

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – OA 382 OF 2016

Arpita Das Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
16 13.02.2020	<p>For the Applicant : Mrs. S. Mitra, Learned Advocate.</p> <p>For the Respondent : Mrs. S. Agarwal, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for granting him pay protection after counting of her past service and other consequential reliefs.</p> <p>The applicant was initially appointed as Assistant Teacher of Economics in Jamsherpur B.N. High School on April 7, 2005 by the Secretary of the Managing Committee of Jamsherpur B.N. High School. The appointment of the applicant as Assistant Teacher in Jamsherpur B.N. High School was approved by the District Inspector of Schools (SE), Nadia on May 2, 2005. Subsequently, the applicant joined as Assistant Mistress in Economics in Jalpaiguri Government Girls' High School on June 4, 2011 temporarily for three months, but ultimately, she continued as Assistant Mistress in Economics in the said school. The pay drawn by the applicant as Assistant Teacher of Jamsherpur B.N. High School was not protected by granting higher pay at the time of joining of the applicant as Assistant Mistress in Economics in Jalpaiguri Government Girls' High School. On March 29, 2012, she submitted a representation before the Director of School Education, West Bengal praying for pay protection after counting of</p>	

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past service rendered by the applicant as Assistant Teacher of Jamsherpur B.N. High School. The matter was ultimately referred to the Finance Department, Government of West Bengal, which directed the administrative department to resubmit the case of the applicant along with service book after her confirmation in the post of Assistant Mistress in Jalpaiguri Government Girls' High School.

With the above factual matrix, Mrs. Mitra, Learned Counsel for the applicant, has referred to Rule 42A (2) of West Bengal Service Rules, Part-I (in short, WBSR, Pt.-I) and submitted that past service of the applicant as Assistant Teacher of Jamsherpur B.N. High School should be counted for the purpose of grant of pay protection of the applicant. On the other hand, Mrs. Agarwal, Learned Counsel representing the state respondents, submits that Rule 42A (2) of WBSR, Pt.-I will not be applicable in the case of the applicant for counting of past service and granting her pay protection.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the service conditions applicable to the Government employees will be applicable to the applicant with effect from the date of her joining in the post of Assistant Mistress of Jalpaiguri Government Girls' High School. The question for consideration of the Tribunal is whether the past service rendered by the applicant as Assistant Teacher of Jamsherpur B.N. High School will be counted for granting pay protection of the applicant in terms of the provisions of Rule 42A (2) of WBSR, Pt.-I.

It is relevant to quote the provisions of Rule 42A (2) of

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WBSR, Pt.-I which is as follows :

“(2) Notwithstanding anything, contained elsewhere in these rules, the pay of the Government employee shall, in respect of all promotions/appointments from one Group A post to another Group A post carrying higher responsibilities, be fixed at the stage next above the pay drawn in the scale of pay of the lower post, irrespective of whether the lower post is held on substantive, on officiating or temporary basis.

Note 1.- The provisions of sub-rule (2) shall apply to an employee of the Central or other State Government/ Educational Institution including a body incorporate or not, which is wholly or substantially owned or controlled by the Government, when appointed to a post under this Government carrying duties and responsibilities of greater importance than those attached to the post held on substantive, officiating or temporary basis by the said employee immediately before joining the appointment under this Government irrespective of any categorisation of the said post under that organisation.

Note 2.- The provisions of sub-rule (2) shall also apply in the case of appointment of an employee from a Government college to a Government school.

Note 3.- The provisions of sub-rule (2) shall not apply in the case of appointment of an employee from a non-Government college to a Government School.”

On consideration of the above provisions of the rules, we find that the Government employee appointed from one Group A post to another Group A post carrying higher responsibilities, will be entitled to get his/her pay fixed at the stage next above the pay drawn by him/her in the scale of pay of the lower post

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irrespective of whether the said lower post is held on substantive or officiating or temporary basis. Note 1 appended to the above sub-rule (2) of Rule 42A clarifies that the above provisions of the sub-rule will apply to an employee working under the Central Government or other State Government or Educational Institution, provided the said Educational Institution is wholly or substantially controlled by the Government. In the instant case, the applicant was not appointed from one Group-A post to another Group-A post of the State Government, having higher responsibilities. She was initially appointed as Assistant Teacher of Jamshepur B.N. High School by the Secretary of the Managing Committee of the said school. The very fact of giving appointment by the Secretary of the Managing Committee of the School indicates that the control of the School is with the Managing Committee of the School and not with the State Government. In other words, the applicant rendered service as Assistant Teacher of a Government aided School which is not controlled by the Government and as such the said service cannot be counted for granting her benefit of past service for the purpose of pay protection in terms of the provisions of Rule 42A (2) of WBSR Pt. I as contended on behalf of the applicant. Accordingly, we do not find any merit in the present application.

As a result, the original application is **dismissed**, but without any cost.

The **urgent xerox certified copy** of this order, if applied for by either of the parties, may be supplied on priority basis on

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Sanjib	compliance of all necessary formalities. (S.K. DAS) MEMBER(A)	(R. K. BAG) MEMBER (J)
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