

29.02.2024
Item No.08
RP
Ct. No.7

WPA 24848 of 2008

Abhijit Bhattacharyya
Vs.
State of West Bengal & Ors.

Mr. Sakti Pada Jana
Mr. Subhajyoti Das
.....for the Petitioner
Mr. Bhaskar Prasad Vaishya
Mr. Ranjan Saha
.....for State

The prayer of the petitioner for sanctioning post-graduate scale of pay stood rejected by an order of the District Inspector of Schools (SE), Kolkata vide memo dated 15th July, 2005. Such prayer was rejected in the light of GO No.735-SE(S) dated 3rd June, 2002. The petitioner joined as an Honours Graduate Teacher in Attapur Kenaram High School on 21st September, 1992. Thereafter, he joined as a Headmaster in Jagabandhu Institution on 27th March, 2001. The petitioner claims to have acquired the Post-Graduate degree in the relevant subject and the last date of such examination was 11th July, 2003.

The petitioner prayed for permission for taking admission in the Postgraduate course from the District Inspector of Schools (SE) through the Managing Committee of Attapur Kenaram High School. Such prayer of the petitioner was forwarded by the school to the concerned District Inspector of Schools. It further appears from the memo dated 5th April, 2004 that the West Bengal Board of Secondary Education accorded

approval to the proposal of the Managing Committee in sanctioning the study leave in favour of the petitioner for the period from August 2002 to 16th September, 2002 and from 27th June, 2003 to 11th July, 2003.

Though specific permission was not granted by the District Inspector of Schools but the fact remains the prayer of the petitioner for permission to undertake the Post Graduate course was not rejected by the District Inspector of Schools. A similar issue came up for consideration before the Hon'ble Special Bench in a batch of writ petitions, the lead case being WPA 9921 of 2007 (Utpal Kanti Karan vs. State of West Bengal & Ors.) and the Hon'ble Special Bench by a judgment and order dated 7th February, 2024 expressed its agreement with the view of the Hon'ble Division Bench in the case of Akhtar Hossain Chowdhury vs. State of West Bengal & Ors. reported in 2013 (2) CHN (Cal) 632. The relevant portion of the said judgment is extracted hereinbelow.

“In Akhtar Hossain Chowdhury v. State of West Bengal & Ors., reported in 2013(2) CHN (Cal) 632 the argument of Mr. Moitra that paragraph 3 of the circular dated 27th November, 2007 cannot override the provisions of the West Bengal Schools (Control of Expenditure Act, 2005) was accepted as would be evident from paragraphs 15 to 18 of the said decision. The said paragraphs read :

“15. Mr. Moitra also submits that Para 3 of the aforesaid circular dated 27th November, 2007 cannot override the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005.

16. Mr. Moitra invites our attention to Section 14(30 of the aforesaid Act, 2005 and submits that the appellant/petitioner is entitled to draw pay of

post graduate upon acquiring post graduate degree. The said section 14(3) is set out hereunder:

“(3) Every teacher of a school shall, if appointed in the Honours Graduate or Postgraduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order.”

17. It is true that a circular cannot override the specific provisions of the Act. In the present case, the appellant/petitioner was admittedly appointed in the school as Honours Graduate with B.Ed degree. As a matter of fact, at the time of joining the school qualification of the appellant was Honours Graduate in Mathematics and B.Ed. Subsequently the said appellant acquired post-graduate degree. Therefore, in terms of Section 14(3) of The West Bengal Act, XIV of 2005 appellant herein is entitled to draw pay of postgraduate teacher. Furthermore, Para 3 of the Office order dated 27th November, 2007 has not been specifically violated in the present case since the appellant also sought for prior permission from the concerned District Inspector of Schools for undergoing post graduate studies through the managing committee of the school and such permission was never denied by the said District Inspector of Schools.

18. Considering the aforesaid facts, we are of the opinion that the District Inspector of Schools should not have rejected the claim of the appellant/petitioner for higher scale of pay even after acquiring higher qualification i.e. M.Sc in Mathematics.” (emphasis supplied)

We are in agreement with the said decision.”

This Court is, therefore, of the considered view that the claim of the petitioner for higher scale of pay after acquiring the Post Graduate qualification could not have been rejected by the District Inspector of Schools. In view thereof, the order of the District Inspector of Schools dated 15th July, 2005 is set aside and quashed and the writ petition stands **allowed**. The District Inspector of Schools is directed to grant Post-Graduate scale of pay in favour of the petitioner and to take all consequential steps thereafter so that the petitioner is extended the benefits of Post-Graduate scale of pay with effect from the last date of examination.

There shall, however, no order as to costs.

(HIRANMAY BHATTACHARYYA, J.)