

(2008) 07 CAL CK 0052

Calcutta High Court

Case No: Writ Petition No. 7411 (W) of 2007

Miss Sonali Kar

APPELLANT

Vs

D.I. of Schools (S.E.) and Others

RESPONDENT

Date of Decision: July 28, 2008

Citation: (2008) 4 CALLT 251

Hon'ble Judges: Tapan Kumar Dutt, J

Bench: Single Bench

Advocate: Gautam Som, Sahasrangshu Bhattacharjee, for the Appellant;

Judgement

Tapan Kumar Dutt, J.

Heard the learned Advocates for the respective parties.

2. The petitioner's case is that the petitioner's name was recommended by the West Bengal Regional School Service Commission (Southern Region) vide Memo dated 9th February, 2001 for the post of an Assistant Teacher in Nutrition at Giribala Sircar Balika Vidyalaya (Government Sponsored). By an order dated 14th February, 2002 the District Inspector of Schools (S.E) Calcutta, approved the appointment of the petitioner in the said post. It appears from the copy of the said Memo that the appointment of the petitioner was made in the said post in the category of Post-graduate Degree since the petitioner was a Post-Graduate (M.Sc. in Home Science) with B.Ed. at that point of time.

3. It further appears from annexure P-4 to the writ petition that the petitioner was granted a Registration No. 3486 Ph.D (Home Science) by the Calcutta University with effect from 25th February, 1998. On 20th November, 2000 the petitioner submitted her thesis and the petitioner was granted Ph.D Degree on 17th May, 2004 in Home Science (Food & Nutrition) and the petitioner was given the necessary certificate of Ph.D Degree on 28th April, 2005.

4. It appears that the petitioner applied before the School Authority for grant of two additional increments for having obtained the Ph.D Degree on the self-same subject

i.e. Home Science (Food & Nutrition). The petitioner is aggrieved by the fact that the respondent No. 1 has rejected such prayer of the petitioner in view of "G.O.-2062(S) dated 9th November, 2001" as the name of the petitioner was recommended by the School Service Commission as a Post-Graduate in Home Science. The petitioner has challenged the Memo dated 24th August, 2005 by which the respondent No. 1 has rejected the aforesaid prayer of the petitioner.

5. The learned advocate for the petitioner submits that in view of the Memo No. 25-SE(B)/IF-102/98 dated Calcutta, 12th February, 1999, particularly, sub-paragraph 5 of paragraph 12 of the said Memo, the petitioner is entitled to get two additional increments. The said sub-paragraph 5 of paragraph 12 of the said Memo is quoted herein below:

Secondary teachers Headmasters/Headmistresses with Doctorate degree in the subject taught or in an allied subject shall get two additional increments from the date of the convocation of which such degree is awarded.

Provided that those who obtained this degree prior to the date of coming over to the revised scale shall get two additional increments from the date with effect from which they elect to draw pay in the revised scales, provided that they have not already got such additional increments in the earlier pay-revision and provided further that in the latter case, pay should be fixed at least at the third stage of the relevant scale of pay.

6. The said learned advocate has also referred to amendments brought by subsequent Govt. Orders and/or Memos with regard to sub-paragraph 3 of paragraph 12 of the said Memo but such Govt. Orders and/or Memos have not in any way amended the said sub-paragraph 5. The said learned Advocate submits that the petitioner is entitled to two additional increments in terms of the said sub-paragraph 5 of paragraph 12 of the said Memo.

7. The learned advocate appearing on behalf of the respondents referred to a Memo dated 13th July, 1999 which is annexure R-1 to the affidavit-in-opposition and submitted that the respondent authority was right in rejecting the prayer of the petitioner since the petitioner was appointed through the West Bengal School Service Commission and her pay will have to be fixed as per her qualification mentioned by the said Commission. Another Memo dated 3rd June, 2002 was also referred to by the said learned advocate since some amendments of the said Memo dated 13th July, 1999 took place.

8. The learned advocate for the respondents has also referred to a letter dated 9th November, 2001 issued by the School Education Department and submitted that no additional benefit can be obtained by the petitioner for her Ph.D qualification. This letter dated 9th November, 2001 has been wrongly described as a Govt. Order by the respondent No. 1. The learned advocate for the respondents has not disputed such fact. It is only a letter and not a Govt. Order. It can hardly have any statutory

force and/or binding effect on the authorities concerned. The learned advocate for the respondents, during his submissions, placed before this Court a copy of Memo dated 27th November, 2007 and submitted that the petitioner, without taking permission from the school authorities concerned, could not have pursued the Ph.D qualification and as such the petitioner is not entitled to the increments.

9. From the relevant dates indicated above it will appear that much prior to the appointment of the petitioner as an Assistant Teacher the petitioner had already submitted her thesis and the question of obtaining permission did not arise at all. That apart, the Memo dated 27th November, 2007 came into existence long after the petitioner obtained her Ph.D Degree. The said requirement of obtaining prior permission from the school authorities in pursuing the Ph.D. Degree, as contemplated in the said Memo dated 27th November, 2007, cannot be made applicable in the petitioner's case.

10. In view of the fact that sub-paragraph 5 of paragraph 12 of the said Memo dated 12th February, 1999 still stands, the petitioner is entitled to get the two additional increments as contemplated in the said Memo dated 12th February, 1999. In view of the discussions made above, the writ petition is disposed of by setting aside the impugned Memo dated 24th August, 2005 issued by the respondent No. 1 and directing the respondent authorities concerned to grant the two additional increments of pay to the petitioner as contemplated in sub-paragraph 5 of paragraph 12 of the said Memo dated 12th February, 1999 with effect from the date on which the petitioner became entitled to the same. A copy of the Memo dated 27th November, 2007, has placed before this Court by the learned advocate for the respondents, be kept on record.

11. Urgent Xerox Certified copy of this order, if applied for, be given to the parties after completion of all the formalities.