

WPA 7625 of 2021

Susmita Gayen
Vs.
The State of West Bengal & Ors.

Mr. Anjan Bhattacharya
Ms. Anita Shaw
... for the petitioner

1. The present writ petition is to challenge letters of the Deputy Secretary, West Bengal Council of Higher Secondary Education [hereinafter referred to as “Council”], dated November 19, 2012, addressed to the Head of the Institution of the respondent school and concerning the writ petitioner and the letter of the Secretary of the respondent school to her dated October 13, 2015. The letter dated November 19, 2012 is written on the subject matter regarding non-cooperation of teachers in evaluation of written answer scripts, with the allegation that the petitioner has failed to cooperate with the Council regarding evaluation of the answer scripts of Higher Secondary Examinations 2012, as allegedly she has refrained from performing the duties of evaluation of written answer scripts, in spite of being duly informed.
2. The said letter also speaks about the related provision in the government notification, alleged violation of the same by the petitioner and imposition of consequent punitive measures in terms of the government notification against her, in the following words:

“As you know that evaluation of written scripts has been declared obligatory and compulsory for all teaching staff as amendment No.2009-SE (S) dated 3rd November 2000 of section 37 of the related Act which was published in the Calcutta Gazettee on 14th November 2000 and if it is violated, the yearly increment of the concerned teaching staff shall be stopped for one to three years [vide section 28, sub-section 8(a) of the aforesaid rules.

Hence, undersigned is directed to inform you that the Managing Committee/Administrator of the school shall take appropriate action as per said rule against the following teacher(s) and inform the undersigned within 15 days from the date of receipt of this letter as what steps have been taken.”

3. The writ petitioner is an assistant teacher in the respondent school being appointed since September 3, 2010. She has replied to the impugned letter, vide her letter dated December 11, 2012, stating inter alia that during the relevant period, that is in and around end of March, 2012, she has been suffering from ‘Gastritis’ and has been undergoing treatment. That she has been advised by her doctor to take rest for which reason it was not possible for her to complete evaluation of the answer scripts, within the time schedule. She writes that from April 3, 2012 to April 19, 2012, she has been under medical leave. She has stated there further that such facts had been reported to the Head Examiner through an application and corroborating medical documents, with the request to be exempted for the year 2012. She has stated that her prayer as above was duly considered by the Head Examiner. With her letter as above, the petitioner has enclosed necessary documents like medical certificates, Head Examiner’s certificate etc. and copy thereof has also been forwarded to the Council.

4. It was a tranquil period since thereafter, till the month of October, 2015. In October 2015, the petitioner received less

salary for the month of September 2015, than usual and thus being aggrieved she writes to the Teacher-in- Charge vide her letter dated October 5, 2015. She protested that her net salary was curtailed from Rs.31,494/- to Rs.28,561/-, for the month of September 2015. She has made the said respondent authority informed that up to the Month of August 2015, she has been granted salary to the tune of Rs.31,494/-. she has protested such sudden, unnotified and abrupt curtailment of salary, in her said letter.

5. The letter of the Secretary dated October 13, 2015, followed thereafter as if being a follow up action by the respondent school, of the letter dated November 19, 2012, by the Council. The subject matter thereof is with regard to curtailment of the net salary of the petitioner, for the month of September, 2015 and the Secretary of the school writes as follows:

“With reference to the above, this is to inform you that you are satisfied about the amount when you put your signature in staffs’ attendance.

Whereas you are well known about the letter issued from Dy. Secretary, West Bengal Council of Higher Secondary Education vide office Memo No. HE/MRO/I-348/2012. DATED 19.11.2012.

Whereas you are also confirmed about the meeting of managing committee vide their meeting No.75 dated 19.12.2012 noted in the resolution point NO.(2) against your Non-Co-operation with the West Bengal Council of High Secondary Education. So, your prayer not considered by the authority.

Whereas your prayer in this regard dated 09.10.2013, 03.02.2014 & 18.02.2014 aware not considered by the M.C. accordingly.

In view of the above you are hereby directed to be deposited the entire amount through TR Form No.7 at earliest which public money wrongfully gain by you.”

6. The petitioner has stated that with effect from the month of September 2015, till now, her increments are withheld, thereby

allegedly curtailing her legitimate dues, unauthorizedly, unreasonably and in violation of the law. Since thereafter the writ petitioner has knocked the doors of the respondents, expressing her grievances and seeking redress but to no avail. Hence, this writ petition is filed to pray for an appropriate order to redress the petitioner's grievances, as above.

7. Mr. Bhattacharya, Learned Advocate, while representing the petitioner has stated that the impugned letters are bad in law in so far as the respective respondents write the same without taking into account the fact that the petitioner, being on medical leave during the relevant period, would be covered by one of the exception clauses, as mentioned in the guidelines published in this regards by the concerned respondent. He would further say that curtailing increment of the petitioner on and from the Month of September 2015 would be absolutely irrational in so far as no allegation of any breach made by the petitioner has been made in the examinations held in 2015 or thereafter. He would say that the impugned letters have been issued only unauthorizedly and illegally. He seeks adequate relief for the writ petitioner in this case.

8. Increment is the periodical appraisal of good performance of a person in service, being quantified in terms of money. It is a periodical payout, generally yearly, as against the good performance of an employee during the previous year, at the end of which the same stands due. The law is well settled in this regard and it would be beneficial to quote here from the

judgment of the Supreme Court in *KPTCL v. C.P. Mundinamani*, (2023) 14 SCC 411 in this regard, which is as follows:

“17. A government servant is granted the annual increment on the basis of his good conduct while rendering one-year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a timescale, he is entitled to the annual increment and it can be said that he has earned the annual increment for rendering the specified period of service with good conduct. Therefore, as such, he is entitled to the benefit of the annual increment on the eventuality of having served for a specified period (one year) with good conduct efficiently. Merely because the government servant has retired on the very next day, how can he be denied the annual increment which he has earned and/or is entitled to for rendering the service with good conduct and efficiency in the preceding one year.”

9. Increment merges with the basic pay and becomes salary of a person. Increment would not be liable to be withheld unless for any just, proper, viable and lawful reason and without following the due procedure under the law. A person's right to salary is a constitutional right guaranteed under Article 21 of the Constitution of India. It is the constitutional obligation of the employers to pay salary to the employees comprised with all its viable components. Withholding salary of a person or a portion thereof, after utilizing his service, without any justifiable and cogent reason, amounts to exploitation and is a violation of his right to livelihood.

10. The writ petitioner is the permanent approved teacher in the respondent school, who has worked therein continuously for more than ten years. This fact is undisputed in the present

case. As against the petitioner there is an allegation of non-cooperation by her by not evaluating the answer sheets of higher secondary examinations of the year 2012. The same can at best be termed as a non-satisfactory performance, if at all, of the petitioner, in the year 2012. As stated earlier, the writ petitioner would be entitled to increment at the end of twelve month's period, on the basis of performance of her in the previous twelve months. Hence, deficiency in service, if at all, should reflect in withholding increment to her, immediately after the end of the previous twelve month's period. On November 19, 2012, the Council writes to the Head of the Institution, directing him to take appropriate action against the present petitioner. However, the school has taken action much belatedly, that is, by withholding increment of the writ petitioner for the month of September, 2015, whereas in 2015 or to be more precise since after 2012, there has not been any allegation against the writ petitioner whatsoever, regarding deficiency in service. Similarly, since thereafter and till date, the writ petitioner's increments are withheld, without even any allegation of her deficiency in service, during all this period. The Court is constrained to find that withholding of increment of the petitioner for the years in which there has not even been any allegation regarding dissatisfactory service of the petitioner, is irrational, unreasonable and an arbitrary action on the part of the respondents, which would not be maintainable on the anvil of justice, equity and good conscience.

11. So far as the allegation against the petitioner of her non-cooperation in 2012, in evaluating the answer scripts are

concerned, certain things are required to be discussed. Mr. Bhattacharya, for the petitioner has pointed out to the guidelines issued in this regard, which is in vernacular. For the purpose of this order, portions thereof shall be mentioned by translating the same in English. It says that evaluation of the answer scripts is compulsory for teachers and refusal therefor by any teacher without appropriate reasons, would make him subject to the punitive provisions under the norms and rules. Four reasons have been listed therein, due to which a teacher may be exempted, which are as follows:

- (i) leave on medical ground;
- (ii) maternity leave;
- (iii) study leave to pursue B.Ed.; and
- (iv) in case he has been the head examiner in Madhyamik examinations.

12. So far as the present petitioner is concerned, in the year 2012, she has made application before the Head Examiner, stating her medical grounds and submitting documents in support of that. The Head Examiner duly considered her prayer at that time. Also, that from April 3, 2012 to April 19, 2012, she has been on medical leave. Therefore, evidently the writ petitioner fulfils one of the exemption clauses in the guideline published in this regard, as mentioned above. This aspect has not been taken into consideration by the Council, in its letter dated November 19, 2012. The question is if the respondents are justified in proceeding against its own guidelines, in case of the present petitioner.

13. Punitive action for the alleged violation of any Rules, should precede with a fair and reasonable opportunity having

been granted to the person, allowing him to put forth his reasons. By following the principle as mentioned, natural justice is maintained and protected. The principle of ‘audi alteram partem’ is fundamental concept of fairness and justice in human society. It includes the right to be informed of the allegations, to receive adequate notice, to place his own case and to cross-examine the other witnesses. But what one can see in case of the present petitioner is a bizarre violation of the same, that after certain allegations being made against the petitioner in the year 2012 and without granting her any opportunity to submit her version regarding the same, without inviting for and considering her reply, an abrupt curtailment in salary has been made in the month of September 2015, only one-sidedly. The same amounts to exercise of gross arbitrariness and does not satisfy the tenets of rationality and reasonableness too. On the contrary, the record sufficiently shows that the petitioner would be covered by the exception clause, in the guidelines, for which she would not be liable to confront with any punitive action, whatsoever.

14. As found on the basis of the discussion as made above, the impugned letters dated November 19, 2012, and October 13, 2015, should not sustain in the eye of law and are liable to be quashed and set aside.

15. Hence, this writ petition is allowed, with the following directions:

- (i) the impugned letters dated November 19, 2012, and October 13, 2015 are set aside;

(ii) it is directed that the writ petitioner is eligible for grant of increment since September 2015, till date and further in accordance with law;

(ii) let the respondents No.5,6 and 3 take immediate steps for refixation of the salary of the petitioner and positively within a period of three weeks from the date of communication of copy of this order;

(iv) let the petitioner be released with the arrear amount of salary immediately and maximum within the said period of time;

16. It is however made clear that the instant order shall not restrain the respondents to proceed against the petitioner in accordance with the law, in future, for any reason it thinks fit and proper.

17. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)