

(2008) 11 CAL CK 0004

Calcutta High Court

Case No: Writ Petition No. 25535 (W) of 2008

Milan Kumar Dey

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Nov. 26, 2008

Acts Referred:

- West Bengal Schools (Control of Expenditure) Act, 2005 - Section 14(2)

Hon'ble Judges: Sadhan Kumar Gupta, J

Bench: Single Bench

Advocate: Ekramul Bari, for the Appellant; Sipra Mazumdar for the State, for the Respondent

Final Decision: Allowed

Judgement

Sadhan Kumar Gupta, J.

The Judgment of the Court was as follows:

1. The writ petition is taken up today for passing order.
2. The case of the petitioner is that he was appointed as an Assistant Teacher of Work Education group in Nabajiban Colony, Nabajiban Vidyamandir (H.S.), hereinafter referred to as the "school" with effect from 22.4.1976. Said school is a recognised institution under the West Bengal Board of Secondary Education. The appointment of the petitioner was approved by the D.I. of Schools with effect from 22.4.1976. After obtaining permission from the school, the petitioner passed the B.A. in History in the year 1988 and thereafter M.A. in History in the year 1990. The petitioner prayed before the school authority for changing of the group and accordingly the petitioner's group was changed from Work Education to Social Science from the year 1986. This change of group was approved by the A.D.I. of School, North 24-Parganas as it appears from the staff pattern of the said school. Consequent to his obtaining Master degree, the petitioner was granted higher scale

of pay with effect from 17.8.1990 and accordingly his pay was fixed by the D.I. of Schools and he was granted the post-graduate scale of pay. The petitioner, on the basis of such higher scale of pay submitted option form and the said form was duly countersigned by the D.I. of Schools on 20.3.1999. The District Inspector of Schools (S.E.) wrote a letter to the Director of School Education on 14.1.2003 in respect of approval of the higher scale of pay as was granted in favour of the petitioner. As the Director of School Education did not take any action in this respect, so the petitioner submitted representations from time to time. At last, the petitioner received a letter from the Director of School Education on 31.7.2008 wherein the Director of School Education informed the petitioner that his prayer for higher scale of pay was rejected. In the said letter of the Director of School Education, it was mentioned that as per sub-section (2) of section 14 of the West Bengal Schools (Control of Expenditure) Act, 2005 and para 7 of G.O. No. 593-SE(B) dated 27.11.2007 higher scale of pay, as was granted in favour of the petitioner could not be approved.

3. Being aggrieved by the decision of the said Director of School Education, the petitioner has preferred this writ application praying for setting aside the said order of the Director and to pass consequential direction.

4. It is the admitted position that the petitioner was appointed in the school in question in the year 1976. In the year 1988, he passed the Special B.A. Examination after obtaining permission from the school authority. Thereafter in the year 1990, the petitioner passed the M.A. examination and after this the Managing Committee of the school granted the petitioner higher scale of pay with effect from 17.8.1990. Subsequently, it appears from the annexures that this grant of higher scale of pay was countersigned by the concerned D.I. of Schools. In his option, as submitted as per ROPA Rules, the petitioner submitted an option in the existing higher scale of pay on 20.3.1999 and it was also countersigned by the D.I. of Schools. From the letter of the District Inspector of Schools (S.E.), Barrackpore addressed to the Director of School Education, West Bengal, it further appears that the petitioner was appointed with the qualification of B. Com, B.A. as an Assistant Teacher of Work Education group with effect from 22.4.1976 and subsequently the Managing Committee changed the group of the petitioner from Work Education to Social Science. The D.I. of Schools further mentioned that subsequently in the year 1990 the petitioner improved his qualification. So it appears that all these claims of the petitioner are not disputed. There cannot be any dispute that before coming into operation of the West Bengal Schools (Control of Expenditure) Act, 2005, whenever a teacher acquired higher qualification then in that event he was entitled to get higher scale of pay. In this respect, so far as the present case is concerned, there cannot be any doubt that the petitioner having improved his qualification is certainly entitled to higher scale of pay which was so long granted to him with the tacit approval of the District Inspector of Schools. Now the Director of School Education in his impugned letter refused to sanction such higher scale of pay as per provisions of sub-section (2) of section 14 of the West Bengal Schools (Control of Expenditure) Act,

2005. In a similar matter as it appears from the copy of the order, the learned Single Judge-in W.P. No. 14900(W) of 2007, observed that the provisions of West Bengal Schools (Control of Expenditure) Act, 2005 was not applicable in that case, as the petitioner of that case acquired higher qualification prior to the coming into operation of the said Act. So far as the present case is concerned, it is undisputed that the petitioner improved his qualification much before the coming into operation of the said Act. Learned Single Judge while passing such decision relied upon the decision of the Division Bench of this Court as reported in 2008(1) CLJ (Ca1) 810 (State of West Bengal & Ors. vs. Sauvik Ghosh & Ors., wherein the learned Division Bench clearly observed that the West Bengal Schools (Control of Expenditure) Act, 2005 has got no retrospective effect.

5. Under such circumstances, I am of opinion, that the impugned order, as passed by the Director of School Education, in refusing the sanction of higher scale of pay in favour of the petitioner, should be set aside.

6. In the result, the writ petition succeeds on contest but without cost.

7. The Memo No. 1578(2)-GA dated 31.7.2008 of the Director of School Education is quashed. The Director of School Education is directed to approve the higher pay scale, as has already been fixed in favour of the petitioner, immediately. The respondents are further restrained from making any deduction from the salary of the petitioner, as he is entitled to the higher scale of pay.

8. Urgent xerox certified copy be handed over to the parties, if applied for.