

S/L. 53.
29.08.2019
MNS

**Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

WPA 342 of 2019

**Subhra Som
Vs.
The State of West Bengal
and others**

Mr. Ajoy Kumar Sinhania

...for the petitioner.

Mr. Hirak Barman,
Ms. Bedashruti Bose

...for the respondent nos. 1 to 4.

Affidavit-of-service filed in court today be
taken on record.

The respondent nos. 1 to 4, along with
the petitioner, are represented in court.

The petitioner was appointed as an
Assistant Teacher in a primary school, being
Shishu Mahal Primary School, Jalpaiguri,
since August 3, 1981. The date of approval of
the petitioner was January 29, 1988, with
effect from January 1, 1988.

Learned counsel for the petitioner argues
that the approval of eight teachers among the
colleagues of the petitioner, including the
petitioner, was subject initially to a condition
that they would draw their salaries from the
Government fund and shall not claim arrears

of pay; a written undertaking to that effect was obtained from them.

One of the said teachers approached the Principal Seat of the High Court and obtained an order dated September 10, 1990, whereby the said bench directed that the State respondents were to consider grant or approval of the appointment of the petitioner therein within eight weeks from the date of communication and that the petitioner therein would be entitled to all financial benefits, as she was in continuous service on and from August 3, 1981 and that the arrear dues and other benefits would be released to the petitioner within six months from that date.

Subsequently, upon a representation being made by the present petitioner and her colleagues on an equal footing, the District Primary School Council, vide Memo No. 633/1(17) dated June 2, 2005, considered the matter and decided that the services of the said teaching and non-teaching staff would be counted from their date of joining and appropriate scale benefit would also be allowed notionally from the date of their joining, but monetary effect would be given retrospectively from April 1, 2003.

It is submitted on behalf of the petitioner that despite such decision, when the petitioner retired on January 31, 2018, she was deprived of the scale benefits and all other retiral benefits, which she was entitled to get, by a memo issued by the District Inspector of Schools, Primary Education, Jalpaiguri, to the Sub-Inspector of Schools, Sadar East Circle, dated April 23, 2019, pursuant to a memo dated November 24, 2017, whereby it was observed that the teaching and non-teaching staff of the Sishu Mahal K.G. (Pre Basic Nursery) School were entitled to get pay fixation benefit with effect from January 1, 1988, that is, their date of approval.

On the strength of a judgment reported at ***AIR 2017 Supreme Court 4072 (State of Punjab and others Vs. Senior Vocational Staff masters Association and Others)***, learned counsel for the petitioner submits that the principle of 'equal pay for equal work' ought to be applied in the petitioner's case, pursuant to the principles embodied in Article 14 of the Constitution of India, more so since three other teachers, on an equal footing with the petitioner, who had retired in the meantime, were given all benefits with effect from their date of joining.

It is submitted by learned counsel for the respondent nos. 1 to 4 that the said respondents have done the needful and sent all relevant papers to the Assistant Director of Accounts, who was to disburse such amount, on the basis of the date of joining of the petitioner and as such, they have complied with the previous decision arrived at by the District Primary School Council, wherein it was decided that appropriate scale benefit would be allowed notionally from the date of joining of the petitioner and other teachers of the said school but only the monetary effect would be given retrospectively from April 1, 2003.

Upon considering the submissions of the petitioner as well as the respondent nos. 1 to 4, it is evident that the doctrine of 'equal pay for equal work' is squarely applicable to the present case. Any previous undertaking, which was given under compulsion by the petitioner, who was not in a bargaining position, cannot hold the field, being contrary to the principles of equality embodied in the Constitution of India, particularly in Article 14 thereof. In fact, in view of the decision dated June 2, 2005 taken by the District Primary School Council in that regard, the previous undertakings, if

any, were rendered merely academic. Since already three teachers on an equal footing as the petitioner have been granted retiral and other benefits from the date of their joining, it was arbitrary and unlawful on the part of the respondent no. 5 to deny similar benefits to the petitioner.

Accordingly, WPA 342 of 2019 is allowed, thereby directing the respondent no. 5 to immediately issue necessary direction for disbursement of all benefits in favour of the petitioner, taking the scale to be effective from the date of her joining service, that is, from August 3, 1981, with the only exception of the arrears of salary prior to April 1, 2003.

Such necessary directions shall be issued by the respondent no. 5 mandatorily within one month from the date of communication of this order to the said respondent.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)