

07.02.2025

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Sl. No. 94

Ct. No. 08

MAT 101 of 2025

With

CAN 1 of 2025

Anitarani Maity(Bera)

Vs.

The State of West Bengal & ors.

Mr. Sudip Ghosh Chowdhury

Mrs. Shreyeta Mitra

... for the appellant

Mr. S.P. Lahiri

.... for the State

The instant appeal arises from an order dated 09.01.2025 passed by the Single Bench in WPA 30788 of 2024 by which the writ petition was dismissed interpreting the provisions contained in Rule 6(4) of the ROPA Rules, 2019. The grievance of the petitioner raised in the writ petition pertains to the change of an option under ROPA Rules of 2019. According to the petitioner while exercising the option, the petitioner indicated that her financial benefit would be reckoned with effect from 1st January, 2016 but later on she intended to change the option so that the writ petitioner may come within the purview of the ROPA Rules, 2019 with effect from 1st July, 2017.

The question which falls for consideration before the writ Court was whether an employee can be permitted to change the option or switch over to a revised pay structure under the aforesaid Rules after having exercised such option once. The attention of the writ Court was drawn to Rule 6(4) of the ROPA Rules of 2019 which creates a complete bar in subsequent switching over and/or exercising an option after having exercised such option once. Based upon the said Rules, the Single Judge was of the view that the moment, the option is exercised by an employee, it is final and no right is created to change such option or switch over to

further pay structure as an embargo is created under Rule 6(4) of the aforesaid Rules.

The counsel for the appellant tried to create a distinction between the provisions contained in Rule 5 and Rule 6 of the ROPA Rules of 2019 framed for the purpose of teaching and non-teaching staff of the School. Rule 5 thereof provides that an employee shall draw pay in the level in the revised pay structure applicable to the post if he is holding the same as on 01.01.2016 or to which he is appointed on or after 1st January, 2016. The said Rule contained two proviso; the first proviso relates to a choice of the employee to continue to draw the pay in the existing pay structure until the date on which he earns his next increment or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure. Both the counsels are uniform in their stand that such proviso has no manner of application herein.

The second proviso which clinches an issue is sought to be interpreted by the respective counsels in different manners. The second proviso postulates that where an employee has been placed in the higher pay band or a higher grade pay by way of promotion or up-gradation in terms of the provisions of ROPA 2019 or as per the Government decision taken between 1st January, 2016 and 25th September, 2019 may elect to switch over to the revised pay structure from the date of such up-gradation or promotion as the case may be.

According to the counsel for the appellant, since the appellant completed 18 years of continuous service in the year, 2017, it activates the provisions of the second proviso and the moment such right to switch over is conferred, it cannot be taken away. He sought to distinguish the applicability of Rule 5 and Rule 6 to the extent that Rule 5 confers a substantive right into the employee whereas Rule 6 is relatable to a

procedures to be adopted. According to him, the procedural provisions in the statutory Rules cannot override the substantive right.

On the other hand, the counsel for the respondents submits that the second proviso to Rule 5 is applicable in a specified contingency and does not create unfettered right into the employee. As per the counsel for the respondents, switching over to the revised pay structure is permissible only in case of a promotion or up-gradation in terms of the provision of ROPA 2019 or on the basis of any Government decision taken between the specified period as mentioned therein and not otherwise.

Before we proceed, it would be apposite to quote Rule 5 which runs thus:

“5. Drawal of pay in the revised pay structure - *Save as otherwise provided in this Memorandum, an employee shall draw pay in the Level in the revised pay structure applicable to the post which he is holding as on 01.01.2016 or to which he is appointed on or after 1 day of January, 2016:*

Provided that an employee may elect to continue to draw pay in the existing pay structure until the date on which he earns his next increment or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure:

Provided further that in cases where an employee has been placed in a higher Pay Band and or higher Grade Pay by way of promotion or up-gradation as per provisions of ROPA-2009 or as per Government decisions between 1 day of January, 2016 and 25th September, 2019 may elect to switch over to the revised pay structure from the date of such up-gradation or promotion as the case may be.

Explanation 1 - The option to retain the existing pay structure under the first proviso to this memorandum shall be admissible only in respect of one existing Pay Band or Grade Pay.

Explanation 2 - The aforesaid option shall not be admissible to any employee appointed to a post on or after the 1st day of January, 2016 by way of direct recruitment and he shall be allowed pay only in the revised pay structure from the date of such appointment.

Provided that the primary school teachers who joined service on and after 01.01.2016 but prior to 01.08.2019 will be allowed to come under the revised pay structure with effect from the date of up-gradation of their pre-revised pay structure which is 01.08.2019.

Explanation 3- Where the employee exercises the option under the proviso to this Memorandum to retain the existing pay structure in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that pay structure under the existing order applicable to the post, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing pay structure in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.”

The manifest reading of the provisions contained therein, more particularly, the second proviso indicative of the fact that switching over to a revised pay structure is permissible only when the employee is placed to a higher pay band or higher grade pay by way of a promotion or up gradation in terms of ROPA 2019. Admittedly, the appellant was not promoted to a higher post during such period but sought to interpret the word “up-gradation” to a situation where an employee completing a particular tenure which entitles to an incentive would also be regarded as an up gradation.

We are unable to accept the meaning sought to be assigned to the word up-gradation. The up-gradation cannot be construed in the perspective of any incentive given to the employee because of his successful completion of tenure under the Career Advancement Scheme. The promotion or the up-gradation has to be understood though used in disjunctive manner but as an incidence of putting the person to a higher grade pay band or the higher grade pay and does not include within its folds the incentives given to the employee on successful completion of a specified period in service.

Rule 6(4) creates a complete embargo that once the option is exercised, the same is final. Such embargo has to be read conjointly with the right conferred under second proviso to Rule 5 that to upon the strict fulfillment of the conditions enshrined therein.

Since the appellant does not come within the purview of second proviso to Rule 5 of the said Rules, the embargo created under Rule 6(4) of the said Rules is attracted and, therefore, the denial to change the option or switching over the revised pay structure has been rightly denied.

We thus do not find any infirmity and/or illegality in the Judgment of Single Bench.

The appeal sans merit.

The same is hereby dismissed without any order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)