

**In the High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**Coram: The Hon'ble Justice Soumen Sen
&
The Hon'ble Justice Saugata Bhattacharyya**

**MAT 825 of 2020
With
CAN 1 of 2021**

**Md. Adeel Uz Zaman
Vs.
The State of West Bengal & Ors.**

For the Appellant : Mr. Saktipada Jana, Adv.
Mrs. Ujani Pal (Samanta), Adv.

For the State Respondents : Mr. Joytosh Majumder, Ld. G.P.
Mr. Raja Saha, Adv.
Mr. Biswabrata Basu Mullick, Adv.

Heard On : 08.02.2021 & 11.02.2021

Judgment On : 11.02.2021

Soumen Sen, J.:

The appeal is arising out of an order dated 3rd March, 2020 in connection with the writ petition in which the appellant/writ petitioner challenged the order dated 2nd March, 2016 refusing his claim for higher scale of pay. The appellant/writ petitioner participated in the Selection Process at 4th RLST, of 2010, conducted by the West Bengal Madrassa Service Commission and after being selected his name was recommended for appointment to the post of assistant teacher in Chemistry (Hons.) in the respondent Madrassa on 22nd June, 2011. At the relevant time he was holding B.SC. (Hons.) degree in Chemistry. He was appointed to the

Madrasah on vide appointment letter dated 18th July 2011 and joined his service on 21st July, 2011. Before his appointment the petitioner was pursuing his higher study i.e. M.SC. in Chemistry in Aligarh Muslim University for enhancement of his qualification since 2010. The appellant completed his M.SC. Part-I examination i.e. 1st and 2nd semester in the month of June, July 2011 before joining his service in the said post. After joining his service the appellant on 1st July, 2012 applied for permission to complete his higher study of M.SC. part-II examination. The Managing Committee by a resolution dated 15th July 2012 granted such permission without any pay from 1st September, 2012 till 31st May, 2013 for study leave and the said resolution was forwarded to the District Inspector of Schools (S.E.) Murshidabad on 19th July, 2012. The appellant successfully passed the examination and secured 1st Division in the examination held on 19th May, 2013. On the basis of such improvement of his qualification in the relevant subject the appellant applied for higher scale of pay on 12th August, 2014 to the Head Master of the said school who in turn forwarded the said letter to the District Inspector of Schools for sanctioning higher scale of pay by a letter dated 18th May, 2015. The District Inspector rejected the said claim on the ground that the appellant did not seek prior permission of concerned District Inspector of Schools (S.E) for obtaining such higher qualification. In absence of such prior permission the claim for higher scale of pay cannot be entertained and accordingly rejected the claim of the writ petitioner. This was challenged before the learned Single Judge in W.P. No. 7217(w) of 2016. The learned Single Judge relying upon paragraph 3 of the notification dated 27 November, 2007 bearing No.539-

SE/B published under the West Bengal School (Control and Expenditure) Act 2005 dismissed the writ petition as the said Rule requires a teacher to seek prior permission of concerned District Inspector of Schools for obtaining such higher qualification through the Managing Committee of the School. The learned Single Judge was of the view that the order of the District Inspector is well reasoned and has been passed after taking into consideration of the relevant facts and circumstances including the extent law. It was further held that in absence of any permission granted by the concerned District Inspector of schools to the petitioner which was mandatorily required, the writ petitioner is not entitled to such relief.

Mr. Shaktipada Jana, the learned Counsel appearing on behalf of the appellant submits that there may not be any requirement of any prior permission before the appellant participated in the examination as before his appointment of assistant teacher he was pursuing his M.SC. course and he sought for permission from the Managing Committee so that he could complete his course successfully within the scheduled period. It is submitted that the reliance on paragraph 3 of Government Order dated 27th November, 2007 was misplaced and is not applicable to the case of the writ petitioner. It is submitted that the said Rule could be relevant where the petitioner after joining the post as a graduate, wants to pursue higher studies. It is further submitted that this Bench had the occasion to consider a similar situation in **the State of West Bengal Vs. Meghnath Roy in MAT 514 of 2019** and after considering the rival submissions the matter was referred to the District Inspector of Schools to dispose of the

claim of Meghnath Roy after taking into consideration the guidelines straight way in the said order.

Per contra the learned Counsel for appellant submitted that the learned Single Judge was perfectly justified in relying upon paragraph 3 of the Government Order dated 27th November, 2007 in dismissing the writ petition.

It is submitted that it is clear from paragraph 3 of the said Government Order that it is mandatory for the teacher concerned to seek prior permission of the concerned District Inspector of Schools before obtaining such higher qualification. The learned Counsel relied upon a decision of a Single Bench in ***Purna Chandra Misra vs. The State of West Bengal & Ors. (W.P. 12147(w) of 2013)*** to emphasise that in the said judgment the learned Single Judge had construed the said Government Order along with Section 14(3) of the West Bengal Schools (Control and Expenditure) Act, 2005 and held that the Government was permitted to lay down the manner in pursuance whereof every teacher of a school may be entitled to draw a pay of post graduate category of post upon acquiring post graduate degree. Our attention was drawn to the fact that the learned Single Judge declined any relief to the writ petitioner as he did not apply for prior permission before the Managing Committee and on the contrary participated in the examination without permission of the Government.

In the instant case, there is no dispute that at the time of his appointment as Assistant Teacher he was pursuing higher studies. This

fact was known to the Madrasah as well as District Inspector of Schools at the time of his appointment. It is only logical and expected of every noble educational institution, keen to uphold excellence in academic, to encourage a teacher to pursue his higher studies irrespective of the fact whether he was pursuing a post graduate course at the time of his appointment. It is also an admitted fact that the Managing Committee of the School allowed his leave application for completing his Ph.D course and forwarded the application to the District Inspector of Schools for necessary permission. Under what circumstances prior permission can be declined is not mentioned. It is true that higher qualification would attract higher scale of pay. Imparting of knowledge is a duty of a teacher. The students are expected to receive proper and quality education. It is expected that all agencies of the said education department would motivate and encourage teachers in various schools to pursue higher studies and to acquire higher qualification as it would benefit both the teachers and students.

Both the learned Counsel for the parties have relied on the Government of West Bengal order dated 27th November, 2007 being No. 593-SE(B) in support of their respective cases. While Mr. Jana has relied upon Clause 1 of the said order to justify that by reason of enrolment already done, there is no requirement to obtain any prior permission to continue with the higher studies, learned Government Pleader has relied upon Clause 2 of the said order to justify that the application made to the Managing Committee which was subsequently forwarded to the DI of

School was only with regard to study leave without pay and not a prior permission for higher scale or for increment for obtaining higher qualification.

The learned Government Pleader has also drawn our attention to Clause 3 of the said Government Order which requires a teacher to seek prior permission. For proper and better appreciation of the said argument the said three clauses being Clause No. 1, 2 and 3 of the Government Order dated 27th November, 2007 for a teacher appointed in Honours Graduate/Post Graduate scale of pay will be entitled to claim any additional increment and higher scale of pay upon acquiring Post Graduate/or any Higher Diploma/Degree under Section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005 are reproduced hereinunder.

“ 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 qualification) through the Managing Committee of the School.”

There cannot be any doubt that the appellant was appointed on 21st July, 2019 in Science and Maths Group against a sanctioned vacancy and at the relevant point of time he had only B.Sc. Honours degree in Chemistry. It was on the basis of such qualification he was appointed as a Science Teacher in Chemistry of the said college. This appointment letter shows that the authority concerned was aware of all facts that he was pursuing higher studies. In fact, the document disclosed clearly reveals that he had completed his part-I examination in M.Sc. and was pursuing his higher studies. It is in the backdrop of such fact that we need to consider the Government Order dated 27th November, 2007. Clause 1 of the said order is applicable when the teacher concerned is yet to enroll himself in the course and to appear in the examination for enhancement of education qualification. The very fact that he had already enrolled himself prior to his appointment and that he had already participated in the said examination and successfully completed M.Sc. part-I, in our considered opinion he is not required to obtain any prior permission to enroll himself for the purpose of appearing in the future examination for enhancement of his educational qualification as contemplated in clause 3 of the Government Order dated 27th November, 2007. In such view of the matter the decision cited by the Government Pleader passed by a learned Single Judge in **Purna Chandra Misra (supra)** has no manner of application.

Learned Government Pleader has also relied on two decisions of the Hon'ble Apex Court in the cases of **U.P. Avas Evam Vikas Parishad & Anr.-vs.-Friends Coop. Housing Society Ltd. & Anr.** reported in (1995) Supl. (3) SCC 456, paragraph 6 and **High Court of Judicature for Rajasthan-vs.-P.P. Singh & Anr.** reported in (2003) 4 SCC 239, paragraph 40, in support of his argument that any claim for higher benefits cannot be allowed unless the prior permission is taken. In **U.P. Avas Evam Vikas Parishad & Anr. (supra)**, at paragraph 5 another judgment of the Apex Court in **Life Insurance Corporation of India-vs.-Escorts Ltd. and Ors.: (1986) 1 SCC 264** was referred in which the distinction between approval and permission was considered, in the context of Section 29 (1) of the Life Insurance Corporation of India Act. It was observed that the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous act. In our respectful reading of the said two decisions it does not appear to us that there is any embargo under the statute or the relevant rule to grant any *ex post facto* permission if there is sufficient reasons otherwise to grant permission.

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 acquiring such higher qualification. The benefit of higher qualification is no doubt benefit of the

teacher in terms of money but the students are the beneficiary of such acquired knowledge. The institution is as such benefited. It would be the endeavour of all schools to have academic excellence and it is the duty of the State to encourage academic excellence in all the institutions since the ultimate beneficiary would be the students. We feel that some guidelines should be in place to decide a case like the present one as absence of any such guidelines may lead to arbitrary rejection of a deserving candidate.

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 denying higher scale of pay could be that, already there are sufficient numbers 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. In other words staff pattern may not justify any higher qualified teacher in a particular subject. In the present case appellant is in receipt of honours graduate of pay, staff pattern cannot be a bar for extending the benefit of post graduate scale of pay. We also observe that the relevant Rule does not prevent the authorities from giving an ex-post-facto approval if occasion so arises.

In the instant case the staff pattern of the School is not relevant. The order of the DI has to be justified on the basis what was recorded in the impugned order. However, the Learned Government Pleader has raised an issue that the degree obtained by the writ petitioner may not be a valid degree. This issue was neither raised nor considered either by the DI of School concerned or by the learned Single Judge.

In that view of the matter, while we set aside the order of the Learned Single Judge and the impugned order dated 2nd March, 2016, we direct the DI of Schools (Secondary Education), Murshidabad, to consider the prayer for higher scale of pay afresh. For the reasons stated above it would not be open to the DI concerned to reject the prayers for higher scale of pay on the ground of lack of prior permission. The entire exercise shall be completed within a period of six weeks from the date of communication of this order after giving a reasonable opportunity of hearing to the Madrasah and the teacher concerned. A reasoned order shall be passed within the aforesaid period and should be communicated to the writ petitioner within two weeks thereafter.

The appeal and the connected application are accordingly disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

I agree.

(Saugata Bhattacharyya, J.)

(Soument Sen, J.)