

58 19.7.2023
Sc Ct. no.22

WPA 29363 OF 2014

Dr. Jamaul Islam Khan

Vs.

The State of West Bengal & Ors.

Mr. Kazi Sajjad Alam

....For the Petitioner

Mr. Pinaki Dhole

Mr. Avishek Prasad.

....For the State

This is a hearing matter of 2014.

The office report dated **March 13, 2015** showed that despite direction made by a coordinate Bench on **November 13, 2014**, no affidavit-in-opposition was filed.

Mr. Kazi Sajjad Alam, learned advocate appeared for the petitioner.

Mr. Pinaki Dhole, learned advocate appeared for the respondent nos. 1 to 3.

The previous order dated **June 26, 2023** speaks for itself.

Considering the pendency of this age old writ petition for about last nine years and considering the issue involved in the writ petition in the light of the law already settled by the Hon'ble Division Bench of this Court, this Court thought it fit to dispose of the writ petition today, as further pendency of this writ petition will not serve any useful purpose.

The petitioner contended that, at present the petitioner is working as an **Assistant Teacher at Sainthia Town High School (H.S.), District-Birbhum.**

After joining his employment, the petitioner completed his ***Doctorate Degree (Ph.D.) in Physical Education***. The petitioner claimed two additional increments after acquiring his ***Doctorate Degree***.

Learned advocate for the petitioner referring to ***page 22*** from the writ petition submitted that, the ***petitioner obtained and completed his Doctorate Degree on September 3, 2010***. Therefore, the petitioner was entitled to receive and/or eligible to get the benefit of the additional two increments. The petitioner made ***representation dated May 21, 2013*** before the relevant school authority seeking his relief. The relevant school authority adopted a ***resolution on April 27, 2013, Annexure-P5 at page 27 to the writ petition*** whereunder the relevant school authority had decided to send the claim of the petitioner before the ***respondent no.3***.

Learned advocate for the petitioner also contended that, in view of the said resolution, the proposal for consideration of the case of the petitioner was sent before the respondent no.3 as would be evident from ***page 28 to the writ petition***. He submitted that, since then the respondent no.3 did not pay any heed thereto the same is lying pending.

Mr. Pinaki Dhole, learned advocate appearing for the respondent nos. 1 to 3 submitted that, ***Sub-Rule (5) to Rule 12 of the ROPA, 1998 provided for additional***

two increments to be granted to the teachers who acquired the Doctorate Degree in the relevant subject or allied subjects.

ROPA, 1998 was then substituted by ROPA, 2009.

Placing reliance upon the provisions of **ROPA, 2009**, Mr. Pinaki Dhole, learned advocate for the State submitted that, with effect from **January 1, 2006 ROPA, 2009** came into force substituting **ROPA, 1998**. **ROPA, 2009** did not contain any such provision identical with **Sub-Rule (5) to Rule 12 of ROPA, 1998**. **ROPA, 1998** was in force till **December 31, 2005**. As there was no provision engrafted for such additional two increments for a teacher holding a **Doctorate Degree**, the claim of the petitioner could not and cannot be accepted in law. He submitted that, the writ petition is, thus, devoid of any merit and should be dismissed. In support of his contention, Mr. Dhole placed reliance upon a judgment dated **April 5, 2019** delivered by an Hon'ble **Division Bench** of this Court in **FMA 2368 of 2015 (MAT 324 of 2015) - In the matter of : State of West Bengal -vs.- Gautam Ghosh & Ors.**

In reply, learned advocate for the petitioner submitted that, since **ROPA, 2009** is silent on such provision as discussed above, the case of the petitioner may be considered by the respondent no.3. He also relied upon a judgment of a coordinate Bench dated **March 18, 2011** delivered in **W.P. No. 15972 (W) of 2006, In the**

matter of : Dr. Subrata Nayak –vs. State of West Bengal & Ors. at **page 33** to the writ petition and submitted that, the coordinate Bench had allowed the claim of a similarly placed person.

Considering the rival contentions of the parties and on perusal of record, it appeared to this Court that, from **Rule 1 of ROPA, 2009** that the effect thereof was granted from **January 1, 2006** as recommended by the Pay Commission. Therefore, **ROPA, 1998** was in force till **December 31, 2006** and not beyond that.

The petitioner admittedly acquired the Doctorate Degree on **September 3, 2010** which is much subsequent to the said **ROPA, 2009** came in force.

Law had already been settled on the issue by the Hon'ble Division Bench, **In the matter of : Gautam Ghosh & Ors. (supra)**. The relevant portion from the said Division Bench judgment is quoted below :

“This is a case where two dates are very Important. First, the convocation was held on March 9, 2006. Secondly ROPA 1998 was in force till December 31, 2005. With effect from January 1, 2006 it was substituted by ROPA 2009 which does not contain a provision similar to the one contained in paragraph 12(5) of ROPA 1998.

xxx	xxx	xxx
xxx	xxx	xxx

In the present case, the convocation was held on March 9, 2006 when ROPA 1998 was not in operation. The petitioner has claimed additional benefits on the basis of ROPA 1998. Therefore, the Rules on which the claim is made must be in existence on which he has acquired the qualification and after the introduction of

ROPA 1998 with effect from January 1, 2006 ROPA 1998 had ceased to be in existence on the date the convocation was held and the date on which the degree was awarded upon the petitioner. Since the Rules themselves had ceased to exist on the date the degree was awarded the petitioner/respondent no.1 must be held to be ineligible that the benefits claimed by him under ROPA 1998.

xxx	xxx	xxx
xxx	xxx	xxx

Thus, we have no alternative to hold that the respondent no.1/petitioner is not entitled the benefit.”

The judgment of the coordinate Bench ***In the matter of : Dr. Subrata Nayak (supra)***, as referred to above by the learned advocate for the petitioner, was delivered in **2006**, whereas the judgment of the Hon’ble Division Bench was of **2015**, much later and this Court is bound by the same.

Inasmuch as, **ROPA** has a statutory force. When a particular provision was there in a previous Statute/Rules and the subsequent Statute/Rules is silent on the same provision, unless the previous provision is specifically saved, it would be deemed that, such previous provision, as was intended by the rule-framers not to be included in the subsequent Statute/Rules and stands omitted. Even in absence of repeal clause such a provision, which was there in the previous Statute/Rules and specifically neither saved nor provided for in the subsequent Statute/Rules, any incorporation of such provision in the subsequent Statute/Rules by way of

interpretation, would amount to alteration and/or modification of such subsequent Statute/Rules without exercising the due process of law and the same is not permissible.

In view of the foregoing discussions and reasons, this Court is of the firm view that, ***in the absence of any provision in the ROPA, 2009 for granting two additional increments to a teacher holding Doctorate Degree who acquired the Degree after ROPA, 2009 came into force, such increments cannot be granted to such teacher.*** This writ petition is, thus, devoid of any merit.

Resultantly, this writ petition, ***WPA 29363 of 2014*** stands dismissed, without any order as to costs.

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

(Aniruddha Roy, J.)