

WPA 12537 of 2017

**Kabita Ganguly
Vs.
The State of West Bengal & Ors.**

**Mr. Suman Sengupta
Mr. Diptendyu Banerjee
Mr. Dipjyoti Chakraborty
Ms. Sanghita Mukherjee
...for the petitioner**

**Mr. Santanu Kumar Mitra
Mr. Mirza Kamruddin
...for the State**

The petitioner was an assistant teacher in a non-government-aided high school and was appointed with educational qualification of B.A.P.Ed. on 1st January, 1982. Though petitioner was appointed in the work education and physical education group but had undergone post graduate course in Bengali under the University of Calcutta with the permission of the school authority and for appearing in the examination under the said course the West Bengal Board of Secondary Education approved leave in favour of the petitioner vide memo dated February, 1995, page 22 of the writ petition. Petitioner obtained higher qualification of M.A. Bengali in 1985 and subsequently a circular was issued by the State-respondents being No. 57-SE (S) dated 27th January, 1995 whereby the teachers were granted the benefit of higher scale of pay

for obtaining post graduate qualification in non-relevant subject provided that concerned teacher fulfilled conditions as stipulated in the said circular. On introduction of such circular dated 27th January, 1995 petitioner approached the school authority where she was working as an assistant teacher vide letter dated 20th June, 1995 for sanction of higher scale of pay in recognition of her M.A. degree in Bengali since she was taking prescribed number of Bengali classes in the secondary section of the said school. On receipt of such application of the petitioner the school authority by adopting a resolution dated 23rd June, 1995 decided to approach the concerned District Inspector of Schools (SE), Mindapore for sanction of post graduate scale of pay in favour of the petitioner taking into consideration of the fact that the petitioner was taking Bengali classes on obtaining such higher qualification. The concerned District Inspector of Schools in his turn by issuing memo dated 29th February, 1996 approved the post graduate scale of pay in favour of the petitioner with effect from 1st February, 1995 in terms of the said Government order dated 27th January, 1995 being No. 57-SE (S).

Mr. Suman Sengupta, learned advocate representing the petitioner submits that the petitioner enjoyed post graduate scale of pay with effect from 1st February, 1995 upto the date of her retirement on 30th

April, 2015. Subsequently, the concerned District Inspector of Schools forwarded the issue to the Director of School Education vide memo dated 13th October, 2014 just before the retirement of the petitioner for consideration by the Director on the issue of permitting the petitioner to enjoy the post graduate scale of pay. Petitioner retired on 30th April, 2015 but subsequently the pension case of the petitioner was not processed as submitted on behalf of the petitioner which triggered the first writ petition being WPA 7936 of 2016 and the same was disposed of by a coordinate Bench vide order dated 15th November, 2016 directing the Commissioner of School Education, West Bengal to take decision in accordance with law with regard to release of retiral dues of the petitioner upon fixing the pension.

It has further been submitted on behalf of the petitioner that pursuant to the order passed by the coordinate Bench dated 15th November, 2016 the Commissioner of School Education, West Bengal being the respondent no. 2 passed the order as contained in memo dated 10th February, 2017 whereby the concerned District Inspector of Schools (SE) Paschim Medinipore being the respondent no. 4 was requested to sanction retiral dues in favour of the petitioner by fixing pay of the petitioner in the pass graduate scale of pay instead of post graduate scale of pay. It has been

submitted that such unilateral decision by the respondent no. 2 without affording an opportunity of hearing to the petitioner is erroneous and not tenable.

In addition thereto reliance has been placed on behalf of the petitioner on the following judgements of the Apex Court :-

- (i) **(2009) 3 SCC 475 (Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors.)** paragraphs 57, 58 & 59,
- (ii) **(2015) 4 SCC 334 [State of Punjab & Ors. Vs. Rafiq Mashri (White Washer) & Ors.]** paragraph 18.

Such reliance has been placed on behalf of the petitioner apprehending that while settling the pension in favour of the petitioner there might be a possibility of directing the petitioner to refund the excess drawn amount in view of unilateral refixation of pay of the petitioner by the respondent no. 2.

Mr. Santanu Mitra, learned advocate representing the State-respondents has defended the decision of the respondent no. 2 as contained in memo dated 10th February, 2017 and Mr. Mitra has also submitted that the respondent no. 2 has simply refixed the pay of the petitioner in graduate scale of pay based on report of the respondent no. 4 dated 13th October, 2014 but in effect no decision was taken by the respondent no. 2 to direct the authorities to recover the

excess drawn amount from the retiral dues of the petitioner. It has also been submitted that such decision was taken by the respondent no. 2 pursuant to the direction passed by this Court on the writ petition filed by the petitioner. Therefore, according to Mr. Mitra there is no anomaly in the impugned order as contained in the memo dated 10th February, 2017.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record.

On the above narrated facts, it appears that though petitioner was initially appointed with pass graduate scale of pay but subsequently on acquiring post graduate qualification in Bengali her service was utilized by the school authority as a Bengali teacher upon allotting Bengali classes to her. Such issue was taken care of by the Managing Committee of the School where petitioner was working as it emanates from the resolution dated 23rd June, 1995, page 24 of the writ petition. Ultimately based on the papers forwarded by the school authority pursuant to the application made by the petitioner for sanction of post graduate scale of pay the respondent no.4 on applying Government Order dated 27th January, 1995 sanctioned post graduate scale of pay in favour of the petitioner with effect from 1st February, 1995. Petitioner enjoyed such

higher scale of pay from 1st February, 1995 till the date of her superannuation on 30th April, 2015.

The issue relating to sanction of post graduate scale of pay was forwarded by the respondent no.4 to respondent no.2 just few months before the retirement of the petitioner and ultimately the respondent no.2 decided against the petitioner thereby fixing her pay in pass graduate scale of pay.

Fact remains when the post graduate scale of pay was sanctioned in favour of the petitioner the Circular dated 27th January, 1995 was in vogue and pursuant to sanction of post graduate scale of pay in favour of the petitioner by the respondent no.4 vide Memo dated 29th February, 1996 the service of the petitioner was utilized as an assistant teacher having post graduate qualification by allotting classes of Bengali to the petitioner. Such issue was not gone into by the respondent no.2 while deciding the entitlement of the petitioner to enjoy the post graduate scale of pay.

The decision of the respondent no.2 as contained in the impugned Memo dated 10th February, 2017 does have civil and evil consequences since lowering of pay of the petitioner from post graduate scale to pass graduate scale would definitely result in downgrading the fixation of pension of the petitioner therefore before taking such decision by the respondent no.2 the

petitioner should have been given an opportunity of hearing since it was decided by the respondent no.2 that the petitioner is not entitled to receive the post graduate scale of pay which actually she received with effect from 1st February, 1995 till date of her superannuation on 30th April, 2015.

Another issue which does not escape the notice of this Court that the post graduate scale of pay was sanctioned in favour of the petitioner vide Memo dated 29th February, 1996 and subsequently ROPA 1998 came into being. Petitioner upon exercising option pursuant to such ROPA 1998 opted to come under the revised scale in post graduate pay. Such option according to the norms was required to be approved by the respondent no.4 at the time of approving exercise option by the petitioner. In terms of ROPA 1998 it was open to the concerned respondent no.4 to correct the fixation of pay of the petitioner but the respondent no.4 found it appropriate to fix the revised pay of the petitioner in postgraduate scale. Therefore on permitting the petitioner to enjoy such higher scale of pay with effect from 1st February, 1995 after retirement unilateral re-fixation of pay of the petitioner in postgraduate scale by issuing impugned Memo dated 10th February, 2017 appears to be unjustified.

Accordingly, the decision of the respondent no.2 as contained in Memo dated 10th February, 2017 is set aside.

The respondent authorities are directed to finalise the pension case of the petitioner immediately upon fixing the pay of the petitioner in post graduate scale and release the retiral dues including pension in favour of the petitioner accordingly.

Meanwhile this Court while entertaining an interlocutory application being CAN 1 of 2019 (Old CAN 1336 of 2019) by passing order dated 17th January, 2022 directed the respondent No. 4 to release the admissible retiral dues to the writ petitioner pending consideration of the writ petition finally by this Court.

Mr. Mitra, learned advocate, representing the State respondents has informed this Court that the pension payment order has been issued in favour of the petitioner under Memo dated 9th March, 2022 fixing such pension in pass graduate scale. In view of the order passed by this Court today on the writ petition the respondent authorities are required to issue revised pension payment order taking into consideration the pay, which the petitioner has enjoyed in post graduate scale till the date of her superannuation on 30th April, 2015.

The aforesaid exercise shall be completed by the respondents within a period of twelve weeks from the date of communication of this order.

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.)