

MAT 1673 of 2022
CAN 1 of 2022

Achintya Sahu
Vs.

State of West Bengal and others

Mr. Partha Sarathi Deb Barman,
Mr. Chandan Misra,
Mr. Debabrata Majumder
... for the appellant.

Mr. Tapan Kumar Mukherjee, AGP,
Mr. Rajarshi Basu,
Mr. Somnath Naskar
... for the respondents.

1. The appellant challenges an order dated 5th September, 2022 passed by the Single Bench of this Court in WPA 34687 of 2013. By the impugned judgement the Single Bench has dismissed the writ petition.

2. The sum and substance of the case is that sometime in the year 1998 the appellant participated in the selection process to the post of Assistant Teacher with graduate qualifications. At the relevant point of time, the appellant possessed a post graduate degree but chose not to disclose the same. He chose to do so as the chances of success in the post with graduate qualification was higher since a larger number of posts in that category were advertised.

3. The appellant could have applied for a post of a higher secondary teacher since he already had a

post graduate qualification. He consciously chose not to do so.

4. He was appointed as an Assistant Teacher in the year 1999 indicating only graduate qualifications. Nowhere in the letter of his recommendation or his appointment was there any mention of any post graduate degree.

5. The appellant claims that since after appointment, the School Authorities have come to know that he possessed a post graduate degree and entrusted him with teaching student of Class XI and XII. The appellant as well as the School admit that the same constituted a change in staff pattern. No benefit can accrue to the appellant based thereon.

6. The appellant's post was finally converted to that of a higher secondary teacher sometime in the year 2005 based on his post graduate qualification. He was given the post graduate scale of pay since 2005.

7. The appellant filed the first writ petition being WP 11596(W) or 2007 stating that he was entitled to post graduate scale of pay from 1999 i.e. the date of first appointment. The said writ petition was disposed of directing the concerned D.I. of Schools to take a considered decision on the petitioner's claim.

8. The D. I. of Schools rejected the claim of the petitioner/appellant. The writ petitioner thereupon

filed another writ petition being WPA 34687 of 2013. The said petition was dismissed by the impugned order and hence the appeal.

9. Learned counsel for the appellant would argue before this Court that ROPA 1990 and ROPA 1998 provides that a person appointed with a higher qualification is entitled to pay scale commensurate with higher qualification from the date of first appointment.

10. Counsel for the appellant also relies upon several paragraphs of a Full Bench decision of this Court in WPA 9921 of 2007 with WPA 303 of 2023 (Utpal Kanti Karan Vs. State of West Bengal and others). The said decision is placed in support of the argument that a person with higher qualifications must be given the higher pay scale from the date of his initial appointment.

11. This Court is of the clear and unequivocal view that the catch phrase in ROPA 1990 and ROPA 1998 as also the paragraphs of the aforesaid Full Bench decision in Utpal Kanti Karan (supra) is “appointed with higher qualifications”. It is only a person whose letter of appointment or letter of recommendation which contains the mention of his post graduate qualification, that would be entitled to the said post graduate scale from the first date of appointment.

12. In the instant case, the appellant was admittedly recommended and appointed only with graduate qualifications i.e. BA B.Ed in the post of Assistant Teacher. The appellant himself chose to apply for a post that required only graduate qualification to enhance his chances of success in his recruitment process.

13. In view of the above, the appellant cannot claim the benefit of a post graduate scale of pay prior to his post being formally converted to that of a post graduate teacher officially entitled to teach Classes XI and XII.

14. The appellant deliberately and willfully did not disclose his higher qualifications to the respondent which if he did would have disqualified his application itself.

15. For the reasons stated herein above, the instant appeal fails and is hereby dismissed. Consequently all pending applications are also dismissed.

16. Since retiral benefit of the appellant has been withheld without any stay or justification, due to the pendency of the writ petition and appeal. Let all such benefits be paid to the appellant as expeditiously as possible. The concerned D. I. of Schools shall call for the records from the concerned school and calculate the last drawn pay and fitment

of the appellant for pension and send his recommendation to the DPPG of West Bengal within a period of two weeks from the date of receipt of a copy of this order. The DPPG shall issue pension payment order within a period of ten days thereafter.

17. The DPPG shall take note and ensure that arrears of pension and other terminal benefits shall be paid to the appellant with interest at the rate of 7 per cent per annum.

18. It is expected that the concerned Treasury Officer releases the pension of the appellant immediately upon receipt of a PPO and furnishing all bank particulars by the appellant.

19. There will be, however, no order as to costs.

20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)