(1977) 12 CAL CK 0021

Calcutta High Court

Case No: None

Bhabatosh Pati		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Dec. 16, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1977) 12 CAL CK 0021

Hon'ble Judges: Salil Kumar Datta, J

Bench: Single Bench

Advocate: Mrityunjoy Palit, for the Appellant;Sakti Prasad Mukherjee, for the Respondent

Judgement

Mr. Justice Salil Kumar Datta

1. In this application under Article 226 of the Constitution the petitioner has prayed for issuance of an appropriate Writ directing the respondents not to give effect to the letter dated the 31st December 1966. The said letter by the Assistant Secretary, Government of West Bengal to the Headmaster, Nigamananda Saraswati Vidyalaya, P.O. Nigamananda, Dist. Coochbehar (Annexure "C" of the petition) is as follows:

Sub : Advance increments to the teachers on successful completion of the training course of the Institute of English, Calcutta.

Sir,

I am directed to refer to your letter dated 23.7.66 on the subject mentioned above, and to say that only assistant teachers of the Govt. and aided secondary schools teaching English, who would successfully complete the training course at the Institute of English, Calcutta, are entitled to draw two increments in the respective scales of pay from the date of resuming their duties in the respective institutions. But, no arrears prior to the date of

issue of G.O. No.3818-Edn. (D) dated 30.12.64 should be allowed.

Yours faithfully,

Sd/- B. K. Jha,

Assistant Secretary.

It appears that the Government of West Bengal, Education Department, issued a circular earlier which set out below:-

"No.3818-Edn-(D)

5P-29/64

Dated Calcutta, the 30th

December, 1964

From : Shri H. B. Ghosh

Deputy Secretary to the Government of West Bengal

To : The Director of Public Instruction,

West Bengal.

Ref : His letter no.1814, dated the 29th April, 1964

The undersigned is directed by order of the Governor to say that the Governor is pleased to direct that the teachers of Government and aided secondary schools, who would successfully complete the training course at the Institute of English, Calcutta, may be allowed to draw two increments in the respective scales of pay from the date of resuming their duties in the respective schools.

2. The Accountant General, West Bengal has been informed.

3. This order issued with the concurrence of the Finance Department of this Government vide their U.O.No.A.VII/2805, dated the 10th December, 1964.

No. 821 (111) Sc/G

Sd/- H. B. Ghosh,

50-8G-64

Deputy Secretary,

Dated Calcutta, the 17th

February, 1965".

2. A perusal of the said circular of December 30, 1964 would indicate that the teachers of the Government and aided secondary schools who would successfully complete the training course at the Institute of English, Calcutta, have been allowed to draw two increments in the respective scales of pay from the date of resuming their duties in the respective school. There is no dispute that the petitioner, who was working as the Headmaster of Ajodhya High School, Ajodhya, P.S. Bishnupur, District Bankura since March 1, 1963 successfully completed the course of teaching English course at the Institute of English, Calcutta, and was awarded the requisite diploma. On the basis of the letter dated 31st December 1966, Annexure C to the petition, the Managing Committee of the petitioner''s school passed a resolution on March 3, 1974, recording that the petitioner was not entitled to two increments which he had enjoyed and that his increment should be stopped and that he should refund the money to the school taken by him by way of increments.

3. The petitioner in this Rule contends that in the circular issued by the order of the Governor, the increment was made liable to be paid to all teachers who would successfully complete the training course at the Institute of English, Calcutta, and the said circular did not make any distinction between a headmaster and other teachers of the school. Accordingly, he was entitled to the increments enjoyed by him and to continue to receive the benefits thereof as submitted by Mr. Palit, learned Advocate appearing for the petitioner. The petitioner accordingly prayed for appropriate writ restraining the Respondent from giving effect to the letter dated December 31, 1966 aforesaid and the resolution of the Managing Committee of the petitioner''s school passed on March 3, 1974.

4. Mr. Mukherjee, learned Advocate appearing for the members of the Managing Committee has relied on the clarification made by the Assistant Secretary which is Annexure C to the petition as already noted coupled with clause 10 of the Scheme which is annexed to the affidavit-in-opposition on behalf of the members of the Managing Committee. Clause 10 provides as follows:-

10. Headmasters will please note:

We should like to make it clear that the Government Circular No.3818-Edn-D of 20th

5P-29/64

December, 1964 sanctions two increments in pay to teachers of Government and aided Secondary schools, but does not specifically mention Headmasters. The question of granting additional increments to Headmasters is under consideration of the Government and as such it must be clearly understood that there can be no guarantee of increment to

the Headmasters at present. If you decide to join the Institute it should be primarily to improve your knowledge and ability".

The position taken by the Director of the Institute was that the circular of the Government dated 20.12.64 does not specifically mention Headmasters and accordingly the question as to granting of additional increments to Headmasters was not guaranteed. The managing Committee strongly relied on these two documents to support their action adopted by the resolution as stated above passed at the meeting of March 3, 1974.

5. In the circular issued by the order of the Governor no distinction has been made in respect of Headmasters and other teachers and there can be no dispute that the order so made applies to teachers as genus to which includes Headmasters who with other teachers admittedly perform teaching duty to students. The Headmasters by reason of there being Headmasters are not excluded from the category of teachers when they also perform teaching duty to students of the school. The provision for increments to teachers on successful termination of training at the Institute of English can be modified by the order of the Governor and not by any other authority subordinate to him. Accordingly I am of opinion that the circular of the Government dated December 31, 1966 of the Assistant Secretary which does not refer to any authority but appears to be a mere clarification of the order is in derogation of the provisions of the order of the Governor in so far as the Headmasters of the schools are concerned. This circular cannot therefore in any way curtail or modify the rights to which the Headmasters and teachers as well are entitled on the order of the Governor. In these circumstances, the action of the Managing Committee stopping the increment and as also claiming refund of the amount enjoyed by him as increments by the petitioner on the basis of the above letter of December 31, 1966 seems to be without legal authority. Further, the Director of the Institute has also no right to impose any condition in derogation of the provisions of the order of Governor.

6. It is further contended by Mr. Mukherjee tat no writ lies against the members of the Managing Committee, as they are not statutory bodies. I am told that the salaries as also the increments are being paid by the Government. Accordingly, a Writ will lie directing the Government not to claim the refund of the increments enjoyed by the petitioner as also not to deprive the petitioner of such increments to which he is entitled to under the order of the Governor dated December 30, 1964 and to forbear the Government from giving effect to the letter of Assistant Secretary dated December 31, 1966.

The Rule is accordingly made absolute.

Let appropriate Writs issue accordingly on the respondents Nos.1 to 5.

It is recorded that in spite of due service no one appears for respondents 1 to 5, the State and its concerned officials at the hearing of the Rule.