

02.04.2024
Item No.2
Ct. No.11
CHC
(disposed of)

W.P.A. 32089 of 2014

**Makhan Yadav
Vs.
The State of West Bengal & ors.**

Mr. Ekramul Bari,
Sk. Imtiaj Uddin
...for the petitioner

Mr. Bibek Jyoti Basu,
Mr. Arijit Sarkar
...for the State

On 11.12.2023, when the matter was last taken up for hearing, Mr. Basu, learned advocate appearing for the State raised a suspicion regarding the authenticity of the testimonials of the petitioner appended to the writ petition and as such, this Court *vide*. order dated 11th December, 2023 granted liberty to either of the parties to approach the competent authority of the Himachal Pradesh University (in short, the University) to ascertain whether the testimonials namely, the mark sheet and the certificate issued by the University in favour of the petitioner are authentic and bring the response of the University on record. Pursuant thereto, the petitioner has submitted a supplementary affidavit and simultaneously, a report has also been submitted on behalf of the D.I. of Schools incorporating two separate communications made by the University to the learned advocate-on-record of the petitioner and D.I. of Schools

respectively. The Supplementary affidavit and the report, as produced are taken on record.

From those two communications, which are same in substance, it transpires that the competent authority of the University has duly certified that both the testimonials, as referred above are authentic and the petitioner obtained M.Sc. degree in Mathematics from the University.

The present writ petition has been preferred challenging the order vide. Memo. no. 94/(1)(3)L.S. dated 25th June, 2014 passed by the D.I. of Schools (S.E) in deference to the order dated 12.12.2013 passed by a coordinate Bench of this Court in W.P.34429 (W) of 2013 and also for a direction upon the concerned respondent to grant higher scale of pay in favour of the petitioner.

Shortly put, the facts, as delineated in the writ petition, are that the petitioner joined the Gouripore Hindi High School (H.S.) (in short the 'school') as an Assistant Teacher in Mathematics under Science Group w.e.f. 1st March, 1995 and the petitioner's appointment was duly approved by the D.I. of Schools. The petitioner acquired M.Sc. degree in Mathematics from the University in 1994. By making numerous applications, the petitioner approached the competent authority with a prayer for grant of higher scale of pay in terms of the rules in vogue but to no avail. Aggrieved thereby, the petitioner preferred a writ petition being W.P. No. 34429 (W) of 2013, which was disposed of by an order dated 12.12.2013 directing the D.I. of Schools concerned to

consider the case of the writ petitioner after affording an opportunity of hearing to the petitioner and pass a reasoned order. Pursuant thereto, the D.I. of Schools considered the issue but by passing a reasoned order vide. Memo. no. 94/(1)(3)L.S. dated 25.06.2014 negated the petitioner's claim on the grounds that the school authority had forwarded the petitioner's prayer to D.I. of schools after long gap of about 12 years from the date of his joining and the petitioner's appointment was approved as an Assistant Teacher in pass graduate category.

Mr. Bari, learned advocate appearing for the petitioner contends that the petitioner joined in the school with higher qualification and as such, in terms of the West Bengal Services (Revision of Pay and Allowances) Rules, 1990 (in short, the ROPA Rules, 1990), the petitioner is entitled to get benefits of the higher scale of pay. He next contends that the act of withholding such higher qualification is a continuing wrong and such claim cannot be negated raising the plea of delay on the part of the incumbent in approaching the authority concerned. To invigorate such submission, he refers a decision rendered in case of *Union of India and others versus Tarsem Singh* reported in (2008) 8 SCC 648.

He argues that the petitioner joined the school in 1995 i.e. prior to the School Service Commission Act, 1997 came into effect and as such, the above Act of 1997 and even the West Bengal Schools(Control of Expenditure) Act 2005 cannot stand in the way in awarding higher scale of pay to the

petitioner and he submits that before promulgation of ROPA Rules, 1998, no staff pattern in respect of any secondary school of the State was prescribed and as such, the issues of *‘staff pattern and approval of the petitioner’s appointment under pass category’* also cannot stand in the way. In support of his contention, he places reliance upon two unreported judgments of this court, one 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 passed by another coordinate Bench of this Court in WPA 2933 of 2014 (Bula Halder Mandal vs. State of West Bengal & ors).

Mr. Basu, learned advocate appearing for the State vehemently opposes such contention of Mr. Bari. He submits that the petitioner was appointed under pass category and as such, he is not entitled to get the benefits as prayed for. He anticipates that at the time of offering his candidature for the post, the petitioner suppressed such qualification. In his view, such suppression of qualification is a fraudulent act. He asserts that the petitioner slept over his right for years and consequently, after such long distance of time, it would not be apt to accept the petitioner’s claim for higher scale of pay. He claims that judgments referred by Mr. Bari are distinguishable on facts.

Heard the learned advocates appearing for the respective parties. Perused the materials placed on record.

Needless to observe that to improve the teaching-learning process and ensure so that quality education can be

imparted to the students of the schools, the State adopted a policy to encourage the teachers to improve and/or enhance their qualifications on the subjects relevant to their teaching even at the cost of public exchequer. With such an objective, provisions were made in the rules governing the field for awarding higher scale of pay. The petitioner joined the school in 1995 and as such, in this regard, the reference to Clause 16(3) of ROPA Rules, 1990 would be instructive. For the sake of clarity and convenience, the provisions of Clause 16(3) of ROPA Rules, 1990 are reproduced as below:

“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..”

Therefore, the teachers namely, who joined with enhanced qualification or who have improved qualification or who will improve qualification on the subject relevant to his teaching were declared to be entitled to higher scale of pay. Hence, there is an irresistible conclusion that the provisions for grant of higher scale of pay was made by the legislature despite having knowledge that some of the teachers having higher qualification joined the schools under pass category or Honours category, as the case may be and even, their appointments have been approved under the aforesaid

categories. Record reveals that for obtaining M.Sc. degree in Mathematics, the petitioner passed the examination held in November, 1994 but the mark-sheet and the certificate were issued in 1996. In the midst thereof, the petitioner joined. To address such situation, provisions were made to award higher scale of pay from the date of improving qualification.

In the judgment of Union of India & Ors. –vs- Tarsem Singh (supra), which relates to grant of disability pension of a retired army personnel, it was ruled that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy but if the grievance is in respect of any order or administrative decision which related to or affected several others also and if the reopening the issue would settle the rights of affected parties (e.g. seniority or promotion etc.), then such claim should not be entertained. In so far as the consequential relief or recovery of arrears for a part period is concerned, the principles relating to recurring/successive wrongs will apply.

Applying these principles, it can be unhesitatingly inferred that the principles relating to recurring wrongs will apply in the given case.

Quite apart from the above, from the record, it transpires that even in 1996 the petitioner approached the Sub-Divisional Officer concerned, who acted as administrator of the school then, to include his enhanced qualification in the service record and he also claimed pay-hike on the basis of his enhanced qualification. In 1998, the petitioner

approached the D.I. of schools with a prayer for grant of higher scale of pay. In 2007, the same prayer was renewed to the D.I of schools on behalf of the school authority also and in 2013, the petitioner's payer for higher scale of pay was forwarded by the school authority to the D.I. of Schools with favourable recommendation. Therefore, the record rather indicates that despite being so approached on numerous occasions since 1996, the respondents are sitting tight over the matter and it is not the petitioner who was sleeping over his rights.

Hence, what follow from the discussion made hereinabove are that the petitioner's testimonials are authentic and the petitioner joined the school with higher qualification on the subject relevant to his teaching. In terms of Clause 16(3) of ROPA Rules, 1990, the petitioner is entitled to enjoy the benefits of higher scale of pay. The grounds on which the D.I. of Schools has negated the petitioner's claim for higher scale of pay cannot be sustained. Resultantly, the order of D.I. of Schools *vide*. Memo. no. 94/(1)(3)L.S. dated 25.06.2014 is set aside. Therefore, considering factual aspects of the matter and proposition laid down in the above-referred decisions, it can be concluded that the petitioner is entitled to get higher scale of pay and its consequential benefits, as prayed for.

Resultantly, the D.I. of Schools is directed to grant higher scale of pay and its consequential benefits to the petitioner from the date of improvement of his qualification

following the prescribed procedure within three months from the date of receipt of a copy of this order.

With these observations and order, this writ petition is, thus, disposed of, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Partha Sarathi Chatterjee, J.)