

04.12.2023

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WPA 17612 of 2023

Biswajit Das
Vs.
The State of West Bengal & Ors.

Mr. Atanu Biswas
Mr. Mrinal Saha
Mr. Bikram Basak
... For the petitioner.

Ms. Tapati Samanta
Mr. Arindam Ghosh
... For respondent no. 4.

Md. Mansoor Alam
... For the State.

The petitioner was appointed to the post of Librarian of a Government sponsored rural library, at Burdwan on June 22, 1984.

It is not in dispute that the petitioner had a Bachelor's degree in Library Science at the time of his appointment.

The petitioner filed a writ petition before this Court claiming higher scale of pay for the said qualification. A Coordinate Bench of this Court by an order dated September 19, 1996 passed in C.O. 9580 (W) of 1996 directed the State to give the benefit of his higher qualification to revise his pay scale. The said order of the learned single Judge was unsuccessfully challenged upto the Supreme Court by the State.

The petitioner, thereafter, was placed in the scale of pay of Rs. 1390/- - Rs. 2970/- (Scale No. 10) from scale of pay Rs. 1040/- - Rs. 1920/- (Scale No. 6) with

effect from January 1986. The petitioner was also given the 10 years' career advancement incremental benefits in August 1994 and retired from the service attaining the age of superannuation on January 31, 2019.

It is only after his retirement, the respondent authorities sought to withdraw the said 10 years' benefit by issuing a memorandum no. K/RM/L/00051/2019 dated May 08, 2019.

The relevant part of the said memo is quoted below:

“ As per Finance Department's U.O. No. Gr. P-1/2018-19/0036 Dated 03.05.2018, 10 years benefit should not be allowed w.e.f. 19.08.1994. Therefore, pay may please be re-fixed w.e.f. 19.08.94 to the date of Superannuation and overdrawal if any may please be refunded through Treasury Challan.”

The said order was challenged by the writ petitioner by filing a writ petition before this Court (WPA 9904 of 2021) and the learned single Judge of this Court by an order dated September 08, 2021 directed as follows:

“In view of the above, the instant writ petition is disposed of by directing the respondent No. 6 being the Director, Directorate of Pension, Provident Fund and Group Insurance to take a decision with regard to the representation dated 4th November, 2019 annexed at page 59 of the writ petition made by the petition

strictly in accordance with law, after giving an opportunity of hearing to the petitioner or his authorized representative and all other necessary parties, at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to the parties immediately thereafter.

In the event if it transpires that the pension of the petitioner was wrongly re-fixed, then the said authority shall take steps to refund the amount which the petitioner is entitled to in accordance with law.

The Treasury Officer shall refund to the petitioner the amount of Rs. 1,48,115/- which has been deducted from his retiral dues on account of overdrawal salary within a period of four weeks from date.

WPA 9904 of 2021 stands disposed of.”

In compliance with the said order dated September 08, 2021, the case of the petitioner was taken up for hearing by the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal, who passed a reasoned order and communicated the same to the petitioner by a Memo dated December 09, 2021.

The said authority held that the petitioner was not entitled to the 10 years' career advancement benefits.

In this writ petition, the said order of the Directorate of Pension, Provident Fund & Group Insurance, Government of West Bengal has been challenged.

It appears that the 10 years' incremental benefits granted to the petitioner was sought to be withdrawn on the strength of a Government Order dated August 13, 2018 issued by the Director of Library Services, West Bengal. The said order is quoted below: -

“With reference to the above cited subject, he is requested to submit the statement of the pay fixation and arrear calculation of following 03(three) petitioners in the respect of the Finance Department's observation as stated below.

“It may be stated that 10 years CAS benefit 18 years benefit and 20 years CAS benefit are reckonable from the date of initial appointment in the cadre and not from the date of initial appointment in the cadre and not from the date of acquiring higher qualification. Those who have been allowed higher scale as per the order of the Hon'ble Court will not be allowed the first benefit (out of three) i.e. 10 years CAS benefit”.

He is requested to fix the pay fixation statement and arrear calculation according to fixation of Sri Swapan Chakraborty as made by the Deptt. of MEE & LS within 7 (seven) days.”

Seria 1 no.	Name of Petitioners	District	W.P. No. & CPAN No.
1.	Uttam Kumar Roy	Purba Burdwan	W.P. No 29375 (W) of 2014
2.	Gurupada Hazra	Purba Burdwan	W.P. No 29990 (W) of 2014
3.	Nrisingha Prasad Goswami	Purba Burdwan	W.P. No 29364 (W) of 2017

This is to be treated as very urgent.” (emphasis supplied).

I am of the view that the said memo dated August 13, 2018 has been applied in the case of the petitioner without any application of mind.

Without evaluating whether the petitioner in this case was on par with the petitioners in the above quoted memorandum, the same could not have been applied to the petitioner in this case.

It is fundamentally ludicrous to propose that whoever obtains orders in his favour from the High Court, under no circumstances, be given the said of 10 years’ career advancement benefit. It is not in dispute that the petitioner was given 10 years’ service benefit in terms of clause 16 (2) of the Government Order No. 33-EDN (B) dated March 07, 1990 issued by the Education Department of the State, which reads as follows: -

“All teaching and non-teaching employees of Government sponsored/aided institutions shall be entitled to an additional increment in the revised scales for every 10 years of continuous and satisfactory service,

counted from the date of appointment, subject to maximum of two such increments in addition to the benefits which may be admissible under sub para (1) of this paragraph.”

I am also of the view that the petitioner is right in contending that his case could not be reopened after his retirement in terms of the Government Order dated June 12, 2017, which reads as follows: -

“On due consideration of the matter, the Governor has been pleased to order that the last sentence of para-4 of the Memo No. 5630-F(P) dated 28.10.2016 be substituted by the following:

“However, the cases where pay have been fixed/settled under Court Orders with due concurrence of Finance Department irrespective of whether the concerned employees retired or in service shall not be reopened.”

The respondent sought to reopen the case after the retirement of the petitioner on the ground that the High Court by the above quoted order dated September 08, 2021, directed to do so.

When this Court only directed the authority to consider the case of the petitioner in the light of the applicable law, the case of the petitioner should have been considered in the light of the aforesaid Government Order dated June 12, 2017.

The case of the petitioner was protected in terms of the aforesaid Government Order dated June 12, 2017

and could not be reopened in the year 2019, after the retirement of the petitioner.

This writ petition is disposed of with a direction upon the respondent authorities to fix the pension of the petitioner after giving him the benefit of 10 years' CAS benefit in terms of the clause 16 (2) of the Government Order No. 33-EDN (B) dated March 07, 1990 and pay the same along with the arrear pension.

Such exercise shall be completed within one month from the date of communication of this order.

Accordingly, WPA **17612 of 2023** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)