

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

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sm **03.03.
2020**

W.P.A. 1045 of 2019

**Anwesha Dutta
Versus
The State of West Bengal & Ors**

**Mr. Saktipada Jana,
Mr. Debajit Kundu.
.....for the petitioner.**

**Mr. Debabrata Dhar, AGP,
Ms. Paramita Sahu.
.....for the State.**

The petitioner with B.Sc. (Hons. in Physics) participated in the selection process at 9th RLST, (AT), 2008 conducted by the West Bengal Regional School Service Commission, Northern Region and on being successful was appointed in the post of Assistant Teacher in Physics (Hons.) in Kalabari T.E. High School, District Jalpaiguri (hereinafter referred to as the said school) vide Memo dated 8th September, 2010. The appointment of the petitioner was confirmed by the concerned District Inspector of Schools (Secondary Education) by Memo dated 22nd October, 2009 with effect from the petitioner's joining date being 24th October, 2009.

The petitioner's case is that the petitioner appeared in the Post Graduate (Hons.) and Post Graduate category in the examination conducted by the West Bengal School Service Commission. At the time when the petitioner joined the school the petitioner was already pursuing M.Sc. in Physics and

only the Part II examination of such course was left. After joining the school the petitioner took permission from the said school and appeared in Part II M.Sc. Physics examination. The last date of M.Sc. Part II examination 2010 in Physics by the University of North Bengal was conducted on 28th July, 2010. The result of such examination was published on 4th October, 2010. After obtaining the M.Sc. (Physics) qualification the petitioner applied for higher scale of pay.

As the prayer for the awarding higher scale of pay to the petitioner was kept pending, the petitioner moved a writ petition being WP. 21014 (W) of 2018. The said writ petition was disposed of by an order dated 22nd July, 2019 directing the District Inspector of Schools (SE), Jalpaiguri to consider the case of the petitioner in accordance with law on the basis of government orders and circulars prevailing in the field as also the decisions of this Court and to pass a reasoned order. Pursuant thereto the District Inspector of Schools (SE), Jalpaiguri passed an order on 6th September, 2019 rejecting the petitioner's claim for higher scale of pay on the following grounds:-

“The teacher is required to seek prior permission of concerned District Inspector of Schools (SE) (only when he/ she wants to claim additional increment /higher scale of pay etc for obtaining higher

qualification) through the M.C. of the school”.

The petitioner in the instant case had joined the M.Sc. Physics course under North Bengal University prior to being appointed as an Assistant Teacher. There was as such no scope for taking any prior permission from the concerned D.I. at the time of taking admission to such M.Sc. course. The petitioner also competed under Honours and Post Graduate Category in the examination conducted by the West Bengal School Service Commission as the petitioner was an Honours Graduate and as such there is no question of the petitioner competing in any lower category with despite having higher qualification.

The petitioner appeared in the M.Sc. Part II examination after taking due leave from the said school. In the event the school has not communicated the purpose and granting of leave to the petitioner by the said school to the District Inspector of Schools (SE), Jalpaiguri, the petitioner cannot held responsibility since the petitioner had no control over such issue. The petitioner cannot therefore saddled for having sat in the Part II examination without prior approval or sanction from the District Inspector of schools (SE), Jalpaiguri.

The question of prior permission has been the subject matter of various decisions of this Court. In some of the judgment, it has been held that prior permission is not necessary while in some decisions it

is held that prior permission is necessary. After the promulgation of West Bengal Schools (Control of Expenditure) Act, 2005, it has also been held that higher scale of pay is not available on enhancing the qualification the prior permission is required. The scale of pay granted to a teacher is under the Revision of Pay and Allowances (in short ROPA Rules). The Control and Expenditure Act does not deal with the pay scale of teachers. It is the ROPA Rules which deals with the teachers pay scale and clearly provides for higher scale of pay to persons who have acquired higher qualification after being appointed as a teacher. The concerned authorities have also taken into account into the sanctioned strength of the teachers in the school while granting higher scale of pay. For example, if there is already a teacher getting Post Graduate scale in the concerned school and there is no scope of allowing any further Post Graduate teacher the concerned authorities have been found to refuse higher pay scale. The government also can refuse granting Post Graduate scale in view of there being no sanction post for engaging Post Graduate teacher in the school. Even these decisions have been the subject of scrutiny in several judgments. It has ultimately been held the students concerned are being benefited by a teacher having higher qualification and therefore, higher scale of pay is normally awarded to the teacher on

acquiring higher qualification.

In the instant case, the concerned District Inspector of Schools (SE), Jalpaiguri has rejected the petitioner's claim only for not having taken prior permission. As I have held that the petitioner cannot be held responsibility for not having intimated the said D.I. of Schools since the petitioner had informed the school and it was the obligation of the school. Inform the concerned D.I. of Schools, the petitioner cannot be refused higher scale of pay. Moreover, there are several judgments of this Court including Division Bench orders which say that prior permission is not required.

In the facts and circumstances as aforesaid, the impugned Memo dated 6th September, 2019 is set aside. In view of the above discussion, there is no scope of remanding the matter before the authority concerned for reconsideration. The authorities and in particular respondent no.2 & 3 shall grant the petitioner Post Graduate scale of pay from 28th July, 2010 being the last date of examination of M.Sc. Part II conducted by the North Bengal University in which the petitioner became successful.

The authorities shall within a period of six weeks from the date of communication of a Server copy of the order without insisting upon the Certified copy, shall pay the arrears of salary computed on the basis of Post Graduate Scale from 28th July, 2010 till

29th February, 2020 and thereafter shall continue to pay salary to the petitioner on the higher scale of pay month by month.

The writ petition is disposed of accordingly.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties on compliance of all requisite formalities.

(ARINDAM MUKHERJEE, J.)