

16.08.2022
Court No.13
Item No.1
sp

WPA 22777 of 2010

Mrityunjoy Bandyopadhyay
Vs.
State of West Bengal & Ors.

Mr. Ekramul Bari,
Sk. Imtiaj Uddin

...for the petitioner

Mr. Malay Singh,
Mr. Bibekananda Tripathi

....for the State

The writ petitioner is aggrieved by the stoppage of higher pay of scale granted to him pursuant to his having acquired a post graduate degree in physical education in the year 1998.

The petitioner joined the Manihara High School (H.S.), Purulia, on 20th September, 1989, approved by the D.I. of Schools (SE), Purulia, with effect from September 28, 1991.

Pursuant to the higher qualification acquired by the petitioner, the school forwarded the salary of inter alia the petitioner, recommending the higher scale of pay and the concerned D.I. of Schools has allowed the same.

The petitioner was drawing higher pay scale from 1998 till 2009. Sometime in the year 2006, the D.I. of Schools (SE), Purulia, wrote to the Secretary, Manihara High School (H.S.), Purulia, asking for a copy of the prior permission of the D.I. to permit the

petitioner to enhance his qualification to post graduate scale.

The school was unable to do so. The petitioner's post graduate scale of pay was stopped in the year 2009 and was reverted his original graduate scale of pay.

Mr. Ekramul Bari, learned counsel appearing for the petitioner submits that in terms of ROPA 1998, particularly, the clarification under notification 25-SE dated February 12, 1999 at Clause 12(3), all teachers enhancing higher qualification became entitled to receive post graduate scale of pay.

The requirement of prior permission of the D.I., before any such enhancement was brought into the Court in prior permission by notification no. 548 dated 24.06.1998. The said notification came to be interpreted by the Division Bench of this Court in the case of ***Rabi Kanta Barman Vs. District Inspector of Schools (SE), & Ors.*** being judgment dated ***January 31, 2014*** in ***W.P. 14760 (W) of 2004***. It was held that prior permission of the D.I. as conceived of under the aforesaid notification, was not required for a teacher to acquire Post-Graduation and to seek higher pay scale. It is clear and evident that the impugned communications of the year 2006 and 2009 of the D.I., were most likely based on the notification issued before coming into force of the

West Bengal Schools (Control of Expenditure) Act, 2005 and the West Bengal School Service Commission Act of 1997. The petitioner having been appointed prior to coming into force of the Act of 2005 and the 1997 was not therefore required, to obtain any prior permission of the D.I. for the purpose of receiving higher pay scale pursuant to higher qualification.

Mr. Malay Singh, learned counsel appearing for the State, however, draws the attention of this Court to paragraph 5 of the writ petition, where an erroneous statement has been made that the school has given prior permission to the petitioner to acquire higher qualification. Annexure P/2 to the writ petition only indicates that the petitioner had only been granted leave to pursue academic training for the higher qualification.

This Court is of the view that the said omission, is not seriously relevant in the facts of the present case.

The next argument of the learned counsel for the State, by reference to the extract of the resolution dated August 19, 1998 at annexure P/5 of the writ petition that the school itself requested the D.I. for prior approval for refixation of pay and therefore, the petitioner cannot turn back and contend that no prior approval of the State is required, is not

sustainable in law. Statutory and fundamental rights cannot be waived even if a stray statement is made by the school, seeking prior approval of the pay fixation in the Post-Graduate scale of the petitioner, of the D.I., the same firstly cannot be deemed to be an acceptance of any requirement of prior permission. Nor can it in any way water down the rights that already accrued to the petitioner under ROPA 1998. The school has informed the D.I. about the refixation of the petitioners' pay on account of his having acquired post graduate qualification. The D.I. has acted upon the same and the petitioner has been receiving post graduate scale of pay until the year 2009.

This Court is, therefore, of the view that the stand taken by the D.I. that prior permission of his office is necessary for acquiring post graduate qualification and/or for seeking post graduate scale of pay is, therefore, illegal and incorrect and is set aside. The order, stopping post graduate scale of pay from 2009 to the petitioner, is equally illegal and also quashed and set aside.

The petitioner shall be entitled to refund all arrears of post graduate scale of pay, that has not been paid to him from August 2009 till date, within a period of three months from the date of communication of a copy of this order.

The arrears shall carry interest @6% per annum. The petitioner's pay shall be refixed on the basis of his last drawn post graduate scale of pay and all increments and revisions, in accordance with law, shall be calculated and made available to him. The petitioner's current pay scale and salary shall be on the basis of his revised pay scale based on the aforesaid directions.

Accordingly, the writ petition is allowed and disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)