

17 20.4.2023
Sc Ct. no.22

WPA 24816 OF 2022

Asim Kumar Rath

Vs.

The State of West Bengal & Ors.

Mr. Sayan De
Mr. Kaustav Shome
Ms. Esha Acharya
Mr. Sayan Kanjilal.

....For the Petitioner

Ms. Chaitali Bhattacharya
Mr. Manas Kumar Sadhu.

....For the State

The petitioner claimed to be the **Head Master at Ghoshkira Junior High School, District – Paschim Medinipur**. The petitioner had joined the service as an Assistant Teacher in the year 1991. The **petitioner was appointed as the Head Master at the said school on November 21, 2001**.

The school was initially a Junior High School, i.e. up to **Class - VIII**. Subsequently, on and from **May 1, 2008, the school was upgraded to High School**, i.e. up to **Class – X**. The school was thereafter **further upgraded to a Higher Secondary School in 2012**.

The petitioner claimed **benefit of additional 3% increment** in terms of a **Government Memorandum bearing No.46 – SE (B)/5B-1/2009 dated February 27, 2009** read with a **Government Memorandum No.181-SE(B)/5B-1/09 dated October 8, 2009** at **pages 6 and**

13 to the exception affidavit affirmed on March 28, 2023 filed by the petitioner.

Relying upon **Annexure-P6 at page 33 to the writ petition**, Mr. Sayan De, learned counsel for the petitioner submitted that, in a similarly placed circumstance another Head Master received the same benefit in terms of the said two **Government Memoranda dated February 27, 2009 and October 8, 2009**, as referred to above. The claim of the petitioner was rejected by the respondent no.4 by its impugned decision/communication dated **October 18, 2022, Annexure-P7 at page 34 to the writ petition.**

The petitioner through the instant writ petition had challenged the said impugned decision dated **October 18, 2022, Annexure-P7 to the writ petition** along with a **communication issued by the respondent no.3 dated March 22, 2017 at page 35 to the writ petition.** The petitioner claimed that, in terms of the said two **Government Memoranda dated February 27, 2009 and October 8, 2009**, as referred to above, the petitioner is entitled and eligible to receive 3% additional increment.

Ms. Chaitali Bhattacharya, learned counsel appearing for the respondent nos. 1 to 4 referred to another **Government Memorandum bearing No.30-SE(B)/5B-1/2009** dated **February 10, 2010, Annexure-R1 to the affidavit report** affirmed on March 13, 2023 and submitted that, the case of the petitioner has already

been clarified and had taken care of under the said ***Government Memorandum dated February 10, 2010 at page 6 to the affidavit report.*** She submitted that, the said two ***Government Memoranda dated February 27, 2009 and October 8, 2009*** shall not apply at all in case of the petitioner. Referring to ***Clause 11*** from the ***Government Memorandum dated February 27, 2009*** she submitted that, selection of Head Master is totally an independent process and not by way of a promotional selection. Therefore, the said two Government Memoranda would not apply for the petitioner. Referring to ***Sub-Clause (c) of the Government Memorandum dated October 8, 2009 at pages 14 and 15 from the exception affidavit,*** she submitted that, this additional increment of 3% provision was discontinued and would no more apply in the case of the petitioner and the same was duly clarified in the said ***Government Memorandum dated February 10, 2010, Annexure-R1 at page 6*** to the affidavit report.

Learned State counsel further submitted that, when the school was upgraded from Class VIII to Class X, the petitioner must have enjoyed and received one increment. She further submitted that, the pay scale of the petitioner for the post of Head Master was never approved by the jurisdictional District Inspector of Schools which is a mandatory provision under the law.

Mr. Sayan De, learned counsel for the petitioner denied the submission of the learned State counsel to the extent that, the petitioner had already enjoyed one increment at the stage of upgradation of the school from Class VIII to Class X.

In light of the above submissions, made by Ms. Bhattacharya, learned State counsel, she submitted that, there is no merit in the writ petition and the same should be dismissed.

Considering the rival contentions of the parties and considering the materials on record, it appeared to this Court that, several factual matrix to be gone into and in the light of those factual matrix, the applicability of the said two ***Government Memoranda dated February 27, 2009 and October 8, 2009 at pages 6 and 13 to the exception affidavit*** were required to be considered. Inasmuch as, to ascertain the allegations raised by the State as recorded above, several factual inquiries are required to be made.

Mr. Sayan De, learned counsel for the petitioner submitted that, there is a serious time constraint as the petitioner shall retire in the month of ***April 2024*** and the ***Pension papers for the petitioner are required to be prepared at least eighteen months prior thereto.***

Insofar as the challenge of the petitioner to the said ***impugned communication dated March 22, 2017 at page 35 to the writ petition*** is concerned, under which

the ***Memorandum dated December 4, 2014 at page 33 to the writ petition was withdrawn***, the same was not related to the petitioner but was related to another individual Head Master named, ***Bharat Chandra Kar, Head Master of Tajpur High School, District – Purba Medinipur***. Inasmuch as from a plain reading of the said impugned communication dated ***March 22, 2017***, this Court is of the view that, the ***two Government Memoranda dated February 27, 2009 and October 8, 2009***, as referred to above, had not been affected with the issuance of the said impugned communication dated March 22, 2017 upon the petitioner herein. They remained in force.

In view of the above, this Court is of the view that, the communication dated March 22, 2017 at page 35 to the writ petition does not concern the petitioner in any manner. For those reasons, the ***impugned decision of the respondent no.4 dated October 18, 2022, Annexure-P7 at page 34 to the writ petition stands set aside and quashed***, as this Court thinks fit that ***the issue needs to be revisited once again by a higher authority in the light of the observations made herein***.

In view of the above, to subserve justice, the petitioner is granted liberty to submit a comprehensive representation narrating his case ***but the same shall not travel beyond the scope of this writ petition and the***

documents annexed thereto, positively within a period of two weeks from date before the ***Principal Secretary, School Education Department, State of West Bengal***.

In the event, such a representation is submitted, the Principal Secretary shall issue at least a seven days' prior notice of hearing to the petitioner and/or any other necessary parties as the Principal Secretary would think fit and proper and after giving them an opportunity of hearing, shall decide the issue by passing a reasoned order in accordance with law.

It is made clear that this Court has not gone into the merits of the claim and rival claims argued on behalf of the appearing parties, as recorded above, and the parties shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the Principal Secretary ***but shall not travel beyond the scope of the claim made in the writ petition***.

It is made clear that, while passing the reasoned decision, the Principal Secretary shall take into consideration the ***two Government Memoranda dated February 27, 2009 and October 8, 2009 at pages 6 and 13 to the exception affidavit*** including their applicability in the case of the petitioner.

The entire exercise, as directed above, shall be carried out and completed by the Principal Secretary positively within a period of eight weeks from the date of

receiving the said comprehensive representation from the petitioner and the reasoned order to be passed shall be communicated to the petitioner and/or the necessary parties within a further period of two weeks from the date of the said reasoned order to be passed.

It is made clear that, in the event, the petitioner does not submit his comprehensive representation within the time stipulated above, ***the impugned decision of the respondent no.4 dated October 18, 2022, Annexure-P7 at page 34 to the writ petition*** shall resume its effect and force without any reference to this Court.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is further made clear that, this order shall not create any equity or right in favour of the petitioner in the event the petitioner is not eligible to receive his claim strictly in accordance with law.

With the above observations and on the above terms, this writ petition, ***WPA 24816 of 2022*** stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)