

23.12.2024
Item No.14
RP
Ct. No.07

WPA 20199 of 2021

**Sri Pradip Kumar Biswas
Vs.
The State of West Bengal & Ors.**

Mr. Subhas Jana
.....For Petitioner
Mr. Supriyo Chattopadhyay, AGP
Ms. Sayantanee Bhattacharjee
.....for State

1. The petitioner, who was appointed as an Assistant Teacher in Work Education and Physical Education Group, has filed this writ petition praying for release of higher scale of pay after setting aside the Office Memorandum dated August 3, 2000.
2. Petitioner enhanced his qualification and obtained Master's degree in Physical Education from Nagpur University. The petitioner enhanced the said qualification by attending the vacation course conducted by the said university and the last date of such examination was June 17, 2000. The prayer of the petitioner for higher scale of pay was rejected by the order dated August 3, 2020 by the District Inspector of Schools (SE), Kolkata. Challenging such order, the petitioner has approached this Court.

3. Learned advocate appearing for the petitioner places reliance upon an order of the Coordinate Bench dated 6th October, 2004 passed in WP 15321 (W) of 2004 in support of his contention that an applicant, who has enhanced his qualification by attending the vacation course, is also entitled to higher scale of pay.
4. Ms. Bhattacharjee, learned advocate led by Mr. Chattopadhyay, learned Additional Government Pleader appearing for the State submits that since the petitioner has not obtained the Master Degree by pursuing two year regular course, he is not entitled to higher scale of pay.
5. Heard the learned advocates for the parties and perused the materials placed.
6. The reasons for rejecting the prayer of the petitioner for higher scale of pay is two-fold. Firstly, the post-graduate scale of pay is not admissible to the petitioner, as he has not obtained such degree by pursuing two years regular course. The other ground of rejection is that the approved staff pattern of the concerned school do not permit higher scale of pay to be extended to the petitioner for enhancing the qualification.

7. It is not in dispute that the petitioner, an Assistant teacher in Physical Education and Work Education Group has enhanced his qualification by obtaining the Masters Degree in the relevant subject. Two questions arise for consideration.
 - (i) Whether G.O. dated 8.3.2000 can be a bar in extending the benefits of the higher pay scale to the petitioner?
 - (ii) Whether approved staff pattern of the school permits grant of higher scale of pay to the petitioner?
8. Insofar as the first issue is concerned, this Court is guided by the decision of the Coordinate Bench in WP 15321 (W) of 2004 in the case of Moyno Ghosh vs. The State of West of Bengal. The Coordinate Bench took note of the letter of Comptroller of Examination of Nagpur University wherein it was stated that the same examination was held by them for students of summer course and the regular course and the degree through summer course has to be treated as equivalent to degree through regular course.
9. After taking note of the stand of the Nagpur University in that regard the Coordinate Bench

observed that a candidate has prosecuted the Master of Physical Education course by attending regular classes in Nagpur during his vacation in the expectation of advancement in his career and in the expectation of scale of pay pertaining to his qualification. The Coordinate Bench further held that the circular of 8th March, 2000 could not be applied to those teachers who attended the course prior to issuance of that circular.

10. It is not in dispute that the petitioner got himself enrolled in the said course prior to issuance of the circular dated 8th March, 2000. By applying the decision of the Coordinate Bench dated 6th October, 2004 to the case on hand, this Court holds that the circular dated 8th March, 2000 could not have been applied to the case of the petitioner as he got himself enrolled to the vacation course prior to issuance of such circular.
11. The other issue relates to rejection of the claim of the petitioner for higher scale of pay that the approved staff pattern of the school does not permit extending the benefit of said higher scale of pay to the petitioner. The impugned order only states that the petitioner is entitled to graduate scale of pay. The reasons as to why the approved staff pattern does not

permit post-graduate scale of pay to the petitioner has not been disclosed in the impugned order. The approved staff pattern of the school has not been produced before this Court.

12. In view thereof, this Court is of the considered view that the matter should be relegated to the District Inspector of Schools (SE), Kolkata to decide only the issue as to whether the approved staff pattern of the concerned schools permits extending the benefit of higher scale of pay to the petitioner.
13. The District Inspector of Schools (SE), Kolkata shall consider the approved staff pattern of the Basudebpur High School (HS), Kolkata for the relevant period and after giving an opportunity of hearing to the petitioner and the school authority shall pass a reasoned order in accordance with law in the light of the observations made hereinbefore.
14. Since the issue with regard to the bar imposed vide circular dated 8th March, 2000 has been decided by this Court, such issue should not be reopened by the District Inspector of Schools (SE), Kolkata.
15. The entire exercise shall be completed by the District Inspector of Schools (SE), Kolkata within a period of

six weeks from the date of receipt of the server copy of this order.

16. With the above observation, the impugned order stands set aside. The writ petition stands disposed of.

17. Urgent photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)