

(2008) 10 CAL CK 0002

Calcutta High Court

Case No: Writ Petition No. 27379 (W) of 2007

Suresh Singh

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Oct. 1, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2008) 4 CHN 785

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Ekramul Bari and Syed Mansur Ali, for the Appellant; Jayanta Mitra Chameli Majumder and Debabrata Karan, for the Respondent

Final Decision: Allowed

Judgement

Soumitra Pal, J.

The Judgment of the Court was as follows:

1. Facts of the case are that on 31st October, 1995 the petitioner was appointed Assistant Teacher in Netaji Vidyalaya F.P. School. At the time of appointment he was undergoing B.Ed. course in the 1995-96 Session which commenced on 1st July, 1995 and ended on 30th June, 1996. Since the petitioner was not holding the B.Ed. degree, initially he was placed in the "B" category. The B.Ed. final examination was conducted in the month of June, 1996. After completion of the course, by memo dated 18th July, 2001 the petitioner was placed in the "A" category and continued to draw salary under the said category till 21st June, 2007 when the Chairman, District Primary School Council, Burdwan, respondent No. 4 by a memo intimated that since he had obtained the B.Ed. degree after 1st July, 1996 he was entitled to get "B" category scale of pay and not eligible to get "A" category scale of pay from 1st July, 1996. By the said memo the Sub-Inspector of Schools, (P.E.) Durgapur Circle,

respondent No. 6 was directed to calculate the payment made in excess and was requested to submit the written option of the petitioner regarding the mode of recovery of excess payment. Being aggrieved this writ petition was filed challenging the memo dated 21st June, 2007 on the ground that since the examinations were completed before 30th June, 1996 it should be deemed that the petitioner had obtained the B.Ed. degree before 1.7.96 as postulated in the Notification dated 31st May, 1996. Drawing analogy from the Notification dated 17th September, 1984 that as the date of obtaining higher qualification by a secondary teacher is counted from the date following the last date of examination, both theoretical and practical, subject to the condition that the teacher comes out successful in the said examination, it was submitted that the same principle should govern a primary teacher. Submission was made that since there is no alternative remedy, the writ petition is maintainable.

2. Learned Advocate appearing on behalf of the State-respondent relying on Rule 20 of the Rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution of India submitted that as no representation was filed before moving the writ petition, the petition is not maintainable. It was contended that as the petitioner had obtained the degree after 1st July, 1996, the issue is covered by the Notification dated 31st May, 1996 and hence, the action of the respondent No. 4 in issuing the memo dated 21st June, 2007 is just and proper. Moreover, since it is a matter of policy, the issue should be relegated to the authorities for considering the matter on merits. Learned Advocate for the respondent had relied on a Notification dated 26th October, 1971 issued by the Education Directorate. (Primary) to highlight the fact that an incumbent should pass the examination before the appointed day. Reliance was placed on the judgment of the Apex Court in Baij Nath & Ors. vs. State of Punjab & Anr., reported in AIR, 1996 SC 2395.

3. The matter was moved on 20th February, 2008 when directions were issued for filing of affidavits. An interim order was passed restraining the respondents from recovering the alleged excess pay from the salary/service benefits of the petitioner and also restraining the respondents from lowering down the pay from "A" to "B" category.

4. In the context of the case the question which falls for consideration is what should be the date for obtaining B.Ed. degree - whether the last date of holding the practical or theoretical examination or the date of publication of the result of such examination.

5. In order to appreciate the issue it is necessary to refer to the relevant provision in the Notification dated 31st May, 1996 which is set out hereunder:-

"No. 352-SE(Pry.) Calcutta, the 31st May, 1996 From: Shri S. Som. Joint Secretary to the Government of West Bengal. To : The Director of School Education, West Bengal. The undersigned is directed to invite a reference to memo No. 306-SC/P. dated

7.2.67 issued by the Director of Public Instruction, West Bengal and indicating that there may not be any objection to treat the MA, BT/BA, PGBT teachers of aided primary schools as "A" category teachers for the purpose of payment of Government grants on deficit basis.

2. The matter has since has been reconsidered by this Deptt. This Deptt. is of the view that BT/B.Ed. degrees are intended for teaching in Secondary/High School and do not impart necessary training in methods of teaching in Primary Schools.

3. The undersigned is accordingly directed by order of the Governor to say that for the purpose of sanction of pay scale to a Primary School Teacher as trained Matriculate/School Final/ Madhyamik Passed or equivalent. The Primary Teachers Training Certificate only from a recognised Primary Teachers Training Institute of this State shall be accepted w.e.f. 1.7.96.

4. The undersigned is further directed to say that the cases already decided on the basis of the Memo No. 306-SC/P dated 7.2.67 of the D.P.I., West Bengal need not be reopened. Also the cases of the Primary School Teachers who have obtained BT/B.Ed./PGBT degree/diploma before 1.7.96 may be decided in terms of the said Memo dated 7.2.67 of the DPI, West Bengal.

5. All concerned may be informed accordingly.

Sd/-S. Som Joint Secretary."

(Emphasis supplied)

6. In this context it is appropriate to refer to the Notification dated the September, 1984 which is as under:-

"No. 253-Edn. (B)

Dated, the 17th September, 1984

From: Shri M.M. Sinha Roy, I.A.S.,

Deputy Secretary to the Government of West Bengal.

To: The Director of School Education, West Bengal;

6, Bhabani Dutta Lane, Calcutta-73

Sub : Revision of pay scales of the teachers of Non-Government/aided/sponsored educational institutions.

The undersigned is directed to say that note 2(b) and 2(c) of Annexure-I of the G.O. No. 372-Edn. (B) dated 31.7.81 read thus:-

"2(b) All existing Secondary School Teachers who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on

qualification basis after five years" teaching counting from the date on which higher qualification was obtained.

2(c) In future, Secondary School Teachers will be allowed higher pay scale on qualification basis only when they obtain such higher qualification in the subject relevant to their teaching/ appointment."

A question has been raised as to the date which may be taken into consideration regarding "obtaining higher qualification."

The Governor is now pleased to direct that the date of obtaining higher qualification will count from the date following the last date of examination-both theoretical and practical-subject to the condition that the incumbent concerned comes out successful in the said examination. This principle will be applicable in the case of teachers appointed in High School, Jr. High Schools, Jr. and High Madrasahs.

All concerned have been informed.

Sd/- Illegible

Deputy Secretary"

7. It is to be noted that the Education Department has two wings Primary and Secondary. Since by Notification dated 17th September, 1984 in the case of the secondary teachers the date of obtaining higher qualification is counted from the date following the last date of examinations-both theoretical and practical - subject to the condition that the incumbent concern comes out successful in the said examination, there is no reason why the same analogy should not be made applicable to a primary teacher. In my view, once a primary teacher becomes successful in the B.Ed. examination, it should relate back to the last date of the examination, provided it was held before 1st July, 1996. The word "obtained" appearing in the Notification dated 31st May, 1996 should be interpreted contextually and not literally and also in the manner as explained otherwise even if B.Ed. examinations were held months or weeks before 1st July, 1996 an incumbent would be prejudiced if results were published after 1st July, 1996. The Notification dated 17th September, 1984 though relating to secondary teachers in my view is a pointer in that direction. In the instant case as admittedly the B.Ed. examination was completed before 1st July, 1996 and the petitioner was successful, there is no reason why he should not be treated to have "obtained" his degree or had passed B.Ed. examination before 1st July, 1996. The argument that the writ petition is not maintainable as the petitioner did not file any representation before filing the petition does not hold good as there was Immediate threat of implementing the impugned memo by deducting the amount. Since the Apex Court had no occasion to deal with the proposition as to what should be the date of obtaining or acquiring the degree, the principles of law in Baij Nath (supra) are not applicable to the facts of the case. The writ petition is, thus, allowed. The memo dated 21st June, 2007 cannot

be sustained and is, therefore, set aside and quashed.

8. No order as to costs.

9. Urgent xerox certified copy of this judgment and order, if applied for, be given to the appearing parties on priority basis.