the petitioner shall be granted the **Additional Two Increments** and/or any other benefits attached with the acquiring of Ph.D. degree by the petitioner on and from **December 25, 2005** with all arrears. In the event, it is found that, the relevant school had not forwarded or transmitted the records to the respondent No. 3 then the school shall and must pay interest @ **8%** per annum to the petitioner on the entire arrear amount since **December 25, 2005** till that actual date of tendering the entire arrear amount.

In the event, it is found that the records were sent and was lying at the office of the respondent No. 3, then the State authority shall pay interest to the petitioner in the manner and mode as directed above. The entire arrear amount shall be paid by the State authority positively within a period of **four weeks** from the date of the reasoned order to be passed, if the reasoned order goes in favour of the petitioner.

In the event, the reasoned order goes in favour of the petitioner, the State authority shall continue to pay the petitioner the additional increments and the benefits connected with his acquiring of Ph.D. degree without any interruption and default.

It is further made clear that, this order shall not create any right or equity in favour of the petitioner in the event, the petitioner is found to be not eligible to receive his claim strictly in accordance with law.

With the above observations and directions this writ petition being **W.P.A. 11694 of 2012** stands disposed of, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)