

S/L 4

20.12.2023

Court No.25

SD

WPA 2933 of 2014

Bula Halder Mandal

Vs.

State of West Bengal & Ors.

Mr. Ekramul Bari

Mr. Syed Mansur Ali

Sk. Imtiajuddin

...for the Petitioner.

Mr. Arindam Chattopadhyay

Ms. Lipika Chatterjee

...for the State.

Questioning the sustainability of the Memo *vide.* No. 1877-GA dated 8/25.8.2005 issued by the Director of School Education, West Bengal and seeking an order upon the concerned respondent to grant Post Graduate scale to the petitioner in view of improvement of qualification in the subject relevant to her teaching, the present writ petition was prepared by the petitioner. By passing an order under his Memo *vide.* No. 1877-GA dated 8/25.8.2005, the Director of School Education, West Bengal turned down the petitioner's prayer for grant of higher scale of pay.

Necessitous facts needed to be adumbrated for the purpose of effective adjudication of the writ petition are that the petitioner was appointed as Assistant Teacher of History under Social Science Group in Baugachhi Kashibala Vidyapity (hereinafter referred to as 'the school') on 17.7.1997 and her appointment was duly approved by the District Inspector of Schools *vide*. his Memo dated 20.8.1998.

The petitioner by making an application to the school authority sought for prior permission for pursuing M.A. in History from Burdwan University in 1999-2001. The Managing Committee by adopting a resolution accorded permission to the petitioner to pursue M.A. course. The District Inspector of Schools also under his Memo. *vide*. no. 615/G dated 17.5.2000 granted permission to the petitioner to sit for M.A. (History) examination from Burdwan University. The West Bengal Board of Secondary Education granted study leave to the petitioner to pursue M.A. from that University and in 2001, the petitioner earned M.A. degree in History. The last date of her M.A. examination was 10.12.2001. After improvement of qualification in the subject relevant to her teaching, the petitioner made an application before the competent authority for grant of higher scale of pay in her favour and her prayer was duly forwarded by the school authority to the District Inspector of School concerned.

Subsequent thereto, the Director of School Education, West Bengal by passing an order dated 08.8.2005 turned

down the prayer for Post Graduate scale of the present petitioner. The order passed by the Director of School Education is reproduced hereinbelow:-

“With reference to the above the undersigned has to inform him that this Office is unable to consider the prayer for admissibility of Post-Graduate Scale of Pay in favour of Smt. Bulu Mondal, Assistant Teacher of Baugachi Kashibala Vidyapith on the ground that the Prior Permission of the said post was obtained with Scheduled Caste reservation having qualification of graduation with Geography, preferably trained so there is no need of post graduate Degree for that post.

Further from the Staff Pattern it appears that there are three posts in Social Science Group of which one Teacher was M.A. in History so there is no specific reason for taking into consideration of another Teachers i.e. Smt. Mondal having M.A. in History in Social Science Group.

This decision may be communicated to the School Authority and the Teacher concern accordingly.”

Despite direction the parties have not exchanged their affidavits. However, Mr. Chattopadhyay, learned advocate appearing on behalf of the State filed a report which was taken on record.

Mr. Bari, learned advocate appearing on behalf of the petitioner contends that the present petitioner was

appointed in the school prior to the West Bengal School Service Commission Act, 1997 came into force. The petitioner took prior permission to improve her qualification from the school authority as well as from the District Inspector of Schools and even, the West Bengal Board of Secondary School granted study leave to the petitioner to appear in M.A. examination and the petitioner has improved her qualification in the subject which is relevant to her teaching.

He submits that the prayer for Post Graduate scale of the present petitioner was turned down on the ground that the post in which the petitioner was appointed was reserved for SC candidate and the prior permission was given to fill up the post by the candidate having qualification of Graduation with Geography, preferably trained. He argues that the order under challenge in the writ petition indicates that the Director of school education considered that the staff pattern was a bar in granting the benefit of higher scale of pay to the petitioner. He further argues that in the order under challenge in the writ petition there is no indication how many teachers having post graduate degree and how many teachers having qualification of Pass graduate were fitted in the staff pattern of the Social Science Group of the school.

By placing his reliance upon a judgment passed by a coordinate Bench delivered in the case of *Raghunath Mondal vs. State of West Bengal* reported in (2013) 3 CHN 626, he submits that in this judgment, it was unequivocally

held by this Court that the staff pattern have no nexus with scale of pay of an Assistant Teacher of any school. To embolden his submission, he referred another decision rendered by a Hon'ble Division Bench of this Court in the case of *Md. Adeel Uz Zaman vs. State of West Bengal & Ors.* reported in *2021 SSC Online Cal 293* for the proposition that the staff pattern cannot stand in the way of granting the benefit of higher scale of pay in favour of the teacher who has improved his/her qualification in the subject relevant to his/her teaching. Mr. Bari also refers two unreported judgments of this Court passed in *MAT 513 of 2014 (State of West Bengal & Ors. vs. Jayanti Basak & Anr.)* and in *MAT 514 of 2019 (The State of West Bengal & Ors. vs. Meghnath Roy)*.

In response, Mr. Chattopadhyay, learned advocate appearing on behalf of the State drawing my attention to the Rule 12(3) of the ROPA Rules, 1998 and its subsequent amendment introduced by a Memo vide No.155-SE dated July 13, 1999, argues that the grant of higher scale of pay is to be granted subject to the fulfillment of the condition that such higher qualified teachers in the relevant subject or group is justified as per the approved staff pattern of that school.

Mr. Chattopadhyay further contends that according to staff pattern of the school, there was already a teacher having qualification of M.A. in History and hence, the Director of School Education rightly observed that there was no

requirement of any teacher having same qualification being M.A. in History.

In reply, Mr. Bari argues that the proviso inserted in the memo. no. 155-SE dated July 13, 1999 is applicable for the teachers who were appointed on the recommendation of the School Service Commission. By placing his reliance upon a judgment by a coordinate Bench of this Court delivered in the case of *Partha Chatterjee vs. State of West Bengal & Ors.* reported in (2004) 2 CAL LT 610 (HC) he submits that considering the a Memo vide No. 155-SE dated July 13, 1999, a coordinate of this Court observed that where two sets of teacher obtaining the same educational qualification are performing the same work, then the Government authority cannot treat the said teachers differently in the matter of fixation of salary and taking note of such amendment direction was given to grant higher scale of pay in favour of the teacher who improve his qualification irrespective of the position of the staff pattern of the school.

Admittedly, the petitioner was appointed in the school prior to West Bengal School Service Commission Act, 1997 came into force. The petitioner improved his qualification in the subject which is relevant to her teaching taking prior permission from the school authority as well as from the District Inspector of Schools concerned and at the cost of reiteration it can be stated that the study leave was also granted by the West Bengal Board of Secondary Education to enable the petitioner to sit for M.A. examination.

Form the report as produced by Mr. Chattopadhyay, it is explicit that the District Inspector of Schools after enumeration of the brief facts of the case made the following statements therein:

“..... Now, from the reasoned order issued by the Commissioner of School Education, WB in connection with MAT 514 of 2019(The State of West Bengal & Ors. –vs- Megnath Roy wherein it is stated that , the Hon’ble Division Bench has observed that there is no guideline prescribed in the existing policy of the Govt. as to the factors to be taken into consideration by the District Inspector of Schools(SE) either in allowing or disallowing the higher scale of pay. The Hon’ble Division Bench has felt that there should be a guideline to decide a case like the present one. In absence of any guideline to allow the higher scale of pay to a person in a case like the petitioner, the executive authority like the District Inspector of Schools(SE) can not extend any financial benefit to the petitioner from the State Exchequer. The ratification or regularization of an act is possible which is within the power and jurisdiction of the authority. Moreover, the District Inspector of Schools (SE) is not the policy making authority.”

In case of State of West Bengal & Ors. –vs- Megnath Roy (supra), at the time when the petitioner joined the school he was pursuing higher studies. He was granted permission by the Managing Committee to pursue Master degree in Geography in 2013. The petitioner obtained Master degree but he did not take prior permission of the D.I. of

Schools concerned in term of clause 3 of the circular no. 593 dated 27.11.2007. Ultimately, the Commissioner was directed to decide the issue in the light of the observation made in the judgment.

It would be profitable to reproduce the relevant portion of the judgment delivered by the Hon'ble Division Bench of this Court in MAT no. 514 of 2014 (The State of West Bengal & Ors. –vs- Megnath Roy) at least to understand in which context above observation was made by the Hon'ble Division Bench.

“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 being 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.”

So, it is quite vivid and luminescent that in a different context, the Hon'ble Division Bench was pleased to make

such observation and that apart the factual matrix of that case is totally different from the factual conspectus of the case at hand.

In the judgment of *Raghunath Mondal (supra)*, a coordinate Bench of this Court observed as follows:-

“5. The provisions of the clause 2 of the department circular No. 670-SE(S)/1M-14/98 dated September 4, 1998 hereinafter referred to as ROPA,1998 are also quoted below:-

“2. For High School/High Madrasah/Higher Secondary(Normal Section):-

(a) Language group- Four Posts (Two pass degree & two Hons./Master degree)

(b) Science & Mathematics-Three posts (one pass degree & two Hons./Master degree)

(c) Social Science-Two posts(one pass degree & one Hons/Master degree)

(d) Work Education, Physical and Social Service-Two posts.They must be having qualifications as mentioned in the procedure 14-SE(S) dt. 8.1.98.

(e) Headmaster/Headmistress-One. He/She must be having qualifications as mentioned in the procedure 14-SE(S) dt. 8.1.98.

6. After perusing the aforesaid provisions of the said ROPA , 1998, I find that the same entitles the petitioner who was appointed with higher

qualification to enjoy the benefit of the post-graduate scale of pay with effect from January, 1996 or the date of improving the qualification, whichever was earlier. With regard to the provisions of Clause 2 of departmental circulars No. 670-SE(S)/1M-14/98 dated September 4, 1998, i find that the same was in operation in a different field which prescribed the staff strength in a particular group of teaching having no nexus with the scale of pay of the assistant teachers of that school. After further scrutiny of the above departmental circular i find that the two groups of assistant teachers namely, for Pass Degree and Honours/Master degree were prescribed in the departmental circular. The petitioners belonged to the group of Honours/Master degree. Therefore, the claim for granting post-graduate scale of pay in accordance with provisions of aid ROPA, 1998 cannot be rejected taking recourse to the departmental circular under reference.”

In case of *Raghunath Mondal (supra)* placing reliance upon the judgment delivered in case of *C.L.Verma v. State of M.P.* , reported in 1989 Supp(2) SCC 437, it was held that an administrative instruction cannot compete with statutory rule. I express my agreement to such decision. It is well-settled proposition of law that in case of conflict between an administrative instruction or a

departmental circular and a statutory rule, the latter shall prevail.

Hence, the staff pattern of a school which was fixed in terms of a departmental circular cannot overrule the Rule 12(3) of the ROPA Rules, 1998.

Rule 12(3) of ROPA Rules, 1998 postulates that all teachers including Physical Education teachers and librarians of secondary schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, w.e.f. 1.1.1996 or the date of improving qualifications, whichever is later.

By a notification vide. Memo No.155-SE dated July 13, 1999, Rule 12(3) was amended as follows :

‘All teachers including Physical Education teachers and librarians of secondary schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualifications, whichever is latter provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of that school. If such teacher is appointed through

West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Commission'.

Mr. Bari claims that the proviso included in the amended rule of 12(3) is applicable for the teachers who were appointed on the basis of recommendation by the school service commission. Mr. Chattopadhyay riposted such claim of Mr. Bari.

I am of the view to give judicial answer to the query raised in this writ petition, I need not enter into the arena of such dispute.

In the case of Partha Chatterjee (supra), it was observed that in another case, one Soumen Dutta who joined in the school prior to the Government order no. 155-SE dated 13th July, 1999 came into force was granted benefit of higher scale of pay in 2003 by the Director of School Education vide his memo. no. 284/1(S) LC dated 17/16th November, 2003 observing that when Mr. Dutta joined in the School the memo. dated 13th July, 1999 did not come into force.

In the Case at hand, the petitioner joined in the school in 1997. Rule 12(3) of ROPA Rules, 1998 came into effect from 1.1.1996. Hence, the petitioner acquired a right to get higher scale of pay on joining the school. Such right cannot be taken away by giving

retrospective effect of the circular dated 13th July, 1999.

Hence, in view of the foregoing analysis, it is clear as day that the order of the Director of School Education vide. memo. 1877-GA dated 08/25.08.2005 (Annexure-P/5 to the writ petition) which virtually indicates that the staff pattern of the school creates a bar in granting higher scale of pay in favour of the petitioner runs counter to the decision taken by this Court in cases of *Raghunath Mondal(supra)* and *Partha Chatterjee (supra)*

In view of forthcoming analysis and in view of the aforesaid enunciation of law, the order under challenge in this writ petition cannot be sustained. Accordingly, the same is set aside.

The respondent no.3 is directed to extend the benefit of higher scale of pay in favour of the petitioner since the last date of her examination of M.A. along with all the arrears within two months from the date of receipt of a copy of this order.

With these observations and directions, WPA 2933 of 2014 is disposed of.

There shall be no order as to costs.

All parties are to act on the server copy of this order uploaded in the official website of the Court.

(Partha Sarathi Chatterjee, J.)