

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15301 of 2022

Asit Kumar Sen
v.
The State of West Bengal & Ors.

Mr. Avishek Prasad
Mr. Sourodeep Singha
... For the petitioner

Mr. Swapan Kumar Dutta, Ld. GP
Mr. Rajat Dutta
... For the State

1. Affidavit of service filed in Court is taken on record.

2. The petitioner is aggrieved by the objection raised by the District Inspector of Schools (Secondary Education), Kolkata on 26th August, 2021 objecting to the petitioner's prayer for approval of two additional increments on acquiring Ph.D. degree in Bengali.

3. The grounds of objection as appearing at page 33 of the writ petition (Annexure P-4) is as follows:
(1) 'copy approval of appointment letter in favour of Asit Kumar Sen' and (2) 'As per Expenditure Act, 2005 the concerned teacher may not accorded Ph.D allowances (two increments)'.

4. The petitioner has annexed the copy of the approval of his appointment issued by the District

Inspector of Schools (Secondary Education), Kolkata on 8th September 1997. The petitioner's appointment stood approved with effect from 9th October, 1996. He was appointed with B.A. Degree (Honours in Bengali) and he was teaching the subject Bengali.

5. The petitioner thereafter enhanced his qualification and attained Post Graduate Degree and later on he obtained the Ph.D. degree. Though the petitioner was accorded higher scale of pay on account of acquiring post graduate degree, but the prayer for grant of two additional increments upon acquiring Ph.D. degree has been objected to by the concerned District Inspector of Schools.

6. Learned advocate representing the petitioner refers to the Government Order dated 5th January, 2012 issued by the Joint Secretary, School Education Department, Secondary Branch, Government of West Bengal, wherein a particular cut-off date was published for providing the two additional increments.

7. The issue as to whether a cut-off date can be fixed for providing additional increments to Ph.D. degree holders came up for consideration before this Court in the matter of **Chowdhury Moniruzzaman v. State of West Bengal** reported in **(2012) 5 CHN 598** wherein the Court was pleased to hold that the Government Order dated 5th January, 2012 imposing

ban on grant of incremental benefits to teachers acquiring PH.D. decree after 18th August, 2005, i.e., the date before publication of the Control of Expenditure Act, 2005 cannot be retained on record.

8. The Court was pleaded to quash the Government Order dated 5th January, 2012. The Court was also pleased to direct the authority to grant two additional increments with effect from the date when such doctoral decree was awarded to him in the convocation.

9. While deciding the aforesaid issue, the Court observed that the authority cannot create sub-classification amongst the teachers who acquired Ph.D. decree prior to the cut-off date and the teachers who acquired the decree after the cut-off date. The same is not only arbitrary and irrational but also does not have any nexus with the object to be achieved.

10. The petitioner also relies on the order dated 9th July, 2013 passed by the Court in **WP No.22506 (W) of 2012 (Sanku Nath Pramanik v. State of West Bengal & Ors.)** wherein the Court was pleased to follow the law laid down in the matter of Chowdhury Moniruzzaman (supra) and was further pleased to direct grant of interest on the arrears due to the said petitioner and also imposed costs upon the authorities.

11. Prayer has been made by the petitioner to make the necessary calculation and disburse the

amount on account of two additional increments at an early date as the petitioner is due to retire from service in December 2026.

12. The aforesaid submission and prayer of the petitioner has been opposed by the learned advocate representing the State respondents. Learned advocate for the State, however, contends that apart from the Control of Expenditure Act, 2005, provisions of ROPA 1998 and ROPA 2009 ought to have been taken into consideration by the authority for deciding the prayer of the petitioner for grant of additional increments.

13. Learned Government Pleader relies on the order passed by the Hon'ble Division Bench on **24th April, 2019** in **MAT 961 of 2017 with CAN 6944 of 2018 with CAN 6286 of 2017 (The State of West Bengal & Ors. v. Chandra Bhusan Dwivedi & Anr.)** wherein the Hon'ble Division Bench held that as the appellant sought for the additional increments relying on ROPA 1998 which ceased to exist when ROPA 2009 came into operation, accordingly, the additional increments cannot be paid to the appellant.

14. Prayer has been made to dismiss the instant writ petition.

15. I have heard the submissions made on behalf of both the parties and have perused the materials placed before the Court.

16. In Chandra Bhusan Dwivedi (supra), the date of seeking prior permission for pursuing Ph.D. degree is not mentioned. In the instant case, the petitioner obtained prior permission in pursuing Ph.D. degree when ROPA 1998 was in force. The petitioner may have obtained the decree later on, but the benefit ought to be allowed to the petitioner relying on the law which was prevailing on the day the petitioner started his doctoral course.

17. The submission of the State respondents that the authority ought to have taken additional grounds to reject the prayer of the petitioner cannot be accepted by the Court. It is settled law that the authority cannot raise new grounds in support of the impugned order objecting to the prayer of the petitioner. The authorities ought to restrict their submission to the grounds which are already impugned in the writ petition.

18. The respondents have not filed any affidavit in the matter. The matter is pending consideration before the Court since July, 2022.

19. In view of the above, as it appears that law in this regard has already been settled by the Court in Sanku Nath Pramanik (supra), accordingly, similar direction is being passed herein.

20. The objections dated 26th August, 2021 raised by the District Inspector of Schools (Secondary Education), Kolkata objecting to the grant of two additional increments to the petitioner stands set aside.

21. The District Inspector of Schools (Secondary Education), Kolkata is directed to take steps to accord two additional increments to the petitioner on account of acquiring his Ph.D. decree on and from the date of convocation of the Ph.D. decree on the petitioner, i.e., on 9th December, 2015. Necessary calculation shall be made by the authority at the earliest and the additional increments shall be disbursed positively within a period of sixteen weeks from the date of communication of this order.

22. The writ petition stands disposed of.

23. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

24. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Amrita Sinha, J.)