

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)**

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 8509 of 2016

Birinchi Kumar Ghosh

Versus

The State of West Bengal & Ors.

Mr. Biplab Guha

Mr. Nittogopal Mukherjee

.....For the Petitioner

Mr. Arindam Chattapadhyay

Ms. Lipika Chatterjee

.....For the State

Heard on : 21.02.2022

Judgment on : 25.02.2022

Krishna Rao, J.: The petitioner claims pay protection on the basis of the Memo vide No. 151-SE (B)/1M-136/2005 dt. 12.05.2006 issued by the Government of West Bengal School Education Department by setting aside the impugned order issued vide Memo No. 159-LS/IC-LS-772/10 dt. 17.03.2015.

The petitioner was appointed as an Assistant Teacher Kurunnahar High School, District- Birbhum on 05.06.1965 and the salary was fixed at Rs. 210/- per month in the Scale of Rs. 210-10-450/-.

On obtaining higher qualification i.e. M.A in Philosophy, the pay of the petitioner fixed at Rs. 745 i.e. Rs. 745-730-15 (Buster Pay).

The petitioner exercised option under ROPA 1990 under revised scale of pay w.e.f. 03.04.1989 as accordingly the school authorities revised the scale of pay of the petitioner time to time in accordance with law till the retirement of the petitioner on 31.10.2002.

At the time of retirement of the petitioner, the Managing Committee of the School forwarded the pension paper to the District Inspector of School and the same was also again forwarded to the Director of School Education for approval. The Director of School Education returned the pension file of the petitioner with the note that the option exercise by the petitioner dt. 03.04.1989 is not acceptable and directed to change the option of the petitioner.

The petitioner was going to be retired from his service on 31.10.2002 and accordingly the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal issued pension payment order dt. 22.10.2002 and in the said order it was shown that the gratuity amount of Rs. 1,06,882/- as over drawn amount.

On receipt of the P.P.O, the petitioner made representation to the concern authorities. In reply, the Director of School Education vide Memo No. 1261-GA/4G-74/81 dt. 17.06.2008 informed that the request of Pay

Protection of the petitioner cannot be accepted due to non fulfilment of conditions (3) of Government Order No. 151-S.E(B) dt. 12.05.2006.

The private respondent no. 6 was appointed as an Assistant Teacher in the same school on 24.08.1966 and was having the qualification of Graduate only but the authorities have fixed higher scale of pay of the respondent no. 6 than the petitioner.

Being aggrieved with the decision of the authorities, the petitioner had preferred a writ application before this Court being WP No. 13357(w) of 2010. The writ petitioner was disposed of by the Coordinate Bench on 02.07.2014 by passing following order:-

“The said respondent is directed to consider the claim of the petitioner for pay protection regarding fulfilment of condition (3) of Govt. Order No. 151-SE(B)/1M-136/2005 dated 12th May, 2006 and disposed of the same preferably within a period of four weeks from date. The petitioner is directed to furnish the particulars required to the said respondent along with a copy of this order. The impugned Memo dated 17th June, 2008/2nd July, 2008 is set aside.”

Though the respondents failed to comply with the order passed by the Coordinate Bench dt. 02.07.2014, the petitioner has filed a contempt application and immediately the Commissioner of School has passed an order rejecting the claim of the petitioner vide 159-LS/IC-LS-772/10 dt. 17.03.2015.

Mr. Biplab Guha, Ld. Counsel appearing on behalf of the petitioner submitted that till the retirement, the petitioner was enjoying the higher pay scale than the private respondent. The petitioner was having higher qualification than the private respondent and the private respondent was appointed subsequent to the petitioner but the respondent authorities have

with the malafide intention lower down the scale of pay of the petitioner at the time of retirement.

Mr. Arindam Chattapadhyay representing the respondent authorities submitted that the petitioner initially exercised option under ROPA 1990 to come under revised scale of pay with effect from 03.04.1989 in terms of Note-1 of serial 5 of ROPA 1990.

It is further submitted that the petitioner had no scope to exercise option under ROPA 1990 to claim revised scale of pay from any date after availing the Post Graduate scale of pay and when the same was detected, the pay fixation of the petitioner was revised.

The Counsel for the respondent further submitted that petitioner obtained M.A degree in philosophy on 21.01.1987 but the private respondent was always as Hons. Graduate in Chemistry and accordingly the pay of private respondent was fixed in higher scale than the petitioner. The qualification of the petitioner and the private respondent was not same in terms of Clause (3) of Government Order No. 151-SE(B)/M-136/2005 dt. 12.05.2006 and thus the petitioner cannot claim parity with the private respondent.

This Court considered the rival submission of the parties and the documents available on record.

The petitioner was appointed as Assistant Teacher on 05.06.1965. Subsequent to the appointment, the petitioner obtained Post Graduate Degree in Philosophy in the year 1987 and accordingly, the school authorities have awarded higher pay scale to the petitioner. The pay scale of

the petitioner was revised from time to time and the petitioner was enjoying the same till his retirement.

The petitioner retired from his service w.e.f. 31.10.2002 and just before his retirement on 22.10.2002, pension paper was issued in favour of petitioner wherein the petitioner came to know an amount of Rs. 1,06,882/- was deducted from gratuity as an overdrawn amount.

The Commissioner, School Education has passed the impugned order on 17.03.2015 rejecting the request of the petitioner stating inter alia:-

“At the time of pay protection prayed by the petitioner his qualification was M.A.(philosophy), P.G.BT. Whereas the qualification of junior teacher was B.SC.(Hons. In Chemistry), B.ED. Since the qualifications of the senior and junior teachers are different the condition (3) is not fulfilled for consideration of pay protection. Hence, the prayer of the petitioner for protection of pay in comparison with the junior teacher cannot be considered.”

The authorities have rejected the request of the petitioner relying upon Clause (3) of Government Order No. 151-SE(B) dt. 12.05.2006 which reads as follows:-

“Both of them (in respect of Teaching Posts) should have the same qualification like Pass Graduate/Hons. Graduate/Post Graduate etc. at the time when such ‘Pay Protection is being considered.’”

The authorities have relied upon Clause (3) of Government Order dt. 12.05.2006, though the same is not applicable in the case of the petitioner as the petitioner retired much prior to the said Government Order i.e. 31.10.2002.

The petitioner was appointed in the year 1965 that is much prior to the appointment of private respondent. At the time of appointment both were having Graduation Degree. The petitioner has obtained Post Graduation Degree in the year 1987 and thereafter the petitioner was

awarded higher pay scale. The private respondent has not obtained any Post Graduation Degree and the private respondent was having only Graduate Degree. Till the retirement, the petitioner was enjoying higher pay scale. It is admitted fact that the petitioner has not obtained higher pay scale by practicing fraud or suppressing any material fact.

The school authorities have awarded higher scale of pay on obtaining Post Graduate Degree and subsequently the pay scale was revised from time to time till his retirement and without any notice or opportunity of hearing an amount of Rs. 1,06,882/- was deducted from the gratuity of the petitioner and lower down the scale of the petitioner than the private respondent admittedly he is junior and having only Graduation degree.

In view of the above, the impugned Memo No. 159/IC-LS/772/10 dt. 17.03.2015 issued by the Commissioner, School Education is not sustainable under law and accordingly, the same is set aside and quashed.

The respondent No. 2 is directed to release the amount of Rs. 1,06,882/- in favour of petitioner and to re-fix the pension of the petitioner in terms of last pay drawn within 8 (eight) weeks from the date of communication of the copy of this order.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)