

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : HON'BLE JUSTICE SOUMITRA PAL, HON'BLE CHAIRMAN.

Case No. – OA 814 of 2021.

SIKHA GHOSH –VS-THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. B. Bhushan, Mr. S. Bhattacharya, Advocates.
<u>5</u> 8.8.2022	For the State Respondents	: Mr. Soumendra Narayan Ray, Advocate.
	For the Principal Accountant General (A & E) West Bengal	: Mr. B. Mitra, Departmental representative.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 496-WBAT/1E-08/2003 (Pt.-II) dated 4th August, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

Though on 14th July, 2021 direction was issued to file reply, no reply has been filed by the State respondents.

Heard Mr. B. Bhushan, learned advocate for the applicant.

Mr. S.N. Ray, learned advocate for the State respondents opposes the prayer of the applicant.

The applicant has prayed for benefits under Career Advancement Scheme as stated in the application.

In OA No. 1646 of 1998 (Shila Bhattacharjee and 25 Ors – versus - The State of W.B. & Ors), the West Bengal Administrative Tribunal, dealing with a similar issue passed an order, the relevant portion of which is set out below :-

“.....We have given our anxious consideration with regard to the submissions made before us by the respective parties. But having heard the parties before us and looking into the available materials and seeing those with meticulous care, we may indicate that normally if a person is borne on a scale higher than the basic scale for the post, the

same should be treated as a basic scale for his advancement under the scheme. But herein this particular case, since such upgradation of scale was in terms of the order of the Hon'ble High Court, which was ultimately accepted by the concerned department, possibly it will not be available to the concerned authorities to turn around and to say that the other benefits, such as benefit under Career Advancement Scheme should not be given to such an employee on completion of satisfactory service during this stipulated period, as mentioned in the scheme.

Here in this particular case also, it has been brought to our notice that ease of one Kuntal Kanti Mandal, such benefit has also been granted before actually upgradation of the pay scale of the Inspectors of Social Welfare.

That being the position, upon total analysis of the materials available before us and in view of our reasonings, as above, and also for the reason that when such benefit has been granted to Kuntal Kanti Mondal before upgradation of pay scale, we are inclined to accept the contentions of the petitioner in the instant case. Consequently, we hold that the circular dated 21-06-1990 of the Finance Department, Government of West Bengal will not create any impediment in the connected matter.

Accordingly, we quash and set aside the impugned order dated 08-12-1990 passed by the Joint Secretary, Finance Department and the order of the Deputy Secretary, Social Welfare Department issued on 03-04-1993 together with the order dated 22-04-1998 issued by the Officer on Special Duty and Ex-officio Director of Social Welfare with a further direction upon the Respondents to consider the case of the petitioners for grant of Career Advancement Scheme benefit in terms of the extant rule within the period of 03 months from the date of communication of

this order, and the Respondent Authorities are further restrained from withdrawing the benefit under Career Advancement Scheme from the petitioners, who are enjoying such benefit under the said scheme...”.

Being dissatisfied, the State of West Bengal, being the respondents herein, preferred a writ petition before the High Court, Calcutta, being WPST No. 147 of 2009, which was disposed of on 11th August, 2016 by affirming the order of this Tribunal, the relevant portion of which is quoted hereinbelow :-

“.....The State authorities did not prefer any appeal against the earlier orders of the Hon’ble Court and consciously complied with the mandate of the Hon’ble Court by placing the Supervisors, similarly situated with the respondents herein, in scale no. 10 and by granting the CAS benefits through placement in scale no. 11 and that as such the contention of Mr. Mukherjee to the effect that the benefits were erroneously extended to the petitioners in the earlier writ petitions, is not acceptable. After such compliance, the denial of extension of identical benefits to the respondents is derogatory to the mandate of the Court and such action is unsustainable in law [See the judgement delivered in the case of Manohar Lal (D) by Lrs. – vs- Ugrasen (D) by Lrs. & Ors., reported in 2010 (4) Supreme 519].

Fairness and reasonableness are paramount issues for administrative action. As a model employer the State Government must conduct itself with high probity and candour and cannot act arbitrarily by withholding the benefits as extended to similarly situated incumbents [See the judgment delivered in the case of The Madras Port Trust versus Hymanshu International by its Proprietor V. Venkatadri (dead) by L.R.S., reported in (1979) 4 SCC 176]. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated

should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently [See the judgement delivered in the case of State of Karnataka & Ors. –vs- C. Lalitha, reported in (2006) 2 SCC 747].

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned. The scope of judicial review is very narrow and limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates. The impugned judgment does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

For the reasons discussed above, we do not find any reason to interfere with the judgment impugned. The writ petition and the connected application are, accordingly, dismissed...”.

Aggrieved by the aforesaid judgement, the State of West Bengal preferred a Special Leave Petition before the Supreme Court of India being Special Leave Petition No. 40494 / 2017 which was dismissed on 5th February, 2018.

Subsequently, the State respondents have complied with the direction passed in OA No. 1646 of 1998 (supra) and submitted a compliance report before this Tribunal on 8th February, 2019 in C.C.P. No. 41 of 2008.

Therefore, considering the factual aspect of the case and submission of the learned counsel for the contesting parties, the application is disposed of by directing the Director of ICDS, Government of West Bengal, Kolkata, the respondent no. 2 to dispose of the representation dated 6th November, 2020, being annexure ‘A/10’ to

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the application by passing a reasoned order, strictly adhering to the settled principles of law laid down in OA No. 1646 of 1998 and WPST 147 of 2009, to be communicated to the applicants within a period of fifteen (15) weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal.

No order as to costs.

(SOUMITRA PAL)
CHAIRMAN.

Sk.

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