

29.08.2022.
Court No.13
Item No. 46
ap

W.P.A. No. 16457 of 2022
Nabin Chandra Choudhury
Versus
The State of West Bengal & Ors.

Mr. Rabilal Maitra,
Mr. Rajitlal Maitra.

...For the petitioner.

Mr. Sudipto Panda,
Mr. Sajal Kumar Pandit.

..For the State.

Affidavit-of-service filed in Court today be taken
on record.

The writ petitioner joined Chhabghati K.D. Vidyalaya (H.S), District – Murshidabad in October 1996. At the time of entry, the District Inspector of Schools (SE), Murshidabad indicated in the order dated 23rd August, 1995 that the prescribed qualification for the post to be Graduate with Recognised Training in Library Science (Diploma/Certificate Holder). The scale fixed of the petitioner was Rs.1390-2970. The petitioner started working in the said School and continues to do so as on the date. He superannuation from service on 31st August, 2022. The petitioner received all the increments and pay revision based on the first fixed pay. Since the petitioner was retiring soon, the first pension papers came to be prepared.

By a communication dated 28th June, 2022, the

respondents purported to hold that in terms of Pay and Allowances that were fixed pursuant to the Notification of the Education Department of the State dated 7th March, 1990 that the petitioner should be entitled to any of the three scales prescribed under Serial Nos. 13, 14 and 15 of Annexure –V. The three grades prescribed were (a) Post Graduate with Diploma in Library Science; (b) Graduate with Diploma in Library Science and (c) Matriculate with certificate.

The respondents in the impugned communication held that fixation of pay of the petitioner was incorrect and that he should have been treated in the third category i.e. Matriculate with Certificate in Library Science and should have been only allowed such pay scale. Recovery was ordered and re-fixation of pay scale was for the purpose of pension was proposed.

It is now well settled that in terms of the decision of the Hon'ble Supreme Court of India in the case of **Thomas Daniel – Vs. State of Kerala** reported in **AIR 2022 Supreme Court**, where an employee is not responsible for any wrong fixation or is not guilty of misrepresentation or fraud and has received the same benefit from the State, the same cannot be recovered from him, immediately prior to or after retirement.

Admittedly the petitioner cannot be held responsible for any alleged incorrect fixation of Pay Scale. No refund whatsoever can be effected from the terminal benefits of the petitioner by the respondents. The petitioner shall continue to receive salary and emoluments as he has been receiving till date until the date of superannuation.

However the effect of an earlier incorrect fixation of Pay Scale stands on completely different footing while calculating pension. Any such mistake in calculation or fixation of Pay Scale can be rectified at the time of determination of pension.

A very peculiar situation arises here wherein the petitioner does not fall either under Serial No.12 or Serial No.13. Serial No.12 admittedly prescribed a Pay Scale for Graduate Librarian with a Diploma in Library Science. Serial No.13 Pay Scale prescribes for Librarian, who are Matriculate and possess only a certificate of training in Library Science.

The petitioner's pay scale has to be fixed in a hybrid manner as he falls somewhere between Serial No.12 and Serial No.13.

It is a settled principle of law that when two views are possible, in service jurisprudence, a view that is more beneficial to an employee is normally required to be taken.

However, this Court orders that the matter

should be decided by the Secretary, School Education Department, Government of West Bengal.

Let a copy of the writ petition be treated as the representation of the petitioner by the Secretary, Education Department, Government of West Bengal to decide what ought to be the Pay Scale for the petitioner given the fact that the District Inspector of Schools (SE), Murshidabad has approved the original Pay Scale and the petitioner not clearly falling under Serial No.12 or Serial No.13 of the Notification of 1990 referred to hereinabove.

The Secretary, Education Department, Government of West Bengal shall give a personal hearing to the petitioner and/or his legal representative. A reasoned order may be passed and communicated to the petitioner within a period of seven days thereafter.

Let the aforesaid exercise be completed by the Secretary, Education Department, Government of West Bengal within a period of one month from date.

The petitioner shall communicate this order to the Secretary, Education Department, Government of West Bengal and the non-appearing respondents.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)