

8
18.04.2024
Court No. 35
D.Hira

WPA 7030 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2023

Chaitanya Tarafdar & Ors.
Vs.
State of West Bengal

Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra.
... for the petitioners

Mr. Suman Dey.
... for the State

1. An order dated March 22, 2017, issued by the Joint Secretary (Secondary) School Education Department to the Deputy Director of School Education (G.A.) Government of West Bengal, is disputed and challenged in this writ petition.

2. The impugned order dated March 22, 2017 is relating to the subject matter of rectification of pay of headmasters of higher secondary schools, upgraded after February 27, 2009. To answer a query as to whether or not the headmasters of the higher secondary schools upgraded after February 27, 2009 shall be allowed 3% additional increment in addition to the additional grade pay of Rs.200/-. The authority, by dint of the said impugned order has held that, since ROPA 2009 and other related orders have not proposed any additional increment in favour of the headmasters of higher secondary schools upgraded after February 27, 2009 – no

such additional increment can be allowed (that is @ 3%) as per ROPA 2009.

3. Before this, two other notifications are relevant, those are, dated August 6, 2014, and December 4, 2014. The first one that is August 6, 2014 provided that a headmaster of a higher secondary school upgraded after February 27, 2009, shall be granted one increment @ 3% of his basic pay, in addition to the additional grade pay admissible. The second notification that is, dated December 4, 2014, has provided that the headmaster of the high school who has been appointed in the said post in an upgraded high school after February 27, 2009, will be entitled to get 3% increment, and additional grade pay. By dint of the impugned notification dated March 22, 2017, the earlier notification dated December 4, 2014, has been withdrawn. That is, benefit of one increment @ 3% of the basic pay stood withdrawn for the headmasters of schools upgraded after February 27, 2009, or appointed as a headmaster of such a school after that date.

4. The present writ petitioners fall within the category and the impugned notification dated March 22, 2017, applies to them. They therefore seek adequate redress vide an order, in this writ petition.

5. Mr. Ranjit Chatterjee has represented the writ petitioners. He has submitted that since the year 2014, his clients have enjoyed the benefit of 3% additional increment as to their basic pay. Any abrupt curtailment of the same would amount to gross illegality, meted out to the writ petitioners. He has further pointed out that in

other similar cases, the Courts, including the present Court, has held in favour of the respective writ petitioners. Mr. Chatterjee has further referred the impugned notification as discriminatory in view of the fact that the same has discriminated between the headmasters who are similarly placed and equal in status, on the basis of their date of appointment. Persons appointed before, and after the cut-off date are discriminated, according to him. He says that such discrimination would be ineligibile, in view of the constitutionally guaranteed right of equality. He would submit that the ground of differentiation as above, amongst the equals, would not justify reasons and thus would be declared arbitrary and illegal. He has stated further that it is a wrong notion that ROPA 2009 has not proposed such additional increment. He says that the clarificatory memoranda dated October 8, 2009 and February 10, 2010 of ROPA 2009 had cleared the mist around the said wrong notion and removed any embargo for providing the said benefit to an eligible candidate. The other point he has urged is with regard to the prospective application of the impugned memorandum dated March 22, 2017. He has stated that even if the same is to be applied, it has to be applied with prospective effect from the date of the same and would not have any retrospective effect to take the petitioners within its fourfold. He seeks relief for the writ petitioners, in terms of the prayers in the same.

6. Mr. Chatterjee has relied on a Coordinate Bench judgment of this Court dated June 22, 2021, in WPA

22066 of 2017 (Kali Sadhan Bhattacharjee @ Bhattacharyya vs. State of West Bengal & Ors.) to submit that the finding of the Hon'ble Co-ordinate Bench has been that after three years the benefit earlier advanced to the writ petitioner there, could not have been withdrawn by the respondent authority.

7. He has also relied on a decision of this Bench dated 15th January, 2024 in WPA 6217 of 2021 (Subir Kumar Ghosh vs. The State of West Bengal & Ors.), in which the Court has set aside the impugned notification no. 292-SL/ss-294/12 dated 22.03.2017.

8. Mr. Chiranjib Bandyopadhyay/writ petitioner no. 4, is stated to have been transferred to a School under jurisdiction of the District Inspector of Schools, Secondary Education, Barrackpore. Mr. Chatterjee, learned counsel submits that, in that event the same is required to be added as a party in this case. Let necessary amendment be carried out in the cause title of the writ petition, by Mr. Chatterjee, incorporating the District Inspector of Schools, Secondary Education, Barrackpore as a party respondent here.

9. Mr. Suman Dey, learned counsel appearing for the State. He has strong objections as to the contentions and prayer of the writ petitioners. He says that Memo No. 1003-SE(S)/SP-129/12 dated 4th December, 2014 is only a clarification to be finalized only after consideration of the Commissioner of School Education. According to him, the same cannot be the basis of any benefit to be advanced to the Headmasters. Mr. Suman Dey, learned counsel for the State has further stated that the

impugned notification dated March 22, 2017, is a further clarification to crystallize the policy to be undertaken by the respondent State in this regard.

10. He says to elaborate that a notification, to be applicable would require sanction of the Finance Department and excepting that, the benefits thereunder cannot be considered to be applicable to an incumbent. He points out that Memo No. 1003-SE(S)/SP-129/12 dated 4th December, 2014 was not supported by any sanction of the Finance Department. He would further say that Memo No. 1003-SE(S)/SP-129/12 dated 4th December, 2014 as well as the impugned notification no. 292-SL/ss-294/12 dated 22.03.2017 are clarifications as regards ROPA 2009. He says that ROPA 2009 which was published in concurrence of the Finance Department would be the parent or substantive Rule and the eligible incumbents are to be granted benefits only as per provisions enumerated therein. He states that the present writ petition is worth dismissal.

11. The writ petitioner no. 1 is not proceeding with this case. Hence, his name is struck off from the cause title.

12. The other writ petitioners are the headmasters of different High Schools being appointed as Headmaster on a date, ranging from 1st March, 2002 to 15th July, 2011. Their schools respectively were upgraded to H.S. level after the date 27th February, 2009, which is the cut off date for a headmaster of the Institution to be allowed 3% additional increment, according to the impugned notification, as above.

13. The legality, propriety and maintainability of the impugned notification dated March 22, 2017, has been elaborately dealt with by this Court in the writ petition being WPA 6217 of 2021 (Subir Kumar Ghosh vs. The State of West Bengal & Ors.). By dint of the order dated January 15, 2024, the said order, as impugned in this case, that is, No. 292-SL/ss-294/12 dated 22.03.2017 has been set aside.

14. So far as the submissions made on behalf of the respondent State is concerned in this case, the same does not inspire confidence in the mind of this Court in view of the fact that the benefit of 3% additional increment pursuant to Memo No. 1003-SE(S)/SP-129/12 dated December 4, 2014, has already been allowed to the writ petitioners and would be withdrawn by dint of the impugned notification. Therefore, after allowing the benefit pursuant to the notification dated December 4, 2014, the argument placed that the same would not have any effect, so far as the grant of additional increment to the concerned incumbent is concerned, without concurrence of the Finance Department, shall have no legs to stand, as it has already been implemented.

15. Be that as it may, records would clearly show that the impugned notification dated March 22, 2017, has already been set aside by this Court by dint of the order as stated above. There would not be any cogent reason for this Court to deviate from the decision or the reasons thereof as promulgated in the said order. The ratio thereof is squarely applicable, in case of the present writ petitioners.

16. Under such circumstances, this Court finds that the writ petition to be eligible to be allowed.

17. The impugned notification no. 292-SL/ss-294/12 dated 22.03.2017 is set aside.

18. The writ petitioners (excepting the original writ petitioner no. 1 whose name has already been struck off) shall be entitled to the pay fixation and payment of salary/arrears in terms of Government orders dated August 6, 2014 and December 4, 2014 respectively. In case pay refixation have already been undertaken against the writ petitioners, in terms of the impugned notification, the respondent authorities shall forthwith rescind/cancel the same and an appropriate pay fixation shall be made in terms of Court's findings, as above, within a period of four weeks from the date of communication of this order.

19. Let the order be published as per the amended cause title.

20. Mr. Suman Dey, learned counsel for the State is requested to represent the said added respondent too.

21. The writ petition being WPA 7030 of 2020 is dismissed along with the pending applications, if any.

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

(Rai Chattopadhyay, J.)