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2025

Ct. No. 08

Ab

FMA 981 of 2022
IA No. CAN 1 of 2022

Samarendranath Adak

Vs.

The State of West Bengal and others.

Mr. Kanailal Samanta.

... for the appellant.

Mr. Supriyo Chattopadhyay,
Ms. Iti Dutta.

... for the State.

The writ petitioner/appellant was enjoying a 3% increment in addition to additional grade pay as a Headmaster of the Higher Secondary School upgraded after 27th February 2009. Subsequently, a Memo being no. 292-SL/5S-294/12 dated 22nd March 2017 was issued by the School Education Department withdrawing the said additional increment, as it is not in accordance with the ROPA-2009. By virtue of the said Memo, the earlier Memo conferring such right into the Headmaster dated 4th December 2014 was withdrawn.

The writ petitioner/appellant challenged the said Memo dated 22nd March 2017 by filing a writ petition on several grounds including that the same is unconscionable, unreasonable and is issued in colorable exercise of powers conferred upon the authority. The Single Bench rejected the writ petition on solitary ground that the challenge to the said Memo is restricted to its operation. In other words, it is sought to be contended that whether the Memo will have a retrospective or prospective operation cannot be a ground to quash and set aside the said Memo.

Our attention is drawn to the writ petition and we do not find that the challenge to the same Memo is restricted upon the aforesaid ground alone. The

appellant has averred that the said Memo cannot operate retrospectively but has challenged the said Memo on other ground as well. In course of hearing of the instant appeal, our attention is drawn to the fact that the identical writ petitions at the behest of the other Headmasters have been disposed of by this Court whereby and whereunder the said Memo dated 22nd March 2017 has been quashed and set aside.

We find that in *Dibyendu Sundar Ray vs. State of West Bengal and others* (WP 18216(W) of 2019), the writ petition was disposed of on 21st June 2024 by quashing the said Memo dated 22nd March 2017 and extending the relief of 3% additional increment as the said writ petitioner was availing prior to the Memo came into existence.

The similarly circumstanced persons cannot be treated differently. The equality amongst the equal is the hallmark of Constitutional ethos and, therefore, the moment the said Memo was quashed and set aside, the authorities cannot treat the same alive so far as the appellant is concerned, as the writ petition filed by the appellant was dismissed by the Single Bench. The judgment quashing the said Memo operates in rem and not in personem and, therefore, the benefit of the said judgment should be extended to the appellant as well.

In view of the fact that the said Memo has already been quashed and set aside in another proceeding, the impugned judgment cannot be sustained and the same is hereby set aside. As a consequence whereof the writ petition is disposed of directing the respondents to grant 3% additional increment along with grade pay of Rs. 200/- in terms of the ROPA-2009 with effect from the up gradation of the school or date of his appointment as Headmaster, whichever is earlier.

With these observations, the appeal and the

connected application being CAN 1 of 2022 are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)