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2025

WEDNESDAY

Court : CB-07
Item : DL-08
Bench : SINGLE
Matter : WPA
Status : DO
ID : 266057
AR : NANDY

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA30531 OF 2024

RAJENDRA PRASAD GHOSH
VS.

THE STATE OF WEST BENGAL& ORS.

MR. MD. MANUWAR ALI, ADVOCATE

.....for the Petitioner

MR. SALAUDDIN MOLLAH, ADVOCATE

.....for the State

1. The instant writ petition is yet another instance of the inconsistent stand taken by the State regarding the grant of additional benefits to the Headmasters of upgraded schools.
2. Initially, the Education Department decided to extend such benefits to the Headmasters of all upgraded schools, but subsequently revised its position and restricted the benefit to Headmasters of schools upgraded after a particular cut-off date. This change in stance led to disputes concerning the grant of retirement benefits to those Headmasters. The present *lis* is merely an offshoot of that dispute, which has entered the extraordinary jurisdiction of this Court by preferring this writ petition filed by a retired Headmaster, primarily seeking a direction upon the concerned authority to refund an amount of Rs.1,37,693/- along with accrued interest, re-fix his pension, and release other consequential benefits.
3. The petitioner commenced his service career as an Assistant Teacher at Rangabelia High School (H.S.) on 31.03.1986. Thereafter, on 31.03.2006 he assumed the charge of Headmaster at BangaRamendraSundariVidyapith (H.S.), which falls under the territorial jurisdiction of the District Inspector of Schools (Secondary Education), Murshidabad. From the said School he retired on

- 31.12.2020 upon attaining the age of superannuation.
4. Taking into account the rise in prices and other relevant factors, the Government periodically introduced Rules for Revision of Pay. In 2009, the Revision of Pay and Allowances (in short, ROPA) Rules, 2009 were framed, incorporating a provision to implement the State's policy decision to grant an additional 3% increment to Headmasters and Headmistresses in recognition of the added administrative responsibilities they shoulder in managing schools.
 5. In accordance with the ROPA 2009, the petitioner's basic pay was fixed at Rs.29,910/- as on 01.07.2006, and this fixation was duly approved by the District Inspector of Schools, the competent authority. The petitioner continued to avail this benefit, and after successive revisions in pay, his basic pay was revised to Rs.1,07,500/- as on 01.07.2020.
 6. At the end of his service career, when the petitioner's pension papers were forwarded to the competent authority for processing and release of pension benefits, an objection was raised. It was alleged that the petitioner's pay had been erroneously fixed, and that he had been unlawfully granted a basic pay of Rs.37,510/-. The authority based this conclusion on the claim that the petitioner was not entitled to the 3% additional increment, as the school where he served as Headmaster had already been upgraded to the Higher Secondary level prior to 26.08.2015. Despite having been allowed to retire while drawing the said benefit, the authority subsequently determined that the petitioner had overdrawn a total amount of Rs.1,37,693/-. He was then directed to deposit the said amount as a precondition for the release of his pension.

7. Faced with these compelling circumstances, the petitioner deposited the said amount, following which his pension was released, albeit at a reduced rate. Consequently, the petitioner has been constrained to approach this Court by filing the present writ petition.
8. Mr. Ali, learned Advocate appearing for the petitioner, submits that although the State authorities initially decided to extend the benefit of a 3% additional increment in basic pay to all Headmasters, they subsequently revised their decision, restricting the benefit only to those Headmasters serving in schools that were upgraded after 27.02.2009.
9. Referring to an unreported decision of the Hon'ble Division Bench of this Court rendered in MAT 6 of 2020 with MAT 7 of 2020 and two other unreported decisions of a Coordinate Bench of this Court, Mr. Ali further submits that this Court has consistently held that there is no justification for creating a classification or distinction between Headmasters of schools upgraded prior to 27.02.2009 and those upgraded thereafter. Consequently, the circular dated 22.03.2017 was quashed by a Coordinate Bench of this Court. He further contends that the Court has repeatedly held that the withdrawal of such benefit and the subsequent demand for refund of a lump sum amount from Headmasters after their retirement is impermissible and legally unsustainable. In these circumstances, he prays for an appropriate direction from this Court.
10. Mr. NureZaman, learned advocate appearing for the State, defended the State's action by contending that the petitioner's basic pay had been erroneously fixed at Rs. 37,510/- resulting in an overdrawal of Rs. 1,37,693/- over time. This discrepancy was detected only when the petitioner's pension papers were

processed. Accordingly, the State rightly directed the petitioner to refund the said amount. He submits that, in view of these facts, there is no scope for interference by this Court in the present writ petition.

11. Heard the learned Advocates. Perused the materials-on-record placed before me.
12. Admittedly, clause 11 of ROPA 2009 and the notification dated 08.10.2009 provides that, in view of the additional responsibilities undertaken by Headmasters and Headmistresses in managing the administration of schools, the State decided to grant them one additional increment @ 3% of their basic pay. As submitted on behalf of the petitioner, the provisions of ROPA 2009 were given effect from 27.02.2009.
13. Subsequently, the State clarified its stance through the issuance of a memorandum dated 10.02.2010, which stated that if a school was upgraded to the Higher Secondary level between 01.01.2006 and 27.02.2009, the Headmasters would be entitled to two additional increments from the date of such upgradation, in accordance with the provisions of the unrevised scale of pay.
14. Subsequently, another memorandum dated 04.12.2014 was issued, which specified that Headmasters and Headmistresses of high schools upgraded to the 10+2 Higher Secondary category after 27.02.2009 would be entitled to receive a 3% additional grade pay in accordance with the order dated 27.02.2009.
15. Subsequently, a Notification No. 292-SL/55-294/12 dated 22.03.2017 was issued, which conveyed the State's position that no such benefit, i.e., the 3% additional increment on basic pay, would be granted to Headmasters of schools that were upgraded after

- 27.02.2009. By memorandum dated 22.03.2017, the earlier notification dated 04.12.2014 was withdrawn.
16. A Hon'ble Division Bench led by the Hon'ble Justice Soumen Sen got occasion to deal with the issue in two Intra-Court Appeals, MAT 6 of 2020 and MAT 7 of 2020. The Hon'ble Bench formed a *prima facie* opinion that there was no intelligible differentia between the schools which have been upgraded prior to 27.02.2009 and those schools that were upgraded after that date. However, as the notification 22.03.2017 was not challenged in that action, the Appeal were disposed of by granting liberty to the petitioners to file comprehensive writ petitions challenging the Notification dated 22.03.2017.
17. Accordingly, two separate writ petitions, WPA 9676 of 2021 and WPA 9577 of 2021 were filed, and a Coordinate Bench of this Court held that the classification made in the circular could not be justified, as it was not based on any intelligible differentia. Consequently, the Bench set aside the circular dated 22.03.2017.
18. Another Division Bench, led by the Hon'ble Justice Harish Tandon (as His Lordship then was), also had occasion to address this issue in MAT 1002 of 2022. The Hon'ble Division Bench concluded that the classification could not be sustained and directed that the amount already deducted from the appellant's retirement benefits be refunded.
19. In another decision rendered by a Coordinate Bench in W.P. 7521 (W) of 2019, the State was directed to refund the amount it had compelled a similarly situated candidate to deposit as a precondition for receiving pension and other retirement benefits.
20. Admittedly, the petitioner was appointed as Headmaster in a Secondary School on 31.03.2006 but the School was upgraded school on 26.08.2015. In

accordance with the applicable rules and notifications, the petitioner was granted a 3% additional increment on his basic pay, and his basic pay was revised accordingly. At that time, the State approved the revision of the petitioner's pay, including the 3% additional benefit. However, following a change in the stance of the State, the grant of such a benefit was later deemed illegal.

21. As on date, the Notification dated 22.03.2017 has been set aside and this Court has consistently held that there was no justification or intelligible differentia in classifying Headmasters of schools upgraded prior to 27.02.2009 and those upgraded thereafter, and that the State has not challenged this decision before any appropriate authority, thereby allowing it to attain finality, that decision is now binding on the State. Furthermore, the Principal Secretary, School Education Department, while passing a reasoned order in compliance with the direction issued in WPA 24816 of 2022, concluded that until the ambiguity prevailing in this regard is finally resolved by the Government as a matter of policy, the petitioner therein would be allowed to continue availing the benefit.
22. Therefore, based on the proposition set in the decisions referred to in the preceding paragraphs and upon perusal of materials on record, I am of the opinion that the action of requiring the petitioner to deposit a sum of Rs. 1,37,693/- as a precondition for the release of his retirement benefits and pension is illegal.
23. Consequently, the writ-petition being **WPA 30531 of 2024** is **allowed**.
24. Respondent Nos. 4 & 6 shall take all necessary steps to return that amount being Rs.1,37,693/-.
25. The Respondent no. 4 to re-fix the last basic pay of

the petitioner by giving effect 3% incremental benefit and the petitioner's pension including basic pension shall be revised and/or re-fixed based on such fixation of basic pay and the benefit of such revision and/or re-fixation shall be extended along with the release of all consequential benefits.

26. The entire exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

(PARTHA SARATHI CHATTERJEE, J.)