

15
07.05.2025
Court No. 25
D.Hira

**WPA 9993 of 2021
With
CAN 1 of 2023**

**Santi Nath Dolui
Vs.
State of West Bengal & Ors.**

**Mr. Kanailal Samanta.
... for the petitioner**

**Mr. Supriyo Chattopadhyay, Id. A.G.P.,
Ms. Sayantanee Bhattacharjee.
... for the State**

1. The grievance of the writ petitioner is that the additional 3% (three) increment earlier granted to him, pursuant to Memo no. 1003-SE(S)/5P-129/12 dated December 4, 2014 has been withdrawn at a later stage, pursuant to a subsequent Memo No. 292-SL/5S-294/12 dated March 22, 2017.
2. Mr. Kanailal Samanta, learned counsel appearing for the petitioner submits that the Court has earlier decided upon the issue, thereby setting aside the memo dated March 22, 2017 and granting relief to the writ petitioner.
3. In this regard, he has referred to an order of this Court in W.P. No. 18216 (W) of 2019 dated June 21, 2024.
4. Government Order No. 1003-SE(S)/5P-129/12 dated 04.12.2014/18.05.2015 has provided as follows:-

“With reference to the above subject and in respect of his above query, I am directed to say that the Commissioner of School Education in his letter No. 1785-GA dated 14.08.2012 forwarded one query in the instance of Bharat Chandra Kar, Headmaster of Tajpur High School, Dist, Purba Meninipur, where the school was upgraded to Higher Secondary school in

the session 2009-10 vide order No DS(A) SD/299/Recog/09 dated 22.08.2009.

The question was raised that in G.O. No. 30-SE(B) dt. 10.02.2010 and in G.O. No. 181-SE(B) dt. 08.10.2009 it was stated that the school upgraded in between 01.01.2006 and 27.02.2009 (publication of ROPA) the Headmaster would be entitled additional increments from the date of such upgradation. But no clear instruction is given if the school upgraded after 27.02.2009.

It is seen from the case that the headmaster joined as Asstt. Teacher on 19.03.1987. He was appointed as Headmaster in Secondary school on 21.10.1997. he enjoyed scale of pay as the Headmaster. He opted for revised pay on 01.01.2006 and the school was upgraded to Higher Secondary on 1.07.2009.

As the cut of date has been fixed on which the order of ROPA was issued on 27.02.2009, all the benefits allowed before this date cannot be curtailed. Hence, it was decided that the additional increment will be added to the Basic Pay while fixing pay under ROPA, ie., the period of 01.01.2006 to 27.02.2009 is the period when the additional increment was allowed under ROPA 98 due to upgradation of the school.

In the instant case the Headmaster was enjoying Headmaster scale of pay which has been revised on the date of his option to come under the ROPA 2009 and after upgradation of the school he become entitled for benefits of a Headmaster of a Higher Secondary school under ROPA 2009. Hence, there was no necessity to explain the cases further for those cases where upgradation was made after 27.02.2009.

The Headmasters/mistress of the High Schools who has been appointed as HM in an upgraded (10+2) H.S. after 27.2.2009, will be entitled to get 3% increment and additional grade pay in pursuance to the order no 46-SE(B)/5B-1/09 dated 27.2.2009, clause 11 and order No. 181-SE(B) dated 8.10.2009.

Clarification is sent to the CSE for his consideration."

5. The subsequent memo no. 292-SL/5S-294/12 dated March 22, 2017, has clarified that the pay of Headmasters of the Higher Secondary Schools upgraded after February 27, 2009, shall not include 3% additional increment over and above the additional grade pay of Rs.200/-. It has further been clarified that according to ROPA-2009 for the Headmasters of the Higher Secondary Schools upgraded after February 27, 2009, the additional grade pay at the

rate of Rs.200/- shall only be payable and not any additional increment at the rate of 3%.

6. In the judgment of **Dibyendu Sundar Ray versus The State of West Bengal & Ors.** as referred to by the petitioner in this case, the Court has held that by issuance of the impugned memo dated March 22, 2017, the respondent authority has differentiated amongst the Headmaster to the school upgraded before and after February 27, 2009. The Court found that the differentiation as above not to be based on intelligible differentia and has amounted to creation of class within a class.
7. The law permits unequal treatment amongst the equals. However, the same should be founded on intelligible differentia, a conceivable reason which may justify such differentiation. In the present case, on the basis of a clarification given later on by the State it is perceived that grant of 3% additional increment to the Headmaster of a school is to acknowledge their additional service to the school as the administrative head thereof. It was however not comprehensible as to what makes the nature of duty of a Headmaster differentiable before and after the cut-off date, that is, February 27, 2009.
8. The facts of the instant case is similar to that as the Court held with in the case of **Dibyendu Sundar Ray (supra)**.
9. Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appearing for the respondent informs that the Hon'ble Coordinate Bench has also

been pleased to pass orders in the similar factual background, in favour of the petitioner on the basis of the reasons as above.

10. In the instant case, therefor, the Court finds no justifiable reason to differ from whatever has been settled by the Court's earlier order, on the basis of the factual background of the instant case.

11. Therefore, since after setting aside of the impugned memo dated March 22, 2017, the petitioner would be eligible for grant of 3% additional increment from an appropriate date and the present writ petition is thus, to be allowed.

12. The writ petition being WPA No. 9993 of 2021 is allowed with the directions as follows:-

(i). The writ petitioner shall be granted 3% additional increment along with grade pay of Rs.200/-, in terms of ROPA-2009 with effect from the date of upgradation of a school or the date of his appointment as the Headmaster in the upgraded school, which is, later;

(ii). The respondent District Inspector of Schools, Secondary Education, Paschim Medinipur/respondent no. 3 shall calculate arrear amount of pay of the writ petitioner and take steps for immediate disbursement thereof to the writ petitioner;

(iii). The entire exercise as above should be concluded by the respondent no. 3 within a period of four weeks from the date of communication of copy of this order.

13. Since no affidavit is invited, the allegations contained in the petition are deemed to have been

denied by the respondents including the private respondents.

14. With the above observations and directions, the writ petition being No WPA 9993 of 2021 is disposed of, along with the pending applications, if any.

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

(Rai Chattopadhyay, J.)