

15.02.2022
Item No.32
Crt. No.11.
KB

WPA 7220 of 2015

Prosenjit Sarkar
-Vs-
The State of West Bengal & Ors.
(Via Video Conference)

Sk. Sahajahan Ali
... For the petitioner.

The writ petitioner has filed the instant writ petition challenging the order passed by the District Inspector of Schools (S.E.), Cooch Behar dated 27th February, 2015 wherein the request of the petitioner for grant of higher pay scale has been rejected by mentioning the G.O. No. 593-SE(B) dated 27.11.2007.

The facts of the case in so far as the material brought by the writ petitioner in the writ petition is that the writ petitioner on completion of his Graduation in mathematics, the petitioner has joined Post Graduation degree in M.Sc. (Mathematics) from University of North Bengal. The petitioner passed M.Sc. Part-I Examination in the year 2007.

In the meantime, the petitioner was appointed as Assistant Teacher (Mathematics), Mughabhog High School, on 19th September, 2007. After the appointment, the petitioner has reported his duty in the said school. On 02.03.2008, the petitioner has submitted an application

before the school authorities for permission to appear in M.Sc. Part-II Examination 2009 and accordingly the Managing Committee of the school vide resolution dt. 2.4.2008 allowed the petitioner to appear in the said examination. The petitioner passed M.Sc. Part-II Examination in the year 2009. After completion of Post-graduation degree in Mathematics, the petitioner has applied for grant of higher pay scale. The request made by the petitioner has been rejected by the District Inspector of Schools by referring the G.O. No.593-SE(B) dated 27.11.2007.

The counsel for the petitioner submitted that petitioner was pursuing Post Graduation course in M.Sc.(Mathematics) prior to the appointment as Assistant Teacher. The petitioner has completed his Post-Graduation Course in Mathematics from North Bengal University in the year 2009 and accordingly the petitioner had made representation to the authorities for grant of higher pay scale. It is further contended that without assigning any reason and without any opportunity of hearing in one line by mentioning the Government Order number rejected the claim of the petitioner.

The petitioner submitted that in the similar circumstance case, this Hon'ble Court in several matters

has passed an order directing the authorities for grant of higher scale of pay.

The petitioner relied upon the judgement passed by Co-ordinate Bench of this Hon'ble Court in W.P.A. 14468 of 2013 (Animesh Choudhury vs. State of West Bengal & Ors.). The petitioner submitted that in the said case the similar question was raised before this Court and this Court has considered the same and passed an order directing the authority for grant of higher scale of pay. The petitioner submitted that the case of the petitioner is squarely covered in the case referred above and prayed for benefit of the judgement passed by the Co-ordinate Bench of this Court.

This Court has considered the submissions made by the counsel for the petitioner, documents available on record and the judgement relied by the petitioner. Admittedly, before the appointment of the petitioner as Assistant Teacher, the petitioner was pursuing Post Graduation Degree in M.Sc. (Mathematics) from the University of North Bengal.

After the appointment, the petitioner has applied for permission before the school authority for allowing the petitioner to appear in the M.Sc. (Maths) Part-II Examination from the University of North Bengal and accordingly the Managing Committee of the school

allowed the petitioner to appear in the Examination. The petitioner has completed Post Graduation Degree in M.Sc. (Mathematics) in the year 2009.

The respondent authorities have rejected the claim of the petitioner referring the Government Order No.593-SE(B) dated 27.11.2007. The Government Order dt.27.11.2007 was dealt by the Co-ordinate Bench of this Court in W.P.A. No.14468 of 2013 (Animesh Choudhury – vs- State of West Bengal & Ors.).

The Hon'ble Judge while disposing of the writ has relied upon the judgement passed by the Hon'ble Division Bench in the case of State of West Bengal vs. Meghnath Roy (MAT 514 of 2019) dated 16th December, 2019, *inter alia*,

*“19. Subsequent to the above orders, the Division Bench decision of **State of West Bengal –v- Meghnath Roy (MAT 514 of 2019)** dated December 16, 2019 was rendered wherein the Court had noted that sub-section (3) of Section 14 of the 2005 Act also did not envisage any prior permission being sought by any teacher before seeking a post-graduate qualification. The Division Bench did so in the following words:*

*‘Undoubtedly, the writ petitioner, at the time of joining the present school was already pursuing the higher studies and the Managing Committee of the present school had permitted him to pursue such course without affecting academic interest of the institution. **Section***

14(3), as it stands, does not require any prior permission to be taken for obtaining higher qualification. However, manner in which a teacher must be entitled to higher scale of pay upon acquiring post-graduate degree is indicated in the Government Order dated 27th November, 2007.

We do not find any guideline which the District Inspector of Schools is required to follow in the event it is found that a teacher before joining in the institution was already pursuing his higher studies but for some unavoidable reasons, permission as contemplated under G.O. dated 27th November 2007 was not sought for from the District Inspector of Schools or the Managing Committee failed to take steps in this regard. **We have also not found out any relevant Rules which sets out any guideline as to the factors to be taken into consideration by the D.I. either in allowing or disallowing higher scale of pay upon obtaining higher qualification.** Possibly, these are the difficulties for which the communication dated 8th June, 2017 was made from the Deputy Director of School Education to the District Inspector of Schools to refer such cases where the said authorities are facing difficulties.

There cannot be any doubt that a person with higher qualification would be expected to have better knowledge in the subject and the students are likely to be benefited by reason of the higher qualification is not only restricted to monitory benefit of the teacher but is also extended to the students and the institution in which he is

*working as a teacher. It would be the endeavour of all schools to have academic excellence and it is the duty of the welfare State to encourage academic excellence in all the institutions since the ultimate beneficiary would be the students with focus on all registrations which are student-centric. **We feel that same guideline should be in place to decide a case like the present one as absence of any such guidelines may lead to arbitrariness.***

*We are not unmindful of the fact that the West Bengal Schools (Control and Expenditure) Act, 2005 was enacted to provide for the control of expenditure in the schools in West Bengal and unless the authorities are of the opinion that such expenditure towards payment of the higher salary of a teacher would be a futile exercise or would not be beneficial to the schools or the students, the authorities may decline payment of higher scale of pay. Higher scale of pay would encourage the teacher and would be a motivating factor which ought not to be ignored. The consideration for not denying higher scale of pay could be that, already there are sufficient number of teachers having Honours/post-graduate degree on the same subject in the institution and, as such, payment of higher scale of pay would not be a burden on exchequer. **We also observe that the relevant Rule does not prevent the authorities from giving an ex-post-facto approval if occasion so arises....”.***

20. Subsequent to the decision rendered in **Meghnath Roy (supra)**, the same Division Bench in its decision of **Md. Adeel-Uz-Zaman –v- State**

of West Bengal (MAT 825 of 2020) dated February 11, 2021, reiterated the need for guidelines to be framed by the State for District Inspectors of Schools (S.E.) to decide such cases wherein teachers were demanding the post-graduate/higher scale of pay and the factors that would be taken into consideration for either allowing or rejecting such claim for a higher scale of pay upon securing post-graduate qualifications. In between the dates the two decisions were rendered, no such set of guidelines have been framed or to the limited extent of this writ petition, have not been placed before this Court.”

In the judgement referred above, the Hon’ble Division Bench has held that Sub-section (3) of Section 14 of the 2005 Act also did not envisage any prior permission being sought by any teacher before selecting a Post Graduate qualification. As the act of enrolling and appearing for examination in Post Graduation Course is to be considered as “Composite act” and prior permission from the concern authority/D.I. of School is not required.

In view of the settled position of law as mentioned above, this Court is of the view that the case of the petitioner is squarely covered in terms of the judgement passed by the Hon’ble Division Bench in the case of Meghnath Roy (supra) and the Hon’ble Co-ordinate Bench in the case of Animesh Choudhury (supra). The petitioner

is entitled to get the higher scale of pay on the date of the representation of the petitioner.

In view of the above, the Respondent No.4, i.e. the District Inspector of Schools (S.E.) is directed to grant the higher scale of pay to the petitioner from the date of the representation of the petitioner within a period of four weeks from the date of communication of the order.

WPA 7220 of 2015 is thus disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)