

Form No. J(2)
Item No. ML / 213
Suwendu – A.R.(CT)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

W.P.A. NO 7650 OF 2024

JAMAL ABDUL NASSER

VS.

THE STATE OF WEST BENGAL & OTHERS

BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

For the Petitioner : Mr. Bidhan Biswas

For the State : Mr. Santanu Kumar Mitra
Mr. Subhabrata Das

Heard on : 16.09.2025

Judgment on : 16.09.2025

SAUGATA BHATTACHARYYA, J.:

1) Affidavit of service filed on behalf of the petitioner is taken on record.

2) In the writ petition memo dated 24th January, 2024 issued by the District Inspector of Schools (SE), Birbhum being respondent no. 3 is questioned whereby prayer of the petitioner to grant promotional

benefit on being appointed as Headmaster of Kogram High School, Birbhum from 1st July, 2020 along with yearly incremental benefit was turned down.

3) It is submitted by learned advocate representing the petitioner that petitioner joined the post of Headmaster on 4th February, 2020 and opted to avail promotional benefit from 4th February, 2020. On sanction of promotional benefit with effect from 4th February, 2020 petitioner was denied yearly incremental benefit on 1st July, 2020 since as per ROPA 2019 petitioner was entitled to receive yearly incremental benefit on 1st July, 2021 and not prior to that. Petitioner made representation on 4th August, 2021 seeking permission to deposit promotional benefit which petitioner enjoyed from 4th February, 2020 till 30th June, 2020 and further prayed for sanction of promotional benefit and yearly increment with effect from 1st July, 2020.

4) Earlier writ petition being WPA 15834 of 2021 preferred by the petitioner was disposed of by a coordinate Bench vide order dated 10th August, 2023 directing the respondent no. 3 to take decision on the representation of the petitioner in accordance with law. Pursuant to said order dated 10th August, 2023 decision was taken as contained in impugned memo dated 24th January, 2024 rejecting the prayer of the petitioner.

5) During course of hearing, on behalf of the petitioner reliance is placed on the order of the Hon'ble Division Bench dated 15th September, 2022 passed on a review petition being **RVW 130 of**

2014 (The Secretary, Mahishadal Raj High School and Anr. Vs. Dr. Kanika Sahoo (Mondal) & Ors.).

6) State respondents are represented by Mr. Mitra, learned Senior Government Advocate, who has made submission to defend the decision of the respondent no. 3 as contained in memo dated 24th January, 2024. In addition thereto, reliance is also placed on memorandum dated 13th December, 2019 issued by the School Education Department and it is submitted that once option was exercised to avail promotional benefit from 4th February, 2020 petitioner was estopped from getting the promotional benefit on and from 1st July, 2020 along with yearly increment.

7) On considering rival submissions made on behalf of the parties and taking note of the memorandum dated 13th December, 2019, it appears that under Note 1 it is provided that employee may have option to get his pay fixed either from date of promotion /up-gradation or from the date of next increment.

8) In the present case, though initially petitioner opted to avail promotional benefit from 4th February, 2020 but subsequently he prayed before the concerned State authority to permit him to avail promotional benefit along with yearly incremental benefit with effect from 1st July, 2020 on refund of amount which petitioner enjoyed due to grant of promotional benefit for the period from 4th February, 2020 till 30th June, 2020.

9) While considering the claim of the petitioner, this Court finds observation made by the Hon'ble Division Bench in the order dated

15th September, 2022 in **The Secretary, Mahishadal Raj High School** (supra) comes in aid of the petitioner as it has been held therein that the incumbent was entitled to seek non-functional incremental benefit either from the date of entitlement or from next 1st July, therefore, the Hon'ble Division Bench was of the view that prayer of the incumbent to forego the increments for the months of May and June, 2010 and seeking release of the non-functional increment on 1st July, 2010 cannot said to be unlawful. Such observation was made by the Hon'ble Davison Bench taking note of Clause 1 of the memorandum no. 2728-F dated 7th April, 2009. This Court finds there is *pari materia* provision in the memorandum dated 13th December, 2019. In the memorandum dated 13th December, 2019 under Note 1 it is provided that employee may have option to get his pay fixed either from date of promotion /up-gradation or from the date of next increment.

10) In view of aforesaid discussion, impugned memo dated 24th January, 2024 of the respondent no. 3 is set aside.

11) Commissioner of School Education, Government of West Bengal being respondent no. 2 is directed to pass an order by eight weeks from date of communication of this judgment and order thereby intimating the petitioner the amount to be refunded by him fixing time within which such refund is to be made. On refund being made by the petitioner he shall be permitted to get promotional benefit from 1st July, 2020 consequently pay of the petitioner as well as pension of the petitioner to be fixed accordingly. Enhanced benefit

shall be paid to the petitioner within a period of four weeks from the date of refund to be made by the petitioner as per order to be passed by the respondent no. 2.

12) Writ petitions stands disposed of.

13) There shall be no order as to costs.

14) Urgent photostat certified copy of this judgment and order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)