

11.12.2023
SI No.50
Court No.8
(gc)

**FMA 989 of 2022
CAN 1 of 2023**

**Dipali Bhattacharya
VS
The State of West Bengal & Ors.**

Mr. Chandan Dutta

...for the Appellant.

Mr. Pinaki Dhole,
Mr. Avishek Prasad

...for the State.

1. The appeal is arising out of an order dated 7th April, 2022 in which the writ petitioner challenged the order dated 23rd November, 2020 by which the prayer for fixation of the scale of pay in terms of the Government Memorandum No.25-SE(B)/IM-102/98 dated 12th February, 1999 has been rejected.
2. Before the learned Single Judge it was urged that the outer pay scale of her pay as on the date of superannuation that is 30th November, 2007 ought to have been Rs.7075/-. The respondents have fixed up the scale of pay as per Government Order No.25-SE(B) dated 12th February, 1999 at Rs.4600/- on 1st April, 1996 in the scale of pay of Rs.3350/- to Rs.6325/- in terms of the G.O. No.732-SE (Law)//CH/5S-284/01 dated 21st November, 2003 of the School

Education Department, Government of West Bengal. Before the learned Single Judge a detailed calculation was placed on behalf of the Government to show as to how the pensionary benefit of the petitioner was fixed in the basic pay of Rs.5950/- on 30th November, 2007. It appears that the writ petitioner was receiving her salary at a higher scale of pay compared to the teacher-in-service at the relevant time in the post of Assistant Teacher. The Circular dated 21st November, 2003 clearly clarifies that the teachers who have unconditionally opted to be treated as 'Teachers of Burdwan DPSC' should be fixed as per Government order guiding such fixation but not on the basis of the existing pay they used to receive under Asansol Municipal Corporation. The pay structure should be in parity with the existing teachers of Burdwan District Primary School Council. It was initially not done. Overlooking the said memo higher pay scale was allowed. Subsequently, it was revised.

3. In view thereof, we do not find any reason to interfere with the order passed by the authority concerned in re-fixing the salary

of the petitioner on the basis of the
aforesaid Government memorandum.

However, any amount wrongly paid on
account of salary should not be recovered.

4. With the aforesaid observation, the appeal
and the application stand disposed of.

5. However, there shall be no order as to
costs.

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

(Uday Kumar, J.)

(Soumen Sen, J.)