

15.3.2021
6 and 7
gd/ssd

MAT 6 of 2020
CAN 1 of 2020 (CAN 1942 of 2020)
(Through Video Conference)
Satyajit Ghosh
Vs.
State of West Bengal & Ors.

with

MAT 7 of 2020
CAN 1 of 2020 (CAN 1943 of 2020)
Asit Kumar Maiti
Vs.
State of West Bengal & Ors.

Mr. Kanailal Samanta

..for the Appellant in both matters.

Mr. Joytosh Majumdar, Ld. G.P.

Ms. Chaitali Bhattacharya

Mr. Kartick Chandra Kapas

Mr. Sayan Ganguly

..for the State in MAT 6 of 2020.

Mr. Joytosh Majumdar, Ld. G.P.

Mr. Supriya Chattopadhyay

Ms. Iti Dutta

Mr. Sayan Ganguly

..for the State in MAT 7 of 2020.

These appeals are arising out of the orders passed by the learned Single Judge in the writ petitions filed by the present appellants challenging the denial of additional 3% increment to the writ petitioners as Headmasters of Higher Secondary Schools. The right to receive such additional 3% increment was denied on the basis of a circular relied upon by the appellant dated 4th December, 2014 which has withdrawn by subsequent circular dated 22nd March, 2017.

The learned Single Judge although had noticed that based on the circular dated 4th December, 2014 payments have been made to the similarly circumstanced Headmasters, the writ petitioners were

declined to grant relief in view of the latest circular dated 22nd March, 2017. The learned Single Judge has also noted that the writ petitioners also did not challenge the circular dated 22nd March, 2017. There is no dispute that before the learned Single Judge in the affidavit-in-opposition State respondents have relied upon the circular dated 22nd March, 2017 to deny the claim of the writ petitioners and the proper course for the writ petitioners would have been either to amend the existing writ petition thereby throwing a challenge to the circular dated 22nd March, 2017 or to file a fresh writ petition with liberty to challenge the said order in order to find out the basis for withdrawal of the earlier circular dated 4th December, 2014 being directed the State respondents to file an affidavit disclosing the basis. In the affidavit filed by the Joint Secretary affirmed on 26th February, 2021 the Joint Secretary has placed reliance upon a memorandum dated 12th February, 1999 i.e. ROPA 1998, ROPA 2009 and a clarificatory memorandum dated 10th February, 2010.

The learned Additional Government Pleader has relied upon clarification given by Deputy Secretary in answer to point No.9 which is reproduced below:

Points of doubt	Clarifications
How pay will be fixed in the revised pay structure in the following cases:- a) A School was a High School (V	“(a) The Headmaster of a High School was not entitled to any additional increment other than scale of pay of the post in the unrevised scale. If the School was upgraded to H.S. within the period 01.01.2006 to 27.02.2009, the

to X) before 01.01.2006, but it was upgraded to Higher Secondary School (V to XII) between 01.01.2006 to 27.02.2009. How pay of the Headmaster will be fixed in such a case?	Headmaster would be entitled to two additional increments from the date of such upgradation as per provisions of the unrevised scale of pay. When the said Headmaster would opt to come under the revised pay structure, his pay could have been fixed as per his option either from 01.01.2006 or from the date of upgradation of the school when he got two additional increments in the unrevised scale. In the first case, after fixation of his pay in the revised scale, he would be again entitled to get 3% increment and additional Grade Pay from the date of taking higher” responsibility of the upgraded school. In the second case, he would be entitled to get his pay fixed in the revised pay-structure taking two additional increments in the unrevised scale and he would then get additional Grade Pay of the post of the Headmaster of H.S. School under the revised Pay structure.”
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However, it is interesting to note that the Joint Secretary who is admittedly higher in rank on consideration of all the relevant materials on record opined that the Headmasters/Mistress of the High Schools who has been appointed as Headmaster in an upgraded Higher Secondary after 27th February, 2009 will be entitled to get 3% increment and additional grade pay in pursuance to the order No.46-SE(B)/5B-1/09 dated 27.2.2009, Clause 11 and order No.181-SE(B) dated 8.10.2009.

It appears from the memorandum dated 4th December, 2014 the matter was referred to the Joint

Secretary regarding rectification of pay of Headmaster of Higher Secondary Schools under ROPA-2009.

The issue that had fallen before the Joint Secretary was in respect of a Headmaster who had joined as Assistant Teacher on 19th March, 1987 and was later appointed as Headmaster on 21st October, 1997 and he enjoyed scale of pay as the Headmaster who was subsequently opted for revised pay on 1st January, 2006 after implementation of ROPA-2009 and the school was upgraded to Higher Secondary on 1st July, 2009 i.e. after ROPA-2009 came into force.

The case of the appellants on facts are identical to the issue decided by the Joint Secretary on 4th December, 2014. There cannot be any doubt that the Headmasters similarly placed as that of the writ petitioner were allowed 3% increment on the basis of the opinion expressed by the Joint Secretary. Unless such opinion has been accepted the payments could not have been made to some of the Headmasters which are evident from annexures "P-17" and "P-18" of the stay petition, namely, Government of West Bengal Memorandum No.285-Law dated 7th July, 2017 from the District Inspector of Schools (S.E), Purba Medinipur to the Secretary/Administrator, Simulia Chandimata Kedarnath Vidyapith (H.S.) regarding fixation of pay in favour of Sri Timir Baran Bhattacharyya. The subsequent notification relied upon before the learned Single Judge dated 22nd March, 2017 did not discuss

the issue at all raised earlier in the memorandum dated 4th December, 2014 and it appears to be a cryptic consideration of the entire issue. There cannot be any doubt that when the appellants (in both appeals) filed the writ petition, they were entitled to receive benefits in terms of the decision of the Joint Secretary dated 4th December, 2014 which did not make any distinction between the schools which have been upgraded prior to 27th February, 2009 and those schools that were upgraded subsequently 27th February, 2009. In fact, Headmasters were enjoying 3% incremental benefits notwithstanding date of upgradation prior to or after 27th February, 2009. Apparently that there was no intelligible differentia between the schools that were upgraded prior to February, 2009 and after February, 2009. While the Headmasters of the schools upgraded prior to 27th February, 2009 have been extended with the benefits of 3% increment the basis for not extending the same benefit to Headmasters of schools upgraded after February, 2009 *prima facie* appears to be discriminatory. *Prima facie*, it appears that the matter needs to be considered in a properly filed writ petition.

We find substance in the argument of Mr. Samanta that the Headmasters of the schools upgraded between 1st January, 2006 and 27th February, 2009 were enjoying additional increment and additional Grade Pay and, accordingly, the grade pay at the rate of Rs.200/- is paid to the appellants (in both the appeals)

irrespective of the date of upgradation of their respective schools, does not justify denying of 3% increment and it is, prima facie, discriminatory and absence of intelligible differentia. We are also of the, prima facie, view that the order of the Joint Secretary of School Education dated 4th December, 2014 is prima facie a correct approach to the problem as it would also not discriminate between Headmasters who were getting the benefits in respect of the schools that were upgraded before February, 2009 but denying such benefits only because the same schools were upgraded later on. However, these are required to be decided in the writ petitions where the writ petitioners would be required to challenge, amongst others, the letter dated 22nd March, 2017 on grounds that may be available to them in law. We dispose of the appeals by giving liberty to the writ petitioners to file a comprehensive writ petitions challenging the letter dated 22nd March, 2017 and the memorandum dated 10th February, 2010, if advised and all other relevant circulars that may cause an impediment or hurdle in getting the benefits of 3% increment within four weeks from date. In the event the writ petitions succeed, the writ petitioners shall be entitled to get increment with effect from the date of upgradation of the schools as Higher Secondary Schools in which the petitioners are working as Headmasters.

It is needless to mention that the views expressed above by us is prima facie and shall not influence the

learned Single Judge in deciding the writ petitions in accordance with law.

The appeals and all connected applications are disposed of.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)