

11
12.03.2020
Court No.2
DC

CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE SIDE

WPA 567 of 2019

Dr. Tapan Kumar Das
Vs.
State of West Bengal & Ors.

Mr. Debajit Kundu.....for petitioner

Mr. Bikramaditya Ghosh
Mr. Momenus Rahaman.....for State

The petitioner was appointed as an Assistant Teacher in Geography in Hatgachha K.C. Institution, North 24-Parganas with effect from 4th November, 1997. At the time of his appointment he was a graduate.

Thereafter, he enhanced his qualification and obtained postgraduate degree as well as B.Ed. degree in the year 2003. While in service he obtained his Ph.D degree in the year 2012.

The petitioner joined as Assistant Professor in Geography in Cooch Behar College with effect from July 8, 2015.

The case of the petitioner is that as per the memo issued by the Government of West Bengal, Higher

Education Department he is entitled to additional increments for attaining his higher qualification.

The petitioner applied before the respondent authority praying for his increments but the same was rejected by the Director of Public Instruction, Higher Education Directorate vide his Memo dated 23rd October, 2017.

The petitioner submits that the case of the petitioner will be guided by Memo No. 892-Edn (U)/1U-79/13 dated 4th November, 2016 and the subsequent corrigendum No. 896-Edn(U)/1U-79/13 dated 8th November, 2016.

The petitioner submits that the case of the petitioner has been erroneously rejected relying on a Memo dated 11th February, 2000 which was not applicable in his case.

This Court, therefore set aside the order dated 23-10-2017 passed by the Directorate of Public Instruction, West Bengal by an order dated 18-01-2019.

The matter was directed for fresh consideration by the Directorate of Public Instruction, Higher Education, West Bengal. The said authority has considered the petitioner's case and by a reasoned order dated 2nd May, 2019 again rejected the petitioner's claim. The reasons for rejection are set out hereunder ;

“1. It is evident from the Sl.No. 08 of the G.O. 195-Edn(CS), dated 11.02.2000 that “The teachers whose pay has been protected in consideration of their past service will be entitled to draw either the pay which has been protected or the pay with advance increment as per rules, whichever is higher.”

2. that the petitioner’s basic pay was initially fixed at Rs. 21,600/- and after protection of pay it was enhanced to Rs. 28,560/-. As per G.O. no. 892=Edn(U)/1U-79/13 dated 4.11.2016, by giving benefit of five increments for doing in service Ph.D., the petitioner’s pay may be fixed at Rs. 24,850/-, whichever is lower than his protected pay.

3. That the petitioner is entitled to get any one of the above benefits-either the protected pay of Rs. 28,560/- or the pay of Rs. 24,850/- after incorporating five increments. He cannot enjoy both the benefits simultaneously. He cannot approbate and reprobate at the same time which is not sustainable in the law and equity as well.”

The petitioner complains that his case has been again considered under the G.O. dated 11-02-2000 which was turned down by this Court vide order dated 18-01-2019.

The respondents are represented. Despite direction they have not filed any opposition and submits that the matter can be heard without opposition being filed from their end.

After considering the submissions made by the respective parties, the materials on record, I find that the petitioner joined Cooch Behar College with a basic pay of Rs. 15,600 – 39,100/-. On account of his Ph.D. degree he received a further sum of Rs. 6000/-. The total emoluments was, therefore, Rs. 21,600/-. The

petitioner has been granted a pay protection due to which the petitioner draws a sum of Rs. 28,560/-.

The Memorandum dated 04-11-2016 in Clause-2 speaks as follows :

“2. Teachers who have entered into service on and after 01.09.2008 with Ph.D/M.Phil and other higher qualifications in his/her relevant subject shall be awarded advance increments in their initial Scale of Pay at the entry of Lower Scale of Pay on the day of award of Ph.D/M/Phil and other higher qualifications in the following manner:

- a) Five non-compounded advance increments at the entry level of recruitment as Assistant Professor (Stage-I)/ College Librarian/ Assistan Librarian possessing Ph.D Degree;*
- b) Three non-compounded advance increments from the day of award of Ph.D Degree to those who have acquired Ph.D Degree while in service;*
- c) Two non-compounded advance increments at the entry level of recruitment for possessing post-graduate Degree in a professional course such as LL.M/M.Tevch etc. recognized by the relevant statutory body/ council;*
- d) Those who acquire M.Phil/LL.M.T/M.Tech etc. degree, recognized by the relevant statutory bodies/ councils while in service shall be entitled to one advance increment.”*

The petitioner entered into the service on and after 01-09-2008 and acquired Ph.D. subsequently while being in service. This Clause-2, therefore, is not applicable in the case of the petitioner as it speaks about teachers entered into the service on and after 01-09-2008 with Ph.D/M.Phil and other higher qualifications in his/her relevant subject. It appears that the corrigendum dated 08-11-2016 is applicable in the case of the petitioner. The said corrigendum

replaces Clause-2 of the Memorandum dated 04-11-2016 in the following manner :

“2. Teachers who have entered into service on and after 01-09-2008 with Ph.D/M.Phil and other higher qualifications in his/her subject and the teachers who have acquired Ph.D.,M.Phil and other higher qualifications while in service on and after 01.09.2008 shall be awarded advance increments in their initial Scale of Pay at the entry or Lower Scale of Pay on the day of award of Ph.D/M.Phil and other higher qualifications in the following manner.”

In terms of the said corrigendum read with the Memo dated 04-11-2016, the petitioner is entitled to advance increments in the initial pay scale at the entry level or lower scale of pay on the day of award of Ph.D/M.Phil and other higher qualification in view of the following ;

“ a) Five non-compounded advance increments at the entry level of recruitment as Assistant Professor (Stage—I)/ College Librarian/Assistant Librarian possessing Ph.D Degree.”

The Directorate, Public Instruction, West Bengal on reconsideration of the issue has considered the Memo dated 04-11-2016 along with the corrigendum and has come to the conclusion that five advance increments for acquiring Ph.D Degree will take the petitioner's pay scale to Rs. 24,850/-. The petitioner under the pay protection is getting higher scale of pay, i.e. Rs. 28,560/-. The petitioner has not been able to show that instead of the initial scale of pay at the

entry the petitioner is entitled to have increment on the basis of lower scale of pay on the day of award of the Ph.D. He is also unable to show that the lower scale of pay on the day of award of Ph.D was more than Rs. 21,600/- and by awarding five increments it will surpass Rs. 28,560/-

After considering all these aspects, I find no infirmity in the order dated 2nd May, 2019 being the order impugned in the writ petition.

The writ petition is devoid on merits and is dismissed.

There shall, however, be no order as to costs.

Urgent certified Photostat copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Arindam Mukherjee, J.)