

18.04.2024
Item No.24
Court No.11
Avijit Mitra

WPA 24521 of 2012

In re: An application under Article 226 of the Constitution of India;
And

Tarit Kumar Sen
- Versus -
The State of West Bengal & ors.

Mr. Ekramul Bari,
Sk. Imtiazuddin
...for the petitioner
Ms. Tapati Samanta
...for the State

Throwing challenge to the legality of the order passed by the District Inspector of Schools (in short, the D.I. of Schools) communicated to the petitioner under a memo dated 21st September, 2012 and praying for a writ of mandamus commanding the respondents to grant higher scale of pay in favour of the petitioner, the present writ petition has been instituted.

Facts need to be narrated for effective adjudication of the writ petition are that the petitioner joined as Assistant Teacher in Geography in Deocharai High School (in short, the said school) on 1st February, 1997 and at that point of time, he was a running student of M.A. in geography. His appointment was duly approved. After joining the school, he made an application before the school authority imploring for permission to continue his study and appear in the M.A. Part-I and Part-II examinations. Such permission was accorded by adopting a resolution.

Record reveals that to pursue the M.A. Course and to appear in the examinations, the petitioner was granted leave without pay for 105 days. After acquiring M.A. degree in Geography, he approached the competent authority with an application for grant of Post-graduate scale of pay due to enhancement of qualification on the subject relevant to his teaching. Despite receipt of such application from the petitioner, the same was kept in suspended animation which prompted the petitioner to knock on the door of this Court by preferring a writ petition being WPA 2570 of 2012, which was disposed of on 2nd July, 2012 directing the D.I. of Schools to consider the school's proposal for grant of higher scale of pay to the petitioner for his enhanced qualification and take ultimate decision thereon by passing a reasoned order after affording an opportunity of hearing to the petitioner and the school authority within a specific time-frame.

Pursuant thereto, the D.I. school by his order communicated to the petitioner under a memo dated 21st September, 2012 negated the petitioner's claim of higher scale of pay on the following grounds:

- i) *To pursue M.A. in geography, which is a practical based subject, in regular course, the petitioner availed of leave without pay for 105 days hampering the academic interest of the School;*
- ii) *The petitioner improved his qualification without prior permission of the D.I of Schools;*
- iii) *The West Bengal Board of Secondary Education (in short, the Board) did not sanction his study leave.*

Assailing the order passed by the D.I. of Schools and seeking a direction upon the concerned respondent to release the Post-Graduate scale in favour of the petitioner, this writ petition has been preferred. No affidavit-in-opposition has been used and/or submitted on behalf of the State, as directed.

Mr. Bari, learned advocate appearing for the petitioner submits that the petitioner joined in the school prior to the West Bengal School Service Commission Act, 1997 came into operation. He submits that the petitioner upgraded his qualification after taking permission of the managing committee. He argues that the rules governing the field do not make the grant of prior permission and sanction of the study leave as mandatory pre-conditions to obtain higher scale of pay. Citing two unreported decisions rendered by the two different Hon'ble Division Benches of this Court in WPA 14760(w) of 2004 (Rabi Kanta Barman Vs. District Inspector of Schools (SE) & ors.) and in MAT 513 of 2014 (State of West Bengal & ors. Vs. Jayanti Basak & anr.), he claims that those issues have been set at rest in the afore-referred two decisions.

He contends that while giving answer to the reference, the Hon'ble Division disposed of case of Rabi Kanta Barman (supra) holding that a teacher cannot be denied higher scale of pay on the plea that he had improved his qualification without taking prior permission from the D.I. of Schools.

He argues that the negation of petitioner's claim of higher scale of pay on the ground that the study leave had not been sanctioned by the Board cannot be sustained. Citing another decision rendered in case of Khagendra Nath Paul Vs. State of West Bengal & ors., reported in 1998 (1) Cal LJ 283 he submits that if a recognized

University awards a degree to any student after successfully completion of any course, the respondents cannot refuse to accept such degree and the respondent is bound to extend the benefits accrued to such student on his acquisition of the degree.

He also draws my attention to a notification being no.1485-SE(S)/4A-25/11 dated 2nd December, 2011 and submits that in terms of the provisions of the notification the authority is bound to grant post-facto approval of Post Graduate Scale of pay to the petitioner who was appointed under Honours category.

Ms. Samanta, learned advocate appearing for the State inviting my attention to the order impugned in the writ petition submits that the petitioner has completed his M.A. in regular course taking leave without pay from the school authority and as such, the academic interest of the school was hampered. He asserts for this reason the D. I. of Schools has rightly rejected the petitioner's claim of the benefits of higher scale of pay. He submits that the petitioner's prayer for higher scale of pay was rightly rejected by the D.I. of Schools by passing a reasoned order leaving no scope before this Court to interfere with the same.

Heard the learned advocates and perused the materials on record.

Records reveal that the petitioner joined in the school as Assistant Teacher in Social Science Group (Geography) having qualification of B.A. Honours in Geography under Honours category on 1st February, 1996 and as such, there cannot be any quarrel in accepting the facts that the petitioner joined in the post prior to the West Bengal School Service Commission Act, 1997 came into operation. The career Advancement Scheme and the related issue was

introduced in 12(3) of ROPA Rules 1998. Reproduction of Rule 12(3) can throw some light on the issues. Rule 12(3) reads thus:

“12(3)- All teachers including Physical Education teachers and Librarians of Secondary Schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualifications, whichever is later.

on the recommendation of the School Service Commission, a Circular, being No. 155-SE(B)/10M-102/98 Pt. I dated Calcutta, the 13th July, 1999, was issued by the Government of West Bengal amending Memorandum No. 25/SE(B)/IM-102/ 98 dated 12th January, 1999 with effect from 26th June, 1999, in the manner indicated herein below:

“12(3) All teachers including Physical Education Teachers and Librarians of Secondary Schools who have improved/ will improve their qualifications who were appointed with higher qualification in the subject or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualifications, whichever is latter, provided that such higher qualified teachers in the relevant subject or group is justified as per approved staff pattern of other school, if said teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission.”

The petitioner acquired M.A. degree prior to 26.06.1999 so the question of staff pattern cannot come into play. Suffice it to state that the petitioner joined the school as an Assistant Teacher in Geography under Honours Category.

Therefore, on cursory reading of Rule 12(3) it can be concluded that despite having knowledge of all the existing rules and notification and administrative orders, the State introduced the Career Advance Scheme but it consciously omitted to incorporate any

condition like grant of permission or sanction of study leave as *sine qua non* for obtaining the higher scale of pay. The proposition laid down in the judgment Rabi Kanta Barman (supra) will definitely lend support to this view. In the case of Rabi Kanta Barman(supra), it was ruled that despite having knowledge of the Government Order dated 24th June, 1997 the legislature framed the ROPA Rules 1998 but did not incorporate the condition of grant of prior permission as precondition for obtaining higher scale of pay.

Indisputably, the petitioner upgraded his qualification on the subject relevant to his teaching. The petitioner was accorded permission by the school authority to continue to pursue the M.A. in Geography and even he was armed with the permission to appear in both the theoretical and practical examination. Suffice it to observe that petitioner was granted leave without pay. The school authority in its resolution adopted on 15.12.2003 has observed that the petitioner attended the classes taking minimum leave. From that resolution, it would be explicit that the petitioner had submitted application seeking necessary permission and study leave but those documents were not forwarded by the then managing committee in due time. From the notification dated 2.12.2011, it transpires that the teacher concerned improved his qualification taking prior permission from the managing committee of the concerned school, the Deputy Secretary concerned held that he would get higher scale of pay.

Taking note of such facts, I do not find any justification of the observation of the D.I. of Schools that the petitioner completed M.A. in regular course taking leave without pay for 105 days hampering academic interest of the school. No complain either from any student or any guardian has been placed before me to endorse

such observation of the D.I. of School. As such, in absence of any definite proof or convincing materials which could have prompted the D.I. of Schools to conclude that the academic interest of the school was hampered, such observation of the D.I. of Schools is discounted.

At the cost of reiteration, it can be mentioned that the petitioner joined in the post prior to the West Bengal School Service Commission Act, 1997 came into effect. He improved his qualification on the subject relevant to his teaching. The petitioner acquired M.A. degree prior to 26.06.1999 so the question of staff pattern cannot come into play. Suffice it to state that the petitioner joined under Honours Category. Either in ROPA Rules, 1998 or in other rules or regulations governing the field, the grant of prior permission and sanction of study leave have been made *sine qua non* for obtaining higher scale of pay.

Taking stock of such chronological events and resume and having regard to the laws laid down in the judgments of Rabi Kanta Barman (supra) and Jayanti Basak (supra) and the provision of the notification dated 2.12.2011, as referred above, the only analogy which can be drawn is that the petitioner is entitled to obtain higher scale of pay and the order of the D.I. of Schools cannot be sustained.

Resultantly, the order passed by the D.I. of Schools, which was communicated to the petitioner under a Memo. dated 21.09.2012 (Annexure –P/5 to the writ petition) is set aside. The D.I. of Schools is hereby directed to grant Post-graduate scale in favour of the petitioner from the last date of his M.A. examination being 23rd April, 1999 and release his arrears of salary and other admissible dues

positively within a period of eight weeks from the date of receipt of this copy of the order.

With the above observations and directions the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)