

Court No. 15

WPA 23658 of 2018

08.07.2022

(ML 141)

(S. Banerjee)

Dr. Asis Kumar Pal

Vs.

The State of West Bengal & Ors.

Mr. Golam Mostafa
Mr. Tarasankar Samanta
Mr. Subir Sabud

... for the petitioner

Mr. Tapan Kumar Mukherjee, AGP
Mr. Himadri Sikhar Chakraborty
Mr. S. T. Mina

... for the State

Petitioner was appointed in the post of Assistant Professor in Botany with effect from 27th March, 2012 in a non-government aided college. At the time of appointment petitioner was having Ph.D. degree in the relevant subject which he obtained in the year 1999 as it appears from the certificate dated 16th March, 2000, page 28 of the writ petition.

It has been submitted by Mr. Mostafa, learned advocate representing the petitioner, that prior to his joining the post of Assistant Professor, he was working on substantive basis as an Assistant Teacher in a non-government aided secondary school. On being recommended by the College Service Commission he was appointed as an Assistant Professor in the college. It has further been submitted that the petitioner

enjoyed the benefit of pay protection in consideration of his past service which he rendered in the school and accordingly at the entry level in the college his pay was fixed reckoning the pay which he was enjoying as a teacher in the school.

Since the petitioner was possessing Ph.D. degree, he approached the concerned respondent authorities for sanction of non-compounded advance increments. However, it has been submitted that while granting pay protection in favour of the petitioner, out of five increments, two have been sanctioned since while he was working as a teacher he was enjoying two incremental benefits. Therefore, it has been submitted on behalf of the petitioner that the petitioner is entitled to receive rest three non-compounded advance increments.

On approach being made before the concerned respondent authorities, the prayer of the petitioner for sanction of such incremental benefits have been turned down vide memo dated 4th October, 2018 issued by the Deputy Secretary, Department of Higher Education, Government of West Bengal. Such memo dated 4th October, 2018 is under challenge in the present writ petition.

Mr. Mukherjee, learned Additional Government Pleader, appears on behalf of the State-respondents and

defends the decision taken by the Deputy Secretary dated 4th October, 2018 to the extent that if the petitioner is extended the benefit of further three advance increments in that event the petitioner has to forgo the benefit of pay protection which has been granted to him at the time of his appointment in the college.

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

On perusal of the impugned memo dated 4th October, 2018, issued by the Deputy Secretary, Higher Education Department, Government of West Bengal, being the respondent no. 2, it appears that referring to two Government Orders, one dated 4th November, 2016 and another dated 24th November, 2016, the prayer of the petitioner for sanction of incremental benefits have been refused. This court has seen the Government Memo dated 4th November, 2016 wherein Clause 2 deals with sanction of incremental benefits to the members of teaching faculty in a college. On perusal of Clauses 2(a) and 2(b) it does not appear that while sanctioning incremental benefits in favour of the petitioner there is any requirement to withdraw the benefit of pay protection which has already been granted to the petitioner. This court has also taken the pain to go

through another memo dated 24th November, 2016 issued by the Directorate of Public Instruction, Government of West Bengal, wherein Clause 5 deals with certain situations relating to sanction of incremental benefits in favour of the members of teaching faculty in college who are possessing Ph.D. degree. However, none of the situation contemplated under Clause 5 goes to show that for extending the incremental benefit to the petitioner, there is a requirement to forgo the benefit of pay protection which has already been extended to the petitioner.

In view of the aforesaid situation, this court finds it apt to set aside the decision of the respondent no. 2 as contained in memo dated 4th October, 2018. Accordingly such decision dated 4th October, 2018 is quashed and the Secretary, Department of Higher Education, being the respondent no. 1, is directed to take the decision on entitlement of the petitioner to receive incremental benefits for possessing Ph.D. degree at the time of his appointment as an Assistant Professor in the college on 27th March, 2012 and to pass a reasoned order within a period of eight weeks from the date of communication of this order. Before taking such decision, respondent no. 1 is directed to grant opportunity of hearing to the petitioner or his representative as well as one representative of the college authority. The reasoned decision to be taken by

the respondent no. 1 shall be communicated to the petitioner within a period of one week thereafter.

With the above direction the writ petition is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Saugata Bhattacharyya, J.)