

(2014) 03 CAL CK 0065

Calcutta High Court

Case No: F.M.A. No. 354 of 2014 and C.A.N. No. 1146 of 2014

Shyamal Paul

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: March 27, 2014**Citation:** (2014) 3 CHN 160**Hon'ble Judges:** Jyotirmay Bhattacharya, J; Ishan Chandra Das, J**Bench:** Division Bench**Advocate:** Biswarup Biswas, Advocate for the Appellant; Yamin Ali, Manas Kumar Sadhu and Subhrajit Chakraborty, Advocate for the Respondent

Judgement

1. This mandamus appeal is directed against the judgment and order dated 1st July, 2013 passed by a Learned Single Judge of this Court in W.P. No. 18838 (W) of 2007. By the said order, the relief claimed by the writ petitioner was allowed in part. Considering the fact that the petitioner had M.A. Degree in Physical Education at the time of his appointment, it was held that he was entitled to get the benefit of higher scale of pay as per Ropa Rules, 1998. However, while disposing of the writ petition, His Lordship directed the concerned authority to grant higher scale of pay to the petitioner from the date of the order. Since the benefit of higher scale of pay for his higher educational qualification was not given to the petitioner from the date of his appointment, the petitioner/appellant has come before this Court with this appeal by challenging the said order of the Learned Single Judge of this Court.

2. Let us now consider as to how far the Learned Single Judge was justified by not allowing the benefit of higher scale of pay to the petitioner/appellant for his higher educational qualification in the relevant subject from the date of his appointment.

3. Here is the case where we find that the petitioner/appellant obtained Master Degree in Physical Education in the year 1990. He participated in the selection process for the post of Assistant Teacher in Physical Education in 1998. In the application which was submitted by him before the West Bengal Central School

Service Commission, he disclosed his M.P.Ed., qualification which he obtained in 1990 from the Kalyani University.

4. After being successful in the selection test held by the West Bengal Central School Service Commission, the petitioner/appellant was appointed as an Assistant Teacher in Tokipur Rajlakshmi High School (H.S.) in the District of North 24-Parganas on 9th January, 1999.

5. The appointment of the petitioner/appellant was approved by the concerned District Inspector of schools and such approval was intimated to the school authority by the concerned District Inspector of schools vide the office Memo. No. 210/g dated 8th March, 1999.

6. From the said communication which is annexure "P-4" to the said application, it appears that service of the petitioner/appellant was approved with effect from 9th January, 1999. However, his educational qualification was shown in the approval letter as B.Sc., B.P.Ed. Though, he disclosed his Master Degree qualification in Physical Education in his application as mentioned above, still then his Master Degree qualification was not mentioned in the approval letter for the reason known to the concerned authority.

7. Be that as it may, it is rightly pointed out by the Learned Single Judge that petitioner's prayer for grant of higher scale of pay for his higher educational qualification is recognised under Rule 12(3) of Ropa 1998. Rule 12(3) of Ropa 1998 as it stood at the relevant time of his appointment as an Assistant Teacher in the said school runs as follows:-

"12(3) All teachers, including physical Education teachers and Librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualification, whichever is later."

8. If we consider the appellant's claim for higher scale of pay for his higher educational qualification in the light of the said Rule 12(3) of Ropa 1998, then we have no hesitation to hold that the appellant's right to get higher scale of pay from the date of his appointment cannot be denied. In this regard, we like to mention here that the said Rule 12(3) of Ropa 1998 was subsequently amended on 13th July, 1999 and after such amendment, a proviso was added to the said Rule which runs as follows:-

"Provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of that school. If such teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School

Service Commission."

9. Since the said proviso was added to the original Rule 12(3) of Ropa 1998 after the appellant was appointed as an Assistant Teacher in the said school, the said proviso which was added subsequent to his appointment cannot be the decisive factor for deciding his claim for higher scale of pay for his higher educational qualification in the present case.

10. As such, we dispose of this appeal by recognising the appellant's claim for higher scale of pay for his higher educational qualification with effect from the date of his appointment.

11. Accordingly, we modify the impugned order by directing the concerned authority to pay the appellant's salary and/or allowances in the same scale which was admissible to, an Assistant Teacher having Master Degree in Physical Education with effect from the date of his appointment.

12. We are informed by the learned advocate appearing for the petitioner/appellant that pursuant to the direction passed by the Learned Single Judge of this Court, he has already been paid the arrear amount from 1st July, 2013 till February, 2014

13. We thus direct the concerned authority to pay the differential amount on account of such pay revision from the date of the appellant's appointment upto 30th June, 2013 within six weeks from the date of communication of this order.

14. Needless to mention here that such payment should be made after refixing the appellant's pay scale in the light of the directions passed hereinabove with effect from the date of his appointment.

15. The concerned authority is also directed to rectify the approval letter by showing his Master Degree qualification in Physical Education in the place of his B.P.Ed. qualification as mentioned in the approval letter. Both the appeal and the application stand disposed of. Urgent photostat certified copy of this order, if applied for, be furnished to the applicant as early as possible.