

November 24, 2023
Sl. No. 4
Court No.2
s.biswas

**In the Calcutta High Court
Circuit Bench at Jalpaiguri
Appellate Side**

WPA 2537 of 2023

Lipika Joarder

vs.

The State of West Bengal and others

Mr. Debajit Kundu

... for the petitioner

Mr. Subir Kumar Saha

Ms. Bedashruti Bose

...for the State

Affidavit of service filed by the petitioner is taken on record.

The petitioner submits that she was appointed as an Assistant Teacher of Sishu Niketan K.G. Primary School, Jalpaiguri on March 5, 1986. Thereafter, her services were approved and she was transferred to Kadamtala Girls Primary School (morning section). The petitioner served her term and superannuated from the said school. The pay of the petitioner was fixed according to ROPA 2019.

The pension payment order was issued by the Assistant Director of Pension Provident Fund and Group Insurance, West Bengal as per ROPA 2019 vide memo No.PRI/JPG/21/F/1224 dated August 5, 2021.

The petitioner submits that on receipt of the PPO she was shocked to find that her pension was fixed after deducting overdrawal amount of Rs.5,56,980/- and Rs.72,830/-. The pensionary benefit was fixed with effect from March 26, 1997 on the basis of Memo dated November 24, 2017 issued by the Deputy Director of School Education, West Bengal.

The petitioner submits that she had joined the service on March 5, 1986. Her service was approved and confirmed with effect from March 5, 1988 and she retired from service on February 29, 2020. The petitioner further submits that the pay fixation with effect from March 26, 1997, was arbitrary, discriminatory and contrary to law.

Ms. Bose, learned Advocate for the State submits that the pension papers were prepared with effect from the date of service, i.e., March 5, 1986, and the same was returned with objection from AD Accounts. The School Education Directorate's Memo No.1299-SC/P dated November 24, 2017 had not been complied with. According to the said memo, the petitioner was entitled to get pay fixation with effect from March 26, 1997, that is, when Sishu Niketan was taken over as a primary school.

It is further stated that the overdrawn amount had been deducted as the petitioner had already given a declaration that she undertook to adjust from her retirement benefits any extra payment that was made to her earlier.

Heard the parties. The School Education Department, Primary Branch, Government of West Bengal had issued a notification dated August 22, 1995 by which teachers engaged in Sishu Niketan, Jalpaiguri, a children's welfare society, were to be absorbed by converting the school to Kinder Garten School or to any other primary or pre-primary school. Such absorption was made subject to certain conditions. Fifty four such teachers were absorbed and confirmed after Sishu Niketan, Jalpaiguri was converted into a primary school under the District Primary School Council, Jalpaiguri.

The Deputy Director of School Education (R/P), West Bengal issued a notification dated November 24, 2017, inter alia, stating that the teaching and non-teaching staff of Sishu Niketan K.G. School, Jalpaiguri, would be entitled to get pay fixation benefit with effect March 26, 1997.

According to the petitioner, similarly situated teachers were granted pay fixation with effect from

the date of joining Sishu Niketan, Jalpaiguri, irrespective of the above memorandum. The petitioner has relied on certain decisions of this court, by which the District Inspector of School, Primary Education, Jalpaiguri was directed to grant a hearing to any teacher who had similar grievance and take a decision, in the light of the order of a coordinate Bench, passed in WPA No.342 of 2019.

Under such circumstances, the petitioner's case must also be considered in the light of the cases of other similarly situated teachers. The issue of overdrawal shall also be decided accordingly.

The District Inspector of Schools, Primary Education, Jalpaiguri, shall treat the writ petition as a representation of the petitioner, and decide the issue, in the light of the decisions passed in WPA No.342 of 2019 and WPA No.748 of 2022.

A reasoned order shall be passed and upon hearing the petitioner, the school authorities and any other interested party. A copy of the reasoned order shall be communicated to the petitioner.

It is made clear, if any benefit has already been given to similarly situated persons in the light of the decisions of the High Court, the same

benefit shall also be considered in case of the petitioner, provided the petitioner can establish that she stands in the same footing. The entire exercise shall be completed within a period of three months from the date of communication of this order. While considering the case of deduction of the overdrawn amount, the authority shall consider whether in the facts of the case of the petitioner, such action was justified or not.

The writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)