

10.6.2024
ct.25, sl.71
sk

WPA 26800 of 2017

Sk. Nazrul Islam-vs-State of West Bengal & Ors..

Mr.Kanai Lal Samanta
...for the petitioner.

Mr. Samanta, learned advocate is representing the writ petitioner whereas no one is representing the State respondent in spite of service of notice.

Record reveals that previously also before the Court the State respondent has not been represented. No affidavit-in-opposition has been filed on behalf of the State respondent. Hence, it is found that the respondent State has not been interested to contest in the present case.

For this reason, the matter is being taken up today in the absence of the State respondent, for disposal.

The writ petitioner is the Headmaster of Aguiboni High School, District Jhargram. He was appointed as Headmaster with effect from May 1, 2005.

The School was upgraded to be a Higher Secondary School with effect from academic Session 2011-2012. Subsequent to the same, a Notification No. 1003-SE(S)/5P-129/12 dated December 4, 2014, was issued by the Joint Secretary, School Education Department, Government of West Bengal, to provide that the Headmaster/Headmistress of the High School, who has

been appointed as HM in an upgraded School, after 27.2.2009, will be entitled to get 3% increment and additional grade pay in pursuance to the government orders dated 27.2.2009 and 8.10.2009.

The said order made the writ petitioner entitled to the benefit of 3% of additional increment, being him the Headmaster of an upgraded School.

However, the petitioner is aggrieved as subsequently, vide Notification dated March 22, 2017, the said respondent authority, withdrew the earlier Notification No.1003-SE(S)/5P-129/12 dated December 4, 2014.

Mr. Samanta is appearing for the writ petitioner. He says that according to the ROPA Rules, 2009, the writ petitioner would be entitled for additional increment of 3% being the Headmaster of the upgraded School and carrying on the higher responsibility, similar to that of any School, which may have been upgraded at an earlier point of time.

It is submitted that in fact, the petitioner, being appointed as the Headmaster much prior to the cut off date i.e. February 27, 2009, has been bearing additional responsibility from an earlier period of time and he would be covered by the 2009 Rules, promulgating payment of 3% additional increment.

Mr. Samanta has further submitted that the impugned Notification dated March 22, 2017 is discriminatory in nature, thereby effecting discrimination amongst the Headmasters placed similarly as the petitioner. He seeks adequate relief for his client.

The facts of the case has revealed that the writ petitioner was appointed as a Headmaster, with effect from academic Session 2011-2012.

The School in which he has been working as a Headmaster, was upgraded with effect from May 1, 2005.

The Rules have provided that the Headmaster appointed in an upgraded School after February 27, 2009, shall be allowed 3% additional increment in addition to the additional grade pay @ Rs. 200/-.

There was confusion, as regards the entitlement of the headmasters who served as the headmasters in a school which has been upgraded after February 27, 2009. The clarification order is dated March 22, 2017, which is impugned in this writ petition.

It has been clarified that the headmaster of the higher secondary school upgraded after February 27, 2009, shall not be allowed 3% additional increment, in addition to the grade pay, in terms of ROPA 2009. For the said reason, the impugned notification dated March 22, 2017 was issued directing withdrawal of the earlier memo dated December 4, 2014.

This Court finds the grounds as stated above, in the impugned order dated March 22, 2017, to be reasonable and discriminatory in nature. The purpose for grant of additional increment is to recognize the additional administrative services rendered by the headmaster to run a school. With upgradation of the school, comes the greater responsibility for the headmaster to efficiently, manage the same.

Two different situations are projected here. One is when a person has been appointed as the headmaster, after the cut-off date, in an upgraded school, and the second is when a person has been appointed as the headmaster, before the school has been upgraded. The impugned memo differentiates entitlement of the headmasters, on two different situations as enumerated above. The Court finds the same not to have been based on any intelligible differentia. There would not be any cogent reason to be found to conclude difference in the nature of duties, discharged by the headmasters of an upgraded school, irrespective of whether they have been appointed as the headmasters, pre or post, the cut off date. This has made the impugned notification bereft of any justifiable reason. Unreasonableness of an order is fatal. Discrimination as would be meted out due to the same coming into effect, would be detrimental for its subsisting any further. There cannot really be any reason

as regards the grounds on which benefits of the persons appointed as the headmasters from an earlier date, can be curtailed in comparison to those who have been appointed later.

The post of Headmaster should always bear additional responsibility irrespective of the date of upgradation of the School.

Under such circumstances, any discrimination in respect of pay to be granted to the Headmaster of the upgraded School, appointed before the so called cut off, date would not be in accordance with the principles as laid down under the law.

Considering the facts as above, this Court finds that the impugned Notification dated March 22, 2017 cannot be considered to be sustainable in terms of the legal principles. The same is de hors the law and should be set aside.

On the discussion as made above, this writ petition is allowed with the following directions:-

- i) The impugned Notification No. 292-SL/5S-294/12 dated March 22, 2017 is set aside.
- ii) The writ petitioner is entitled to and should be immediately provided with the pay, including 3% additional increment, with effect from the date of the school

being upgraded with effect from Academic Session 2011-2012.

- iii) The respondent authority shall immediately effect re-fixation of pay scale of the writ petitioner.
- iv) Arrear accrued, if any, shall be paid to the writ petitioner, with immediate effect.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)