

20.07.2023
Item No.38
Ct. No.5
CHC
(dismissed)

W.P.ST 174 of 2016
IA NO: CAN/1/2022

The State of West Bengal & ors.
Vs.
Tarak Kumar Bandyopadhyay & ors.

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Pranab Halder,
Mr. Somnath Naskar
...for the appellants/State

Mr. Soumya Majumder,
Mr. Barnamoy Basak
...for the respondent nos.1 to 7

The writ petition is at the instance of the State assailing an order dated April 26, 2016 passed by the West Bengal Administrative Tribunal in O.A.78 of 2015.

The private respondents approached the Tribunal for setting aside of State Government Memo No. 574-TET(Poly) dated September 13, 2010.

By the impugned order, the Tribunal set aside such Memo alongwith all other Government orders which were not in consonance with the impugned order of the Tribunal.

Learned Senior Advocate appearing for the State submits that, State can fix the pay scale and pay fixation formula of the teaching staff of polytechnic institution. State did so in terms of the Memo dated September 13, 2010. Guidelines issued by All India Council for Technical Education (AICTE) established under the provisions of the All India Council for Technical Education Act, 1987 are not binding upon the State. Moreover, there are financial constraints of the State which needs to be taken into account.

Learned advocate appearing for the private respondents draws the attention of the Court to the West Bengal Services (Revision of Pay and Allowance) Rules, 2009. He submits that the members of the service to whom, University Grant Commission and All India Council of Technical Education apply, were kept outside the purview of ROPA 2009. He draws the attention of the Court to a notification dated January 22, 2010 issued by the AICTE relating to the fixation of pay. He submits that, pay scale and pay fixation formula was specified therein. The authorities are required to follow the same.

Private respondents approached the Tribunal, assailing the Memo of the State Government dated September 13, 2010, which directed a formula for fixation of pay.

Private respondents are teaching staff of institutions recognised by the AICTE.

State Government published ROPA 2009. Rule 2(1) of the ROPA 2009 is as follows:-

“2. Application.- (1) *Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts under the rule making control of the Government of West Bengal except members of All India Services, the West Bengal Judicial Service and members of the services to whom the University Grants Commission and the All India Council of Technical Education scales of pay apply.”*

It appears from Rule 2(1) of ROPA 2009 that, members of services to whom University Grants Commission and All India Council for Technical Education were kept outside the purview thereof.

AICTE issued a notification dated January 22, 2010 which is called the “All India Council for Technical Education Pay Scale, Service Conditions, Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2010”.

Regulation 10 of AICTE Regulations, 2010 prescribes that they will apply to institutions

conducting technical education and such other courses and programmes and areas as notified by the AICTE from time to time.

The fact that the private respondents are working as teaching staff of Polytechnic Institutions governed by the Act of 1987 and the Rules and Regulations framed thereunder is not being disputed by the State.

By virtue of ROPA 2009, the private respondents were kept outside the purview thereof.

The private respondents are governed by the Regulations of 2010 issued by the AICTE.

The contention of the State as to financial constraints as also the issue that the private respondents are not to be governed by the Regulations of 2010 were discussed elaborately by the impugned order. The Tribunal held that, the private respondents were entitled to the pay scale and pay fixation formula in terms of the AICTE Regulations of 2010.

Significantly, State is accepting fixation of pay scale made by AICTE but is seeking not to accept the pay fixation formula prescribed thereunder. State should not be allowed to dissect the same regulation which prescribes the pay scale from the pay fixation formula prescribed therein. In our view, both pay scale and the pay fixation formula are necessary

parameters in order to assess whether the human resources available in a polytechnic institution is complying with the parameters laid down for assessment of a polytechnic under the AICTE or not.

State is accepting the recommendations of the University Grants Commission decision as lecturers are concerned in respect of degree colleges. Therefore, there is no reason as to why, State should not accept the recommendations of AICTE laid down under the Regulations 2010 so far as teaching staff of polytechnics are concerned. The claim that in case of UGC recommendation, funding of 80% is made by the Central Government is of no consequence. Polytechnics are required to adhere to the standards prescribed by AICTE. Human resources which includes teaching staff and the pay packets of such teaching staffs are yardstick and parameters which are prescribed by AICTE. State is accepting the authority of AICTE to lay down such standards in such respect. Once the State accepts such authority of AICTE to lay down such directions it goes without saying that, where AICTE by the same Regulation of 2010 seeks to introduce a pay scale and pay fixation formula in respect of a particular teaching staff and for that matter even an employee engaged in a polytechnic, then the same should also be adhered to by the State. This is more so, when, ROPA 2009 of the

State excludes the teaching staff of a polytechnic institution governed by AICTE regulation.

In such circumstances, we find no merit in the present writ petition.

WP.ST 174 of 2016 alongwith connected application are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)