

Item-51. 26-09-2023

sg Ct. 8

FMA 1697 of 2018
(CAN 3794 of 2017)

Puran Chandra Misra
Versus
State of West Bengal & Ors.

Mr. Balai lal Sahoo, Adv.

Mr. Rajeip Roy, Adv.

...for the appellant

Md. Nurezaman, Adv.

...for the respondent no.3

Mr. Sirsanya Bandopadhyay, Adv.

Ms. Tapati Samanta, Adv.

...for the State

1. The appellant is aggrieved by the order dated 7th Mary, 2017 in which the learned Single Judge upheld the order of the District Inspector of Schools (SE), Pashim Medinipur (hereinafter referred to as “DIOs”) dated 14th December, 2022.
2. The DIOs refused the prayer of the writ petitioner primarily on the two-fold grounds:
 - (i) The writ petitioner had not obtained the prior permission of the DIOs in terms of paragraph-3 of Government Order No. 593-SE(B) dated 7th November, 2007 issued by the Joint Secretary to the Government of West Bengal, School Education Department, Secondary Branch and
 - (ii) Having opted for drawing pay in the revised scale of pay under ROPA-2009 with effect from 1st January, 2006, the petitioner is not entitled to the scale of pay meant for post-graduate category of teachers.

3. Briefly stated, the petitioner while working as an Assistant Teacher in the school has sought for permission sometime in 1999 to pursue further studies to enhance the qualification. Although, all formalities were complied with enabling him to peruse such further course of study. Unfortunately, the petitioner met with an accident in which he fractured his leg and as a result thereof, he could not avail of the opportunity of pursuing further study. The matter remained closed until it was resurrected when the petitioner addressed a letter dated 16th November, 2007 to the teacher-in-charge of the school. The letter reads as follows:

“Respected Sir,

With due respect and humble submission I have the honour to bring under your kind perusal to this effect that my prayer for higher studies (M.A. in English) accommodated by the Ex-Managing Committee vide Resolution No. 24, dated 24.8.99 has been sanctioned by the D/I of Schools (S.W.) for the same. Xeroxed copy of the sanctioned study leave by the D/I with the photocopy of the said Examination (M.A. in English). Schedule has been annexed with this intimation for your earliest convenience.

Therefore, I hope that you will be kind enough to appreciate the same and oblige.

Thanking you in anticipation.”

4. The teacher-in-charge of the school had received the letter on 17th November, 2007. On 16th September, 2008 the petitioner addressed a letter to the Secretary of the Managing Committee of the school. The relevant portion of the said letter reads as follows:

“...For this reason, I could not avail myself of the M.A. Examination as aforementioned. Now I want to complete the said higher studies and I earnestly solicit your kind permission in order to extend the aforesaid Study Leave so that I shall raise my qualification of M.A. in English through Correspondence Course under Netaji Open University for the Session July, 2006 namely for the years 2006-2006 and onwards. Necessary testimonials in support of my prayer have been annexed with this application for your earliest convenience.

Therefore, I hope that your hounour be pleased to comply with my humble prayer and oblige.”

5. The petitioner thereby had intended to pursue a correspondence course for acquiring the qualification of M.A. in English from Netaji Open University from the session 2006-08. However, the said communication did not disclose in the said letter that he had already taken Part-I Examination pertaining to M.A. English on 25th November, 1st December, 2nd December and 8th December, 2007. The resolution of the Managing Committee of the school dated 1st April, 2010 that the petitioner was sanctioned leave with full pay of 14 days, which includes the aforesaid four dates.
6. Giving the aforesaid facts, the learned Single Judge observed that the letter dated 17th November, 2007 is a camouflage for pursuing further course of study by referring to the earlier permission that was granted by DioS in 1999.
7. The learned Counsel for the appellant has submitted that the conclusion arrived at by the learned Single Judge is not supported by the materials on record as admittedly, he had obtained permission in 1999 and it was on the basis of said

permission he would be entitled to continue unless it is recalled. It is submitted that the Managing Committee took a resolution to grant leave to avail full pay to the petitioner and such resolution was forwarded to the West Bengal Board of Secondary Education and on that basis, the Secretary vide Memo dated 10th December, 2010, sanctioned leave to the petitioner for appearing in the Parts I and II Examination in English from the said University under Correspondence Course from 19th November, 2007 to 24th November, 2007 and again from 9th February, 2009 to 14th February, 2009.

8. In the aforesaid facts, it is submitted that DioS could not have denied to grant higher scale of pay to the petitioner. There are two impediments standing in the way of the writ petitioner. First is, the enactment of West Bengal Schools (Control of Expenditure) Act, 2005 (hereafter the “Act”) that was enacted to control expenditure in the schools in West Bengal. Section 14 of the said Act refers to scale of pay etc. of teachers provides in sub-section (3) which reads as follows:

“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 category, upon acquiring Post-graduate degree, in the manner as may be specified by order.”

(underlining for emphasis)

9. The manner has been specified by the Government in the Government Order dated 27th November, 2007. The relevant

portion of the said order reads as follows:

“The School Education Department, Government of West Bengal considers it necessary to publish an order specifying the manner in which 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.

- 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 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 Leaves/Study Leave as the case may be (along with the resolution of the 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.*
- 4. Provided further that no such permission can be granted on any ground to any teacher who has entered the service/joined the school with Graduate Degree and*

with a graduate scale of pay. (Any Managing Committee of any school recommending such case and/or any District Inspector of Schools granting such prayer will be treated as an 'Offender' under West Bengal Schools (Control of Expenditure) Act, 2005.

5. *** **

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7. *** **

8. *** **

9. This order will replace all earlier orders published in this matter before the date of coming into effect of West Bengal Schools (Controls of Expenditure) Act, 2005. 1595-SE(S) 26.12.2005 also stands modified."

10. The Government Order of 27th November, 2007 has specified the various stages for acquiring post-graduate degree and based on which, an increment can be claimed. Paragraph 3 of the aforesaid order clearly stipulates that only in a case where the teacher wants to claim additional increment/higher scale of pay etc. for obtaining such higher qualification, the teacher would be required to seek prior permission of the District Inspector of Schools (SE) through the Managing Committee of the school. It is, thus, clear that in the event no claim for higher scale of pay is made, the prior permission of the concerned District Inspector of School would not be necessary. In the instant case, the petitioner has assigned with the BA Honours in English and he was appointed in the post with Honours Graduate scale. The petitioner has opted to draw pay in the revised scale applicable to the post to which he was appointed i.e. Honours Graduate scale. The DioS has rejected the revised

scale of pay on the ground that it would be too late for the petitioner to contend that notwithstanding such exercise of option he would be entitled to pay scale for post graduate category of teachers. In the instant case, admittedly, the petitioner did not apply in terms of the Government Order dated 27th November, 2007 for prior permission for obtaining higher qualification with financial benefits. The appellant, however, participated in the Part I and Part II Examination in English from 19th November, 2007 to 24th November, 2007. It was prior to government order dated 27th November, 2007. Section 14(3) of the Act read with the Government Order dated 27th November, 2007 does not necessarily rule out the possibility of a post facto approval if the situation demands and if the District Inspector of School is satisfied that the acquiring of higher degree to the benefit of the Institution. In fact, Section 14(3) contemplates that a Honours Graduate teacher would be entitled to draw pay of a post graduate category teacher upon acquiring post graduate degree as this has to be acquired in the manner indicated in the Government Order dated 27th November, 2007.

11. The learned Counsel for the appellant has relied upon a decision of this Bench in FMA 1647 of 2013 (Moumita Sarkar vs. State of West Bengal & Ors.) decided on 31st July, 2003 to assume that situation may be revisited on the basis of the observations made by this Bench in the said matter. Although, the facts are different the observations made by us could be relevant in deciding an application for

higher scale of pay. The observations are as follows:

“In deciding the matter, it is needless to mention that the larger interest of the school and students should be taken into consideration as the school and the students would be benefited. A teacher with higher qualification be expected to impart better knowledge in the subject and the students are likely to be benefited by reason of acquiring such higher qualification. It is no doubt that the teacher would be benefited in terms of money but the benefit of schools and the students cannot be ignored. It would be the endeavour of schools to have academic excellence and it is the duty of the State to encourage academic excellence in all the schools since ultimate beneficiary would be the students. At the relevant point of time, the West Bengal Schools (Control of Expenditure) Act, 2005 is not in force. Even assuming that the said Act could be applicable, the benefits could not be denied unless the authorities are of the opinion that such expenditure towards payment of higher salary to a teacher would be a futile exercise or would not be beneficial to the school or the students. The consideration for denying higher scale of pay would 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 be a burden on the expenditure. In other words, the staff pattern and the teachers-students ratio may not justify any higher qualified teacher in a particular subject.”

12. However, we must observe that in *Moumita Sarkar* (supra), the qualification was acquired prior to 2005 Act came into force. The considerations for allowing or refusing the higher scale of pay would however, remain the same excepting that the circulars relevant to the issue are required to be taken

into consideration and in the instant case, the Control of Expenditure Act of 2007. Having said that we must also observe that the relevant provision does not rule out an ex post facto approval given in the situation demands

13. However, this aspect of the matter was not argued and considered in the impugned judgment or by the DI School. In view thereof, we direct the District Inspector of School (SE), Paschim Medinipur to revisit the issue of ex-post factor approval and only upon a satisfaction being recorded that there is justifiable ground keeping in mind the larger interest of the school, students and if the students are likely to be benefited by reason of such acquiring such higher qualification may grant higher scale of pay within a period of eight weeks from the date of communication of this order by a reasoned order. The appellant and the school authorities should be given opportunity of hearing. The school shall produce all the relevant record.
14. The appeal and the application are accordingly, disposed of.
15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)