

13.06.2024
Sl. No.2(DL)
srm

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

W.P.A. No. 785 of 2024

Tabibar Rahaman Pramanik

Versus

The State of West Bengal & Ors.

Mr. Somraj Paul

...for the Petitioner.

Mr. Hirak Barman,
Mr. Bikash Singha

...for the State-respondents.

Mr. Amales Ray,
Mr. Deborshi Dhar

...for the District Primary School
Council, Cooch Behar.

1. Affidavit-of-service is taken on record.
2. The petitioner is serving as an assistant teacher in Ametulla Government Primary School under Haldibari Circle, Cooch Behar. A criminal proceeding had been initiated against the petitioner. The petitioner was taken into custody and thereafter enlarged on bail. The petitioner was suspended from service by the District Primary School Council, Cooch Behar. The suspension order was revoked on March 13, 2020. The petitioner is now working on regular basis.

3. The petitioner relies on a notification bearing Memo No.437-SE(P&B)/SL/5S-408/19 dated 12.12.2019. The Principal Secretary, Government of West Bengal, School Education Department, Planning and Budget Branch, had declared that in view of the recommendation of the 6th Pay Commission, the Governor had been pleased to direct that the date of effect of the revised pay structure, the manner of fixation in the revised pay structure and other conditions of service of the teaching and non-teaching staff of recognised aided training institutions for primary teachers, shall be from January 1, 2020. According to the petitioner, Clauses 5 and 6 of the said notification would be applicable.
4. The petitioner filed a representation dated February 5, 2024, seeking to opt for the new pay scale as per ROPA, 2019. Thereafter, the petitioner demanded justice through his learned Advocate by a letter dated March 5, 2024 requesting the authorities to allow the petitioner to exercise option to come under the new scale of pay as per ROPA 2019.
5. Mr. Amales Ray, learned Advocate appearing for the District Primary School Council, Cooch Behar

submits that as per the rules, the petitioner should have filed his representation for being allowed to exercise option within three months from his return to service.

6. In my *prima facie* view, even if the time period has been prescribed in the rules, such exercise of option is a formality and under special circumstances of the case, the delay is not fatal. Considering the fact that the pay benefit of 6th Pay Commission was given to all employees, only because of the delay, the petitioner should not be deprived of a chance to exercise his option, if otherwise permissible in law. The petitioner cannot be penalised only because of some delay in approaching the authority. The petitioner is entitled to reap the benefit of the notification. Such notification is for welfare of the employees
7. Under such circumstances, the writ petition is disposed of with a direction upon the Controller of Finance, District Primary School Council, Cooch Behar, to consider the representation of the petitioner/demand of justice and dispose of the same in accordance with law upon granting an

opportunity of hearing to the petitioner and to the school authorities where the petitioner is working, if necessary.

8. A reasoned order shall be passed and communicated to all concerned.
9. The entire exercise shall be completed within three months from the date of communication of this order.
10. There shall be no order as to costs.
11. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)