

S/L 7
20.12.2023
Court No.25
SD

WPA 5779 of 2014

Anindya Chatterjee
Vs.
State of West Bengal & Ors.

Mr. B.N. Ray
Ms. Shetparua Ray
Mr. Subrata Mukherjee

...for the Petitioner.

...for the State.

Questioning the defensibility of the order passed by the District Inspector of Schools (S.E.), Barrackpore, North 24 Parganas communicated to the petitioner under his Memo dated 24.10.2013 (Annexure P/9 to the writ petition) and praying for a direction upon the concerned respondents to release and/or pay the incremental benefits in favour of the petitioner for the period commencing from July 1, 2006 to July 1, 2008, the present writ petition was instituted.

Facts as unfurled in the writ petition, in brief, are that on the basis of a recommendation of the School Service Commission, the petitioner was appointed as Assistant Teacher of Geography of Mohispota Boys High School (H.S.) (in short 'the school') on 18.4.2001 with a qualification of B.A. Honours in Geography. The petitioner's appointment was approved on June 29, 2001 by the competent authority. Since the petitioner joined in the post without having any qualification of B.Ed. degree as per the rule prevailing at that time, the petitioner was required to complete B.Ed. course within five years from the date of joining in the service i.e. within April 7, 2006. On a condition that the petitioner

would complete the B.Ed. course within the prescribed period, the four yearly increments were given to the petitioner from April 18, 2002 to April 18, 2005 but as the petitioner could not complete the B.Ed. course within the five years from the date of his joining, yearly increment in his favour was stopped with effect from April 17, 2006. However, the petitioner was completed B.Ed. course from the institution recognized by NCTE in 2008 and his yearly increment was granted with effect from 01.7.2009 but no increments have been given in his favour in the year 2006, 2007 and 2008. Hence, he made a representation before the concerned authority with a prayer for release of incremental benefits for the years, 2006, 2007 and 2008 and the District Inspect of Schools concerned by passing an order dated September 20, 2012 rejected the prayer for incremental benefits in favour of the petitioner.

The petitioner assailed the said order dated September 20, 2012 by preferring a writ petition being W.P. No.1645 (W) of 2013. The aforesaid writ petition was disposed of by a coordinate Bench of this Court by an order dated January 31, 2013 whereby the order passed by the respondent no.3 dated September 20, 2012 was set aside and direction was given upon the respondent no.3 to reconsider the claim of the petitioner in the light of the observation in the order dated January 31, 2013 within the period stipulated therein.

In obedience to the said order dated January 31, 2013, the order under challenge in this writ petition has been

passed whereby the prayer for release of increment benefits in favour of the petitioner has been again turned down by District Inspector of Schools concerned.

Mr. Roy, learned advocate appearing for the petitioner, contends that the school authority concerned allowed its teacher to complete B.Ed. course according to seniority and hence, the petitioner could get an opportunity to complete B.Ed. course in 2008. He argues that the concerned District Inspector of Schools has misinterpreted and misconstrued the provision contained in both the Circulars dated 30th July, 2009 and 10th February, 2010 and glossed over the observation made by this Hon'ble Court in W.P. No.1645 (W) of 2013 and returned an erroneous finding.

He submits that the stoppage of increment was relaxed on a condition that the teacher concerned was to complete B.Ed. course within 2012 and the petitioner had completed B.Ed. in 2008 and hence, the petitioner is entitled to get benefits of the aforesaid two circulars but the concerned respondents acted unreasonably by withholding the petitioner's yearly increments fell due for the years 2006 to 2008.

Mr. Mukherjee, learned advocate for the State submits that there is no question of any misconception of the aforesaid Circulars from the end of the District Inspector of Schools. He asserts that the District Inspector of Schools has rightly interpreted the contents of the aforesaid Circulars and came to a justified finding leaving no scope before this

Court to interfere with the order passed by the D.I. of Schools concerned.

Heard learned advocates appearing for the respective parties and perused the materials on record.

Admittedly, the petitioner joined in the school on April 18, 2001 with a qualification of B.A. Honours in Geography and his appointment was approved by the competent authority on June 20, 2001. The pre-condition to avail the benefits of yearly increment was that the petitioner was required to complete the B.Ed. course within five years from the date of joining in the said school, that is, within April 7, 2006. The facts remain that the petitioner could not complete the B.Ed. course within the time stipulated and consequently, his yearly increment was stopped with effect from April 17, 2006.

The O.S.D. & Ex-officio Joint Secretary to the Government of West Bengal issued a notification vide No.759-SE (S)/2P-1/09 dated July 30, 2009 which is reproduced as follows:-

“In reference to his memo no. 2443-GA/OM-20/2006 (pt.) dated 24.12.2008 on the above noted subject, the undersigned is directed to say as per existing rules/provisions 4 (four) increments are allowed to the Asst. Teachers during their first 5(five) years of service within which they have to complete the B-Ed course approved by NCTE. As during the period of Court Cases continued for the last 3 years, the incumbents’ concerned were unable to even get themselves admitted to the B-Ed Course in the colleges approved by NCTE, the Governor after careful examination of all the facts & circumstances

of the cases has been pleased to allow the incumbents in drawing increments upto the year 2012 as usual and during that period they must have to complete such training approved by NCTE.

This is only one time relaxation which is being granted upto the year 2012 and will not be extended beyond that on any ground.

This order issues with the concurrence of the Finance Department vide U.O. No. 1368, Group-P(Pay) dated 07.07.2009.”

By another Memorandum vide No.30-SE(B)/5B-1/2009 dated February 10, 2010, the aforesaid memo dated July 30, 2009 was modified to the extent that the benefit of exemption from stoppage of increment as provided in Memo No. 759-SE (S)/2P-1/09 dated July 30, 2009 will be counted from July 1, 2006.

From the Memo dated July 30, 2009 , it is explicit that there shall be one time relaxation of stoppage of increment which was granted up to 2012 meaning thereby the teacher concerned was required to complete B.Ed. course within 2012 and the teacher who completed B.Ed. within 2012 will get benefit of exemption from stoppage of increment in view of the Circular of July 30, 2009 and the yearly increment shall be granted on and from July 1, 2006 in terms of the Circular dated February 10, 2010.

There cannot be any doubt that the petitioner has completed B.Ed. in 2008. Hence, he fulfilled the condition contained in the Circular dated July 30, 2009 and hence, he is entitled to get yearly increments with effect from July 1, 2006. So, the act of withholding the yearly increments in

favour of the petitioner which fell due on July 1, 2006, July 1, 2007 and July 1, 2008 runs counter to the terms and conditions of the aforesaid two Circulars. Hence, the order passed by the District Inspector of Schools communicated to the petitioner under his Memo dated October 24, 2013 cannot be sustained and according the order passed by the D.I. of Inspector of Schools communicated to the petitioner under his Memo. dated 24.10.2013 is hereby set aside.

The respondent no.3 is directed to release the yearly increments in favour of the petitioner fell due on 1st July, 2006, 1st July, 2007 and 1st July, 2008 , re-fix the scale of pay of the petitioner and to disburse the petitioner's subsequent salaries on the basis of such re-fixation of scale of pay within two months from the date of receipt of a copy of this order. The respondent no. 3 is further directed to pay all the arrears of salaries to the petitioner within the time stipulated hereinabove.

With these observations and directions, WPA 5779 of 2014 is disposed of.

There shall be no order as to costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)