

Court No. 22

**04.10.2023**

ML-195

b.r.

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**W.P.A.4660 of 2019**

Sanat Mondal

- *Versus* -

The State of West Bengal & Ors.

Mr. Sakti Pada Jana

Mr. Subhojyoti Das

... for the petitioner.

Mr. Mrinal Kanti Ghosh

.... For the State.

Mr. Sakti Pada Jana, learned Counsel, appears  
for the petitioner.

Mr. Mrinal Kanti Ghosh, learned counsel,  
appears for the respondent nos. 1 to 4.

This is a hearing matter.

The office report dated January 29, 2021  
suggests that despite there being a direction on March  
13, 2020 by a co-ordinate Bench, no affidavit-in-  
opposition was filed.

The petitioner has challenged the impugned  
order dated **February 15, 2019** passed by the  
**respondent no.4, Annexure P-11 at page 50** to the  
writ petition. By and under the said impugned order,  
the respondent no.4 has rejected the claim of the  
petitioner for receiving higher pay scale  
commensurating with his post graduation degree that  
is M.Sc. in Mathematics.

The petitioner claimed to be an **Assistant Teacher** joined at **Gourisail Gouripur Ananda Vidyapith, Nadia**. The petitioner had joined in the year 2008 after completion of her Honours. Graduate degree for the subject Mathematics. The petitioner also received his employment as an Honours Graduate Teacher and not as a Post-Graduate Teacher. At the time of receiving such appointment the petitioner had already been pursuing his Post Graduation degree (M.Sc – Mathematics) with the University of Kalyani. The petitioner then qualified his Post Graduation in the year 2009. The relevant Post Graduation certificate, **Annexure P-5** at **page 35** to the writ petition. After acquiring the said higher qualification the petitioner applied before the relevant school authority i.e. respondent Nos. 5 and 6 for receiving the higher pay scale commensurating with his Post Graduation degree, **Annexure P-7** at **page 42** to the writ petition.

The respondent No. 4 did not take any decision on the issue. The petitioner moved the first writ petition being **W.P. 15620 (W) of 2018** when a co-ordinate bench by its order dated **January 2, 2019** at **page 48** to the writ petition directed the respondent No. 4 to decide the issue.

Pursuant to the said direction of the co-ordinate bench the fourth respondent passed the

impugned order dated **February 15, 2019, Annexure P-11** at **page 50** to the writ petition rejecting the claim of the petitioner *inter alia* with the following observation:

*“1) The petitioner Sanat Mondal, B.Sc. (Hons) in Mathematics, is an approved Assistant Teacher of Gourisail Gouripur Ananda Vidyapith. He joined in the said school on 04/10/2008 and approval of appointment was issued by the Additional District Inspector of Schools, Ranaghat Sub-Vision, Ranaghat, Nadia vide memo no. 69/RS/SE, dated on 05/02/2009 in favour of this petitioner. His post was retained we.ef. 04/10/2010 by Additional District Inspector of Schools, Ranaghat Sub-Division, Ranaghat, Nadia vide memo no. 190/RS/SE, dated 05/03/2013.*

*2) The petitioner was appointed in the post of Assistant Teacher on recommendation of WBRSSC, South Eastern Region in the Hons./PG category post vide memo no. 13=438/ESTT-287/RSSC(SER)08, dated 10/09/2008.*

*3) The petitioner took admission in M.Sc. Part-1 regular course in Mathematics in the University of Kalyani (Session 2007-08) on 03/08/2007. He appeared in M.Sc. Part-I Examination in 2008 in Mathematics and was qualified for M.Sc. Part-II Examination-2009, Date of Publication of M.Sc. Part-1 Examination result is 30/09/2008. He passed M.Sc. Part-II Examination-2009 in Mathematics from the same University.*

*Date of publication of his M.Sc. Part-II Examination result is 17/08/2009.*

*The last date of M.Sc. Part-II Examination is 15/06/2009.*

*4) After joining the service on 04/10/2008 the petitioner continued M.Sc regular course without taking any leave except M.Sc Part-II Examination period and without prior permission from the Additional District Inspector of Schools, Ranaghat, Sub-Division, Ranaghat-Nadia.*

*5) The petitioner appeared his M.Sc. Part-II Examination 2009 dated on and from 02/06/2009 to 15/06/2009 without taking any prior permission from the Additional District Inspector of Schools, Ranaghat Sub-Division, Ranaghat-Nadia.*

*6) The petitioner applied for study leave during the period from 02/06/2009 to 15/06/2009 for appearing M.Sc Part-II Examination and this period of study leave was sanctioned by the West Bengal Board of Secondary Education vide Memo no. NAD-914/18/G/4, dated 07/09/2018.*

*7) As per G.O. 593-SE(B), dated 27/11/2007; para no.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”*

*So, considering the above the Additional District Inspector of Schools, Ranaghat Sub-*

*Division, Ranaghat, Nadia is not in position to accord P.G. scale of pay in favour of Sri Sanat Mondal, the petitioner and Assistant Teacher of Gourisail Gouripur Ananda Vidyapith, PO Gangsara Mathergram, PS-Gangnapur, District-Nadia, PIN-741233.”*

Through, the instant writ petition the petitioner had challenged the said impugned decision dated **February 15, 2019, Annexure P-11** at **page 50** to the writ petition passed by the respondent No. 4.

Mr. Sakti Pada Jana, learned counsel appearing for the petitioner submitted that, the issue is now well settled by a Division Bench of this Court, in favour of the petitioner, **In the matter of: Sri Sukesh Majumder Vs. The State of West Bengal & Ors., MAT 1220 of 2021 with IA No. CAN 1 of 2021.** The judgment was delivered on April 21, 2023. Following the said pronouncement by the Hon'ble Division Bench, this Court had also delivered its judgment and order dated June 7, 2023 in **WPA 6130 of 2019, In the matter of: Sumon Mandal Vs. The State of West Bengal & Ors.**

Mr. Mrinal Kanti Ghosh, learned State counsel appearing for respondent Nos. 1 to 4 submitted that, the petitioner did not obtain prior permission in terms of the Government Order being **No. 593-SE(B) dated November 27, 2007.** He submitted that, the said Government order had two limbs. The first limb was

that, at the time of enrolment with a course for obtaining higher qualification the petitioner was required to take a permission from the State authority and the second limb was that while appearing for the examination to obtain higher qualification the petitioner was also required to obtain a prior permission from the State authority. In the facts of this case, learned State counsel submitted that, such two stage permissions were not there. The first limb of restriction though was not applicable because the petitioner had joined the employment while pursuing her Post Graduation studies however, before appearing the final examination for Post Graduation degree the petitioner ought to have obtained the prior permission from the State authority which was not there. On the basis of such plea the impugned order was passed rejecting the claim of the petitioner and the impugned order was correctly passed.

Mr. Ghosh, learned State counsel referring to pages 37A and 37B to the writ petition submits that the petitioner was a non-collegiate student. He submits that as a non-collegiate student he could not have attended the M.Sc course regularly as also teaching in the relevant school at a time. Hence, he can not get the higher scale benefit.

After considering the rival contentions of the parties and on perusal of the materials on record and

upon reading the law laid down by the Hon'ble Division Bench **In the matter of: Sri Sukesh Majumder (Supra)**, it appeared to this Court that, the said Government Order had been considered and discussed by the Hon'ble Division Bench in its judgment.

The relevant portions from the said Division Bench judgment **In the matter of: Sri Sukesh Majumder (supra)** are quoted below:

**“Thus, the crux of the instant lis is as to whether the petitioner has violated any provision laid down by the Government in respect of obtaining higher qualification prior to being in service and, after achieving the same, praying for higher scale of pay.**

**The Government of West Bengal, School Education Department, Secondary Branch Order being No. 548-SE (S) dated 24th June 1997 reads as follows:**

**“No. 548-SE(S) Dated: the 24th June, 1997.  
To: The Director of School Education, West Bengal  
Sub: Recognition of correspondence courses conducted by the different Universities of India.**

**The undersigned is directed by the order of the Governor to say that henceforth all the teachers teaching in different state-aided schools will have to take prior permission from the District Inspector of Schools (SE) through the Managing Committee, Ad hoc Committee/Administrator as the case may be if they like to enroll themselves and to appear for the examination conducted through Correspondence/ Distance Mode of education from**

the UGC-affiliated universities. The Managing Committee of the concerned school shall send such cases to DI (SE) for approval along with their comments, including, inter alia, the relevance of the subject of higher studies and also whether such higher studies are likely to affect the duties of the teacher in the school”

From the aforementioned Government Order it reveals that all the teachers teaching in different State aided schools will have to take prior permission from the DI (Secondary Education) through the Managing Committee, Ad-hoc Committee/ Administrator as the case may be if they wish to enroll themselves and to appear for the examination conducted through correspondence/distant mode of education from the UGC-affiliated universities.

In this instant case the writ petitioner got admitted to the masters degree course in English in the University of Burdwan in the session 2003-2005 and appeared in the M.A. Part - I examination 2005 and M.A. Final Examination 2006. As such it is evident that the petitioner joined the course for post 6 graduation in English prior to her joining the service which was on the 7th day of March in the year 2006, when he joined the Bishpara High School as an Assistant Teacher of English. So the question of obtaining prior permission from the concerned authority does not arise. As such there is no violation by the petitioner in respect of the aforementioned Government Order.

Next, the Government Order being No. 593-SE (B) dated 27.11.2007 states 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 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.*

*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 7 of Schools granting such prayer will be treated as an 'Offender' under West Bengal Schools (Control of Expenditure) Act, 2005].*

*5. The courses to be studied should be relevant to the subjects studied in Under Graduate Honours/Post Graduate Course of the Applicant Teacher and none other. The Deemed University/University etc. conducting the examination must be affiliated to UGC."*

From the aforesaid Government Order it reveals that a teacher who is in service has to obtain prior permission from the concerned authority and in the instant case the petitioner had joined her course for post graduation in English prior to joining the service as a School Teacher on 07.03.2006. Therefore, no question of prior permission from the authorities concerned is relevant in case of the appellant/ writ petitioner.

So the appellant/ writ petitioner has not violated either of the aforementioned two orders relying upon which the District Inspector of Schools had rejected the prayer for enhanced scale of pay.

It is also a fact that the appellant/ writ petitioner had completed her Masters Degree in English, the subject which he is teaching in school. Needless to mention that the teacher concerned with her higher degree of qualification in the subject which he is assigned to teach shall only contribute to the benefit of the students and the school.

**The aforementioned Government Orders/ circulars hence do not stand in the way to granting benefits of higher scale of pay to a teacher on acquiring higher qualification.**

**As such the impugned order requires to be interfered with and stands set aside.**

**The impugned Order of the District Inspector of Schools (Secondary Education), Burdwan also stands quashed.**

**The appellant/writ petitioner will be entitled to receive the benefit of higher scale of pay for obtaining higher degree of qualification from the date of her preferring the application before the concerned school authority.”**

In so far as the submission of the learned State counsel with regard to the status of the petitioner participating in the M.Sc examination as non-collegiate student is concerned as recorded above, on a close scrutiny of the impugned order dated February 15, 2019 it appears to this Court that such was not the ground on which higher scale benefit was rejected by the respondent no.4. The benefit of higher pay scale was rejected to the petitioner only on the sole ground of absence of prior permission from the respondent no.3 before acquiring the higher qualification.

The law is well settled. A Constitutional Court in exercise of its power under Article 226 of the Constitution of India in judicial review has a limited authority to assess the impugned order. The Court will look into whether there is any glaring perversity

and illegality in the order and whether there is any infirmity in the decision making process while the impugned order was passed. The Court cannot travel for an expedition to cause a **roving and fishing enquiry** beyond the order impugned before it. The impugned order reveals that the claim of the petitioner was rejected on the ground that the petitioner did not obtain prior permission from the respondent no.3 before acquiring his Master Degree and not on any other plea. On this score, the law is now well settled that when a teacher has already been pursuing his Master Degree and during such period has joined as an Assistant Teacher with honours graduate degree, prior permission is not required.

In view of the settled law as discussed above, the impugned order dated **February 15, 2019, Annexure - 'P-11'** at **page 50** to the writ petition, in the firm opinion of this Court, cannot sustain in law and accordingly stands **set aside and quashed**.

The writ petitioner shall be entitled to receive the benefit of the higher scale of pay for acquiring his higher qualification i.e. Post Graduation in Mathematics from the date of his preferring the application before the relevant school authority.

The respondent No. 4 shall take all further and consequential steps to allow the petitioner to obtain the higher scale of pay as discussed above positively

within a period of three weeks from the date of communication of this order. The relevant school authority shall consequently release the necessary payment in favour of the petitioner forthwith.

With the above observations, this writ petition being **WPA 4660 of 2019** stands allowed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Aniruddha Roy, J.)**