

11.07.2022
RP/Ct. 2
sl no. 26

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction**

**WPA 749 of 2022
Ila Choudhury Saha @ Ila Chowdhury Saha
vs.
The State of West Bengal & Ors.**

Mr. Amritam Mandal
Mr. Debasish Mukhopadhyay
Ms. Madhushri Dutta

.... For Petitioner

Mr. Subir Kumar Saha
Mr. Bikramaditya Ghosh
Mr. Momenur Rahman

.... For State

The petitioner retired as Assistant Teacher from Sishu Niketan Primary School, Jalpaiguri on September 30, 2016. The petitioner approached this Court on an earlier occasion by filing WPA 113 of 2021 alleging that the retirement benefits have been withheld after fixing 26th March, 1997 to be the date from which monetary benefit is to be determined which, according to the petitioner was arbitrary. A coordinate Bench by an order dated January 21, 2021 in WPA 113 of 2021 directed the concerned District Inspector of Schools to pass a reasoned order after giving an opportunity of hearing to the petitioner and also after taking into account the order passed by another coordinate Bench in WPA 342 of 2019.

The petitioner has challenged the memo no.174/JPG dated April 6, 2021 which is annexed as Annexure P-12 at page 78 of the writ petition holding that

the scale benefit will be given from the date of joining of the petitioner i.e. April 1, 1983 and the monetary benefit will given from March 26, 1997. The said order dated April 6, 2021 has been challenged in this writ petition.

Mr. Mandal, learned advocate for the petitioner submits that the issue as to whether the scale benefit is to be granted from the date of joining of the teacher concerned or from 26.03.1997 has been decided by a coordinate Bench in WPA 342 of 2019. He submits that the order dated April 6, 2021 has been passed in total disregard of the order passed by this Hon'ble Court.

Mr. Ghosh, learned advocate appearing for the State in his usual fairness submits that the issue as to whether the teacher concerned will be entitled to scale benefit in a case of this nature has already been decided by a coordinate Bench in 342 of 2019. He further submits that the order passed by a coordinate Bench was subsequently affirmed by a Division Bench of this Hon'ble Court.

After going through the order passed by a coordinate Bench in WPA 342 of 2019, filed at the instance of another assistant teacher of the same school, it is evident that the concerned respondent was directed to disburse all the benefits in favour of the teacher concerned taking the scale to be effective from the date of her joining.

In WPA 113 of 2021 filed at the instance of the writ petitioner another coordinate Bench directed the concerned District Inspector of Schools to take into account the said order passed in WPA 342 of 2019 while passing a reasoned order in the case of the petitioner.

From a bare perusal of the order dated April 6, 2021 it appears that the concerned District Inspector of Schools after holding that the scale benefit will be given from the date of joining of the petitioner i.e. 1.4.1983 further held that the monetary benefit will be given from 26.03.1997. The decision of the authority to grant monetary benefit with effect from 26.3.1997 is without any basis and the same is also contrary to the decision passed in WPA 342 of 2019. In view thereof, that part of the direction in the order dated April 6, 2021 is liable to be set aside and quashed and the same is accordingly set aside and quashed. The District Inspector of Schools, Primary Education, Jalpaiguri, being the respondent no.2 herein, is directed to issue necessary direction for disbursing all the benefits in favour of the petitioner by treating the petitioner to be entitled to all benefits with effect from the date of joining.

With the aforesaid directions, this writ petition is disposed of. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all usual formalities.

(Hiranmay Bhattacharyya, J.)