

Sl No.26
03.02.2021
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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 570 of 2020

**Bhaskar Sen
-versus-
State of West Bengal & Ors.**

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

Mr. Bikramaditya Ghosh
Mr. M. Rahman
...for the State Respondent

The petitioner was appointed as Assistant Teacher in Mathabhanga High School, Coochbehar on 27th December, 2013. On 24th February, 2014 he applied for permission to continue his higher studies i.e., M. Sc. Course in Physics from Vinayaka Missions University, Salem, Tamilnadu stating inter alia that he took admission in the said M. Sc. Course prior to his appointment as Assistant Teacher of the above named school. Subsequently, he obtained a degree from the said university. On 26th April, 2015 he made an application before the respondent No.3 for higher scale of pay on account of his obtaining higher academic degree. The said application was disposed of by the

respondent No.3 by a Memo dated 31st December, 2019 stating as follows:-

“On perusing the relevant testimonials of master degree of the petitioner it appears that he enrolled himself as a student of master degree with Vinayaka Mission University State University and open Study Centre namely Nibedhai High School North 24 Parganas to conduct the course of master degree through distance mode of education. Guidance issued by University Grant Commission in respect of territorial jurisdiction and offering of program through off campus/Study Centre etc. by institution /universities required to authenticate the program through the distance mode by the said Study Centre through UGC erstwhile DEC since some of universities are offering program through distance mode without approval of university/erstwhile DEC and several universities/institutions opened their study centers in violation of the policy of UGC and erstwhile DEC on territorial jurisdiction.”

Thus, the prayer of the petitioner for higher scale of pay was turned down on the ground that Nibedhai High School is not affiliated by the UGC.

Learned advocate for the petitioner draws my attention to a decision of the High Court at Calcutta in the case of **Chaitali Banerjee vs. State of West Bengal** reported in **2019 (2) CHN (Cal) 568** wherein it has

been held that if a person is appointed as Assistant Teacher while pursuing his/her higher studies of M.A./M.Sc., on the basis of his academic qualification as B.A./B.Sc. Honours, he/she is entitled to get higher scale of pay because a candidate had no opportunity to obtain permission of the appointing authorities for pursuing higher academic studies on the date of his/her appointment. Relying on the decision in **Chaitali Banerjee** (supra) another Co-ordinate Bench in the case of **Bingku Roy vs. State of West Bengal & Ors.** [W.P. 3287(W) of 2018] passed the same order on 4th May, 2018 directing the respondents to allow higher scale of pay to the petitioner on account of his/her obtaining higher academic qualification.

It is submitted by the learned advocate for the respondents that the prayer of the petitioner was not rejected by respondent No.3 on the ground of non-compliance of Government Memo regarding obtaining permission of the authority prior to pursuing higher studies. In the instant case the respondent No.3 has raised a doubt as to whether the said university is affiliated to the UGC or whether Nabadhai High School is the authenticated centre of the said university for offering higher studies.

Having heard the learned advocates for the petitioner and the respondents and on careful perusal of the entire materials on record, this Court is of the

view that the petitioner is entitled to higher scale of pay for his degree of M.Sc. in Physics provided the university from which he obtained the degree is affiliated to the UGC.

In view of the above observation, the order dated 31st December, 2019 passed by the respondent No.3 is set aside. The respondent No.3 is at liberty to enquire into the authenticity of the certificate issued by Vinayaka Mission's Research Foundation, Deemed University, Salem, Tamilnadu to come to a finding as to whether the said university is affiliated to the UGC or not. If the university is found to be affiliated, the respondent No.3 is directed to issue pay slip at higher scale of pay in favour of the petitioner from the date of his acquiring higher degree.

The entire exercise shall be completed within four weeks from the date of communication of this order by the respondent No.3.

The instant writ petition is, thus, disposed of on contest, however, without costs.

(Bibek Chaudhuri, J.)