

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 15523 of 2019

MD Kabir & Ors.

vs.

State of West Bengal & Ors.

For the Petitioners

: Mr. Ekramul Bari,
: Sk. Imtiaz Uddin.

For the State

: Mr. Bibekananda Tripathi.

Heard on : 20/03/2024

Judgment on : 20/03/2024

Rai Chattopadhyay, J.

1. The writ petitioners are the Headmasters of different schools in the District of Murshidabad. They are aggrieved that inspite of their being Headmasters of the respective schools, the benefit of re-fixation of pay under ROPA Rules-2009, has not been granted in their favour, by allowing additional increment @ 3% along with additional grade pay, reckonable to upgradation of the schools as Higher Secondary Schools, with effect from the respective dates of upgradation of schools by the concerned respondent authority. The memorandum dated 22.03.2017, issued by the Joint Secretary, School Education Department, Government of West Bengal/respondent no. 3, is impugned in this writ petition, which was issued with reference to an earlier memorandum dated 06.05.2016. The writ petitioners have prayed that the impugned

memorandum be not acted upon any further set aside and by dint of an order of this Court. The other prayer of the writ petitioners is for direction of the Court to allow them the benefit of increment @ 3% of the existing Basic Pay, in addition to the Grade Pay or additional Grade Pay as admissible, as per ROPA Rules-2009.

2. The fact of the present writ in brief is that the writ petitioners are Headmasters of different schools in District Murshidabad, which have been upgraded to Higher Secondary School as per the policy decision of the respective respondent authority. Thus, as the Head of Administration and Headmasters of the schools the writ petitioners claim that they have entrusted with higher responsibility than earlier. On the occasion of the “ROPA Rules 2009” having come into force, the petitioners have claimed their benefit under the same i.e. grade pay along with 3 % increment.
3. They filed this writ petition alleging that though they being eligible to the said benefit, have been deprived on some frivolous grounds and have been subjected to discrimination as well as violation of their vital statutory as well as constitutional rights.
4. On the facts and grounds as above, the petitioners have filed the present writ petition to pray for the reliefs, as stated above.
5. Mr. Ekramul Bari, learned Advocate on behalf of the petitioners has submitted by referring to the notification thereunder dated 10.02.2010, that the benefits as applicable “*Headmaster/Headmistress/Assistant to the Headmaster/ Assistant Headmistress, Higher Secondary School (VXII)*”, shall be applicable to the petitioner, in this case, he being the Headmaster of the Higher Secondary School. The same would include the grade pay as well as additional increment @ 3 % . He has further stated that subsequent

notification dated 22.03.2017 which is impugned in this case would not be tenable in view of its contradictory and discriminatory nature. Let the relevant portion of the notification be extracted, as herein below:-

“With reference to the above, it appears that the Deputy Director of School Education, (G.A.). West Bengal has sought clarification as to whether or not the HM of the Higher Secondary Schools upgraded after 27/02/2009 shall be allowed 3 % additional increment in addition to the additional grade pay of @Rs.200/-.

Having considered the issue raised by the Deputy Director of School Education (G.A.), West Bengal in connection with Memo No-1003-SE(S)/5P-129/12 dated 04.12.2004, this is to clarify that ROPA 2009 and other related orders issued by this Department with the concurrence of other departments have not proposed any additional increment in favour of the Headmasters of Higher Secondary Schools upgraded after 27.02.2009. Only additional grade pay @ Rs.200/- has been allowed to the HM of the Higher Secondary Schools upgraded after 27.02.2009.

Hence, I am directed to inform that no additional increment can be allowed as per ROPA, 2009 and accordingly, Memo No-1003-SE(S)/5P-129/12 dated 04.12.2014 stands withdrawn. The Commissioner, School Education and concerned D.I. of Schools are requested to act accordingly.”

6. Mr. Bari, for the petitioners, has relied on a judgment of the Hon'ble Division Bench of this Court, dated 15.03.2021, in the case of **Satyajit Ghosh Vs. State of West Bengal**, to the following portion therein :-

“There cannot be any doubt that when the appellants (in both appeals) filed the writ petition, they were entitled to receive benefits in terms of the decision of the Joint Secretary dated 4th December, 2014 which did not make any distinction between the schools which have been upgraded prior to 27th February, 2009 and those schools that were upgraded subsequently 27th February, 2009. In fact, Headmasters were enjoying 3% incremental benefits notwithstanding date of upgradation prior to or after 27th February, 2009. Apparently that there was no intelligible differentia between the schools that were upgraded prior to February, 2009 and after

February, 2009. While the Headmasters of the schools upgraded prior to 27th February, 2009 have been extended with the benefits of 3% increment the basis for not extending the same benefit to Headmasters of schools upgraded after February, 2009 prima facie appears to be discriminatory. Prima facie, it appears that the matter needs to be considered in a properly filed writ petition.”

7. Mr. Bari submits further that the writ petitioners, being the Headmaster of a Higher Secondary School, would be entitled to the benefits, as claimed and depriving him from the same would tantamount to curtailment of his statutory as well as constitutional rights. That the same would amount to gross illegality being meted out to the writ petitioners. Hence, he seeks appropriate relief for his clients.
8. Mr. Tripathi, representing the State and has strong objections as regards the contentions and prayer of the petitioner. He has strongly relied on the notification dated 10th February, 2010, to submit that the Headmaster of the Schools, which have been upgraded during the period from 1.1.2006 to 27.02.2009, are only entitled to the benefit of additional increment of 3% as per the ROPA Rules-2009.
9. It is further submitted that on the basis of the said notification, the essential criteria would be the concerned person “*taking higher responsibility of the upgraded school*”, to be eligible for the additional increment as per the ROPA Rules-2009.
10. Mr. Tripathi further indicates that the petitioners has not undertaken any higher responsibility in an upgraded school, in terms of the said notification dated 10th February, 2010.
11. According to Mr. Tripathi, as per the policy undertaken by the respondent authority, the Headmaster of a school, who have been

upgraded during the said period of time, would only be eligible for the additional increment of 3%. He says further that the petitioners cannot be considered as qualified in terms of the said criteria fixed by the respondent authority and hence, the petitioners shall have no right as to the additional increment, as claimed.

12. Mr. Tripathi has sought for dismissal of the writ petition.

13. Let some relevant rules be mentioned, for benefit of the discussions.

i)

6. How additional Grade Pay for taking higher responsibilities of Head Teacher (Primary School), Headmaster/Headmistress, Assistant Headmaster/Assistant Headmistress of the Schools of different nomenclature will be regulated in the revised scale in the case of existing teachers?	The term “existing teachers” means those who are in service on or before 01.01.2006. Additional Grade Pay is a new concept in the revised pay structure for taking higher responsibility. The benefit of additional “Grade Pay” will be admissible to the existing Head Teacher, Primary Schools, Assistant Headmaster/Assistant Headmistress, High School (V-X), Headmaster/Headmistress, Assistant headmaster/Assistant Headmaster/Assistant Headmistress, Higher Secondary School (V-XII) Headmaster/Assistant Headmaster, Junior High School (V-VIII), irrespective of their dates of appointments to such posts notionally with effect from 01.01.2006 and actually with effect from 01.04.2008. Such existing teachers as per their option on any date on and from
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	01.01.2006 to 27.02.2009 may be allowed to fix their pay in the revised pay structure along with additional Grade Pay which is admissible to them for taking higher responsibility as mentioned above.
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ii)

4. Additional Responsibilities – Additional Grade Pay

Keeping in view, the additional responsibilities of the Headmaster/Headmistress/Asstt. Headmaster/Asstt. Headmistress/Head Teacher in Junior High/High/Higher Secondary and Primary School, the Revised Grade Pay of the posts as published in Govt. Order No.46-SE(B) dated 27.2.2009 is hereby amended as follows:-

(a) Primary (Head Teacher): An additional Grade Pay of Rs.200/- over and above the Grade Pay admissible to him/her(according to ROPA, 2009) at present, with effect from the date of his/her Appointment to the post but not before 01.01.2006.

(b)

High School (V to X), Asstt. Headmaster/Asstt. Headmistress Higher Secondary School (V to XII) (Headmaster/Head- Mistress, Asstt. Headmaster/ Asstt. Headmistress), Junior Master/Headmistress only)	An additional Grade Pay of Rs. 200/- over and above the Grade Pay admissible to him/her (according to ROPA, 2009 (at present to Headmaster/Headmistress Asstt. Headmaster/Asstt; Headmistress with effect from his/her date of appointment to the post, but not before 01.01.2006.
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The Grade Pay as noted above will be allowed on or after 01.01.2006 nationally and actually with effect from 01.4.2008. But the 'additional' grade pay will automatically cease if the teacher is relieved from the post of Headmaster/Asstt. Headmaster etc. and/or be appointed as Asstt. Teacher afresh. Even the benefit of Grade Pay or Additional Grade Pay of

Headmaster/Asstt. Headmistress etc. should not be taken in to account and his pay is to be fixed in the scale of Asstt. Teacher concerned with the Grade Pay admissible to him as Asstt. Teacher.

(c)After coming under revised pay structure, an Asstt. Teacher of Govt. Sponsored or Govt. Aided School on his/her appointment to the post of Headmaster/Headmistress or Asstt. Headmaster/Asstt. Headmistress will get his/her pay fixed in the pay structure of Headmaster/Headmistress/ Asstt. Headmaster/ Asstt. Headmistress as the case may be after getting one increment @ 3% of his/her existing basic pay (pay in the Pay Band + Grade Pay) in addition to the Grade Pay or additional Grade Pay as admissible for the post of Headmaster/Headmistress etc. Asstt. Teachers from other schools are not, however, entitled to this benefit.

Additional increments for appointment to the post of Headmaster/Headmistress or Asstt. Headmaster/Asstt. Headmistress as was being allowed in the unrevised scale of pay is discontinued from the date of coming into force of the revised pay structure. Provided that those who already got additional increment(s) before 01.01.2006 in the unrevised pay scale for his/her appointment to the post of Headmaster/Headmistress or Asstt. Headmaster/Asstt. Headmistress will get their pay fixed in the revised pay structure with effect from the date of option by taking into account the additional increment(s) already allowed to them.

(iii)

9. How pay will be fixed in the revised pay structure in the following cases:- (a) A School was a High School (V to X) before 01.01.2006, but it was upgraded to Higher Secondary School (V to XII) between 01.01.2006 to 27.02.2009. How pay of the Headmaster will be fixed in such a case?	(a)The Headmaster of a High School was not entitled to any additional increment other then scale of pay of the post in the unrevised scale. If the School was upgraded to H.S. within the period 01.01.2006 to 27.02.2009, the Headmaster would be entitled to two additional increments from the date of such upgradation as per provisions of the unrevised scale of pay. When the said
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	Headmaster would opt to come under the revised pay structure, his pay could have been fixed as per his option either from 01.01.2006 or from the date of upgradation of the school when he got two additional increments in the unrevised scale. In the first case, after fixation of his pay in the revised scale, he would be again entitled to get 3 % increment and additional Grade Pay from the date of taking higher responsibility of the upgraded school. In the second case, he would be entitled to get his pay fixed in the revised pay structure taking two additional increments in the unrevised scale and he would then get additional Grade Pay of the post of the Headmaster of H.S. School under the revised Pay structure.
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- 14.** Objection of the State respondent, as to the claim of the writ petitioners is that the concerned school was upgraded as a Higher Secondary School, prior to the period as specified in the notification. Thus, they cannot be considered to have undertaken any additional responsibility, in terms of the notification, to be eligible for the additional benefit, in emoluments.

- 15.** The same, however, do not satisfy the requirement of subserving intelligible differentia. Any Higher Secondary School would always carry the same status and discharge same duties and responsibilities, irrespective of the period or date at which it has been vested with the status of a Higher Secondary School. Likewise, a Headmaster, being the administrative head of the school, would always carry and discharge some additional responsibility, irrespective of his being posted in a Higher Secondary School or otherwise.
- 16.** The law does not eschew unequal treatment of the equals, but approves the same, provided the same should be based on intelligible differentia. The reasons thereof must appeal, to the understanding of a prudent man.
- 17.** The submissions made on behalf of the State authorities is not found acceptable on the ground that the petitioners have taken up additional responsibility upon upgradation of the Schools, and, thus, they cannot be treated as disqualified for the benefit as mentioned above.
- 18.** The petitioners having already been a Headmaster and taking responsibility of a Higher Secondary School has been bestowed with the higher responsibility, which would fall within the four corners of the said notification, dated 10.2.2010, as mentioned above.
- 19.** Under such circumstances, the petitioners are found to be entitled to the benefit of additional 3% increment as prayed for by him in this writ petition.
- 20.** In view of the above observations, this Court directs for setting aside of the impugned notification dated 22.03.2017 issued by the Joint

Secretary, School Education Department, Government of West Bengal , being respondent No. 3.

21. The writ petition No.WPA 15523 of 2019 is **allowed**.

22. Let the benefits accruing to the petitioners in terms of the notification dated 10.02.2010 be granted to them within a period of six weeks from the date of communication of this order.

23. WPA 15523 of 2019 is, accordingly **disposed of**.

24. Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)