

OD 4

WPO/552/2019
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

CHHOTE LAL
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date: 25th January, 2024.

Appearance:
Mr. Shakti Pada Jana, Adv.
Mr. Subhajyoti Das, Adv.
. . .for the petitioner.

Mr. Sirsanya Bandopadhyay, Adv.
Ms. Tapati Samanta, Adv.
. . .for the State.

The Court: The writ petitioner is aggrieved by the impugned order dated 12.09.2019 passed by the District Inspector of Schools, Secondary Education, Howrah/respondent no.3.

By dint of the said impugned order, the writ petitioner's prayer for higher scale of pay pursuant to his higher qualification obtained subsequently, has been rejected.

The petitioner being aggrieved has moved this writ petition to pray for necessary orders to set aside the impugned order dated 12.09.2019 of the District Inspector of Schools/respondent no.3. He has also prayed for sanction of the post graduate scale of pay in favour of him as he has acquired a post

graduate degree i.e. 'MA in Mathematics'. He has prayed for all consequential benefits with effect from 19.06.2004 as per the pay revision, if granted by the Court.

The fact of the case to be narrated in a nutshell is that the writ petitioner was an assistant teacher appointed on 01.05.1996 in Adarsha Vidyamandir High School, (H.S.), District - Howrah. Subsequently, on 03.02.2003 he submitted his application to the school authorities, seeking necessary permission for enhancement of his qualification. The same was immediately forwarded to the office of the present respondent no.3/District Inspector of Schools (Secondary Education), Howrah, on the same date. After 24 days, the writ petitioner filled up the examination fee for MA part I examination on the stipulated date, that is, 27.02.2003. Subsequently, he appeared in the examinations and qualified. His claim to the enhanced scale of pay arise pursuant to being qualified as a Master Degree holder candidate.

Mr. Sakti Pada Jana learned advocate appearing for the writ petitioner ventilates grievance of his client that in spite of submission of prayer for permission to obtain higher qualification before the concerned respondent, that is, respondent no.3, it has allegedly sat tight over the matter without granting necessary permission to the present writ petitioner. He submits further that such inaction of the said respondent left no other scope open for the present writ petitioner than to complete process of filling up forms for the said examination, by submission of examination fees, pending formal permission to be granted by the said respondent. He further submits that as per the settled rules, after

obtaining higher qualification the writ petitioner would be eligible for higher grade of pay which has been unreasonably and illegally denied to the present writ petitioner.

Objection has been raised on behalf of the respondent authority so far as the contentions and prayers in this writ petition are concerned. Mr. Sirsanya Bandopadhyay, learned advocate appearing for the respondents categorically says that the writ petitioner has not submitted his application sufficiently before appearing for the examination and as such, the respondent authority did not get sufficient time to process with his application for permission for obtaining higher qualification. He has further referred to the notification of the Government of West Bengal School Education Department, Secondary Branch, dated 24.06.1997 and submits that obtaining prior permission before pursuing higher qualification or obtaining higher degree is the mandate under the said circular. Hence it is a mandatory and unavoidable law. Accordingly, the writ petitioner, having obtained higher qualification without permission from the concerned respondent authority would not be eligible for any higher scale of pay in terms of the rules. He has supported the impugned order dated 12.09.2019.

From the record it is revealed that on 03.02.2003, the writ petitioner has submitted his application for permission to pursue higher qualification in terms of the Government of West Bengal notification dated 14.06.1997. The said application of him has, however, not been processed by the respondent no.3. The reason for which is stated to be the scarcity of sufficient time to process the said application.

This Court cannot help noticing that the circular or the rules has not provided for any minimum period of time before which an application seeking permission would have to be submitted. No such time limit have been prescribed under the provisions of the rules/law.

The submissions made on behalf of the respondent authority does not inspire much confidence in the mind of this Court in view of the above provision, which has force of a statute. Instead, the writ petitioner, having submitted his application duly for permission to seek higher qualification, before enrolling for it, it is found to be a bounden duty of the respondent no.3 to consider the same and pass an appropriate order, which the respondent no.3 has not done in due time.

Under such circumstances, the refusal by the respondent authority of the higher scale of pay to the writ petitioner in spite of obtaining higher qualification by dint of its order dated 12.09.2019 appears to be unjustified and de hors the provisions of settled law. The respondent's acts, if not supported by reasonableness and nonarbitrariness, should not be sustained. The impugned order in this case does not satisfy the tests of reasonableness and nonarbitrariness. Hence, the same is illegal and unsustainable.

On the finding as above, the order impugned in this writ petition dated 12.09.2019 is set aside.

Let the concerned respondent, that is, respondent no.3 take adequate steps to immediately provide the 'A' Category scale of pay to the writ petitioner, commensurate to his Master Degree qualification, with effect from the date

19.06.2004, along with necessary pay fixation and consequential benefits.
Arrear salary and benefits may be released immediately.

With the above directions this writ petition is disposed of.

(RAI CHATTOPADHYAY, J.)

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