

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 4632 of 2016

Ajoy Kumar Debnath
VS
The State of West Bengal & Ors.

For the Petitioner	: Mr. K.M.Hossain, Ms. Keya Sutradhar, : Sk. Kazi Ardan Ali.
For the Respondent/State	: Mr. Supriyo Chattopadhyay Mr. Gourav Das.
Heard on	: 22/01/2025
Judgment on	: 22/01/2025

Rai Chattopadhyay, J. :-

1. In the impugned order dated May 17, 2010, the District Inspector of Schools (SE), Paschim Medinipur, has relied on the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005, to deny and reject the petitioner's prayer for grant of additional incremental benefit, pursuant to his Ph.D Degree.
2. Hence, being aggrieved, the petitioner has filed this writ petition, to challenge the said order dated May 17, 2010 and seeks setting aside of the same.

3. Mr. K.M. Hossain, learned advocate for the petitioner, has stated that there would not be any scope for application of the provisions as above, in case of the writ petitioner, in so far as the writ petitioner has obtained 'Ph.D/Doctorate', before coming into force of the Act of 2005. It is stated that the petitioner has obtained Ph.D degree on May 8, 2005. The petitioner having obtained his degree prior to coming into force of the 2005 Act and the said Act having no retrospective operation cannot be applied in case of such an incumbent has been held by this Court earlier, Mr. Hossain has stated. He has referred to the following two judgments:-

- i. ***State of West Bengal Vs. Chandra Bhusan Dwivedi reported in 2019 (3) CHN (Cal) 221;***
- ii. ***AST 117 of 2014 The State of West Bengal & Ors. vs. Satyabrata Mahapatra & Ors. order dated 13.09.2023.***

4. The State is represented by Mr. Chattopadhyay.

5. The writ petitioner was issued the certificate in Ph.D degree course, on May 8, 2005. He, having considered himself to be governed under the provisions of ROPA 1998, has claimed the benefit of two additional increments, pursuant to his such degree, as per provision of Rule 12(5) of the ROPA 1998.

6. His prayer as above has been turned down by the respondent District Inspector of Schools (Secondary Education) Paschim Medinipur, by dint of the impugned

order dated May 17, 2010, and the reasons therefor are as follows inter alia that:

- Approval of appointment of the petitioner being on August 6, 1997, he would be governed under the ROPA 1998;
- In the year 2004-2005, the petitioner did not obtain any permission to enhance his qualification;
- After coming into force the West Bengal Schools (Control of Expenditure) Act, 2005, the petitioner was required to obtain permission of the District Inspector of Schools, but not complied with the said provision;
- Hence the petitioner would not be entitled to the benefit as claimed.

7. On the date of the petitioner being qualified with the Ph.D degree, that is on May 8, 2005, the West Bengal Schools (Control of Expenditure) Act, 2005, had not come into effect. The same had come into effect only from August 19, 2005. The said Act has no retrospective operation. Thus, as on the date of the petitioner's obtaining qualification as above, the Act of 2005 cannot be made applicable.

8. As on the relevant date, that is, the date of the petitioner's obtaining certificate in Ph.D degree on May 8, 2005, he should have been considered to be governed under the ROPA Rules 1998, which ultimately ceased to exist subsequently with effect from January 1, 2006. Therefore

the petitioner would be entitled to the benefits under the Clause 12(5) of the ROPA Rules 1998, which may be quoted as hereinbelow, for the benefit of discussions:

“12. Career Advancement Scheme and Related Issues

(5) Secondary teachers/Headmasters/Headmistresses with Doctorate degree in the subject taught or in an allied subject shall get two additional increments from the date of the convocation on which such degree is awarded: Provided that those who obtained this degree prior to the date of coming over to the revised scale shall get two additional increments from the date with effect from which they elect to draw pay in the revised scales, provided that they have not already got such additional increments in the earlier pay-revision and provided further that in the later case, pay should be fixed at least at the third stage of the relevant scale of pay”.

9. The idea that the petitioner should have obtained prior permission, possibly emanates from the notifications published subsequent to coming into force of the Act of 2005, as the Rule applicable to the writ petitioner, that is ROPA Rules 1998, would not provide any such condition, in order to be eligible for the benefits as per Rule 12(5) thereunder.
10. Therefore, the impugned order, in its entirety, is the result of gross non application of mind by the respondent No.3/District Inspector of Schools (Secondary Education)

Paschim Medinipur. On one hand the said respondent No.3 finds that the petitioner would be governed by the ROPA 1998. On the same breath, the said authority has applied the Act of 2005 in case of the writ petitioner, without considering that the same would not have any retrospective operation. At the time of recording its finding that the petitioner should have obtained permission of the authority, the said respondent is at a fix and absolutely clueless, that the petitioner could not be held to require permission under the governing Rules.

11. In the case of **Chandra Bhushan Dwivedi (supra)**, the Hon'ble Division Bench of this Court has held that the petitioner having obtained the Ph.D degree, during the course of subsistence of ROPA 1998, would be governed by the Clause 12(3) thereof, to be entitled to the benefit of two additional increments.
12. In AST 117/2014, order dated September 13, 2023, the Hon'ble Division Bench has upheld the Single Bench's order in W.P. No. 4532 (w) of 2012 and held that the applicability of the ROPA Rules 1998, would not change or cease to operate even after coming into force of the Act of 2005, in so far as the said Act has not imposed any ban or bar as regards application of provisions under the ROPA 1998, as a consequence of the Doctoral Degree having been acquired by any teacher. The Court has rather held that the Act of 2005 having not made any provisions for the Ph.D degree holders, the relevant provisions under the ROPA 1998, would continue to operate without any discrimination being made. Least is required to be

mentioned about the necessity to obtain permission by the petitioner, which is, however, not provided under any of the provisions of the Rules, applicable to the petitioner, as mentioned above.

13. Hence, considering all as above, the impugned order dated May 17, 2010, appears to be unfounded and illegal, being *de hors* the settled law.

14. Let this writ petition being WPA 4632 of 2016 be allowed with the directions as follows:-

- i. The impugned order dated May 17, 2010, by the District Inspector of Schools (SE), Paschim Medinipur, is set aside.
- ii. Let the District Inspector of Schools (SE), Paschim Medinipur, grant incremental benefit in accordance with the ROPA 1998, to the writ petitioner with effect from the date of his Ph.D degree, that is, w.e.f May 8, 2005.
- iii. Let re-fixation of salary be immediately made and arrear salary, if any, be disbursed to the writ petitioner forthwith.

15. The entire exercise as above, should be concluded by the respondent District Inspector of Schools (SE), Paschim Medinipur, within a period of six weeks from the date of communication of copy of this order.

16. The writ petition is disposed of.

- 17.** Since no affidavit has been called for, allegations made in the writ petition, shall be deemed to have not admitted by the respondents.
- 18.** Urgent certified photocopy of this order, if applied for, shall be supplied to the parties, on compliance of all necessary formalities.

(Rai Chattopadhyay, J.)