

09.07.2024
Sn/sl.15
Ct. no.25

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)**

WPA 24313 of 2019

**Pranab Bar
Vs.
The State of West Bengal & Ors.**

Mr. Sayan De
Mr. Kaustav Shome
Mr. Sayan Kanjilal
Mr. Abhijit Mondal
Mr. R. Chakraborty
..for the petitioner
Mr. Mrinal Kanti Ghosh
Mr. Kartick Chandra Kapas
..for the State

The reasoned order of the District Inspector of Schools (Secondary Education), Paschim Medinipur, (hereafter referred to as the DI), dated November 28, 2019 is under challenge in this writ petition.

In the same, the respondent/DI has held that the petitioner is allowed post graduate scale of pay with effect from 09.04.2006. His revised basic pay is Rs.18520/- as on 01.01.2006 in pay band 4 with grade pay 4700/-. That, on 09.04.2006 his revised basic pay stands at Rs.18620/-, in pay band 4 with grade pay 4800/-. He was not allowed periodical increment on 01.07.2006 as the difference between the two dates, that is, 09.04.2006 and 01.07.2006 is less than 6 months. It has been held that the petitioner's next increment falls on the next year,

that is 01.07.2007 and the basic pay is Rs.19180/-(Band pay Rs.14380/- + Grade Pay Rs.4800/-).

DI intended to rectify its earlier letter dated 22.12.2017, in this regard. It has recorded its finding that the petitioner's claim for additional increment was beyond ROPA 2009 Rules. Thus such claim was rejected by the DI, in the said impugned order.

The impugned order has been a result of the directions passed by this Court in WP No.12011(w) of 2018, vide its order dated 18.04.2019.

The Court directed the DI to recalculate the basic pay of the petitioner in terms of Note 1 of Clause 11 of the Memo No.46-SE(B) dated February 27, 2009, that is ROPA 2009.

Let the same be quoted here :

“ 11. Fixation of pay on promotion on or after 1st day of January, 2006 -

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Note 1 - In case the employee opts to get his pay fixed from his date of next increment, then, on the date of promotion, pay in the pay band shall continue to be unchanged, but grade pay of the higher post shall be granted. Further re-fixation shall be done on the date of his next increment, i.e., 1st day of July. On that day, such an employee shall be granted to increments; one annual increment and the second on account of promotion. While computing these two increments, basic pay prior to the date of promotion and grade pay corresponding to such pay in the pay band shall be taken into account. After allowing such increments, grade pay of the higher post/skill shall be allowed.”

The DI, in the said impugned order has held that, allowing post graduate scale of pay, is not a promotional benefit granted to the petitioner. Accordingly calculation

is made in the said impugned order, not in terms of Note 1 of Clause 11 of ROPA 2009.

It is, however, in derogation of the directions of this Court, in WP No.12011(w) of 2018, vide order dated 18.04.2019. The Court's order is mentioned above. The same has reached finality having not been challenged. On the other hand, it is evident and explicit that the DI has not followed the same in its order dated 28.11.2019 on the ground that fixation of post graduate scale of pay for the petitioner, would not be a promotional benefit, to attract provision under Note 1, of Clause 11 of the ROPA 2009.

Therefore, there is no compliance by the DI, as to this Court's order dated 18.04.2019 in WP No.12011(w) of 2018. As stated earlier, the said order having reached its finality, has to be complied in its letters and spirit. Otherwise, the order of the DI, as impugned in this petition, would not be maintainable.

On the said premise, the impugned order dated 28.11.2019 of the DI, is set aside.

The respondent No.2/Commissioner of Secondary Education, is directed to consider the petitioners prayer for grant of higher pay scale, in terms of the ROPA 2009, specifically, as directed by this Court in WP No.12011(w) of 2018, vide order dated 18.04.2019.

The said respondent would be at liberty to come to an appropriate and reasoned decision reduced to a

written order, after hearing the petitioner, as regards his grievances. For the purpose of hearing, the writ petitioner would be at liberty to produce the proposed fixation of basic pay, as proposed by the school authority and annexed with this writ petition.

The respondent No 2, shall record reasons of its decision, after duly dealing with the ROPA Rules 2009 and the proposed fixation (if produced by the petitioner).

The entire exercise as above, shall be completed by the respondent No.2, within a period of six weeks from the date of communication of copy of this order.

The writ petition being **WPA 24313 of 2019** is disposed of with the directions, as above.

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

(Rai Chattopadhyay, J.)