

WPA 8853 OF 2011

Pradyut Narayan Mukherjee

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak
Sk. Imtiaj Uddin.

....For the Petitioner

Mr. Avishek Prasad

....For the Respondent
Nos. 1 to 3

This is a hearing matter.

Mr. Ekramul Bari, learned counsel appears for the petitioner.

Mr. Avishek Prasad, learned counsel appears for the respondent nos. 1 to 3.

Record shows that, despite there being a direction by a coordinate Bench dated January 9, 2012 for filing affidavits, no affidavit-in-opposition has been filed.

On consideration of the issue involved in this writ petition, it appears to this Court that, both the questions of fact and law are involved, however, insofar as the question of law which is already settled, the part of the issue in this writ petition is decided finally by this Court herein.

Insofar as some factual inquiry that are required to be done, the same shall abide by the direction made hereinafter.

The petitioner was appointed as an **Assistant Teacher** for the subject **English as an Honours Graduate with B.Ed. Degree** by virtue of an approval of appointment dated **April 28, 1997** issued by the respondent no.3, **Annexure-P1 at page-19** to the writ petition. The petitioner then enhanced his qualification by acquiring **Master Degree (M.A. in English)** in the relevant subject in the year **1999** after obtaining permission from the Managing Committee of the relevant school as would be evident from the resolution of the managing committee dated **September 23, 1998, Annexure-P2 at page 20** to the writ petition. The Head Master of the school then submitted the prayer before the District Inspector of Schools on **December 11, 2003** for sanctioning the higher pay scale, **Annexure-P4 at page - 26** to the writ petition.

The claim of the petitioner was not decided by the respondent no.2 and/or the appropriate authority. The petitioner moved the writ petition when coordinate bench directed the respondent no.3 to decide the issue with the following observation:

*“In my opinion, right to improve qualification is a right. Any employee of an educational institution may improve qualification or undertake research work without hampering the school hours and also interest of the school as well as education. However, this right cannot be at the cost of eradication of law. The petitioner as well his school did not follow the minimum prescribed rule framed by the Government for taking the prayed benefit. They even did not care for sanction of 31 days **unauthorized leave** of*

the petitioner for which the students of the school concerned had suffered a lot for the satisfaction of personal gain of the petitioner. Whether the petitioner had B.A. (Hons.) degree on 01-08-1981 is not even understadable from the writ petition and none could too enlighten in this respect despite of query.

Such being the legal position, no relief can be granted to the writ petitioner. thus the matter is disposed of. All concerned be informed accordingly.”

Mr. Ekramul Bari, learned counsel appearing for the petitioner submits that the law is now well settled by the Hon’ble Division Bench of this Court in the judgement and order dated **January 31, 2014, In the matter of: Rabi Kanta Barman -vs- District Inspector of Schools (S.E.) & Ors.** rendered in **WP 14760(W) of 2004**. The Hon’ble Division Bench was of the view that since the relevant **ROPA Rule** did not contemplate such prior permission, the plea taken by the State authority on the ground of **prior permission** was not tenable in law. Accordingly, Mr. Bari prayed for grant of higher pay scale to the petitioner by allowing the writ petition.

The other plea taken by the respondent no.3, while rejecting the claim of the petitioner as to the applicability of **The West Bengal Schools (Control of Expenditure) Act, 2005** (for short **The Control of Expenditure Act, 2005**). From the facts of this writ petition, it is clear that, the claim made by the petitioner immediately after acquiring higher qualification which was much prior to the said **The Control of Expenditure Act, 2005** came into force. In support of

his contention, Mr. Bari has relied upon a judgement of the Hon'ble Division Bench of this Court ***In the matter of: Akhtar Hossain Chowdhury -Versus- State of West Bengal*** reported at ***2012 SCC Online Cal 11603: (2013) 2 CHN 632.***

Mr. Avishek Prasad, learned counsel appearing for the State authorities has reiterated the stand taken by the District Inspector of Schools as mentioned at ***page 29*** to the writ petition being a part of ***Annexure-P5***, the impugned order. He submits that, the ***prior permission*** was required at the relevant point of time and in absence of such prior permission, the claim of the petitioner was rightly rejected for granting higher pay scale. He further submits that, in view of the provisions laid down under ***Rule 12(3) of ROPA 1998***, the ***staff pattern*** as on the relevant date, being the following day of the last date of examination of the Post Graduation of the petitioner, i.e. ***December 23, 1999***, the ***staff pattern*** of relevant rule was also a relevant factor for granting such leave to the petitioner so that, the interests of the school and the students shall not suffer due to the absence of the petitioner during such period of study leave. Such factor was also required to be considered and which was considered in the impugned order, according to the learned State counsel.

In reply, Mr. Bari submits that, the amendment in ***ROPA 1998*** came into force through the ***Government***

Memorandum No. 155-SE(B)/10M-102/98 Pt-1 dated July 13, 1999. The provisions made in the said amendment would clearly show that, the **staff pattern** on the relevant day, as stated above, could not and cannot be a material factor for taking into account while granting the higher pay scale to the petitioner. Further, referring to the observation of the Hon'ble Division Bench **In the Matter of : Rabi Kanta Barman (supra)** Mr. Bari submits that, the provisions relating to **staff pattern**, as mentioned in **Rule 12(3) of ROPA 1998**, would not apply.

Considering the submissions made on behalf of the parties and considering the materials on record, this Court is convinced that the petitioner was appointed as an **Assistant Teacher** for the subject **English with Honours Graduate and B.Ed. Degree**. Upon obtaining prior permission from the Managing Committee of the school, he enhanced his qualification and acquired Master Degree in the relevant subject in the **year 1999**. **The Control of Expenditure Act, 2005** admittedly was promulgated and came into effect much subsequent thereto. Therefore, the plea of **The Control of Expenditure Act, 2005**, taken by the respondent no.2 while rejecting the claim of the petitioner, was totally devoid of any merit and not tenable in law.

In the matter of: Rabi Kanta Barman (supra),
the Hon'ble Division Bench had observed as under:-

“ Let us now consider the present problem in the light of the above quoted Rule of Ropa 1998.

We have already indicated above that the petitioner was appointed as an Assistant Teacher in the said school prior to coming into operation of the School Service Commission Act, 1997. As such, the last part of the proviso contained in Rule 12(3) wherein the subject relating to the teachers appointed through the School Service Commission is dealt with, has no application in the present case. So we will have to opt the said portion of the said Rule out of our reconsideration presently.

Ropa 1998 was notified on 12th February, 1999 and the effect of the said Ropa was given retrospectively from 1st January, 1996 as per recommendation given by the Pay Commission. Thus, when the new revised scale of pay of the teachers and non-teaching staff was introduced by framing revision of Pay and Allowances Rule 1998, the Government was aware about its earlier Government Order issued on 24th June, 1997. When despite having knowledge of the earlier Government Order dated 24th June, 1997, the Government, while framing revision of Pay and Allowances Rule 1998 did not specifically mention in the said Rule that such financial benefit cannot be given to those Assistant Teachers who acquired higher qualification in the relevant subject without obtaining prior permission from the concerned District Inspector of Schools (SE), grant of higher scale of pay to such Assistant Teachers after they have acquired higher qualification in the relevant subject, in our view cannot be denied provided however, they satisfy the condition mentioned therein. In fact, the condition for grant of higher scale of pay to such Assistant Teacher is qualified in the said Rule which provides that such higher scale of pay can be granted to those teachers only when such higher qualified teacher in the relevant subject or group is justified as per approved staff pattern of that school.

Thus, in our considered view, if the said condition as provided in the said proviso of Rule 12(3) of the Ropa 1998 is satisfied then the petitioner's prayer for grant of higher scale of pay for his enhanced educational qualification cannot be denied notwithstanding he acquired such degree without obtaining prior permission from the concerned District Inspector of Schools (SE) in terms of the Government Order dated 24th June, 1997. Provided however degree which he acquired is recognised as per the Government Order No. 549-SE(S) dated 24th June, 1997. Thus, we endorse the

conclusion which was drawn by the other Division Bench of this Hon'ble Court in the case of Samir Kumar Saha –vs- State of West Bengal & Ors.(Supra) by holding that the petitioner herein is entitled to get higher scale of pay for his enhanced qualification subject to satisfaction of the conditions as mentioned above.

The writ petition is thus, disposed of with a direction upon the concerned District Inspector of Schools (SE) to consider the petitioner's claim for grant of higher scale of pay for his enhanced educational qualification from the date of enhancement of his educational qualification in the relevant subject, afresh in the light of the observations made hereinabove after hearing the petitioner and the school authority viz. the erstwhile employer of the petitioner, and decide the petitioner's claim by passing a reasoned order in support of his conclusion positively within a period of eight weeks from the date of communication of this order.

The writ petition is, thus disposed of.”

In the matter of : Akhtar Hossain Chowdhury

(supra), the Hon'ble Division Bench has observed as under:

“ 17. As a matter of fact, at the time of joining the school qualification of the appellant was Honours Graduate in Mathematics and B.Ed. Subsequently the said appellant acquired post-graduate degree. Therefore, in terms of section 14(3) of The West Bengal Act, XIV of 2005 appellant herein is entitled to draw pay of post-graduate teacher. Furthermore, Para 3 of the Office Order dated 27th November, 2007 has not been specifically violated in the present case since the appellant also sought for prior permission from the concerned District Inspector of Schools for undergoing post graduate studies through the managing committee of the school and such permission was never denied by the said District Inspector of Schools.

18. Considering the aforesaid facts, we are of the opinion that the District Inspector of Schools should not have rejected the claim of the appellant/petitioner for higher scale of pay even after acquiring higher qualification i.e. M.Sc in Mathematics.

19. Accordingly, we set aside and quash the decision of the District Inspector of Schools, as

communicated to the appellant/petitioner, under office memorandum dated 15th March, 2011.

20. For the identical reasons, we also set aside the impugned order under appeal passed by learned Single Judge.

21. We direct the District Inspector of Schools (SE), Paschim Medinipur to allow the benefit of higher scale of (Post-graduate scale) to the appellant/petitioner herein in view of acquiring higher qualification i.e. M.Sc in Mathematics without any further delay but positively within a period of four weeks from the date of communication of this order.

22. Needless to mention that the appellant/petitioner will be entitled to receive the aforesaid benefit of higher scale of pay from the day following the date on which the last Post-Graduate Examination was completed which is deemed to be the date on which the appellant/petitioner acquired the Post-Graduate Degree in Mathematics in view of Government Order being No.253-Edn. Dated 17th September, 1984.

23. With the aforesaid directions, we allow both the application as well as the appeal upon treating the said appeal as on day's list."

After considering the relevant provisions of law and the law laid down by the Hon'ble Division Benches, as discussed above, this court is also of the considered view that, since the relevant provisions of **ROPA 1998** stood satisfied and it is not the case of the respondents that, the petitioner had not satisfied such conditions, the claim of the petitioner for grant of higher scale of pay for his enhancement of qualification in the relevant subject could not and should not have been denied, notwithstanding whether he had acquired the Masters Degree without obtaining prior permission from the Jurisdictional District Inspector of Schools in terms of the Government Order dated June 24, 1997. Inasmuch

as, the higher qualification which the petitioner had acquired was duly recognized as per the relevant Government Order issued by the appropriate authority. Therefore, the decision of the respondent no.2 and/or the State authority for not to grant higher pay scale to the petitioner was not tenable in law.

In view of the law having already been settled on the subject as discussed above, the ***impugned order*** passed by the respondent no.2 dated ***March 9, 2011***, ***Annexure-P5 at page 29*** to the writ petition stands ***set aside and quashed***.

Insofar as the ***staff pattern*** as mentioned under ***Rule 12(3)*** of ***ROPA 1998*** is concerned, the relevant observation of the Hon'ble Division Bench ***In the matter of : Rabi Kanta Barman (supra)*** is quoted below :

“ Ropa 1998 was notified on 12th February, 1999 and the effect of the said Ropa was given retrospectively from 1st January, 1996 as per recommendation given by the Pay Commission. Thus, when the new revised scale of pay of the teachers and non-teaching staff was introduced by framing revision of Pay and Allowances Rule 1998 did not specifically mention in the said Rule that such financial benefit cannot be given to those Assistant Teachers who acquired higher qualification in the relevant subject without obtaining prior permission from the concerned District Inspector of Schools (SE), grant of higher scale of pay to such Assistant Teachers after they have acquired higher qualification in the relevant subject, in our view cannot be denied provided however, they satisfy the condition mentioned therein. In fact, the condition for grant of higher scale of pay to such Assistant teacher is qualified in the said Rule which provides that such higher scale of pay cannot be granted to those teachers only when such higher qualified teacher in the relevant subject or group

is justified as per approved staff pattern of that school.

Thus, in our considered view, if the said condition as provided in the said proviso of Rule 12(3) of the Ropa 1998 is satisfied then the petitioner's prayer for grant of higher scale of pay for his enhanced educational qualification cannot be denied notwithstanding he acquired such degree without obtaining prior permission from the concerned District Inspector of Schools (SE) in terms of the Government Order dated 24th June, 1997. Provided however degree which he acquired is recognised as per the Government Order No. 549-SE(S) dated 24th June, 1997."

(underline supplied)

In view of the said observation of the Hon'ble Division, to a limited extent, the respondent no.2 shall visit the issue and pass a reasoned order that, whether the provision for **staff pattern** as enumerated under **Rule 12(3) of ROPA 1998** shall apply and if applies to what extent for the petitioner as on **December 23, 1999** being the date mentioned above.

The respondent no.2 shall revisit the issue and pass a reasoned order only to the extent related with **staff pattern** as indicated herein and it is clarified further that, insofar as **prior permission** is concerned, **the issue is decided in favour of the petitioner.**

After verification of all the materials and documents on the basis whereof the impugned order dated **March 9, 2011** was passed, if it appears to the respondent no.2 that, the **staff pattern** provision shall go in favour of the petitioner in the light of the provisions made under **Rule 12(3) of ROPA 1998** then, there shall

be no further embargo whatsoever to grant higher scale of pay to the petitioner forthwith.

The entire exercise, as directed above, shall be carried out and completed by the respondent no.2 positively within a period of **four weeks** from the date of communication of this order. As the petitioner is a retired teacher this direction is mandatory.

In the event the decision of the respondent no.2 goes in favour of the petitioner all consequential steps shall be taken in accordance with law but positively within a period of **four weeks** from the date of passing of the said reasoned order.

With the above observations and directions, this writ petition **WPA No. 8853 of 2011 stands allowed**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)