

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.21451 OF 2009

ORDER:

The petitioner prays for Mandamus directing 1st respondent to act according to Regulation 30(A) Part-I by fixing revised pay scale with consequential retrial benefits applicable to the post of Accounts Officer and to pay the difference of amount till the date of his retirement.

The petitioner was working as Assistant Accounts Officer.

The undisputed and admitted circumstances of the case are that through Memo No.CGM(HRD&Trg.)/DS(P)/AS(P)/PO-III.1/456/2008, dated 21-06-2008 the petitioner along with eight others was transferred and posted as Incharge Accounts Officer by 2nd respondent. On 28.02.2009, the petitioner was retired from service on reaching the age of superannuation.

The grievance in the instant writ petition is that from 04-07-2008 to 28-02-2009 the petitioner discharged the duties of Accounts Officer and he is entitled for payment of difference of scale of pay and also retrial benefits.

Learned counsel for petitioner relies upon the orders in W.P.No.1085 of 2006, dated 28-03-2006 and W.P.No.14278 of 2006, dated 13-07-2006. The operative portion of the order in W.P.No.1085 of 2006 reads as follows:-

"It is relevant to extract Regulation-30-A of the Regulations, which reads as follows: -

"Notwithstanding anything contained in these Regulations where a Board servant holding a post in a

substantive, officiating or temporary capacity is promoted or appointed in a substantive, officiating or temporary capacity to another post carrying duties and responsibilities of greater importance than those attaching the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.”

From a reading of Regulation-30-A of the Regulations, it is clear that if a Board servant holding a substantive or officiating or temporary capacity is promoted/appointed in a substantive or officiating or temporary capacity to another post carrying duties and responsibilities of greater importance, he is entitled to pay fixation at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post. It is also clear that Regulation-30-A of the Regulations applies to a Board servant, if he is officiating or temporarily discharging another post carrying duties and responsibilities of greater importance, and he is entitled to pay fixation in terms of Regulation-30-A of the Regulations.

In that view of the matter, there is no reason for depriving the benefit of pay fixation to the petitioner in terms of Regulation-30-A of the Regulations.

Accordingly, there shall be a direction to the respondent to fix the pay of the petitioner in terms of Regulation-30-A of the Regulations within six weeks from the date of receipt of a copy of this order and take steps in accordance with law.”

Learned counsel for petitioner prays for granting similar relief.

With the assistance of learned counsel appearing for respondents, I have perused the counter affidavit filed by them and the defence taken in the instant writ petition is substantially same and similar to the objection raised in the writ petition disposed of by this Court. Therefore, the objections are not referred to in detail and are rejected.

Though the petitioner prays for relief viz., to fix revised pay scale for the period referred to above and work out consequential

retrial benefits on such determination, this court is of the view that retrial benefit can't be directed to be worked out on the scale of pay of Accounts Officer, for the petitioner is entitled only to difference of pay for discharging duties of Accounts Officer. The petitioner unless and until is promoted or appointed in a substantive post and officiates or discharges under one or the other circumstances, referred to above, can't ask for fixation of his pay scale for the purpose of retrial benefits. Therefore, it is made clear that petitioner is entitled for consideration and grant of pay attached to the post of Accounts Officer for the period 04-07-2008 till 28-02-209 as additional pay and the prayer of the petitioner for determining the retrial benefit as Accounts Officer is not considered and accepted by this Court. The additional pay to the petitioner for the short period shall be paid by the respondents within three months from the date of receipt of a copy of this order.

The writ petition is disposed of. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V. BHATT, J

Date: 06.04.2016

Prv

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