

FMA 615 of 2020
(Prasanta Kanti Bose Vs. The State of
West Bengal & Ors.)

Mr. Biswarup Biswas

.... For the appellant

Mr. Kartik Chandra Kapas

..... For the State respondents

1. The present appeal has been preferred by Prasanta Kanti Bose (in short, Prasanta) challenging a judgment dated 11th March, 2019 passed by the learned single Judge in a writ petition being WP No. 9112 (W) of 2013. The said writ petition was preferred praying for setting aside an order dated 30th August, 2012 passed by the respondent no. 3 herein and to grant all consequential benefits.

2. The following facts are not in dispute. Prasanta, upon acquiring the qualification B.Sc. MP. Ed., participated in a selection process conducted by the West Bengal Regional School Service Commission (in short, Commission) for appointment to the post of assistant teacher in Physical Education. He emerged to be successful and was, accordingly, appointed in Bagdah High School and he joined the said post on 3rd February, 1999. Such appointment was also approved by the respondent no. 3 *vide* memo dated 23rd March, 1999 and he enjoyed the post graduate scale of pay since then. Subsequently, for getting appointment in a school nearer

to his residence, he again participated in a selection process conducted by the Commission in the year 1999. He emerged to be successful and was appointed to the post of assistant teacher with the qualification B.Sc. MP. Ed. at Ariadaha Sree Vidyaniketan High School on 14th March, 2001. Such appointment was approved by the respondent no. 3 *vide* memo dated 25th May, 2001 wherein the column towards '*Scale of Pay*' was filled up stating '*as per GA Rules*'. In the said approval memo, it was also stated that Prasanta had opted for '*pass degree holder in Physical Education*' and accordingly, Prasanta was paid the graduate scale of pay. Aggrieved thereby, Prasanta approached the writ Court praying for post graduate scale of pay and on the basis of a direction passed in the said writ petition, Prasanta's claim was considered by the respondent no. 3 and his prayer was refused *vide* memo dated 30th August, 2012. Aggrieved thereby, Prasanta preferred a writ petition being WP No. 9112 (W) of 2013 and the judgment delivered in the same had been impugned in the present appeal.

3. Records would reveal that by an order dated 20th December, 2019, a coordinate Bench of this Court condoned the delay in preferring the appeal and disposed of the stay application with liberty to mention the matter after disposal of the reference pending before the Larger Bench in terms of the order of the Hon'ble Supreme

Court dated 25th July, 2019 passed in the case of *Shohidullah Vs. The State of West Bengal & Ors.*

4. Mr. Biswas, learned advocate appearing for the appellant submits that the dispute involved in the present case is no longer *res integra* and has been finally decided in the case of '*Utpal Kanti Karan Vs. State of West Bengal & Ors.*', reported in 2024 SCC OnLine Cal 1274. The matter pending before the Hon'ble Supreme Court [*Shohidullah (supra)*] had already been disposed of in the light of the observations of the Special Bench judgment in the case of *Utpal Kanti Karan (supra)*.

5. He further argues that a perusal of the judgment impugned would reveal that Prasanta's claim was rejected on the rudiments of an erroneous observation that Prasanta's qualification was not in the subject relevant to the group in which he was appointed. The learned single Judge observed, *inter alia*, that the qualification of Prasanta is B.Sc. MP. Ed., i.e., not a Master degree holder in a Science subject, but in a different stream, Physical Education. Such observation is erroneous inasmuch as Prasanta was appointed as an assistant teacher in Physical Education with post graduate degree in Physical Education and on the rudiments of such qualification in the earlier selection process conducted by the Commission, he was granted the post graduate scale of pay.

6. He further submits that in the application form there was no space for exercise of option for post graduate qualification while participating in the recruitment examination of the year 1999. In view thereof, it cannot be stated that he suppressed his qualification. While replying to an application under the Right to Information Act, 2005, the Commission *vide* memo dated 05th January, 2010 intimated that Prasanta mentioned M.P.Ed qualification in the application form at the time of participation in the 1999 selection process. In view thereof, the learned single Judge erroneously proceeded on the basis that Prasanta had participated in the second selection process upon opting pass category. Such argument, as advanced, was glossed over by the learned single Judge.

7. Mr. Kapas, learned advocate appearing for the State respondents denies and disputes the contention of Mr. Biswas and submits that the approval memo itself would reveal that Prasanta opted for '*pass degree holder in Physical Education*' and as such, he was rightly granted the graduate scale of pay as per the GA Rules.

8. He further argues that Prasanta was not given the post graduate scale of pay way back in the year 2001 and having accepted the graduate scale of pay, he cannot turn back and challenge such decision moreso when he did not lodge any objection contemporaneously. In view

thereof, the learned single Judge has rightly refused to exercise discretion in his favour.

9. In reply, Mr. Biswas submits that the issue as regards grant of post graduate scale of pay to teachers appointed in group of Physical Education/Work Education, was not finally decided till the disposal of the matter [*Utpal Kanti Karan* (supra)] on 7th February, 2024 and that as such Prasanta's claim could not have been denied on the ground of delay *moreso* when in the earlier round of litigation, the writ petition was entertained and disposed of on 4th April, 2012 directing the respondent no.3 to consider the appellant's representation for post graduate scale of pay.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record.

11. Prasanta obtained the MP. Ed. Degree in the year 1997. On the rudiments of such qualification and after he emerged to be successful in the selection process conducted by the Commission in 1998, he was granted the post graduate scale of pay. Though there was no change in circumstances thereafter and as he appeared in the second examination conducted by the Commission in the year 1999 with the same qualification, no reason is forthcoming as to why he was granted the pass graduate scale of pay. The respondent no. 3 as well as the learned

single Judge erroneously proceeded on the basis that Prasanta appeared in the second examination process conducted by the Commission as a pass graduate degree holder.

12. The issue as regards entitlement of post graduate scale of pay to teachers in the Physical Education and Work Education group has been considered in the judgment delivered in the case of *Baishali Banerjee (supra)*. Dealing with the judgments cited, the learned single Judge rightly observed that in Physical Education there is no such distinction between pass category and honours category and that as such Physical Education teachers with Master degree in Physical Education would be entitled to post graduate scale of pay notwithstanding the fact that post graduate degree in Physical Education was not necessary for appointment as assistant teacher in Physical Education.

13. Prasanta's entitlement to the post graduate scale of pay and the grant of such benefit was not contingent upon an application to be made by the teacher. The provisions do not provide that such benefits can be granted only if a representation to that effect is submitted within a stipulated time. It is a benefit, which has been granted on the rudiments of a policy decision adopted by the State. The breach of such decision has persisted over a time and there had been continuous default on the part

of the respondents to grant the actual benefits to Prasanta which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules.

14. The circulars operating on the date of appointment of Prasanta and the provisions of the ROPA Rules permitted grant of post graduate scale of pay and as such in view of the judgment delivered in the case of *Utpal Kanti Karan (supra)*, the learned single Judge ought not to have rejected Prasanta's claim towards post graduate scale of pay.

15. Accordingly, the order passed by the respondent no. 3 *vide* memo dated 30th August, 2012 and the judgment impugned in the present appeal are set aside and the respondents are directed to disburse the post graduate scale of pay with effect from 14th March, 2001 and other consequential benefits including the arrears in favour of the appellant within a period of 6 (six) weeks from the date of communication of the order.

16. With the above observations and directions, the appeal is disposed of.

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

18. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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