

Court No. 22
07.6.2023
(Item No. ML
34)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 6130 of 2018

Sumon Mandal
VS
The State of West Bengal & Ors.

Mr. Samim-ul-Bari
Mr. K. M. Hossain
Mr. Raju Mondal
... for the petitioner
Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey
... for the State

The petitioner claimed to be an **Assistant Teacher** joined at **Dhipara Khadem Ali Memorial School, Murshidabad**. The petitioner had joined in the year 2009 after completion of his 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 Jadavpur University. The petitioner then qualified his Post Graduation in the year 2010. The relevant Post Graduation certificate, **Annexure P-4** at **page 23** to the writ petition. After acquiring the said higher qualification the petitioner applied before the relevant school authority i.e. respondent Nos. 4 and 5 for receiving the higher pay scale commensurating with

his Post Graduation degree, **Annexure P-4** at **page 23** to the writ petition.

The relevant school authority then adopted a resolution in favour of the petitioner for granting him the higher pay scale as claimed by the petitioner and forwarded a recommendation dated **February 6, 2015, Annexure P-5** at **page 27** to the writ petition before the respondent No. 3.

The respondent No. 3 did not take any decision on the issue. The petitioner moved the first writ petition being **W.P. 6683 (W) of 2017** when a co-ordinate bench by its order dated **March 14, 2017** at **page 28** to the writ petition directed the respondent No. 3 to decide the issue.

Pursuant to the said direction of the co-ordinate bench the second respondent passed the impugned order dated **April 19, 2018, Annexure P-7** at **page 35** to the writ petition rejecting the claim of the petitioner *inter alia* with the following observation:

“In terms of serial (3) of the G.O. No. 593-SE(B) dated 27.11.2007; the teacher is required to seek prior permission from the District Inspector of Schools (SE) before admission in the said course as well as before appearing at the said M.Sc Examinations. In the instant matter, Sri Mandal has violated the provision. Therefore, in terms of serial (3) of the G.O. No. 593-SE(B) dated 27.11.2007; Sri Mandal is not entitled for Post Graduate scale of pay. So, his prayer is hereby regretted. All concerned be informed accordingly.”

Though, the instant writ petition the petitioner had challenged the said impugned decision dated **April 19, 2018, Annexure P-7** at **page 35** to the writ petition passed by the respondent No. 2.

Mr. Samim-ul Bari, 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.

Mr. Suman Dey, learned State counsel appearing for respondent Nos. 1 to 3 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 his 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.

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 his 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 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 his 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 his Masters Degree in English, the subject which he is teaching in school. Needless to mention that the teacher concerned with his 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 his preferring the application before the concerned school authority.”

In view of the settled law as discussed above, the impugned order dated **April 19, 2018, Annexure P-7** at **page 35** 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. 3 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 6130 of 2018** 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.)