

11. 04.01.2023
bd. Ct.15

W.P.A. 8222 of 2011

Smt. Rina Paine (Patra)

-vs-

The State of West Bengal & Ors.

Mr. Ekramul Bari

Ms. Tanuja Basak

... for the petitioner.

Mr. Supriyo Chattopadhyay

Ms. Iti Dutta

... for the State.

In the writ petition petitioner has questioned the memo dated 21st March, 2011 issued by the Director of School Education, West Bengal, addressed to the District Inspector of Schools (SE), Bankura, wherein it has been communicated to the concerned District Inspector of Schools that the petitioner is not entitled to receive higher scale of pay in consideration of one Government Circular being G.O.593- SE-(B) dated 27th November, 2007.

Petitioner is an assistant teacher in social science group who was appointed with pass graduate scale of pay with effect from 1st October, 1988 and subsequently obtained post graduate qualification in history. After obtaining such higher qualification petitioner was sanctioned post graduate scale of pay with effect from 14th August, 1996 by the concerned District Inspector of Schools vide issuing memo dated 18th September, 2002. Subsequently, on issuing memo dated 21st March, 2011 by the Director of School Education, West Bengal, right of the petitioner to receive post graduate scale of pay has been denied.

It has been submitted by Mr. Bari, learned advocate representing the petitioner that on issuance of this memo dated 21st March, 2011 petitioner is not receiving pay in post graduate scale which prompted her to approach this Court with the present writ petition.

Mr. Chattopadhyay, learned senior Government advocate appears for the State respondents and defends the decision of the Director of School Education as contained in said memo dated 21st March, 2011. It has been submitted on behalf of the State respondents that for enjoying post graduate scale of pay permission from the concerned District Inspector of Schools is necessary in terms of the Government Order dated 27th November, 2007 being G.O. No.593/(SE)(B).

On hearing learned advocates representing the parties and perusing the impugned decision of the Director of School Education dated 21st March, 2011 it appears that petitioner was sanctioned post graduate scale of pay with effect from 14th August, 1996 being the date following the last date of M.A. Part-II Examination. Therefore, it appears right of the petitioner to enjoy the post graduate scale of pay accrued much before the issuance of the circular dated 27th November, 2007 which has been relied upon by the Director of School Education while denying right of the petitioner to enjoy post graduate scale of pay. It has also been argued on behalf of the petitioner that in terms of Clause 12(3) of ROPA 1998 petitioner is entitled to receive post graduate scale of pay either with effect from 1st January, 1996 or the date of improving the

qualification whichever is latter. Here in the instant case post graduate scale of pay was sanctioned in favour of the petitioner with effect from 14th August, 1996 on acquiring higher qualification. In support of such submission reliance has also been placed on the judgment of the Hon'ble Division Bench dated 31st January, 2014 passed on a writ petition being **WPA 14760 of 2004 (Rabi Kanta Barman -vs- District Inspector of Schools (SE) & Ors.)**.

It is also required to be recorded herein that in spite of direction for filing affidavits the state respondents have decided not to file the same and accordingly this Court is considering the issue based on the materials available on record and the averments made in the writ petition.

It further appears that impugned order of the Director of School Education, West Bengal, is devoid of cogent reasons which depicts non-application of mind on the part of the Director of School Education. It has not been spelt out in the impugned decision dated 21st March, 2011 as to why Clause 12(3) of ROPA 1998 shall not apply in the case of the petitioner in deciding her entitlement to enjoy post graduate scale of pay.

Accordingly, the decision of the Director of School Education, West Bengal, as contained in memo dated 21st March, 2011 stands set aside.

The Commissioner of School Education, West Bengal, is directed to revisit the issue within a period of 12 weeks from the date of communication of this order and pass a reasoned order after

granting opportunity of hearing to the petitioner and the School Authority where petitioner is serving at present as well as, if necessary, Commissioner shall also hear the concerned District Inspector of Schools or his representative.

The decision to be taken by the Commissioner shall be communicated to the petitioner within a period of one week thereafter.

While taking such decision the Commissioner shall consider the decision of the Hon'ble Division Bench delivered in ***Rabi Kanta Barman*** (supra). Petitioner shall also be at liberty to rely upon other relevant circulars and decisions of this Court before the Commissioner.

If Commissioner finds that the petitioner is entitled to receive the post graduate scale of pay consequential steps shall be taken for grant of post graduate scale of pay. If the prayer of the petitioner for sanction of post graduate scale of pay is refused Commissioner is required to assign cogent reasons thereof.

With the above direction the writ petition stands disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

