

08 20.03.2023
rkd Ct.15

W.P.A. 7556 of 2017

Sarbani Chatterjee

-vs-

The State of West Bengal & Ors.

Mr. Ekramul Bari,
Ms. Tanuja Basak

....for the petitioner.

Mr. Ms. Chaitali Bhattacharya,
Mr. Kartik Chandra Kapas

.... For the State.

Writ petitioner was an assistant teacher in secondary school who retired on superannuation on 30th April, 2016. At the time of processing the pension case of the petitioner after superannuation the District Inspector of Schools (S.E.), Howrah as well as the Assistant Director, Pension Provident Fund and Group Insurance, Government of West Bengal vide issuing memoranda dated 24th June, 2016 and 22nd June, 2016 respectively raised objection regarding fixation of pay of the petitioner at Rs.540/- on 1st April, 1986; these two memoranda dated 24th June, 2016 and 22nd June, 2016 are subject matter of challenge in the present writ petition.

The case made out in the writ petition is that there was no error in fixing the pay of the petitioner at Rs.540/- on 1st April, 1986 upon granting incremental benefits by treating the

petitioner as trained teacher on completion of ten years' approved service as untrained assistant teacher. Therefore petitioner has prayed for cancellation of those two impugned memoranda dated 24th June, 2016 and 22nd June, 2016 and has prayed for sanction of retiral dues taking into consideration the last pay drawn by the petitioner at the time of her superannuation on 30th April, 2016 along with interest.

This Court has directed the learned advocate for the State respondents to file report in the form of affidavit in order to demonstrate before this Court that the finding of the respondent authorities relating to fixation of pay on 1st April, 1986 was correct. Subsequent to previous direction of this Court report in the form of affidavit has been affirmed on behalf of the State respondents wherein effort has been made to substantiate the stand of the State respondents relating to the objection raised against fixation of pay at Rs.540/- of the petitioner on 1st April, 1986.

It has been contended on behalf of the State respondents that fixation of pay at Rs.540/- on 1st April, 1986 of the petitioner was erroneous in view of Government Circular dated 19th February, 1979 being No.149-Edn(S). According to the State

respondents since the petitioner was appointed being an untrained assistant teacher on 1st October, 1975 she completed ten years' continuous service on 30th September, 1985 and the first incremental benefits upon treating the petitioner as trained teacher would accrue in favour of the petitioner after completion of one year thereafter in terms of the said Government Circular dated 19th February, 1979. But in the instant case petitioner was granted incremental benefits in terms of the said circular dated 19th February, 1979 after completing ten years' service on 30th September, 1985 which is impermissible.

According to the State respondents first incremental benefit would have been accorded in the year 1986 after completion of one year service on completing ten years' continuous service.

This Court has heard the learned advocates representing the parties and in consideration of the Circular dated 19th February, 1979 as relied upon by the learned advocate representing the State respondents, it appears that there is substance in the contention made on behalf of the State respondents. Since the petitioner was appointed as an untrained teacher on 1st October, 1975 the first incremental benefits should have accrued in her

favour on completing one year's service after completing ten years' continuous service; Circular dated 19th February, 1979 made the petitioner eligible to receive incremental benefits not from the year 1985 but from the year 1986. Therefore, it appears that the objection raised by the State respondents as contained in the impugned memoranda dated 24th June, 2016 and 22nd June, 2016 is unexceptionable.

However, it does not escape notice of this Court that petitioner enjoyed benefit based on fixation of pay at Rs.540/- with effect from April, 1986 till the date of her retirement on 30th April, 2016. Therefore after retirement recovery from the retiral benefits of the petitioner is impermissible in view of law laid down by the Hon'ble Supreme Court in **State of Punjab & Ors. -vs- Rafiq Masih (White Washer) & Ors. reported in (2015) Vol 4 SCC 334** . In paragraph 18 the said judgment it has been decided unequivocally that recovery from retired employees or the employees who are due to retire within one year, of the order of recovery is not permissible.

In view of the law laid down by the Hon'ble Supreme Court in **Rafiq Masih (supra)** this court directs the State respondents not to recover the

excess amount drawn by the petitioner in view of fixation of pay with effect from 1st April, 1986. However, the State respondents are directed to finalise the pension case of the petitioner considering the fixation of pay which was required to be made with effect from 1st April, 1986 in terms of the Government Circular dated 19th February, 1979.

Accordingly, the State respondents are directed to re-fix the last pay drawn by the petitioner upon taking necessary steps within a period of fortnight from the date of communication of this order and after compliance of all formalities issue Pension Payment Order in favour of the petitioner within a period of six weeks thereafter.

However, it is made clear that State respondents shall pay pensionary benefit of the petitioner in terms of the aforesaid direction expeditiously, preferably within a period of ten weeks from the date of communication of this order.

Since it has been found by this Court that the objection in the impugned memoranda dated 24th June, 2016 and 22nd June, 2016 is based on Government Circular dated 19th February, 1979 and there was a requirement to re-fix the pay of the

petitioner with effect from 1st April, 1986 at Rs. 520/- the prayer for interest due to delayed payment of pensionary benefits is rejected.

Accordingly, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)