
(2019) 09 CAL CK 0182

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 29710 (W) Of 2013

Pampa Das

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

West Bengal Services (Revision Of Pay And Allowance) Rules. 1998 — Rule 12(5)

Citation : (2019) 09 CAL CK 0182

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Lina Mazumder, Pinaki Dhole, Ananya Neogi

Judgement

Shampa Sarkar, J

This writ petition has been filed challenging the rejection of the prayer of the petitioner for two additional increments on attaining the Ph.D. degree which was claimed in terms of Clause 16(5) of G.O. No.33? Edn.(B) dated March 7, 1990 and Clause 12(5) of G.O. No.25?SE(B)/IM? 102/98 dated February 12, 1999. The District Inspector of Schools (Secondary Education), Cooch Behar, by an order dated August 19, 2013, rejected the claim of the petitioner on the ground that two additional increments for the Ph.D. degree attained by the petitioner could not be granted in view of the provisions of G.O. No.46?SE(B)/5B?1/2009 dated February 27, 2009.

It is the contention of the petitioner that an Hon'ble Division Bench of this Court answered a reference on a similar point and had held that in view of the provisions contained in Clause 12(5) of G.O. No.25? SE(B)/IM?102/98 dated February 12, 1999, a person who had acquired a Ph.D. degree prior to coming into force of G.O. No.46?SE(B)/5B?1/2009 dated February 27, 2009 was entitled to two additional increments from the date when the provisional certificate was issued. The decision was rendered by the Hon'ble Division Bench in the matter of Anupam Samanta vs. State of West Bengal & Ors. (In Re: W.P. No.25103 (W) of

2012). For convenience the relevant portion of the order is quoted below:

"Let us now answer the questions formulated by the learned Single Judge one by one.

With regard to the question no.1 formulated by His Lordship as mentioned above, we, by following the same analogy as mentioned hereinabove, hold that in view of the fact, the petitioner, in fact, acquired such Doctorate degree on the date when the provisional certificate was issued to him i.e. on 18th May, 2005 the provision contained in ROPA 2009 cannot stand in the way in grant of the incremental benefit to the petitioner for his Ph.D. Degree as ROPA 2009 came into effect from 1st January, 2006 i.e. after the date when, in fact, the writ petitioner acquired the Ph.D. degree.

Thus, we hold that introduction of ROPA in 2009 with effect from 1st January, 2006 and acceptance of the benefit thereof by the petitioner does not prevent him from claiming higher scale of pay for his Ph.D. degree which, in fact, was acquired by him on 18th May, 2005 when provisional certificate was given to him, notwithstanding the fact that convocation was held on 3rd March, 2006 when the final certificate was given to him.

Be it mentioned here that if somebody acquires Ph.D. Degree on 3rd March, 2006 he is not entitled to get the incremental benefits under ROPA, 2009 which is silent about grant of such benefit to any teacher acquiring Ph.D. Degree under the said ROPA which came into effect on 1st January, 2006.

We make it clear that since the petitioner, in fact, acquired Ph.D. Degree on 18th May, 2005, i.e. prior to 2009 ROPA came into effect, his claim cannot be considered in the light of ROPA, 2009.

With regard to the question no. 2 which was formulated by His Lordship as mentioned above, we hold that ROPA 1998 was the relevant provision which was in operation at the time when the petitioner acquired the Ph.D. Degree. ROPA 1998 came into effect from 1st January, 1996. ROPA 1998 was replaced by ROPA 2009. ROPA 2009 came into effect from 1st January, 2006. ROPA 1998 remained effective up to 31st December, 2005.

Since we have held that the petitioner, in fact, acquired the Ph.D. degree on 18th May, 2005; claim of the petitioner will be governed by the provision of ROPA 1998.

Rule 12(5) of ROPA 1998 is the relevant provision concerning the claim of the petitioner. Rule 12 (5) of ROPA 1998 runs as follows :?

"12(5). Secondary teachers Headmasters/ Headmistresses with Doctorate degree in the subject taught or in an allied subject shall get two additional increments from the date of the convocation of which such degree is awarded.

Provided that those who obtained this degree prior to the date of coming over to the revised scale shall get two additional increments from the date with effect

from which they elect to draw pay in the revised scales, provided that they have not already got such additional increments in the earlier pay? revision and provided further that in the later case, pay should be fixed at least at the third stage of the relevant scale of pay.

In view of the provision contained in Rule 12(5) of ROPA, 1998 as mentioned above, we are of the view that though the writ petitioner, in fact, acquired the Ph.D. degree on 18th May, 2005, he cannot claim the benefit of two additional increments from the date on which such provisional certificate was issued to him. In our view, the petitioner can claim such benefit of two additional increments from the date of convocation when such degree was awarded to him i.e. 3rd March, 2006, inasmuch as, his entitlement to get such benefit from the date of convocation is recognised under Rule 12(5) of ROPA 1998.

Thus, both the questions as referred to us, are answered by this Court accordingly."

According to the petitioner, as the degree was granted to the petitioner prior to coming into G.O. No.46?SE(B)/5B?1/2009 dated February 27, 2009, the petitioner was entitled to benefit of two additional increments in terms of Clause 12(5) of G.O. No.25?SE(B)/IM?102/98 dated February 12, 1999 as has been held by the Hon'ble Division Bench judgment of the above matter.

Mr. Dhole, learned Advocate appearing on behalf of the State? respondents, produces a decision of another Hon'ble Division Bench of this Court in the matter of The State of West Bengal & Ors. vs. Chandra Bhusan Dwivedi & Anr. (In Re: MAT 961 of 2017). Mr. Dhole relies on the observation of the Court that once G.O. No.46?SE(B)/5B?1/2009 dated February 27, 2009 had come into force Clause 12(5) of G.O. No.25? SE(B)/IM?102/98 dated February 12, 1999 had ceased to exist with the effect from January 1, 2006. As such, in this case, as the convocation of the petitioner was held after January 1, 2006, the petitioner was not entitled to the benefit of G.O. No.25?SE(B)/IM?102/98 dated February 12, 1999. For convenience the relevant portion of the above judgment is quoted below:

"The petitioner was pressing his claim on the basis of Rule 12(5) of ROPA 1998. All that the petitioner is required to satisfy is that that clause had made him entitled to ask for two additional increments when the doctorate degree was awarded to him. In the present case, the convocation was held on December 15, 2006, by that time ROPA 1998 has ceased to be in operation. ROPA 2009 which later on came to be effective with effect from January 1, 2006 does not contain any such provision of law.

Rule 12(5) of ROPA 1998 entitles the holder of a doctorate degree to ask for the benefit of two additional increments from the date of convocation when the convocation was held ROPA 1998 had ceased to exist. Without a corresponding provision in the new ROPA a Division Bench of this Court by a Judgement and order dated April 5, 2019 in the case of State of West Bengal & Others vs.

Goutam Ghosh and others (FMA 2368 of 2015) observed that since the Rule had ceased to exist on the day the degree was awarded the petitioner must be held to be ineligible to the benefit claimed by him under ROPA, 1998.

This aspect has not been discussed by the learned Single Judge at all. The order impugned in the writ petition was ultimately right, as the petitioner was not entitled to the benefit of two additional increments, though the reasons recorded therein were not correct. At this stage Mr. Barua submitted that the appellant had exercised option under ROPA 1998. If that be so his scale of pay should be fixed under ROPA 1998 and under ROPA 2009.

We find sufficient substance in the appeal filed by the appellants. The judgment and order of the learned Trial Judge is set aside."

It is further submitted by Mr. Dhole that once the petitioner had taken the benefit of fixation of his pay scale in terms of G.O. No.46? SE(B)/5B?1/2009 dated February 27, 2009. The petitioner could not now turn around and claim benefits of pre-existing Government Order which had ceased to exist.

Two different Hon'ble Division Benches have taken contrary views in the matter. Under such circumstances, let this matter be referred to a Larger Bench for answering the following questions:

1. Whether with the introduction of G.O. No.46?SE(B)/5B?1/2009 dated February 27, 2009 with retrospective effect from 1st January, 2006 and acceptance thereof by the petitioner prevented the petitioner from claiming a higher scale of pay on the basis of a Ph.D. degree awarded prior to January 1, 2006 but convocation whereof was held on February 24, 2006.
2. Whether Clause 12(5) of G.O. No.25?SE(B)/IM?102/98 dated February 12, 1999 implementing ROPA, 1998 would be applicable in case of the petitioner in view of the omission of such a provision in G.O. No.46?SE(B)/5B?1/2009 dated February 27, 2009, with retrospective effect. Let the file be placed before the Hon'ble Chief Justice on the Administrative side for appropriate orders.