

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P.A. 14468 of 2013
Animesh Choudhury
-Versus-
State of West Bengal & Ors.

For the Petitioner : Mr. Ekramul Bari, Adv.,
Mr. Amritam Mondal, Adv.,
Ms. Jeenia Rudra, Adv.,
Ms. Sahili Dey, Adv.,
Ms. Madhushree Dutta, Adv.

For the State Respondents : Mr. Supriyo Chattopadhyay, Adv.,
Mr. Gourav Das, Adv.

Heard on : 11.03.2021

Judgment on : 25.03.2021

Shekhar B. Saraf, J.:

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India, whereby the petitioner has claimed the benefit of a higher scale of pay post acquiring the post-graduate qualification in the subject of Mathematics.
2. The facts of the case, in so far as they are material to this writ petition, are circumscribed in a narrow compass and are encapsulated as follows: the

petitioner is presently serving as an incumbent Assistant Teacher of Petkatidanga Junior High School, Maynaguri in the district of Jalpaiguri (hereinafter referred to as the 'said school'). The petitioner had joined the said school as an Assistant Teacher of Mathematics in the 'Hons./Post-Graduate' category on and from August 1, 2011, in terms of the recommendation furnished by the Secretary of the West Bengal Regional School Service Commission, Malda dated June 24, 2011. The petitioner's appointment was approved by the District Inspector of Schools, Jalpaiguri (hereinafter referred to as "D.I. of Schools") by an order dated September 8, 2011.

3. The petitioner was already enrolled in the post-graduate course of Mathematics (M.Sc. in the stated subject) and was pursuing the same from the Netaji Subhash Open University prior to his appointment as an Assistant Teacher in the said school. The petitioner completed the Part-II examinations of the stated course on October 15, 2012 and the results of the same were published in February 14, 2013. The petitioner has averred that the first term of the said course had commenced in 2009, that is, much prior to his appointment as an Assistant Teacher in the said school and merely the mark-sheet of Part- I examinations was issued on September 29, 2011 post such appointment.
4. Having secured such post-graduate qualification, Mr. Bari, learned counsel appearing on behalf of the petitioner, contended that despite a representation submitted to the D.I. of Schools concerned for the grant of higher scale of

pay, his representation was reciprocated with silence. Similar representations dated April 9, 2013 were also filed with the Teacher-In-Charge as well as the Secretary of the Managing Committee of the said school, but the outcome did not turn out to be any different. Mr. Bari submits that in spite of such representations, no substantive decision has been taken by the pertinent authorities as far as the petitioner's request for the grant of higher scale of pay is concerned.

5. With no alternative remedy available, the petitioner has pressed this writ petition seeking a redressal of this *lis*.

6. Mr. Bari had submitted that in view of Section 14 of the West Bengal Schools (Control of Expenditure) Act, 2005 (hereinafter referred to as the '2005 Act') read with the Government Order (G.O.) bearing number 593-SE(B)/ES/O/B/1M-98/2007 dated November 27, 2007 (hereinafter referred to as the '2007 notification'), an Assistant Teacher was eligible to receiving additional increments or a higher scale of pay immediately upon the successful completion of the post-graduate course in the relevant subject; in this case, the M.Sc. in the subject of Mathematics. In light of the 2007 notification, he additionally submitted that no further permission was required for pursuing the stated course from either the Managing Committee of the said school or the D.I. of Schools concerned for the bare reason that the petitioner was already enrolled in the said course in 2009, much prior to his appointment as an Assistant Teacher in the said school.

7. Mr. Chattopadhyay, appearing on behalf of the Respondents, had argued that the petitioner had appeared for the examinations in the post-graduate course of Mathematics without seeking a prior permission from the D.I. of Schools concerned in compliance with the 2007 notification. Mr. Chattopadhyay had submitted that such permission under clause (1) of the 2007 notification was a *sine qua non* from the concerned authority, under the said notification for the petitioner to appear for his examinations in the post-graduate course of Mathematics. Lastly, Mr. Chattopadhyay also urged my attention to the insufficiency of time granted to the D.I. of Schools concerned to consider the petitioner's representation for grant of higher scale of pay given the fact that while such representation was submitted on April 9, 2013, this writ petition was instituted a month later on May 10, 2013.
8. Additionally, Mr. Chattopadhyay has also drawn my attention to the fact that the subject matter of this writ petition is pending before a Full Bench of this Court. He drew my attention to the order of the Supreme Court, passed in Civil Appeal Nos. 3040-3044/2017 dated July 25, 2019 wherein the order of reference dated August 22, 2008 (which laid down the questions of law to be considered) was reiterated as follows:

“An order of reference dated 22.08.2008 in which the following questions were formulated is placed before us:

“(a) Whether, in view of the fact that acquisition of higher qualification or qualifications during the service career of an individual is his right and the same acts as an incentive to career advancement as well as acquiring a higher status of academic brilliance, can such a person be forced to stagnate on lower status perennially and forced to continue to work on a lower

scale of pay which is not commensurate to the high qualification(s) acquired subsequent to his appoint?

(b) Whether, in view of Question No.(a) above, should it not be held that the ratio decided in Tarak Chandra Roy's case supra, read with the provisions of Section 14 and 20 of "The West Bengal School (control of Expenditure) Act, 2005", amount to creating an unreasonable embargo upon an individual's freedom and right to acquire higher educational qualification(s) and therefore, runs counter to the provisions of Article 14 of the Constitution of India?

(c) If the answer to Questions No. (a) is in the negative and to 'Question No.(b) in the affirmative, then should it not be held that the provisions of section 14 and 20 of "The West Bengal School (control of Expenditure) Act, 2005", are ultra vires the relevant provision of the constitution of India referred to above?

(d) Whether, in view of the aforesaid, should it not be held that the ratio decided in Tarak Chandra Roy's case supra, holding that "the Petitioner having been appointed in the pass category clearly therefor, cannot get the benefit of his post graduate qualification" is not the proper proposition and that the correct proposition is the one that has been decided in Sauvik Ghosh's case supra, holding, inter alia in Para 35 therein that "If,..... the Government Order dated 13th July, 1999 were to mean initial fixation would be on the basis of the educational qualifications mentioned in the recommendation of the school "Service commission, and a teacher appointed on the recommendation of school Service commission would be bound by the qualification as mentioned in the recommendation for all time to come and even an enhancement of qualification the teacher would not be entitled to the higher scale of pay.... Only because the School Service Commission had mentioned a different qualification in its initial recommendation, the Government Order would have to be struck down as totally arbitrary, discriminatory and violative of Article 14....?"

As the writ petitioners were filed in the year 2008 and pertain to higher scales for higher qualifications to be paid to the respondents, we request the High Court to expedite the hearing of the matters before the Full Bench."

9. In deference to the Supreme Court's order dated July 25, 2019, a Full Bench of this Court comprising Hon'ble Justice Dipankar Datta (as he then was),

Hon'ble Justice Soumen Sen and Hon'ble Justice Saugata Bhattacharyya last took up the matter in ***Utpal Kanti Karan -v- The State of West Bengal & Ors. (W.P. 9921(W) of 2007)*** on January 15, 2020. However, no further hearings have taken place by the Full Bench.

10. I have heard the learned counsels appearing on behalf of both the parties and have perused the materials on record.
11. As far as the decisions on this point of law is concerned, that is, the grant of higher scale of pay upon the successful completion of post graduate course in any subject is concerned, the issue is not *res integra*. There are numerous decisions of this Court wherein the contours of the applicable law have been stated quite succinctly. The field is governed by the 2007 notification dated November 27, 2007, which was issued under sub-section (3) of Section 14 of the 2005 Act. Sub-section (3) of Section 14 of the 2005 Act provides for the following:

“Section 14 – Scale of pay etc. of teacher:

(1)***

(2)***

(3) Every teacher of a school shall, if appointed in the Honours Graduate or Post-graduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order.”

12. Therefore, in furtherance of sub-section (3) of Section 14, the 2007 notification was issued which specified the process through which a teacher, appointed in either the ‘Honours’ category or ‘Postgraduate’ category, could

seek a higher scale of pay or in other words, post-graduate scale of pay, upon acquiring such qualification. The relevant three clauses of the 2007 notification dated November 27, 2007 are reproduced hereinbelow:

“*****

1. All the teachers teaching in different State Aided Schools will have to take prior permission from the Managing Committee/Adhoc Committee/Administrator as the case may be to enroll themselves and to appear for any examination for enhancement of educational qualification. The Managing Committee being ‘Competent Authority’ in such cases will take a decision in its next meeting and convey its decision to the teacher concerned immediately. A copy of the said decision of the Managing Committee will be forwarded to the office of the DI of Schools (SE) of the concerned district.

2. The applicant-teacher thereafter, will, if necessary, apply for Leave/Special Leave/ Study Leave as the case may be (along with the resolution of Managing Committee) to the West Bengal Board of Secondary Education (which is the Competent Authority in this case) through the Managing Committee of the School.

3. 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 such higher qualifications) through the Managing Committee of the School.

***** ”

13. Before commenting any further on the merits of this writ petition, I choose to delve on the interpretative scope of clause (1) of the 2007 notification. It would not be a misplaced observation to state that multiple writ petitions are filed before this Court urging the same argument in repetition; that teachers, as the petitioner, are often denied the post-graduate higher scale of pay for non-compliance in meeting the requisites of clause (1) of the 2007

notification; in other words, not seeking prior permission for appearing in such post-graduate examinations from the Managing Committee/Adhoc Committee/Administrator of State aided schools, a copy of which also needs to be forwarded to the D.I. of Schools of the relevant district.

14. In a coordinate bench decision of this Court rendered in ***Chaitali Banerjee v. State of West Bengal***, reported in **2019 (2) CHN (Cal) 568**, the learned judge had considered the interpretative scope of clause (1) of the 2007 notification and had ruled the following:

“10. Having regard to the above claim of enhancement of qualification, ***this Court is of the view that the provision of clause I of the Memo dated 27th November 2007 (supra) be read to treat the petitioner’s single enrolment for the composite M.Sc course prior to taking up duties in the school. It is the further view of this Court that the use of the word ‘and’ in the Memo dated 27th November, 2007 be read as conjunctive in the facts of this case.***”

Emphasis supplied.

15. As a result of the law laid down in ***Chaitali Banerjee (supra)***, the act of a teacher in enrolling himself/herself in a relevant course seeking post-graduate qualification and appearing in examinations in furtherance of successfully completing the requirements of such a post-graduate qualification is to be taken as a ‘composite act’ and therefore, cannot be divided into an act which is capable of being divided over stages, that is, an enrollment in the post-graduate course in the first stage and appearance in examinations of such course in the second stage.

16. Considering the nature of the teaching profession and the high duty of care that a teacher owes to his/her students, no loss should be affected to the beneficial interests of the students as the teacher goes onto pursue his/her post-graduate qualifications. Having said that, this consideration alone in no way hinders the right of a teacher who wishes to pursue such a postgraduate qualification. Needless to state, the ultimate beneficiaries of a teacher with post-graduate qualifications in the relevant course would be the students themselves.
17. The true purpose of clause (1) of the 2007 notification, in my considered opinion, is to ensure that once a teacher has been appointed to his post and he/she intends to enroll and appear in his/her postgraduate examinations, the concerned authority as defined in clause (1), based on the permission sought for by the teacher, is in a position to make alternative arrangements of any nature, if any loss of class hours or a related collateral effect may be a consequence, considering the inclination of the teacher to pursue a relevant course seeking a post-graduate qualification.
18. This consideration however, in my opinion, does **not** apply to those individuals who have already enrolled for their post-graduate course prior to taking up their appointment as teachers in the schools concerned. As the enrollment in the post-graduate course and examinations taken in furtherance thereof is to be regarded as a 'composite act' in pursuance of the

law laid down in ***Chaitali Banerjee (supra)***, teachers of State aided schools who had enrolled in their post-graduate courses and commenced with appearing in mandated examinations of such course do not need to satisfy the requirements of clause (1) of the 2007 notification; only those teachers who were appointed in the honours/post-graduate category in such schools and intend to take up a post-graduate qualification subsequent to such appointment need to conform to the requirements mandated by clause (1) of the 2007 notification. It was with these underlying reasons, that I had passed the orders in the unreported decisions of ***Bijay Kumar Roy –v- State of West Bengal*** (W.P. 3285(W) of 2018) dated May 4, 2018 and ***Subhadip Saha –v- State of West Bengal*** (WPA 832 of 2019; Jalpaiguri Circuit Bench) dated December 3, 2019.

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 of a teacher. The benefit of higher qualification is not only restricted to monetary 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....***”

Emphasis supplied.

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.
21. Furthermore, the important point that needs to be highlighted is, based on the Division Bench decisions rendered in ***Meghnath Roy (supra)*** and ***Md. Adeel-Uz-Zaman (supra)***, an ***ex-post facto approval*** of a higher scale of pay is not barred under sub-section (3) of Section 14 of the 2005 Act.
22. Apropos, Mr. Chattopadhyay’s argument that this Court should not adjudicate this *lis*, considering the fact that the question of law remains

pending for the consideration of the Full Bench, I see no merit in such argument. In my opinion, there is no proscription which hinders the Court in ruling in the matter given the fact that the Division Bench comprising of two Learned Judges of this Court, who were also part of the coram constituting the Full Bench on January 15, 2020, have also recently ruled in a similar matter, in the case of **Adeel-Uz-Zaman (supra)**. Needless to state, there is no order of stay rendered either by any Bench of this Court or the Supreme Court, on the issue of adjudicating such matters pertaining to the grant of higher scale of pay upon securing a post-graduate qualification.

23. Now, based on such understanding of the law, it is an admitted fact that the petitioner had appeared for Part-I postgraduate examinations in Mathematics in 2009 whereas the mark-sheets for the same only, were issued on September 29, 2011. The mark-sheet therefore, was issued after the petitioner had joined as an Assistant Teacher in the said school on August 1, 2011 with the D.I. of Schools concerned approving such appointment on September 8, 2011. Since, I have ruled that the act of enrolling and appearing for examinations in post-graduate courses is to be considered as a 'composite act', prior permission from the concerned authority/ D.I. of Schools concerned was not required in this case to pursue the course any further. Additionally, the petitioner had appeared for his Part-II examinations without any loss of teaching in the said school because his examinations were held on every Sunday while the last two exams of the course of Part-II were conducted during the said school's puja vacations in 2012. Therefore,

the petitioner was always available to discharge his duties as an Assistant Teacher at the said school, irrespective of the pursuance of his post-graduate qualification.

24. Mr. Chattopadhyay had drawn my express attention to the insufficiency of time granted to the D.I. of Schools concerned to consider the petitioner's representation for grant of higher scale of pay given the fact that while such representation was submitted on April 9, 2013, this writ petition was instituted a month later on May 10, 2013. While that may be the case, this Court cannot find fault in the acts of a petitioner who was vigilant of his rights. ***Delay*** or ***laches*** in instituting writ proceedings before a constitutional court in India is an important consideration for adjudication of a writ petition/application but is not the ***sole factor*** for such adjudication. Notwithstanding such litigation, nothing prevented the D.I. of Schools concerned from granting an *ex-post facto* approval to the representation of the petitioner dated April 9, 2013 which had sought for the grant of a higher scale of pay, as this writ petition remained in a state of pendency before this Court for almost eight years.

25. In normal circumstances, the recourse would have been to remit the matter back to the D.I. of Schools concerned to reconsider the representation filed by the petitioner *apropos* the grant of a higher scale of pay after granting an opportunity of hearing to him, giving due regard to all the relevant documents submitted by the petitioner for taking a fresh decision. Yet, what

must not be overlooked is the fact that almost eight years have passed by since the original representation dated April 9, 2013 was first made by the petitioner and the D.I. of Schools concerned subjected the petitioner's representation to astounding lassitude and non-application of mind.

26. Therefore, the pertinent authorities are now hereby directed to give a higher scale of pay to the petitioner from the date following the last date of the final examination of the post-graduate course. The D.I. of Schools concerned shall do the needful in this regard within a period of four weeks from the date of communication of this judgment.
27. In light of both the conclusion and directions thereof, this writ petition is allowed. There shall be no order as to costs.
28. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)