

03.11.2025
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FMA 604 of 2020
State of West Bengal & Others
- Versus -
Chitta Ranjan Sarkar & Another

Mr. Jayanta Samanta,
Ms. Tapati Samanta
... for the Appellants.
Mr. Sadhan Kumar Halder,
Mr. Dwijadas Pattanayak
... for the Writ Petitioner
/Respondent no.1.

The present appeal has been preferred challenging the judgment dated 20th July, 2018 passed by the learned single Judge (hereinafter referred to as the learned Court) in the writ petition, being WP No. 4954 (W) of 2008.

Mr. Samanta, learned advocate appearing for the appellants submits that as the writ petition was heard in the absence of the learned advocate for the State/respondents, all relevant issues could not be urged and the learned Court also did not take into consideration all the averments made in the affidavit-in-opposition filed on behalf of the State/respondents.

According to him, a composite perusal of the Government Order nos.74 SE/SY4A-8/96 and 74 SE/SY4A-8/93 dated 18th June, 1994 and 7th February, 1995 would clearly reveal that the State authorities took a conscious decision to the effect that

a post-graduate degree in Anthropology is not a subject relevant for the post of Life Science /Bio Science teachers in secondary schools. Such decision was backed by an expert opinion. It was categorically stated in the said memoranda that any Life Science/Bio Science teacher who had obtained or will obtain post graduate degree in Anthropology shall not be entitled to higher scale of pay. The learned Court had glossed over the said issue and no finding was returned on the same. Such infirmity warrants interference of this Court.

He submits that no legal right crystallized in favour of the writ petitioner to be entitled to post graduate scale of pay on the rudiments of his post graduate degree in Anthropology. An erroneous disbursement of higher scale of pay on the part of the State authorities can always be recovered and the State Government has rightly taken a decision to recover the amount which was inadvertently disbursed.

He further argues that without abiding by the relevant Government circulars the school authorities illegally sent requisition for the post graduate scale of pay though admittedly the writ petitioner was not entitled to the same. Such error on the part of the school authorities was ascertained and accordingly, the State authorities took a decision to stop such

disbursement and to recover the amount which was inadvertently disbursed in the favour of the writ petitioner.

Mr. Halder, learned advocate appearing for the writ petitioner/respondent no.1, however, denies and disputes the contention of Mr. Samanta and submits that the writ petitioner did not obtain the scale of pay upon suppressing his educational qualification at the time of entry into service. He was admittedly a post graduate degree holder in the subject of Anthropology. The writ petitioner was initially appointed as an assistant teacher in the Science Group at Maju R.N. Basu High School. Considering such qualification, the competent authority duly approved his appointment in the post graduate scale of pay, as would be explicit from the document annexed at page 46 of the paper book. Subsequently, the writ petitioner joined at Belgachia Mahatma Aswini Vidyapith. Such appointment was also approved by the competent authority, as would be explicit from the documents annexed at pages 54 and 58 of the paper book. On the basis of such approval, post graduate scale of pay was disbursed from the month of January, 1985 till March, 2007. Thereafter the respondents suddenly stopped disbursement of the post graduate scale of pay and took steps for realizing the alleged additional benefits

granted to the writ petitioner on the basis of such post graduate qualification and that too without issuing any formal order and without even grant of any opportunity of hearing. Aggrieved thereby, the writ petition was preferred and the same was decided upon exchange of affidavits by the parties.

Records reveal that the stay application filed in the appeal was disposed of by an order dated 3rd February, 2020 directing the appellants to pay all retiral benefits and admissible dues including the gratuity within a period of three weeks from date with a further observation that in the event the writ petitioner succeeds then the differential amount presently due to writ petitioner would carry an interest of 18 % per annum.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The following facts are not in dispute. The writ petitioner obtained M. Sc. Degree in Anthropology prior to his entry into service. His first appointment was as an assistant teacher in the Science Group at Maju R.N. Basu High School on 11th December, 1985 in the post graduate scale of pay. After working in the said school till 10th July, 1987, he was appointed in the same post at Belgachia Mahatma Aswini Vidyapith and he

continued to enjoy post graduate scale of pay uninterruptedly till the month of March, 2007. No order was issued withholding such grant of post graduate scale of pay or for recovery of the benefits earlier disbursed.

The Education Department, Government of West Bengal issued a memo dated 31st July, 1981 incorporating a clause 2 (b) to the effect that *'All existing Secondary School teachers who have improved their qualifications relevant to their teaching subjects will get the higher scale of qualification basis without any restriction'*.

The said clause was subsequently amended by a notification dated 10th September, 1981 directing that *'All existing Secondary Schools teachers who were appointed with higher qualifications in subjects not relevant to their teaching or who improved their qualifications subsequent there to their appointment in subjects not relevant to their teaching will be allowed the higher scale on qualification basis with effect from the 1st April, 1981 or after five years' teaching counting from the date on which higher qualification was obtained whichever is later'*.

In the Government memo dated 18th June, 1994 the Government took a decision to the effect that *'No such graduate teachers who have obtained post graduate*

degree in Anthropology will also be entitled to the higher scale of pay for such improvement of qualification as not being relevant to their appointment/teaching’.

By a subsequent Government memo dated 7th February, 1995 it was directed that ‘*Post graduate qualification in Anthropology shall not be treated as requisite and sufficient qualification for appointment to the posts of Life Science / Bio Science teachers in the Secondary Schools in West Bengal’.*

In the said Government memoranda dated 18th June, 1994 and 7th February, 1995 there is no reference to the provisions as incorporated in the earlier memo dated 31st July, 1981 which stood amended memo dated 10th September, 1991.

Admittedly, the writ petitioner entered into service prior to issuance of the above memoranda. Upon considering his qualification a conscious decision was taken by the State authorities to disburse the post graduate scale of pay on the rudiments of post graduate qualification M. Sc. (Anthropology). At the time of appointment there was no prevailing condition to the effect that Anthropology was not relevant for Life Science /Bio Science teacher. The said approval memoranda were neither reviewed nor recalled. On the basis of the same, the competent authority disbursed the post graduate scale of pay till March, 2007 without

raising any objection. It is not a case that the writ petitioner had obtained the post graduate scale of pay suppressing his qualification.

The appellants have failed to place on record any order, save and except the memoranda dated 18th June, 1994 and 7th February, 1995. The decision in the same is prospective. As regards stoppage of the petitioner's post graduate pay of scale no independent order was issued upon grant of appropriate opportunity of hearing. The demand for recovery must be in accordance with law.

The learned Court rightly arrived at a finding that by applying the Government memoranda dated 18th June, 1994 and 7th February, 1995, the appellants could not have withheld the disbursement of post graduate scale of pay inasmuch as the said memoranda were not given any retrospective effect. Prior to issuance of the said memoranda and being aware of the memo dated 31st July, 1981 and 10th September, 1991, the State authorities consciously disbursed the post graduate scale of pay in favour of the petitioner till the month of March, 2007. In the said conspectus, the Court directed the respondent authorities to fix the scale of pay of the petitioner in accordance with his educational qualification of M.Sc. and to calculate his retirement benefits in accordance

with his scale of pay taking into account his M.Sc. qualification and release all payments including arrears within a period of four months from the date of receipt of a copy of this order.

The learned Court upon dealing with all factual issues arrived at specific findings and we do not find any error in the same warranting any interference in the present appeal.

Answering our query, Mr. Halder submits that the writ petitioner, who retired in 2018, has been disbursed the benefits, as directed by the order dated 3rd February, 2020 and he has left the decision towards disbursement of interest, as indicated in the order dated 3rd February, 2020, to the discretion of this Court.

Considering the peculiar facts and circumstances of the case and long pendency of the proceedings and as the respondents cannot be directly held responsible for such efflux of time, it may be iniquitous to saddle the State with any direction towards payment of interest. Accordingly, such the direction towards payment of interest, as contained in the order dated 3rd February, 2020, is waived.

The respondents are directed to disburse the remaining unpaid dues to the writ petitioner strictly in terms of the order impugned in the present appeal

positively within a period of four weeks from the date of communication of this order.

With the above observations and directions, the appeal along with the connected application(s), if any, is disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)