

28.03.2025
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Ct.No.654
sdas

WPA 21513 of 2024

Mainul Islam & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Sk. Imtiajuddin
...for the petitioners

Mr. Suman Dey
Ms. Indrani Nandi
... for the State

The present writ petition has been preferred primarily for the following reliefs :

“a. A Writ of and/or in the nature of mandamus by commanding the concerned respondents no. 1, 3, 4 and 5 herein to cancel and/or withdraw and/or rescind and/or to remove and/or recall and/or suitably amend and not to give any effect and/or further effect to the impugned Memorandum issued vide No. 292-SL/5S-294/12 dated March 22, 2017 issued in reference with Memorandum issued vide No. 620-GA/1C-LS/252/12 dated May 6, 2016 forthwith.”

Additionally, the petitioners pray for a direction to the concerned respondent to grant them the benefit of an increment at the rate of 3% of the existing basic pay, in addition to the Grade Pay and any additional Grade Pay, as admissible under the ROPA Rules, 2009.

The petitioners were appointed as Headmasters in various High Madrasahs in the Murshidabad District after 27th February, 2009. As they were tasked with additional duties, they were granted an additional Grade Pay of Rs. 2,00/- in accordance with the ROPA Rules, 2009. Following the promulgation of the ROPA, 2019, they were also granted an increment of 3% of their basic pay, in addition to the Grade Pay.

However, the respondents later determined that granting the 3% increment in addition to the Rs. 2,000/- additional Grade Pay to Headmasters of the Higher Secondary Schools upgrade after 27.02.2009 was improper. Consequently, through a Notification (292-SL/5S-294/12) dated 22nd March, 2017, the concerned department clarified that it did not propose the grant of any additional increment for the Headmasters of Higher Secondary Schools upgraded after 27th February, 2009. As a result, the Memorandum dated 4th December, 2014, which had granted the additional increment of 3%, was effectively withdrawn

Mr. Bari, the learned advocate representing the petitioners, draws my attention to decisions rendered by a co-ordinate Bench of this Court in the writ petition WPA 23867 of 2017 (*Kanchiram Sarkar & Ors. vs. State of West Bengal & Ors.*) and also in WP 15523 of 2019 (*Md. Kabir & Ors. Vs. The State of West Bengal & Ors.*), in which the Notification dated 22nd March,

2017, issued by the Joint Secretary, School Education Department, was set aside. He further submits that the petitioners are currently receiving additional increments at the rate of 3% of their basic pay. Additionally, it is pointed out that petitioner no. 3 is approaching retirement, and if this issue is not resolved promptly, it may create an obstruction in the timely release of his pensionary benefits. Mr. Bari asserts that the State has acted upon the decision rendered in case of *Kanchiram Sarkar & Ors. (supra)*.

Mr. Dey, the learned advocate representing the State, refers to a decision of another co-ordinate Bench passed in WPA 5282 of 2025 and submits that a similar issue was referred to the Commissioner of School Education by an order dated 24th March, 2025. The order directed the Commissioner to make a decision in accordance with the ratio of the judgment delivered by the Hon'ble Division Bench in the case of *The State of West Bengal & Anr. Vs. Sri Kali Sadhan Bhattacharjee @ Bhattacharyya & Ors.*, reported in 2024 Law Suit (Cal.) 1458, as well as the ratio from the judgment in *Subir Kumar Ghosh vs. The State of West Bengal & Ors.*, which was cited in that decision.

In the decision of *Kanchiram Sarkar & Ors. (supra)*, a co-ordinate Bench referred to an order passed by the Hon'ble Division Bench of this Court in *Satyajit Ghosh vs. State of West Bengal*. From the quoted portion of the decision in *Satyajit Ghosh*

(*supra*), it appears that the Hon'ble Division Bench did not find any intelligible differentia between the schools upgraded prior to 2009 and those upgraded after February 2009. In light of this, the Court finds that the differentiation has led to unjust discrimination.

I have been informed that no intra-Court appeal has been preferred challenging the order passed in the writ petition, WPA 23867. However, it remains unclear whether the observations and order made by the Hon'ble Division Bench in the case of *Satyajit Ghosh (supra)* have been challenged.

Therefore, the decision rendered by the Hon'ble Division Bench in *Satyajit Ghosh (supra)*, as well as the decisions of the co-ordinate Bench in *Kanchiram Sarkar & Ors. (supra)* and *Md. Kabir (supra)*, have attained finality. Furthermore, the stance taken by the State indicates that it has accepted the proposition laid down in the aforementioned decisions, in which the notification dated 22.03.2013 was set aside. Needless to observe that unless the decisions in *Kanchiram Sarkar & Ors. (supra)* and *Satyajit Ghosh (supra)* are overturned by a higher forum, the State will not be in a position to deny the payment of the additional increment at the rate of 3% of the basic pay, in addition to the Grade Pay, to the petitioners and other similarly situated candidates. However, since the State has not ceased extending such benefits to the petitioners, I am not inclined to pass any order in this writ petition.

Accordingly, the same is disposed of without any further order. There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)