

06 10.03.2022
rkd Ct.15

W.P.A. 4813 of 2018
(Through Video Conference)

Smt. Pali Bhowmick

-vs-

The State of West Bengal & Ors.

Mr. Sudipta Dasgupta,
Mr. Bikram Banerjee
Mr. Arka Nandi,
Ms. Dipa Acharya,
Mr. Sutirtha Nayek

....for the petitioner.

Ms. Chaitali Bhattacharyya,
Ms. Tuli Sinha

....for the State.

The writ petitioner is an assistant teacher in a Government aided High School and she was appointed on her post in the year 1999. It is an admitted position that the petitioner was not having B.Ed. qualification at the time of her appointment and also could not complete the B.Ed. course and acquire such qualification within five years from the date of her appointment. Subsequently, petitioner obtained B.Ed. degree in the year 2011 as submitted by Mr. Dasgupta, learned advocate representing the petitioner. It is also submitted that petitioner enjoyed incremental benefits upto 2004 which subsequently got revived with effect from 2010. The petitioner also got the arrear benefits for the period from 2005 to 2009.

The grievance of the petitioner is that-

suddenly by issuing Memo dated 8th May, 2017 the Assistant District Inspector of Schools (S.E.), Tufanganj Sub-Division, Cooch Behar, being the respondent no.5 directed the authority of the school where petitioner is working to calculate the excess drawn amount and to initiate the process of recovery from the salary of the petitioner which has been put under challenge in the present writ petition.

It is also contended on behalf of the petitioner that the right to enjoy incremental benefits notwithstanding failure to acquire B.Ed. qualification was protected vide Circular letter dated 30th July, 2009 which is at page 34 of the writ petition wherein it has been provided that as one time measure untrained teachers were allowed incremental benefits upto 2012. In addition thereto, reliance has also been placed on a Circular letter dated 8th October, 2009 issued by the School Education Department, Budget Branch, wherein under Clause 5(d) it has also been provided that untrained teachers on completion of ten years continuous service is to be treated as trained candidate from the following year for the purpose of grant of incremental benefits. It has been submitted on behalf of the petitioner that in view of

these two Circulars dated 30th July, 2009 and 8th October, 2009 there was no anomaly in sanctioning incremental benefits in favour of the petitioner for the period from 2005 to 2009.

There is another limb of submission advanced on behalf of the petitioner that impugned decision of the respondent no.5 as it appears from Memo dated 8th May, 2017 is devoid of reasons, therefore, such decision cannot survive.

Ms. Bhattacharya, learned senior Government advocate representing the State respondents has brought to the notice of this Court one Memo dated 6th February, 2018 whereby the Education Department has made an endeavour to put certain restrictions with regard to granting benefits of the Circular letter dated 30th July, 2009 in favour of the teachers who were untrained at the relevant point of time and it has been contended that benefits of increments in spite of not having B.Ed. qualification can only be granted to those teachers who were appointed in between the years 2006 to 2009 and that too upto 1st July, 2015.

According to the State respondents, in view of the conditions imposed in such Circular letter dated 6th February, 2018 there is no illegality in the decision of the respondent no.5 by giving direction

upon the authority of the school where petitioner is working to refix to pay of the petition and to calculate the excess drawn amount paid to the petitioner and there was requirement of recovery of such overdrawn amount.

This Court has heard the learned advocates representing the parties and also perused the relevant documents available on record including the Circulars issued time to time by the Education Department. The writ petitioner enjoyed incremental benefits without having B.Ed. qualification from 1999 being the year of appointment till 2004 and subsequently, such benefit was stopped and it got revived with effect from 2010 based on the Circular letter dated 30th July, 2009. Thereafter, petitioner acquired B.Ed. qualification in 2011 and was accordingly granted incremental benefits with effect from 2010. Question arises whether the petitioner is entitled to enjoy incremental benefits for the period from 2005 to 2009 which has already been sanctioned in her favour at the time of sanctioning incremental benefits with effect from 2010.

On perusal of the impugned decision dated 8th May, 2017 of the respondent no.5, it appears that while directing the school authority to initiate

the process of recovery it is not expressed in clear terms whether the respondent no.5 has considered the Circular letter dated 30th July, 2009 or not. It appears to this Court that on application of this Circular letter dated 30th July, 2009 read with Clause 5(d) of the Circular letter dated 8th October, 2009 there is no ambiguity in the matter of sanctioning incremental benefits in favour of the petitioner during the period from 2005 to 2009 and also sanctioning subsequent incremental benefits with effect from 2010 onwards. The Circular which has been relied upon by the State respondents is dated 6th February, 2018 whereby, it is true, that certain conditions have been imposed in order to extend the benefits of increment to those teachers who are untrained but on mere reading of this Circular dated 6th February, 2018 it does not appear to this court that such Circular letter covers the case of the petitioner to enjoy the benefits of increment with effect from the date of her appointment in 1999 till date except the period during which such benefit was suspended (from 2005 to 2009) and that was subsequently allowed in her favour with effect from 2010 in the form of arrears. Since this Circular letter dated 6th February, 2018 does not have any retrospective

effect therefore the incremental benefits sanctioned in favour of the petitioner does not get impacted.

On perusal of the decision of the respondent no.5 it also appears that the State respondent has failed to assign any cogent reason in support of giving direction to the school authority to deduct the excess drawn amount from the salary of the petitioner and what is the basis on which the respondent no.5 came to conclusion against the petitioner that he drew excess amount at the material point of time. Neither the petitioner was granted opportunity of hearing before taking such decision.

Accordingly, the impugned decision as contained in paragraph 2 of the Memo dated 8th May, 2017 issued by the respondent no.5 which relates to the petitioner (Pali Bhowmick) stands set aside.

Petitioner has made a representation dated 24th January, 2018 for sanction of 18 year's benefit under the Career Advancement Scheme which is kept pending before the concerned District Inspector of Schools (S.E.) Cooch Behar, being the respondent no.4.

In view of such situation, the respondent no.4 is directed to take decision on the claim of the

petitioner relating to sanction of 18 years' benefit in her favour within a period of eight weeks from the date of communication of this order by passing a reasoned order and such reasoned order is to be communicated to the petitioner within one week thereafter.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)