

27.07.2023
Item Nos. 39
Crt.No.22
b.r.

WPA 18374 of 2015

Sm. Jayanti Saha
-vs-
The State of West Bengal & Ors.

Mr. Nilkamal Ghosh
.... For the petitioner

Mr. Benazir Ahmed
Mr. Debangsu Nandi
.... For the State.

This is a hearing matter upon affidavits.

Mr. Nilkamal Ghosh, learned Counsel,
appeared for the petitioner.

Mr. Benazir Ahamed, learned Counsel
appeared, for the respondent nos. 1, 2 and 3.

The petitioner claimed incremental benefit arising out of **G.O. No. 394-SE (B)/5s-150/98 dated August 7, 2001**. The petitioner claimed to be an **Assistant Teacher** at one **Harisabha Hindu Girls' High School, District- Burdwan, now Purba Burdwan**. The petitioner was appointed on **February 11, 1981** and her appointment was approved by the jurisdictional **District Inspector of Schools (S.E.) (for short, the D.I.)** under his Memo dated **August 3, 1981** as an **untrained**

Assistant Teacher. The petitioner exercised her option under **ROPA-81 on April 1, 1981**. The said **G.O. No. 394 dated August 7, 2001** had amended the **G.O. No. 372-Edn.(8) dated July 31, 1981**.

The petitioner claiming the benefit of increment under the said **G.O. No. 394** had filed a previous writ petition being **WP 25567(W) of 2014**. A co-ordinate Bench by its order dated **January 6, 2015** had observed and directed as under:-

“ The petitioner is at liberty to make a representation before the District Inspector of Schools (S.E.), Burdwan within a period of a fortnight from date ventilating her grievance that in view of the amendment to G.O. No. 372-Edn.(B)/5S-150/98 dated August 07, 2001 she is entitled to incremental benefits and if such representation is received by the district inspector, he shall proceed to consider the petitioner's grievance and pass an appropriate reasoned order thereon either allowing/disallowing the claim of the petitioner.

Let such decision be given by the district inspector within six weeks from date of receipt of the representation.

However, it is made clear that the balance portion of pension and gratuity to which the petitioner is entitled, may be released along with any further amount that the petitioner might be found entitled to upon consideration of her representation, if any.

The writ petition stands disposed of with the aforesaid direction.”

Pursuant to the said direction of the coordinate Bench, the D.I., being the respondent no.3 had considered the case of the petitioner and passed its reasoned order dated **April 9, 2015 annexure P8 at page 75 to the writ petition.**

The said reasoned decision of the D.I. dated April 9, 2015 is impugned in this writ petition.

Mr. Nilkamal Ghosh, learned advocate referring to the said impugned order and referring to the reasons mentioned therein submitted that, the petitioner had qualified **B.Ed Degree** in due compliance of the service condition. The petitioner was **granted the incremental benefit till March 31, 2004** and the increment was then stopped for a period of around one year from **April 1, 2004 till 31 March, 2005**. There after she has been receiving incremental benefit regularly. Hence the petitioner claimed incremental benefit for the period from **April 1, 2004 till March 31, 2005**. The petitioner claimed the benefit under the **G.O No. 394 dated August 7, 2001.**

Learned counsel submitted that, respondent no.3 while passing the said impugned order has misdirected himself and passed the impugned order without considering the actual provisions of the relevant G.O. Hence he

submitted that, the impugned order should be quashed and the incremental benefit as claimed by the petitioner should be granted.

Mr. Benozir Ahamed, learned Advocate, appeared for the State-respondents and referring to the said **G.O. No. 394 dated April 7, 2001** submitted that the said G.O. has amended the previous **G.O. No. 372 dated July 31, 1981**. From the amendment caused through the said G.O. No. 394 dated August 7, 2001, he submitted that, the amendment was restricted for the existing **untrained Secondary** school teachers only.

The amendment also specified that those would who be appointed **on or after April 1, 1981** should only be allowed to the increment in the revised scale and for a maximum period of five years, within which they would have to get themselves qualified otherwise the increment would be stopped. Referring to **annexure p4 at page 15** to the Supplementary Affidavit filed by the petitioner affirmed on July 13, 2023, learned State Counsel submitted that, the appointment of the petitioner was approved as a teacher of **Higher Secondary section** of integrated institution and not for **secondary section**. The

amendment being G.O. No. 394 dated August 7, 2001 was restricted for the **untrained Secondary school teachers** and not for the **Higher Secondary school teachers**. Inasmuch as he had submitted that the petitioner was appointed as a teacher on **February 11, 1981 prior to the effective date of the amendment being April 1, 1981**. Hence the learned State Counsel submitted the petitioner cannot claim any benefit under the said **G.O. No. 394 dated August 7, 2001**.

After considering the materials on record and in exercise of power under judicial review under Article 226 of the Constitution of India, this Court proceeded with its limited jurisdiction to assess the impugned order **dated April 9, 2015 annexure p8 at page 75** to the writ petition. The purport and content of the Government Orders being **G.O. No. 372 dated July 31, 1981** and **G.O. No. 394 dated August 7, 2001** as referred to above, have already been discussed herein before. From a true and proper construction of two Government Orders it appeared that the content of G.O. no. 394 dated August 7, 2001 under which benefit was claimed by the petitioner, would only apply for **Secondary school**

teachers and not for the **Higher Secondary school teachers**.

Inasmuch as the petitioner was appointed on February 11, 1981 whereas the said G.O. being No. 394 dated August 7, 2001 specifically provided its application for the Secondary teachers who joined on or after April 1, 1981.

From the observations and directions made by the co-ordinate Bench dated January 6, 2015 as quoted above, it would appear that the case of the petitioner was restricted only to claim benefit under the said G.O. No. 394 dated August 7, 2001. The impugned order was passed in the light of the said direction and observation made by the co-ordinate Bench accordingly and the claim made by the petitioner claiming to receive benefit under the said **G.O. No. 394 dated August 7, 2001**, which in any event shall not apply for the Higher Secondary school teacher, as the petitioner is.

Thus, for the foregoing reasons and discussions, this Court is of the firm view that, the respondent no.3 while passing the impugned order dated April 9, 2015 did not commit any error and the impugned order was passed upon true and proper construction of the relevant

Government Orders and by applying all the material facts available before it.

There is **no infirmity** found in the said impugned order dated **April 9, 2015**. The same requires no interference. Thus the impugned order dated **April 9, 2015, annexure p8 at page 75** to the writ petition stands **affirmed**.

Resultantly, this writ petition, **WPA 18374 of 2015** stands **dismissed** without any order as to costs.

It is, however, made clear that since the petitioner has retired in 2013 she had received the provisional pension and gratuity amount. The petitioner has also been paid her provident fund dues.

Considering the aforesaid fact, the respondent no.3 shall calculate the dues payable to the petitioner out of her employment career strictly in accordance with the law positively within a period of **eight weeks** from the date of communication of this order and then shall pay the petitioner the same after adjustment of the provisional pension and provisional gratuity already paid to the petitioner along with the interest at the rate of **8%** per annum since the date of retirement till the date of actual payment.

Such payment shall have to be made positively within a period of **four weeks** from the date of completion of calculation of the amount payable to the petitioner in accordance with law as directed above. The State employer shall go on paying the petitioner her pension hence forth without any interruption.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)