

106 14.03.2022
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W.P.A. 19398 of 2018

Dr. Tanusree Saha

-vs-

The State of West Bengal & Ors.

Mr. Pankaj Halder,
Mr. Sanatan Panda

....for the petitioner.

Ms. Chaitali Bhattacharyya,

....for the State.

The writ petitioner is a Principal of Government Sponsored Primary teachers' Training Institute, Unit-II, Sarisha, Diamond Harbour, South 24 Parganas and was appointed on 16th August, 1999 with the educational qualification of B.A. (Hons.), M.A. (Geography) and B.Ed. and subsequently, obtained Ph.D. degree from the University of Visva Bharati in the year 2001. Petitioner has claimed two additional increments for acquiring Ph.D degree in terms of Clause 12(5) of Revision of Pay and Allowance Rules, 1998 (hereinafter referred to as "ROPA 1998") which was introduced vide Memorandum dated 12th February, 1999 being No.25-SE(B)/IM-102/98.

For availing of such benefit petitioner made a representation which was not considered by the concerned respondent authority which triggered first writ petition being W.P. 2872(W) of 2018 and

the same was disposed of vide order dated 10th May, 2018 whereby a coordinate Bench directed the Commissioner of School Education, being the respondent no.2 to take decision on the claim of the writ petitioner on granting two additional incremental benefits.

Pursuant to such order of the coordinate Bench dated 10th May, 2018, the respondent no.2 took decision by issuing Memo dated 20th August, 2018 being No.363/1(3) and refused the claim of the petitioner for grant of such incremental benefits. In the present writ petition such decision of the respondent no.2 is under challenge.

Mr. Halder, learned advocate appears on behalf of the petitioner and upon placing reliance of ROPA 1998 has submitted that the benefit of such revised scale of pay which was introduced on issuing Memorandum dated 12th February, 1999 is not confined to teaching and non-teaching employees of Government Sponsored Secondary Schools and Aided Primary Schools but it also covers teaching staff of training institutes of primary teachers. Apart from other educational institution which have been delineated in the first paragraph of the said Memorandum dated 12th February 1999 it has further been contended that

under Clause 12(5) there is a provision for grant of two additional incremental benefits which should be extended to the petitioner being the Principal of Government Sponsored Primary Teachers' Training Institute. Therefore, the decision taken by the respondent no.2 whereby claim of two additional incremental benefits for acquiring Ph.D. degree has been refused, according to the petitioner cannot survive in view of Clause 12(5) of ROPA 1998.

In addition thereto, it has further been submitted on behalf of the petitioner that since the petitioner is having educational qualification Hons. in Geography and Masters' degree in Geography with B.Ed. which is also relevant qualification for being appointed in the post of assistant teacher in a secondary school therefore, the stand of the respondent authorities in refusing to grant incremental benefits to the petitioner in terms of said Clause 12(5) is discriminatory. Petitioner prays for cancellation of the decision of the respondent no.2 as contained in Memo dated 20th August, 2018.

Ms. Bhattacharya, learned senior Government advocate appears on behalf of the State respondents and submits that the definition of "teacher" has been provided under Section

2(xxi)(a) of the West Bengal Primary Education Act, 1973 which includes teaching post in Primary Teachers' Training Institute. Therefore, the contention of Ms. Bhattacharya is that the post which is being held by the petitioner in the present case should be treated as a teaching post relating to a primary educational institute wherein the qualification of Ph.D. obtained by the petitioner in Geography cannot be considered as a relevant qualification for sanctioning incremental benefits. It has further been submitted that in terms of said Clause 12(5) of ROPA 1998 Rules the benefit of increments which has only been provided to Secondary Teachers / Headmasters/ Headmistress with Doctorate degree in the subject taught or in an allied subject in the Secondary Schools or at the Secondary Level and accordingly, has defended the decision of the respondent no.2 as contained in Memo dated 20th August, 2018.

This Court has heard the learned advocates representing the parties and considered the relevant documents including the relevant provisions of law which has been placed before this Court during the course of hearing.

It appears that the respondent no.2 refused the claim of the petitioner chiefly in consideration

of Clause 12(5) of ROPA 1998 Rules. Though it has been argued on behalf of the petitioner that ROPA 1998 Rules are applicable not only to the teaching employees of secondary schools but these are also applicable to the teachers of training institute of primary teachers, it appears on mere reading of entire Clause 12 of ROPA 1998 Rules that it speaks of benefits under the Career Advancement Scheme. It also appears that different benefits have been extended to different class of employees who are rendering service in different categories of educational institutes. For better understanding Clause 12 of ROPA 1998 Rules is quoted below:

“12. Career Advancement Scheme and related issues.- (1)
An employee whose pay is fixed in any of the revised scales of pay shown in serial numbers 1 to 12 of Annexure III and who has not got a single promotion/advancement to a higher scale in the same post even after completion of 18 years’ continuous and satisfactory service shall be placed in the next higher scale of pay, his designation remaining unchanged. This benefit of next higher scale of pay shall also be admissible to an employee having break-in-service, if the total

period of his service excluding the period of break-in-service is not less than 18 years provided the break is condoned. The pay of such an employee in the next higher scale shall be fixed at the stage next above the pay fixed in the revised scale of pay of his post, the date of his increment remaining unchanged and same as in the lower revised scale of pay.

(2) All teaching and non-teaching employees of Government Sponsored Aided Institutions shall be entitled to an additional increment in the revised scales for every 10 years of continuous and satisfactory service, counted from the date of first appointment to the post, subject to a maximum of two such increments, in addition to the benefits which may be admissible under sub-para (1) of this paragraph;

“Provided that the employees who have already got two additional increments in the earlier pay revision will not get increment further in the present revised scale and the employees who have drawn only on increment in the earlier revision

for 10(ten) years of service, will get one increment in the present revised scale after completion of 20(twenty) years of service."

(3) All teachers, including physical Education teachers and Librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualification, whichever is latter, provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of that School. If such teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission."

(4) Untrained secondary school teachers shall be allowed increments in the revised scale of pay on condition that such untrained teachers will have to

get themselves trained within five years from the date of appointment. An untrained teacher of a recognised secondary school or a Madrasah of the secondary type with ten years' teaching experience in recognised schools/Madrasah shall be treated as a trained teacher for the purpose of drawal of increment in the scale applicable to the teacher concerned with effect from the date on which the condition of teaching experience is fulfilled. Such a teacher shall be eligible to draw the increment on completion of one year's service from the date on which the above condition is fulfilled.

(5) Secondary teachers/Headmasters/Headmistress with Doctorate degree in the subject taught or in an allied subject shall get two additional increments from the date of the convocation on which such degree is awarded:

Provided that those who obtained these degree prior to the date of coming over to the revised scale shall get two additional increments from the date with effect from which they

elect to draw pay in the revised scales, provided that they have not already got such additional increments in the earlier pay-revision and provided further that in the latter case, pay should be fixed at least at the third stage of the relevant scale of pay". (emphasis supplied)

By incorporating Clause 12(1) when it appears that 18 years' service benefit has been extended to all categories of employees working in different types of educational institutions whereas benefit of higher scale of pay for acquiring higher qualification as provided under Clause 12(3) and benefit of two additional incremental benefits for acquiring Ph.D. degree are confined to the teaching posts in Secondary Schools subject to certain restrictions provided therein.

Therefore, on consideration of the provision as contained in Clause 12(5), it appears that the incremental benefits which have been contemplated under such provision are confined to Secondary Teachers/Headmasters/Headmistress with Doctorate degree in the subject taught or in an allied subject in Secondary Schools. Admittedly, the petitioner is the Principal of Primary Teachers'

Training Institute therefore her service is not covered by Clause 12(5).

During the course of hearing Mr. Halder, learned advocate representing the petitioner has drawn attention of this Court to a notification dated 19th August, 2013 which is at page 10 of the affidavit-in-reply wherefrom it appears that for being appointed on the post of Principal in a Primary Teachers' Training Institute a candidate must possess - Masters' Degree of two years duration course with Hons. at the Graduation level having at least 55% marks in any school teaching subject and Diploma/Degree in Education/Primary Education with 55% marks.

or

M.Ed./M.Ed.(Elementary) with 55% marks or M.A. in Education with 55% marks and Diploma/Degree in Primary/Elementary Education with 55% marks.

On consideration of the requisite qualification required for being appointed in the post of Principal in a Primary Teachers' Training Institute, it appears that the candidate has to obtain a degree in the subject of Education. In the present case the petitioner has not obtained Ph.D. degree in Education but in Geography which is not

taught or cannot be considered as an allied subject in a Primary Teachers' Training Institute whereas in terms of Clause 12(5) of ROPA 1998 Rules for getting the incremental benefits a candidate has to be holding teaching post in Secondary Schools and Doctorate degree must be in the subject taught or in an allied subject in the secondary level.

Since the petitioner is holding the post of Principal in a Government Sponsored Teachers' Training Institute who has obtained Ph.D. degree in the subject taught or allied subject at the secondary level therefore petitioner is not covered by Clause 12(5) of ROPA 1998 Rules and this court does not find any flaw in the decision taken by the respondent no.2 as contained in the Memo dated 20th August, 2018.

Accordingly, the writ petition stands dismissed.

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.)