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WPA 17317 of 2017

Susanta Kumar Shee
Vs.
The State of West Bengal & Ors.

Mr. Chittapriya Ghosh
Mr. Goutam Acharya
Ms. Priyanka Saha
....for the petitioner

Mr. Tapan Kumar Mukherjee, learned AGP
Mr. Somnath Naskar
..... for the State

The present writ petition has been preferred challenging the legality and/or propriety of the order dated 27.03.2017 passed by the District Inspector of Schools (SE), Barrackpore, North 24-Parganas, in compliance with the order dated 23.09.2016 passed by a co-ordinate Bench of this Court in W.P. No. 9376(W) of 2009.

Mr. Ghosh, learned Advocate representing the petitioner, submits that the petitioner joined Nawabganj Sridhar Banshidhar High School (H.S.) (hereinafter referred to as “the said school”) on 02.01.1999 with a pass graduate degree in the Language Group. Subsequently, he improved his qualification in the subject relevant to his teaching on 04.11.1999.

Citing a decision by a Hon’ble Special Bench of this Court in WPA 9921 of 2007 (Utpal Kanti Karan vs. State of West Bengal & Ors.), he submits that a claim for enhancement of pay on acquisition of higher qualification

during the service career must be decided based on the relevant Rules operating at the time of acquisition of the higher qualification. He contends that since the petitioner joined the school on 02.01.1999, the Government Circular dated 12.02.1999, which was subsequently amended on 13.07.1999, will not apply to the petitioner's case.

However, he claims that the District Inspector of Schools has rejected the petitioner's claim for a higher scale of pay relying on the Circular dated 13.07.1999. According to Mr. Ghosh, such reliance is misplaced, and the District Inspector of Schools (SE) has improperly declined to grant the petitioner a higher scale of pay.

Mr. Naskar, learned Advocate representing the State, submits that the petitioner's claim for enhancement to a higher scale of pay is based on the Circular dated 13.07.1999. Therefore, according to him, the District Inspector of Schools (SE) has rightly rejected the petitioner's prayer for the grant of a higher scale of pay.

Heard the learned Advocates representing the parties and perused the materials on record.

The issue of enhancement of pay on acquisition of higher qualification during the service career of an Assistant Teacher in schools across the State has been decided by the Hon'ble Special Bench in the case of *Utpal Kanti Karan* (supra). In paragraph 272 of the judgment, it was ruled as follows:

“Enhancement of pay on acquisition of higher qualification during the service career is dependent upon the relevant rules operating at the time of

acquisition of higher qualification and cannot be claimed as a matter of right in absence of Rules”.

Therefore, although the petitioner joined the school as an Assistant Teacher with a pass graduate degree on 02.01.1999, he acquired the higher qualification, on 04.11.1999. Meanwhile, the Government Circular dated 12.02.1999 was amended by another Circular dated 13.07.1999. Consequently, before the petitioner acquired the higher qualification, the Circular dated 13.07.1999 had come into effect. Accordingly, the fate of the petitioner’s claim for a higher scale of pay shall be decided in accordance with the relevant Rules prevailing on 04.11.1999, on which date the Circular dated 13.07.1999 was enforced. The Circular or Memorandum dated 13.07.1999 was published in the Official Gazette with a view to amending sub-para (3) of para 12 of the Circular dated 12.02.1999. The relevant portion of the Memorandum dated 13.07.1999 is quoted herein below:

“3. All teachers, including Physical Education teachers and Librarians of Secondary Schools who have improved /will improve their qualification or who were appointed with higher qualification in the subjects or group 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 qualification, whichever is later, provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of that school. If such 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 Commission”.

A bare perusal of the Memorandum dated 13.07.1999 reveals that a teacher who has improved their qualification shall be entitled to a higher scale of pay, provided that such

higher qualification in the relevant subjects or group is justified as per the approved staff pattern of the school. If such a teacher is appointed through the West Bengal School Service Commission, his/her pay will be fixed in the scale of pay corresponding to the qualification mentioned by the Commission.

It is undisputed that the petitioner was appointed on the basis of the recommendation made by the West Bengal Regional School Service Commission vide Memorandum dated 14.12.1998. The petitioner had submitted his candidature for the post of Assistant Teacher as a pass graduate degree holder in Bengali, and accordingly, his qualification was recorded as “pass graduate” in the Commission’s letter of recommendation. Therefore, in terms of the Circular dated 13.07.1999, he is not entitled to claim any benefit arising out of the subsequent enhancement of his qualification.

In view thereof, I do not find any infirmity in the order passed by the District Inspector of Schools rejecting the prayer of the petitioner for grant of higher scale of pay.

Accordingly, no interference is warranted in the present writ petition. Accordingly, the same is dismissed.

There will be no order as to costs.

(Partha Sarathi Chatterjee, J.)