

WPA 9676 of 2021

**Satyajit Ghosh
Vs.
State of West Bengal & Ors.**

**Mr. Kanai lal Samanta.
... for the petitioner**

**Mr. Bhaskar Prasad Vaisya, ld. A.G.P.,
Mr. Suman Dey.
... for the State**

1. Affidavit-of-service filed in Court today is taken on record.
2. The matter relates to the petitioner's grievance against not allowing him the benefit of 3% additional increment from the date of his assuming office in an upgraded school as the Headmaster.
3. The relevant date would be from 22nd August, 2009 till the date of his superannuation and pensionary benefit of the petitioner would be appropriately refixed, as claimed in this case.
4. Mr. Kanai Lal Samanta, learned counsel appearing for the petitioner submits that pursuant to the memorandum No. 30-SE(B)/5B-1/2009 dated 10th February, 2010 which is in continuation of memo nos. 46-SE(B) dated 27.02.2009 and 181-SE(B) dated 08.10.2009, the writ petitioner would be entitled to grant of one increment @ 3% on his revised basic pay (pay band + grade pay) and in addition he will be entitled to grade pay and additional grade pay as has been prescribed for the post of a Headmaster.

5. The writ petitioner is specifically aggrieved due to issuance of memo no. 292-SL/SS-294/12 dated 22nd March, 2017 by dint of which the respondent has withdrawn the benefit of additional increment, as was earlier granted vide another memo no. 1003-SE(S)/SP-129/12 dated 04.12.2014.
6. Mr. Kanai lal Samanta, learned counsel appearing for the petitioner would further submit that the writ petitioner having been appointed as a Headmaster of a upgraded school with effect from 22nd August, 2009, would be entitled for the benefit of 3% additional increment to be granted to him in addition to the basic and grade pay allowable to him.
7. Government Order No.1003-SE(S)/5P-129/12 dated 04.12.2014/18.05.2015 has provided as follows:-

“With reference to the above subject and in respect of his above query, I am directed to say that the Commissioner of School Education in his letter No. 1785-GA dated 14.08.2012 forwarded one query in the instance of Bharat Chandra Kar, Headmaster of Tajpur High School, Dist. Purba Medinipur, where the school was upgraded to Higher Secondary school in the session 2009-10 vide order No DS(A) SD/299/Recog/09 dated 22.08.2009.

The question was raised that in G.O. No.30-SE(B) dt.10.02.2010 and in G.O.No.181-SE(B) dt 08.10.2009 it was stated that the school upgraded in between 01.01.2006 and 27.02.2009 (publication of ROPA) the Headmaster would be entitled additional increments from the date of such upgradation. But no clear instruction is given if the school upgraded after 27.02.2009.

It is seen from the case that the headmaster joined as Asstt. Teacher on 19.03.1987. He was appointed as Headmaster in Secondary school on 21.10.1997 He enjoyed scale of pay as the Headmaster. He opted for revised pay on 01.01.2006 and the school was upgraded to Higher Secondary on 1.07.2009.

As the cut off date has been fixed on which the order of ROPA was issued on 27.02.2009, all the benefits allowed before this date cannot be curtailed. Hence, it was decided that the additional increment will be added to the Basic Pay while fixing pay under ROPA, ie., the period 01.01.2006 to 27.02.2009 is the period when the additional increment was allowed under ROPA '98 due to upgradation of the school.

In the instant case the Headmaster was enjoying Headmaster scale of pay which has been revised on the date of his option to come under the ROPA 2009

and after upgradation of the school he become entitled for benefits of a Headmaster of a Higher Secondary school under ROPA 2009. Hence, there was no necessity to explain the cases further for those cases where upgradation was made after 27.02.2009.

The Headmasters/mistress of the High Schools who has been appointed as HM in an upgraded (10+2) H.S. after 27.2.2009, will be entitled to get 3% increment and additional grade pay in pursuance to the order no. 46-SE(B)/5B-1/09 dated 27.2.2009, clause 11 and order No.-181-SE(B) dated 8.10.2009.

Clarification is sent to the CSE for his consideration.”

8. The subsequent memo no. 292-SL/5S-294/12 dated March 22, 2017, has clarified that the pay of Headmasters of the Higher Secondary Schools upgraded after February 27, 2009, shall not include 3% additional increment over and above the additional grade pay of Rs. 200/-. It has further been clarified that according to ROPA 2009 for the Headmasters of the Higher Secondary Schools upgraded after February 27, 2009, the additional grade pay at the rate of Rs. 200/-, shall only be payable and not any additional increment at the rate of 3%.
9. In doing so the concerned respondent authority has differentiated amongst the Headmasters of the schools upgraded before and after February 27, 2009. However, unfortunately the same is not found to have been based on any intelligible differentia.
10. The law permits in-equal treatment amongst the equals. However, the same should be founded on intelligible differentia, a conceivable reason which may justify such differentiation. In the present case, on the basis of a clarification given later on by the State it is perceived that grant of 3% additional increment to the Headmaster of a school is to acknowledge their additional service to the school as

the administrative head thereof. It was however not comprehensible as to what makes the nature of duty of a Headmaster differentiable before and after the cutoff date, that is, February 27, 2009.

- 11.** On the contrary, this Court is of the firm belief and opinion that the moment a person occupies the chair of a Headmaster of any school, he undertakes additional duty to maintain administration of the school for the purpose of its smooth running. There could not be any conceivable reason as to why a Headmaster appointed before the cutoff date in an upgraded school may be differentiated from the other, appointed after the cutoff date, so far as the administrative functioning of the school is concerned.
- 12.** The discussions as made above prompts this Court to find that the impugned action of the respondent authority in issuance of memo no. 292-SL/5S-294/12, as well as that dated January 25, 2019, is absolutely unreasonable. Any act not backed by any reason is no less than an arbitrary action, inequitable and impermissible for State authority to do.
- 13.** Therefore, the Court finds no justifiable ground for which the memo nos. 292-SL/5S-294/12 may be sustained any further. Hence, the said are set aside.
- 14.** This writ petition being WPA No. 9676 of 2021 is allowed, with the following directions:-
 - (i) The writ petitioner shall be granted 3% additional increment along with grade pay of Rs. 200/-, in terms of ROPA 2009 with effect from the date of upgradation of his school or date of his appointment as the Headmaster in the upgraded

school whichever is later; the respondent shall immediately enforce appropriate fixation of pay for the petitioner;

(ii) Since the petitioner has already been superannuated on February 1, 2019, the respondent authority shall immediately take steps for re-fixation of his pension and payment of revised pension to the writ petitioner. A fresh pension payment order be immediately issued;

(iii) The respondent authority shall calculate the arrear amount of pay and pension and disburse the same to the writ petitioner along with simple interest at the rate of current day interest of savings account in a nationalised bank;

(iv) The entire as above, shall be concluded by the respondent/District Inspector of Schools, within the period of four weeks from the date of communication of copy of this order.

15. Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)