

20.08.2025
Item No.17
Court No.11
Avijit Mitra

**FMA 16 of 2025
with
IA No.CAN 1 of 2024**

**Kalipada Ghorai
-versus-
The State of West Bengal & ors.**

Mr. Piyush Chaturvedi, Sr. Adv.,
Mr. Bhagbat Choudhuri,
Ms. Mallicka Manna,
Ms. Gopa Mainan
....for the appellant
Mr. Biswabrata Basu Mallick, A.G.P.,
Mr. Sayan Ganguly
...for the State

The present appeal has been preferred challenging an order dated 20th August, 2024 passed by the learned single Judge in the writ petition being WPA 2955 of 2006 which was preferred by the writ petitioner/appellant herein challenging *inter alia* a memo dated 6th September, 2005 issued by the respondent no.2.

The following facts are not dispute. The appellant was appointed and approved as an Assistant Teacher in the Physical and Work Education Group with effect from 19th July, 1993 at Begunabari High School (hereinafter referred to as the said school) with a qualification of B.Com, B.Ed. Prior to such appointment and approval, the appellant completed

the Masters in Physical Education (hereinafter referred to as the said M.P. Ed) course from Utkal University (hereinafter referred to as the said University) as a regular candidate during the session 1992-93. Subsequent to appointment, the appellant applied to the school authorities seeking leave for appearing in the final examination. Such prayer was considered and allowed and he appeared in the examination and emerged to be successful and acquired the Master's degree. Subsequent thereto, the appellant approached the State authorities for grant of post-graduate scale of pay. As such prayer was not being considered, the appellant was constrained to file a writ petition being W.P. No.15021 (W) of 2000 and on the basis of the order passed in the same, the respondent no.3 passed an order dated 16th May, 2001 refusing the appellant's prayer. Aggrieved thereby, the appellant again filed a writ petition being W.P. No.7773 (W) of 2001 but the same was disposed of refusing the appellant's prayer. Aggrieved thereby, the appellant preferred a mandamus appeal, which was also dismissed. Thereafter, the appellant submitted a fresh representation to the respondent no.2 citing instances where persons similarly situated with the appellant were granted the post-graduate scale of

pay on the rudiments of the same qualification as acquired by the appellant. Such representation was, however, rejected by the respondent no.2 *vide* memo dated 6th September, 2005. Challenging the said memo, the appellant again preferred a writ petition being WPA 2955 of 2006 and the order passed in the same has been impugned in the present appeal.

Mr. Chaturvedi, learned senior advocate appearing for the appellant strenuously argues that the appellant was entitled to the post-graduate scale of pay on the rudiments of the initial memo dated 22nd November, 1993 by which the benefit of post-graduate scale of pay was extended to the Physical Education teacher of secondary schools. By a subsequent memo dated 8th March, 2000, it was clarified that the benefit of such post-graduate scale of pay would be admissible only to those Physical Education Teachers, who had obtained such degree on completion of '2 year regular course'. In the said memo, it was also specifically stated that '*this order will take effect from the date of issue of this clarification*'. The appellant was thus entitled to the post-graduate scale of pay as applied for after acquiring the Master's degree Degree Course much prior to 8th March, 2000. It is well settled that a person's claim needs to be considered on the basis of

the circulars and government orders as prevalent on the date such relief was claimed. In support of such contention reliance has been placed upon a judgment delivered by the Hon'ble Special Bench in the case of *Utpal Kanti Karan Vs. State of West Bengal & ors.*, reported in 2024 SCC OnLine Cal 1274.

Drawing our attention to the order dated 10th September, 2001 passed in W.P. No.7773 of 2001, Mr. Chaturvedi argues that the wisdom of making the decision by the State respondents to extend the benefit of post-graduate scale of pay only to persons who had undergone 2 year regular course was not gone into by the Hon'ble Court and as such his claim ought to have been considered taking into consideration the fact that the benefits as claimed by him were extended to persons similarly situated with him. Such argument, as urged, was glossed over by the learned single Judge and no finding was returned on the same and such infirmities warrant interference of this Court.

He further argues that the clarification contained in the memo dated 8th March, 2000 was prospective in nature with effect from the date of issuance of the said memo and the same cannot stand in the way towards grant of post-graduate scale of pay to the

appellant moreso when teachers similarly situated with him, who also completed one year course from the self-same University had been conferred the benefits by the authorities. Thus, the rejection of the appellant's claim by the respondent no.3 *vide* memo dated 6th September, 2005, is unsustainable inasmuch as the State cannot act discriminatorily. In support of such arguments reliance has been placed by him in a judgment delivered by one of us in re: *Gautam Kumar Mondal [W.P. No.2993 (W) of 2008]*.

Mr. Basu Mallick, learned Additional Government Pleader appearing for the State respondents, however, denies and disputes the contention of Mr. Chaturvedi and submits that the issue as regards grant of higher scale of pay to the appellant had already attained finality inasmuch as the order refusing the appellant's prayer for grant of higher scale of pay was not interfered with by the writ Court in the earlier writ petition being W.P. No.7773 of 2001. The said order had also been affirmed by the Hon'ble Appeal Court. In such circumstances, the learned single Judge rightly rejected the appellant's prayer and there is no infirmity in the same, warranting interference in appeal.

He further submits that the appellant had already attained the age of superannuation and his retirement benefits have been settled on the basis of the terms and conditions as existing on the date of such retirement.

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

The argument of Mr. Chaturvedi that as the wisdom of making the decision by the State respondents to extend the benefit of post-graduate scale of pay only to persons who had undergone 2 year regular course was not gone into by the Hon'ble Court, the respondents ought to have extended the benefit of higher scale of pay to the appellant, is not acceptable to this Court in the backdrop of the fact that the order refusing the appellant's prayer for grant of higher scale of pay was not interfered with by the writ Court in the writ petition being W.P. No.7773 of 2001 and the appeal preferred against the same was also dismissed by the Hon'ble Appeal Court.

The issue of discrimination allegedly practiced by the State respondents, as urged by Mr. Chaturvedi, is also not acceptable to us inasmuch as the instances of grant of post-graduate qualification to

incumbents similarly situated with the appellant were of a period prior to the order passed in the writ petition being, W.P. No.7773 of 2001. Such issue of discrimination was not urged before the Court in the said writ petition and the appeal preferred against the order passed in the said writ petition was also dismissed.

The judgments delivered in the cases of *Utpal Kanti Karan (supra)* and *Gautam Kumar Mondal (supra)*, upon which reliance has been placed on behalf of the appellant, are also distinguishable on facts.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned, warranting interference in appeal.

Accordingly, the appeal and the connected application are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)