

02.02.2022
Item No. 24
Crt.No.11
b.r.

WPA 6116 of 2016

Sunit Manna
-vs-
The State of West Bengal & Ors.
(Via video conference)

Mr. Jakir Hossain
..... for the petitioner.

Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal
..... for the State.

The petitioner was appointed as Assistant Teacher, (Physics) on 25.06.2006 at Kantamari Churamoni High School (H.S.), South 24 Parganas. After the appointment, the petitioner joined his service in the said school. In the year 2010 the petitioner has made a request to the School Authority for allowing the petitioner to appear in the examination of M.Sc (Physics) and accordingly the Managing Committee by its resolution dated 09.09.2010 had allowed the petitioner to appear in the M.Sc (Physics) course from Annamalai University. The petitioner has completed his M.Sc. degree in physics and accordingly the Deputy Controller of Examination had issued certificate of Master Degree of science in physics in the year 2012.

After the issuing of the M.Sc degree in physics the petitioner had made a request to the School Authority for grant of higher scale and accordingly the School

Authorities have forwarded the request of the petitioner to the District Inspector of Schools (SE) for taking appropriate steps for grant of higher pay scale of the petitioner. Since the month of January, 2013 the request of the petitioner is pending before the authority for grant of higher scale and the respondents have not taken any decision to the request made by the petitioner.

The petitioner filed the instant writ petition praying for a direction upon the School Authorities including the District Inspector of Schools (SE) for grant of higher scale on the ground of acquiring of higher education qualification, i.e. M.Sc (Physics).

Learned Counsel for the respondents in his usual fairness has submitted before this Court that the case of the petitioner is duly covered in the judgement passed by the Co-ordinate Bench of this Court in WPA 14468 of 2013 (Animesh Choudhury -vs- State of West Bengal & Ors). The learned Counsel for the respondents submitted that the respondents will consider the case of the petitioner in terms of the judgement passed by the Co-ordinate Bench of this Court.

Heard the submissions made by the learned Counsel appearing for the parties and the judgement passed by the Co-ordinate Bench of this Court in WPA 14468 of 2013 (supra). The Co-ordinate Bench while disposing of the writ petition has referred the judgement

passed in the case of State of West Bengal –vs- Megnath Roy (MAT 514 of 2019) dated 16th of December, 2019. In which the Hon'ble Division Bench of this Court as held as follows:-

“ 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 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.

21. Further more, 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.”

In view of the above, the respondent authorities, particularly the Respondent no.3 is directed to consider the representation submitted by the petitioner and to grant the higher scale of pay to the petitioner within a period of six weeks from the date of communication of this order.

WPA 6116 of 2016 is accordingly disposed of.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)