

**MAT 603 of 2022**

with

**I.A No. CAN 1 of 2022****Dr. Tanushree Saha Mondal****Vs.****The State of West Bengal & Ors.**

Mr. Pankaj Halder

Mr. Sanatan Panja

Mr. Tapas Manna

... For the Appellant

Mr. Jayanta Samarder

Mr. Kushal Biswas

Mr. Dip Jyoti Chakraborty

... For the State

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of the judgment and order dated 14<sup>th</sup> March, 2022 passed by a learned Single Judge in a writ petition in which the writ petitioner has, inter alia, prayed for two additional increments for acquiring Ph.D degree.

3. The writ petitioner is a Principal of Government Sponsored Primary Teachers' Training Institute, Unit-II, Sarisha, Diomond Harbour, South 24 Parganas and was appointed on 16<sup>th</sup> August, 1999 with the educational qualification of B.A (Hons.), M.A (Geography) and B.Ed. and subsequently obtained Ph.D. degree from the University of Visva Bharati in the year 2001. The petitioner has claimed two

additional increments for acquiring Ph.D. degree in terms of Clause 12(5) of Revision of Pay and Allowance Rules, 1998 (hereinafter referred to as “ROPA 1998”) which was introduced vide Memorandum dated 12<sup>th</sup> February, 1999 being no. 25-SE(B)/IM-102/98.

4. The petitioner on acquiring higher qualification made a representation for higher scale of pay. Since the representation was not considered, a writ petition being WP 2872(w) of 2018 was filed in which an order was passed on 10<sup>th</sup> May, 2018 whereby a coordinate bench directed the Commissioner of School Education to take decision on the claim of the petitioner on granting two additional incremental benefits. The Commissioner refused the claim of the petitioner. As a result whereof, a writ petition was filed in which the impugned was passed.

5. Mr. Pankaj Halder, learned counsel representing the appellant, has submitted that having regard to the qualification and pay scale of the writ petitioner as that of the teachers of Secondary school, the benefits of ROPA-1998 should be made applicable. It is submitted that there could not be any reason for not extending the benefit of Clause 12(5) of ROPA-1998 in

respect of the writ petitioner although the writ petitioner was appointed under the West Bengal Primary Education Act, 1973. Mr. Halder submits that there is no intelligible differentia between the writ petitioner and the teachers of Secondary school who have been extended the benefit of two additional increments under Clause 12(5) of ROPA-1998.

6. It is further submitted that the principle of “equal pay for equal work” has been considered by the Hon’ble Supreme Court in the case of ***Union of India & Ors. Vs. Dineshan K.K., reported in AIR 2008 SC 1026*** corresponding to ***2008(1) SCC 586***. Mr. Halder submits that the said decision has clearly stated that ‘equal pay for equal work’ is not mere a slogan but a constitutional goal. When the pay scale of the Principal of the Primary Teachers’ Training Institute is similar to that of the teachers of the Secondary schools there could not have any reason for not extending the said benefit when the nature of work is similar and the qualification of the petitioner is not less than that of the teachers of the Secondary school.

7. Learned counsel for the State in opposing the prayer for extending such benefit has

submitted that the service of a Principal in a Government Sponsored Primary Teachers' Training Institute falls under the primary education by virtue of provision of Section 2(xi), 2(xxia) which defines the "Primary Teachers Training Institute" and "teacher" respectively and Section 19 of the West Bengal Primary Education Act, 1973.

8. In terms of Clause 12(3) of the ROPA 1999 only secondary school teachers are entitled to get higher scale of pay appropriate to qualification on accruing higher qualification. However, the amendment of provision of Clause 12(3), as done by the Memo no. 155 SE(B) dated 13.7.1999, put more conditions for availing such enhanced pay benefit to a secondary school teacher, such as fitment to school staff pattern, mentioning of qualification by School Service Commission etc.

9. Under such circumstances, the petitioner's service falls under the West Bengal Primary Education Act, 1973 cannot be treated as Secondary school teacher for availing higher scale of pay in terms of provision of ROPA, 1999 has not been extended any right to the employee of Primary Teachers' Training Institute and as such the appellant has no legal right to enforce

the same. At the material point of time the provision of ROPA, 2009 came into effect with effect from 2006 which does not contain any provision for allowing additional increment for the Ph. D. degree.

10. In the background of the aforesaid facts and the submissions made by the parties we had a look at the judgment passed by Justice Bhattacharyya. It appears that the respondent no. 2 refused to consider the claim of the petitioner primarily in consideration of Clause 12(5) of ROPA 1998 Rules. Though it has been argued by the appellant that ROPA 1998 Rules are applicable not only to the teaching employees of secondary schools but also applicable to the teachers of Training Institute of primary teachers and it appears from the mere reading of entire Clause 12 of ROPA 1998 Rules that it speaks of benefits under the Career Advancement Scheme. It also appears that different benefits have been extended to the different class of employees who are rendering service in different categories of educational institutes. Learned Single Judge has referred to Clause 12 of ROPA 1998 Rules had arrived at a finding that the incremental benefits which have been contemplated in Clause 12(5)

are confined to Secondary teachers/ Headmasters/Headmistress with Doctorate degree in the subject taught or in an allied subject in the Secondary schools. It is not in dispute that the petitioner is a Principal of Government Sponsored Primary Teachers' Training Institute and accordingly his service is not covered under Clause 12 of ROPA 1998 Rules.

11. It appears from the Rules that the teachers are required to be appointed for Primary Education and Secondary Education under the West Bengal School Service Commission with different academic qualification and experience. They cannot be treated at par for various reasons. The pay structure and service condition are also different. Merely because the petitioner possesses a qualification suitable for Principal of Government Sponsored Primary Teachers' Training Institute it would not give a right to the appellant/petitioner to claim for additional incremental benefit, that is applicable to the teachers of Secondary Schools.

12. It appears that before the learned Single Judge an argument was advanced by Mr. Halder referring to a Notification dated 19<sup>th</sup> August,

2013 for being appointed in the post of Principal in Primary Teachers' Training Institute a candidate must possess Masters' Degree of two years duration course with Hons. at the Graduation level at least 55% marks in any school teaching subject and Diploma /Degree in Education/Primary Education with 55% marks or M.Ed./M.Ed. (Elementary) with 55% marks or M.A in Education with 55% marks and Diploma /Degree in Primary/Elementary Education with 55% marks. This qualification ought to have been taken into consideration in deciding the arbitrary exclusion of the petitioner for the purpose of Clause 12 of ROPA 1998 Rules.

13. Apart from the reasons indicated above we are not accepting the argument advanced by Mr. Halder for 'equal pay for equal work' and his submission that the appellant is required to be treated at par with the Secondary teachers for the purpose of receiving incremental benefits under Clause 12 of ROPA 1998 Rules as in the present case the petitioner has not obtained Ph.D. degree in Education but in Geography which is not taught or cannot be considered as an allied subject in Primary

Teachers' Training Institute where as in terms of Clause 12 of ROPA 1998 Rules for getting the incremental benefits a candidate is required to hold teaching post in Secondary schools and Doctorate degree must be in subject taught or in an allied subject in the secondary level.

14. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.

15. On such consideration, the appeal fails.

16. In view of the aforesaid order the appeal being MAT 603 of 2022 stands dismissed.

17. In view of the dismissal of the appeal nothing remains to be decided in the application being CAN 1 of 2022 and the same is accordingly dismissed.

However, there shall be no order as to costs.

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

(Uday Kumar, J.)

(Soumen Sen, J.)

