

25.07.2023
DL-59
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 383 of 2023

Sayan Kumar Panda
Vs.
The State of West Bengal & Ors.

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das
....for the petitioner.

Mr. Tapan Kumar Mukherjee, AGP,
Mr. Somnath Naskar
....for the State.

Mr. Ranjay De,
Mr. Basabjit Banerjee
....for the respondent nos.3 & 4.

The petitioner prays for benefits and allowances under the Revision of Pay and Allowances (ROPA), 2019. The petitioner is working as a Chemist with the Durgapur Chemicals Limited (DCL). He was appointed in December, 2009 pursuant to an advertisement dated September 23, 2009. The petitioner was initially appointed in the pay scale of Rs.4,500 – 9,700/- as per ROPA, 1998. The petitioner was given the benefits in accordance with ROPA Rules, 2009. The petitioner was given a pay scale of 16. His revised pay scale was between Rs.7,100 – 37,600/- with a grade pay of Rs.3,900/-. However, the petitioner was neither given the benefits of Chemist Grade-I, which was in serial no.15, nor was the petitioner considered in the pay scale of

Chemist Grade-II which was in serial no.17 of the list of employees upon implementation of ROPA 2019. Thus, the petitioner's position was in between Chemist Grade-I and Chemist, Grade-II in Pay Band 3. After the implementation of ROPA 2019 with effect from January 1, 2020, the petitioner was neither given the benefits in terms of serial no.15 that was higher than the petitioner's grade nor in terms of serial no.17 that was lower than the petitioner's grade. Under the 5th Pay Commission, the petitioner was getting a pay in Pay Band 3. The corresponding pay band to Pay Band 3 would have been pay matrix 10 with a basic pay of Rs.42,000/- considering the previous basic pay of the petitioner in between Rs.7,100 – 37,600/- in pay Band 3.

Mr. Jana submitted on February 6, 2023 that the petitioner could not be deprived of the benefits of ROPA 2019 on the ground that the petitioner neither fell in Grade-I nor in Grade-II Chemist. It could not be argued that the benefits of 6th Pay Commission given by ROPA 2019 could not be extended to the petitioner on the aforesaid ground.

Mr. De, learned counsel, appearing on behalf of the respondent nos.3 & 4/employer submitted that various representations were made to the State Government for fixation of the pay scale of the petitioner and necessary disbursal of ROPA benefits,

2019, but no steps have been taken by the State Government regarding the said prayer. DCL is not generating funds anymore and completely dependent upon the State Government for providing funds for payment of salaries of its employees.

As recorded earlier, this Court found it perplexing that the petitioner was being discriminated vis-à-vis 168 employees of respondent/DCL. Why the 168 employees of DCL were given the benefits of ROPA 2019 and 4 employees including the petitioner were not given the same could not be satisfactorily explained either by the employer or by the State.

Mr. Mukherjee, learned Additional Government Pleader draws the attention of this Court to a communication dated December 26, 2019 issued by the Deputy Secretary, Public Enterprises & Industrial Reconstruction Department, Government of West Bengal to the Director-in-Charge, DCL.

From the said memo, it appears that the activities for the plant of DCL was temporarily suspended and corrective measures were sought to be taken in accordance with the recommendations of the West Bengal Pollution Control Board (WBPCB). Upon inspection by an expert body of WBPCB and a satisfactory report of compliance being filed by them, the activity process of DCL would be resumed. It was

clarified in the said memo that during temporary suspension of work, **all** the employees of DCL are **entitled** to get salary, emoluments and other dues as admissible till resumption of work.

This Court finds that there can be no doubt as to the entitlement of the petitioner to ROPA, 2019 benefits when 168 employees despite the work of DCL being temporarily suspended were being given the benefits of ROPA, 2019. The petitioner could not be discriminated against, in violation of the provisions of Article 14 of the Constitution of India.

Therefore, this Court directs the petitioner to be given the admissible benefits under ROPA, 2019 with effect from January 1, 2020. The arrears of such benefits shall be disbursed within 3 months from the date of the order along with interest @ 6% per annum.

This Court is of the view that the petitioner could not be discriminated as against the other employees without any fault on his part.

With the directions aforesaid, **WPA 383 of 2023** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)