

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 7151 of 2020

With

CAN 1 of 2020

Lakshman Chandra Singha & Anr.

Vs.

State of West Bengal & Ors.

With

WPA 115 of 2021

Biswanath Jana

Vs.

The State of West Bengal & Ors.

For the Petitioner

: Mr. Subhas Jana

: Mr. Subir Sanyal

: Sourajit Mukherjee

For the State

: Mr. Bhaskar Prasad Vaisya

: Mr. Arindom Chattopadhyay

: Ms. Lipika Chatterjee

... in WPA 7151 of 2020

: Mr. Supriyo Chattopadhyay

: Mr. Sabyasachi Mondal

... in WPA 115 of 2021

Heard on

: 06.01.2025

Judgment on

: 06.01.2025

Rai Chattopadhyay, J. :-

1. The solitary issue determinable in writ petition No. WPA 115 of 2021, is whether the petitioner should be an eligible person to be treated as a trained teacher, in terms of the Government Notification No. 33-Edn.(B) dated March 7, 1990, that is ROPA 1990 (and henceforth mentioned as such), in order to be entitled to the regular increments as per the revised pay scale under the said rules.

2. The petitioner in WPA 115 of 2021 (who is the writ petitioner No. 2, in WPA No. 7151 of 2020), is aggrieved with the order of the District Inspector of Schools (Secondary Education), South 24 Parghanas (hereinafter referred to as “the DI”) dated November 3, 2020, by dint of which the DI has enumerated the admissible pay structure of the petitioner, treating him to be an untrained teacher and curtailing his increments after the 4th year from the date of converting to the revised pay structure.

3. The petitioner’s challenge to the said impugned order of the DI is two fold. Firstly that in terms of clause (4) of the ROPA 1990, the petitioner should have been treated as a trained teacher and granted the pay structure accordingly. Secondly that the DI has discriminated him, unauthorizedly and illegally, from being granted with a pay structure as a trained teacher, since the similar benefit has been extended already to the other similarly placed teacher, that is petitioner No.1 in WPA 7151 of 2020. Hence, WPA No.115 of 2021, is filed seeking setting aside of the said impugned order dated

November 3, 2020, by the respondent DI and granting appropriate relief to the petitioner.

4. Having heard Mr. Sanyal, learned counsel for the petitioners and Mr. Supriyo Chattopadhyay and Mr. Arindam Chattopadhyay learned counsels for the State in WPA 115/2021 and WPA 7151 of 2020 respectively, the Court has arrived at the following conclusions;
5. So far as the petitioner No. 1, in WPA 7151 of 2020 is concerned, he has no further grievances, since he has been granted a pay, according to the structure enumerated in the order of the DI date October 17, 2017, thereby treating him as a trained assistant teacher. Hence WPA 7151 of 2020 becomes infructuous as against the said petitioner No.1 therein.
6. The petitioner No.2 in WPA 7151 of 2020, who is the sole petitioner in the other case that is WPA 115 of 2021, had earlier moved his writ petition in 2020, with a prayer to release him the arrear salary from April 29, 2010, to February, 2017. Such claim of arrear salary, was based on the notion that he be treated as a trained teacher, after completion of ten years of his service. However, after issuance of the present impugned order dated November 3, 2020, thereby allowing the pay structure of an untrained teacher to the petitioner, his earlier cause of action has merged with the cause of action in the present case. Therefore, as stated earlier, the main issue which is required to be discussed and decided upon in the writ petitions at present, is with regard to the eligibility of the petitioner, if any, to be treated as a trained

teacher, after completion of 10 years' service period, inclusive of his period of service in school as an organizing teacher, before approval of his service.

7. The petitioner has stated that vide a judgment and decree dated February 2, 2006, the trial Court has declared the petitioner to be the organizing teacher in school, appointed since from the date January 2, 1989. The petitioner has relied on orders of this Court in WP No. 6626 (w) of 2006, MAT No. 39 of 2011 and the other writ petition being WP No.14803 (w) of 2015 respectively.
8. In WP No. 6626 (w) of 2006 the Court has directed vide order dated April 29, 2010, that the petitioner is to be absorbed by regularization of his service as an assistant teacher of the school and to be released with the salary from the date of upgradation, that is May 1, 2000, forthwith. The Division Bench in MAT No.39 of 2011, has declined to entertain an appeal against the judgement and decree of the trial Court dated February 2, 2006 thereby rendering the judgment of the civil court as final and binding.
9. Learned counsel for the respondents say that the order of the Court dated April 29, 2010, has been given effect to in case of the petitioner, thereby approving his service notionally, with effect from May 1, 2000, as an assistant teacher in History in B.A.(Pass) category. That, in a subsequent writ petition filed by him challenging the said order, that is WP No.14803 (w) of 2015 , the Court directed for issuance of a fresh approval order and granting the petitioner honours graduate category scale of pay. He informs that the said order of the Court has also been complied with by granting the petitioner

honours graduate category pay scale, notionally with effect from May 1, 2000 and actual financial benefit was awarded with effect from April 29, 2010.

10. Upon a careful consideration of the factual development of this case as elaborated above, the Court finds that, the petitioner's service has been approved, in terms of the direction of the Court, with effect from May 1, 2000. Initially that was approved by granting him notional benefit with effect from that date, at graduate scale of pay. But subsequently by dint of the Court's order, the revised pay scale allowable to the petitioner has been enhanced to be commensurate with the honours graduate category pay scale, though there has not been any change as regards the effective date for such grant, that is from May 1, 2000.

11. After coming into force of the ROPA 1990 and in terms thereof the untrained teachers had to complete training within 5 years from the date of coming over to the revised pay scale, to claim regular increments as per the revised pay scale. Admittedly the petitioner has not completed any training within 5 years time, from the date of his approval in service and grant of revised pay scale, that is May 1, 2000. However, the petitioner says that he would be duly covered by the later part of 'clause 16(4) of ROPA 1990', and be eligible for grant of benefit as a trained teacher, in terms of his completed years of service. It is necessary that relevant portion of ROPA 1990 be extracted, as herein below:

"Untrained secondary school teachers shall be allowed annual increments in the revised scale of pay on condition that such untrained teachers will have to get themselves trained within five years from the date of coming

over to the revised scale of pay and in respect of those who will be appointed on or after the 1st January, 1986, within five years from the date of appointment, failing which increment will be stopped till they get themselves trained. An untrained teacher of the recognised Secondary School or a Madrasah of the Secondary type with ten years, teaching experience in recognised schools/Madrasah shall be treated as a trained teacher for the purpose of drawal of increment in the scale applicable to the teacher concerned with effect from the date on which the condition of teaching experience is fulfilled. Such a teacher shall be eligible to draw the increment on completion of one year's service from the date on which the above condition is fulfilled."

12. The same has provided for two eventualities when an assistant teacher may be considered as a trained teacher and be eligible for due increment as per the revised scale of pay. Firstly, that is relied on by the respondents, that secondary school teachers shall be allowed annual increments in the revised scale of pay on condition that he gets himself trained within five years from the date of coming over to the revised scale of pay as per ROPA 1990. The essential rider is that, failing the same, the increment will be stopped after 4th year, till he gets himself trained. The petitioner however, relies on the later portion of the same rule, that an untrained teacher of the recognized secondary school with 10 years teaching experience in recognized school, shall be treated as a trained teacher, for the purpose of drawl of increment in the scale applicable to the teacher concerned, with effect from the date on which the condition of teaching experience is fulfilled. Such a teacher shall be eligible to draw the increment on completion of one year's service from the date on which the above condition is fulfilled, that is on completion of 10 years of teaching experience.

13. There are two important undisputed facts which are very relevant in this case. First is the date of appointment of the petitioner in the school, which as per the unchallenged decree of the civil Court, is January 2, 1989. The other admitted fact is with regard to the date of recognition of the school, that is some where on or about 1971, as submitted by the learned advocate appearing for the petitioner. Vis-a-vis the said two facts if one looks at the provision under ROPA 1990, as mentioned above, can find that a person has to be an untrained teacher with teaching experience in a recognized school, for 10 years, to be treated under the said rules as a trained teacher for the purpose of drawl of increment in the scale applicable, with effect from the stipulated date. The date of approval of the teacher has nowhere been made as a relevant factor, for a teacher who is covered by the said later portion of clause 16(4) of ROPA 1990, but his actual teaching experience in a recognized school has been made the yard stick.

14. Very interestingly the Court cannot help but noticing the manner in which the words have been arranged in the said provision of the rules. Let those be mentioned again. “ ** ** *an untrained teacher of the recognised secondary school with 10 years teaching experience in recognised schools* ** ** ”. Therefore, the period of teaching experience in a recognized school, which may not have been upgraded as a secondary school, shall also be the competent and eligible period of service, to be reckoned as a valid portion of the total 10 years’ service period of a teacher, for the purpose of grant of increment as per revised pay scale, as enumerated in the said rules. The Court therefore has no hesitation to accept the submissions of the petitioner

that after taking into consideration the period from the date of his initial appointment, since he has already completed 10 years' service in the said recognized school and thus is eligible with the 10 years qualifying teaching experience in a recognized school would be entitled for grant of regular incremental benefits as per the revised pay scale, under ROPA 1990.

15. According to the respondent authorities, the petitioner being approved in service with effect from May 1, 2000 and having not concluded training course within five years therefrom, shall not be eligible for grant of further increments, after the first 4 years, after revision of pay as per the said rules. However, since clause 16(4), ROPA 1990, has provided for two modes or manners, to assess a person's eligibility for grant of increment as per the revised pay scale, the said respondent should not approach the issue only blindfolded and assessing applicability of a portion of the said rules and ignoring the other altogether. A plausible justification was required to be elaborated for the sake of transparency and fairness in the administrative action of the State instrumentalities, to justify as to why the later part of the clause (4) of ROPA 1990 may not be made applicable in case of the present petitioner, who as a matter of fact, squarely fits in to those criteria.

16. Similar benefits have already been advanced to the writ petitioner No.1 in WPA No. 7151 of 2020, vide order dated October 12, 2017. In the present writ petition, the respondents have termed such grant to the petitioner No.1 in WPA 7151 of 2020, as an "error", on their part. However, on the discussion as made above, it is now evident that advancing the benefit of increment to the said person who is similarly circumstance with the present petitioner has

been in terms of the letters and spirit of the provision under ROPA 1990, as stated above. Question of any “error” does not appear for the said reason and so also in view of the fact that since from October 12, 2017, till date, there has not been any corrective or punitive measures taken by the said respondent to address or remedy the “error”, so committed. Hence, by rejecting increments as per the revised pay scale to the petitioner, the respondents have not only acted de hors the said rules but also acted treating a person similarly placed with that other dissimilarly, thereby in gross violation of the constitutionally guaranteed right of the petitioner to equality and equal treatment in the eye of law.

17. For the reasons as discussed above, the Court finds the impugned order dated November 3, 2020 to be irrational, discriminatory, unjustified, unreasonable and illegal. The same being not in conformity with the ROPA rules 1990, should be set aside. Instead, in terms of the later portion of clause 16(4) of ROPA 1990, the petitioner is found to be eligible for grant of incremental benefits being treated as a trained teacher after completion of 10 years and more service in the said recognised school, subsequently upgraded. Hence the writ petition WPA No.115 of 2021 and that No. WPA 7151 of 2020 with respect to the petitioner No.2 therein, are allowed, with the following directions:

- (i) the impugned order dated November 3, 2020, is set aside;
- (ii) the respondent District Inspector of Schools (Secondary Education) South 24 Parghanas, is directed to immediately publish, by way of an order, the revised pay structure of the

petitioner, thereby treating him as a trained teacher and granting appropriate regular incremental benefits to him under the ROPA 1990, with immediate effect; let this order be published within a maximum period of three weeks from the date of communication of copy of this order.

(iii) let the arrear amount of pay as stands due and outstanding as per the said revised pay structure be released to the writ petitioner (in WPA 115 OF 2021), within a period of three months from the date of communication of copy of this order;

18. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)