

18.07.2023
SL No.11
Court No.8
(gc)

**FMA 285 of 2022
CAN 1 of 2022**

**Santi Nath Dolui
Vs.
The State of West Bengal & Ors.**

Mr. Kanai Lal Samanta
...for the Appellant.
Mr. Supriyo Chattopadhyay, A.G.P
Ms. Sayantanee Bhattacharjee
...for the State.

The appeal is arising out of an order dated 18th November, 2021 where in view of the Circular dated 22nd March, 2017 the benefit of additional increment of 3% was denied to the writ petitioner. The writ petitioner/appellant is a Headmaster of a Higher Secondary School which was upgraded from Secondary School to Higher Secondary School from the year 2015-2016. The petitioner on the basis of a Circular dated 4th December, 2014 was enjoying an additional increment of 3% and additional Grade Pay which was clarified by another Circular issued by the Joint Secretary dated 22nd March, 2017 by which the additional increment of 3% was withdrawn. This has been challenged by the writ petitioner. The argument before the learned Single Judge was that G.O. dated 22nd March, 2017 does not clarify whether the same would have retrospective effect or not. The learned Single Judge observed that whether it would have retrospective effect or not could not be a ground for setting aside

the said memo and it has to be decided by the appropriate authority whether the said memo has any retrospective effect or not.

Ordinarily, a clarificatory memorandum should have a prospective effect and any benefit extended to a person before the clarification should not be disturbed.

However, in the course of argument, the appellant has argued that the Headmasters of the Schools upgraded earlier were enjoying additional increment and additional Grade Pay. Accordingly, the Grade Pay at the rate of Rs.200/- is paid to the appellant irrespective of the date of upgradation and it does not justify denying of 3% increment as it is, prima facie, discriminatory. In this regard, reliance is placed on a Coordinate Bench judgment in **Satyajit Ghosh Vs. State of West Bengal & Ors. (MAT 6 of 2020 with MAT 7 of 2020) dated 15th March, 2021** in which the Coordinate Bench has observed:-

“We find substance in the argument of Mr. Samanta that the Headmasters of the schools upgraded between 1st January, 2006 and 27th February, 2009 were enjoying additional increment and additional Grade Pay and, accordingly, the grade pay at the rate of Rs.200/- is paid to the appellants (in both the appeals) irrespective of the date of upgradation of their respective schools, does not justify denying of 3% increment and it is, prima facie,

discriminatory and absence of intelligible differentia. We are also of the, prima facie, view that the order of the Joint Secretary of School Education dated 4th December, 2014 is prima facie a correct approach to the problem as it would also not discriminate between Headmasters who were getting the benefits in respect of the schools that were upgraded before February, 2009 but denying such benefits only because the same schools were upgraded later on. However, these are required to be decided in the writ petitions where the writ petitioners would be required to challenge, amongst others, the letter dated 22nd March, 2017 on grounds that may be available to them in law. We dispose of the appeals by giving liberty to the writ petitioners to file a comprehensive writ petitions challenging the letter dated 22nd March, 2017 and the memorandum dated 10th February, 2010, if advised and all other relevant circulars that may cause an impediment or hurdle in getting the benefits of 3% increment within four weeks from date. In the event the writ petitions succeed, the writ petitioners shall be entitled to get increment with effect from the date of upgradation of the schools as Higher Secondary Schools in which the petitioners are working as Headmasters.”

The learned Counsel for the appellant has fairly submitted that the above judgment was not placed before the learned Single Judge and the grounds of challenge are not happily drafted.

The learned Counsel for the appellant has prayed for amendment of the writ petition to include

necessary pleadings challenging the clarificatory memorandum as discriminatory and absence of any intelligible differentia.

We are of the view that the writ petitioner has a prima facie case which is required to be decided on merits. However, having regard to the fact that the writ petition was dismissed, the writ petitioner shall not be entitled to 3% increment for the time being. The prayer for payment of 3% increment may be made before the learned Single Judge. In the event the writ petition succeeds, the writ petitioner shall be entitled to get increment from the date when it was stopped.

The order under challenge is set aside.

We permit the writ petitioner to amend the writ petition. The amended writ petition shall be filed within four weeks from date. In default, the order of the learned Single Judge shall revive.

Accordingly, the appeal and the application stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)