07.12.2023
ap
107

**WPA 20493 of 2023**

**Prof. (Dr.) Krushna Chandra Dora & Ors.**
**Vs.**
**The State of West Bengal & Ors.**

Mr. Barun Kumar Samanta
... For the petitioners.

Mr. Arka Kumar Nag
Mr. S. Bandopadhyay
... For the State.

Mr. Amitava Chaudhuri
Mr. N. Roy
Mr. Chandan Chakraborty
... For the University.

The petitioners are presently working as Professors at West Bengal University of Animal & Fishery Sciences, Kolkata.

It is the common case of the petitioners that their age of retirement was extended from 60 to 62 years and thereafter from 62 to 65 years by the Government Orders dated January 31, 2017 and January 24,2019.

By virtue of the aforesaid two Government Orders, they are still continuing with their services. All the petitioners have reached the last cell of applicable pay level and their increments have already been stopped. The juniors to them in service have already reached the pay level of seniors and as a result, the pay of both the juniors and the seniors have fallen in the same cell of pay level.

It appears that in terms of a Memo No. 1547-F(P$_1$)/FA/N/2M/02/22 (N.B.) dated April 13, 2022, the Finance Department, Audit Branch, Government of West Bengal provided, *inter alia*, as follows:

> "In terms of Memo. No.760-F(P$_1$), dated 17.02.2020, a government employee reaching the last Cell of any particular Level in the Pay Matrix under W.B.S. (R.O.P.A.) Rules, 2019, shall draw annual increment for stagnation beyond the last Cell of that particular Level at the same amount at which it was last drawn subject to a maximum of 6 (six) such increments.
>
> 2. A question has now been raised as to how the pay of an employee drawing stagnation increment shall be fixed on promotion to higher post or to higher Level (Functional or non-functional).
>
> 3. After careful consideration of the matter, the Governor is pleased to order that when an employee while drawing stagnation increment(s) in the Lower post/Level is appointed on promotion to higher post or is appointed to higher Level under promotion policy circular 1981 or M.C.A.S. – 2001 as notified vide Memo No. 3015-F, dated 13.03.2001 read with Memo. No. 6042-F(P$_2$) dated 07.11.2019, his pay in the higher post/Cell shall, in relation to the pay of the lower post/Level by fixed at the next higher Cell keeping the date of increment unchanged.

> 4. The benefit of para 3 above will also be admissible when such 'next higher Cell' is beyond the last Cell of the Level of the higher post/higher Level. The excess over the last cell being deemed to be stagnation increment(s) in the Level of the higher post/higher Level, which together with future stagnation increment(s) shall not exceed 6 (six)."

The Registrar of the University by a letter dated December 06, 2022 requested the Special Secretary, Animal Resources Development Department (University Branch), West Bengal for issuing a matching order towards stagnation increment(s) in terms of the aforesaid Government Order dated April 13, 2022

The State, however, by a letter dated June 09, 2023 rejected such prayer. Relevant part of the said order dated June 09, 2023 is quoted below: -

> "Since the teachers and officers of WBUAFS are enjoying UGC pay structure and no such provision of allowing Stagnation increment is available in UGC guidelines for pay revision of teachers of Colleges and Universities, we may not in a position to allow Stagnation increment in favour of teachers of WBUAFS."

Appearing on behalf of the petitioners, Mr. Samanta, learned advocate submits that the petitioners may enjoy their pay scale in terms of the University Grants Commission's circular but they are not the employees of the Central Government or the University Grants Commission.

In support of his submission, Mr. Samanta relied upon a judgment reported at **(2009) 2 CAL LT 317 (State of West Bengal & Anr. vs. Dr. Bikash Mohan Sanyal & Ors**.). Mr. Samanta has placed paragraphs 7 and 8 of the said judgment that read as follows:

> *"7. The revised pay scale was really adopted by the state Government as per recommendation of the University Grant Commission or by the Government of India.*
>
> *8. It is clear from the said Notification concerned that the University Grants Commission has not fixed up a pay scale, rather guidelines has been given and the same has been adopted by the Government. We are of the view, as rightly contended by Mr. Ghosh, that adoption of pay scale under the guidelines and/or scheme of the University Grants Commission for the purpose of revision of pay scale of the Reader of this college cannot be said to be the pay scale of University Grants Commission being applied. According to us, from the document annexed to this application it appears that it is clear without any ambiguity that the pay scale has been revised by the State Government not by the UGC or by the Central Government. In our considered view, in order to attract the exception Clause of Rule 2 of ROPA Rules one must be a member of the Services to whom the University Grants Commission pay scale can be applied meaning thereby there are staffs*

*and officers of the various universities and other autonomous bodies where pay scale fixed by the University Grants Commission is applied as a matter of course and revision of pay scales for those categories of officers and employees depends upon the University Grants Commission but not upon the State Government. In other words University Grants Commission must be decision maker in this regard. Just because the State Government has accepted the guidelines of the University Grants Commission for revision of pay scale the status of the first respondent as being the Reader of the Government college is not altered and/or changed in order to deprive him of the benefit of stagnation increment. As such we are unable to accept the contention of Mr. Kar that by virtue of adoption of the University Grants Commission pay scale the first respondent comes within the excepted categories of the employees and therefore he is dis-entitled to get stagnation benefit. The decisions cited by Mr. Kar is support o his submission are hardly applicable to the facts and circumstances of this case. The decision of the Supreme Court in case of T. P. George v. State of Kerala reported in 1992 Supp. (3) SCC 191 was rendered by the Hon'ble Supreme Court entirely on different fact. The said decision, while approving the decision of the Division Bench of the Kerala High Court, in another Writ Appeal No. 223 of 1991, has held that once the scheme formulated by the University Grants Commission is accepted by the Government either in its entirety or in the modified form, the said scheme to the extent which is applicable becomes the Government decision and once it is done the employees concerned cannot get*

> *any benefit other than the accepted portion of the scheme formulated by UGC."*

Mr. Samanta submits that the right to increment is inherent in service rules and therefore, the petitioners should not be allowed to continue with their service without any incremental benefits. They should be given similar benefits in terms of the aforesaid Government Order dated April 13, 2022.

Appearing on behalf of the State it has been submitted by Mr. Arka Kumar Nag, learned advocate, that the petitioners are not State Government employees and as such, the aforesaid Government Order dated April 13 of 2022 granting stagnation increment does not apply to them. He has further placed reliance on clause 105 (2) of the First Statute of the West Bengal University of Animal & Fishery Sciences, 1995 to suggest that the petitioners are aware that they are governed by the University Grants Commission's pay scale and allowances as implemented by the State Government from time to time. The State has issued the order dated July 13, 2020 only to implement University Grants Commission's scale of pay and not otherwise. Therefore, the petitioners cannot claim the benefit of stagnation increment which is exclusively framed for the State Government employees.

Mr. Nag sought to distinguish the judgment relied upon by the petitioners on the ground that the High

Court granted relief in that case to the State Government employees and the petitioners are not State Government employees.

The State Government, through Government Order dated April 13, 2020, has extended the benefit of stagnation increment to its employees as a measure of pay protection, aimed at rectifying anomalies in the pay of juniors and seniors. While it is acknowledged that the State has implemented the UGC pay structure for the petitioners, it should be emphasised that this does not preclude the State from safeguarding the petitioners' pay by issuing pertinent orders to address existing anomalies in pay between the petitioners and the professors junior to them in service.

It is undisputed that professors junior to the petitioners are occupying the same cell of the applicable pay level. It is unjust to posit that, where all teaching staff members in State Government colleges enjoy the UGC pay structure, they are entitled to the stagnation benefit outlined in the aforementioned Government Order dated April 13, 2020, while the State would refrain from extending a similar benefit to the petitioners based solely on the applicability of the UGC pay structure to them.

Therefore, the decision of the Finance Department, as contained in the letter dated June 09, 2023, issued by the Assistant Secretary, Animal

Resources Development Department, State of West Bengal is set aside with a direction upon the Secretary, Finance Department, State of West Bengal to reconsider the issuance of a matching order towards stagnation increment as per Memo No. 1547-F(P1)/FA/N/2M/02/ 22 (N.B.) dated April 13, 2022.

Such exercise shall be completed within a period of two months from the date of communication of this order.

Accordingly, **WPA 20493 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.)