

11th June,
2014
(Sm)

W. P.26356 (W) of 2013

Prof. Krishnapada Dash & Ors.

-Versus-

The State of West Bengal & Ors.

Mr. L. C. Bihani,

Mr. N. C. Bihani.

...For the petitioner.

Mr. Sadananda Ghanguly,

Mr. Debopratim Banerjee.

....For the State.

Writ petitioners are aggrieved by and dissatisfied with the impugned Memo No.920-Edn (CS)/5P-52/98 dated 31.12.2012 wherein the benefits of Career Advancement Scheme and re-designation benefits for 28 months starting from 30th June, 2010 to 31st October, 2012 were curtailed.

Mr. Bihani, learned senior counsel appearing for the petitioner submits that the petitioners are teachers in different institutions. University Grant Commission (in short UGC) guidelines are binding on all the said Universities and Colleges affiliated to U.G.C. By a Memo dated 31st December, 2008, Secretary, Ministry of Human Resource Development, Department of Higher Education, New Delhi recommended revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission. It was submitted that the State Governments taking into consideration other local conditions also decided in their discretion, to introduce scales of pay higher than those mentioned in the scheme or may effect to the revised bands/scales of pay from a date on or after 1st January, 2006.

Mr. Bihani submitted that as per G.O. No. 118-Edn (CS) dated 4th February, 1999 read with University Grants Commission Regulation, 2000 there are two advanced increments for M. Phil and four advance increments for Ph. D. holders at the time of entry point. Teachers in service are entitled to two and one advance increments for acquiring Ph. D. and M. Phil. Degree

respectively. Furthermore, U.G.C. Regulations, 2010 specifies that entry points teachers with Ph. D. degree will be awarded five non-compounded advance increments. Teachers completing Ph. D. in service three non-compounded increments.

Mr. Bihani submitted that presently the teachers (both Universities and Colleges) are not enjoying any advance increments for Ph. D. and M. Phil degree. Over and above this, those teachers who are enjoying Ph. D./M. Phil increments prior to the implementation of the new scale on and from 1st January, 2006 State Government has withdrawn those benefits and compelled the teachers to repay the increments already enjoyed by them. This was done simply by deducting the amount from their arrears salary without passing any order whatsoever.

Mr. Bihani submitted that action on the part of the respondent authorities are not in accordance with law. In case any deduction to be made the concerned respondents ought to have granted an opportunity before such deduction. However, he submitted by a circular of the Department of Higher Education, Government of West Bengal bearing Memo No.533-Edn (CS)/5P-52/98 dated 28th August, 2009, Principal Secretary to the Government of West Bengal instructed the Director of Public Instruction, West Bengal to extend the revision of pay structures of the Principals, Teachers, Assistant Librarians/College Librarians and equivalent grades of the State aided non-government colleges including erstwhile sponsored colleges subject to the following conditions.

- (1) The central assistance on this account will be available from the period from January 1st, 2006 to March 31st, 2010.
- (2) The State government will take over the entire financial liability for maintaining the revised Pay structure with effect from April 1st, 2010.
- (3) The central assistance will be restricted to revision of pay scales in respect of only those posts, which were in existence and had been filed up as on January 1st, 2006.
- (4) It was also mentioned that under Clause 12 that this Order issued with the concurrence of the Finance Department, Govt.

of West Bengal vide U.O. No. Group P (Service) 2540 dated 27th August 2009.

Mr. Bihani submitted that another Government Memo of Higher Education Department being No.461-Edn (CS) 5P-52/98(Pt) dated 8th June, 2010 Joint Secretary issued some clarifications in partial modification of this Memorandum of the department dated 24th December, 2009. The modifications are as follows: -

“(i) All promotions /CAS related matters will be processed following extant UGC regulations and the re-designation of teachers and equivalent grades subsequent to revision of their pay will be as per stipulations of MHRD’s order No.1-32/2006-

U.11/U.1 (1) dated 31st December, 2008.

(ii) Direct recruitment at Associate Professor level with AGP of Rs.9, 000/- cannot be done till new guidelines/regulations are issued by the UGC in this regard.

(iii) As and when UGC modifies existing Regulation, 2000 or issues new relevant regulations dealing with this matter, the same would apply; and cut-off for any purpose will apply accordingly.

Mr. Bihani submitted that till now there is no modification of UGC Regulation, 2000 or there is no such new regulation by which the benefit which was granted in favour of the petitioners was withdrawn or curtailed. He

submitted that the impugned Memo dated 31st December 2012 is contrary to the U.G.C. Regulation as well as the two previous memos issued by the Director of Higher Education, Govt. of west Bengal. Mr. Bihani submitted that by this memo dated 31st December 2012 the government has curtailed the benefit of the petitioners in respect of cases of Career Advancement Scheme and re-designation benefit was issued from 30th June 2010 to 31st October 2012.

Mr. Bihani submitted in case of all persons whose Career Advancement Scheme is due on and from 1st November, 2012 would be given the benefit from the same date whose Career Advancement Benefit is due from 30th June, 2010 to 31st October, 2012 would be given from the same date i.e., 1st

November, 2012 which is not only arbitrary but also discriminatory and contrary to U.G.C. guidelines.

Mr. Bihani submitted that impugned portion of government memo is discriminatory and violative of Article 14 and 21 of the Constitution of India. Mr. Bihani submitted that this writ petition was moved before this Hon'ble Court in September, 2013 when this Hon'ble Court passed an order directing the respondent authorities to file their affidavits but that opportunity was not availed and no opposition was filed. In April 2014 when a supplementary affidavit was filed on behalf of the petitioners this Hon'ble Court again gave an opportunity to file affidavit by the respondents but none of the respondents have availed the opportunity. Even today at the time of hearing learned counsel for the State could not file their application against the pleadings of the petitioners.

Mr. Bihani submitted that the impugned memorandum dated 31st December, 2012 could not be given effect to so far the petitioners are concerned since they are entitled to get the benefit of Career Advancement Scheme on and from 30th June, 2010 to 31st October, 2012.

Mr. Ganguly, learned counsel appearing for the State expressed his inability since he was not instructed properly although the direction given by this Hon'ble Court was duly communicated to the respondents. He submits none of the respondents cooperate for filing affidavit against the pleadings. However, he wanted to make submissions on the basis of the pleadings made by the petitioners. He submitted that no supplementary affidavit should be allowed for subsequent events or on any factual matters. He submitted that Hon'ble Apex Court already held instead of filing supplementary affidavit, amendment application should be made following the principles under Order 6 Rule 17 and only after amendment those facts should be taken into account. He also cited one decision in that regard.

Mr. Ganguly further submitted that the Memorandum dated 31st December, 2012 is very specific and clear in Clause 3 of the scheme will be applicable in respect of the teachers, librarians, physical instructors of Government-aided colleges including erstwhile sponsored colleges under the administrative control of this department and will take effect from 1st

November, 2012 with the concurrence of Finance Department vide U.O. 978 Group -P (Pay) dated 5th September, 2012. In view of such decision there should not be any discrimination. However, he also referred clause 6.1 of the Memorandum dated 31st December 2012, which reads as follows: -

“Career Advancement for Teachers (effective from 01/11/2012):

This Scheme will be effective in respect of the incumbents whose career advancement is due on and from 01.11.2012 in respect of all cases where the career advancement was due from 30.06.2010 to 31.10.2012 the scheme will also be effective from 01/11/2012. In respect of all other cases where the career advancement was due from a date which is prior to 30.06.2010, the same will be guided by G.O. No.118-Edn (CS) dated 04.02.1999.”

He also submitted that the Central Government and U.G.C. authorities are necessary parties. They should be served with notice. In their absence this court should not pass any order.

Mr. Ganguly, learned counsel appearing for the State submitted that the petitioner’s prayer could not implemented in view of the circular dated 31st December 2012. He submitted that petitioner’s cases should be referred to the concerned respondents and the concerned respondents should decide each and every cases considering its own merits.

In the light of aforementioned submissions made by the learned counsel appearing for the respective parties, it is evident that the date of giving effect of the scheme is the main dispute. Petitioners claim that although they holding to the group whose Career advancement is due from 30th June, 2010 to 31st October, 2012, they were given the benefit from a subsequent date i.e., 1st November, 2012 with those candidates whose benefit accrues from 1st November, 2012. They were denied 28th months due without any reason whatsoever. It is now undisputed that the petitioners are Professors in different colleges and they are entitled to get Career Advancement Benefits/re-designation benefits as per UGC Regulations, 2010 as modified subsequently. It is also not in dispute that the concerned

Department of Higher Education, C.S. Branch, Government of West Bengal by its own notification dated 28th August, 2009 have decided to give such benefits and it was specifically mentioned in the memorandum that the circular dated 28th August, 2009 is being issued with concurrence of Finance Department, Government of West Bengal that was again confirmed by another memorandum dated 8th June, 2010 with some modification which is quoted hereinbefore. Thus it is evident that the government has already accepted recommendations made by U.G.C. and was agreeable to extend the benefit with the concurrence of Finance Department, Government of West Bengal. Suddenly and surprisingly without any rhyme and reason a new memorandum was issued on 31st December, 2012 curtailing the benefits of the petitioners who are entitled to get Career Advancement Benefits/Re-designation Benefits on or before 30th June, 2010 to 31st October, 2012. There is no reason to curtail such benefits which petitioners are entitled as per U.G.C. Regulations.

The concerned respondents did not choose to file any affidavit nor Mr. Ganguly has taken any instruction in this regard. Mr. Ganguly failed to answer why this discrimination is made and why the concerned respondents have discriminated petitioners who are lawfully entitled to get 28 months benefit as per U.G.C. guidelines. It is not disclosed why the persons who are entitled to get Career Advancement Benefits and Re-designation due to them on or before 1st October 2012 were not given such benefit.

The State authorities chose not to file any affidavit against the pleadings filed by the petitioners. Therefore the averments made in the writ petition are presumed to be correct. More over, it is clear from the documents disclosed in this proceeding that there is finance clearance and the State government was already agreed to pay the benefit to the candidates. Therefore, the impugned portion of the memo to give benefit on and from 1st November, 2012 is arbitrary and illegal.

In my view the impugned circular which curtailed the benefits of the petitioners for 28 months is illegal and arbitrary. The impugned memorandum is violative of principles enshrined under Article 14 and 21 of the Constitution of India. There is no justifiable reason also to deny benefit to

the petitioners for the period starting from 30th June 2010 to 31st October 2012.

Accordingly the prayer made by the petitioners to give 28th months' benefit for Career Advancement Benefits and Re-designation Benefits should be allowed and the respondents No.1 to 4 are directed to give the benefit within eight weeks from the date of communication of this order.

This writ petition is, thus, disposed of.

There would be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.