

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present:-
The Hon'ble Justice Aniruddha Roy**

**WPA 11881 of 2011
with
IA No. CAN 2 of 2013 (Old No. 12622 of 2013)**

***Sri Amal Kumar Tewari*
-vs-
*The State of West Bengal & Ors.***

For the petitioner: ***Mr. Kamalesh Bhattacharyya. Adv.***
Mr. Bidhan Biswas, Adv.
Mr. Tapas Chatterjee, Adv.

For the State: ***Mr. Arindam Ghosh, Adv.***
Ms. Tapati Samanta, Adv.

Hearing concluded on : **08.12.2023**

Judgement on: **08.12.2023**

ANIRUDDHA ROY, J.:

1. Mr. Kamalesh Bhattacharyya, learned counsel, appears for the petitioner.

2. Mr. Arindam Ghosh, learned State advocate, appears for the respondent nos. 1 to 3 along with Ms. Tapati Samanta, learned State advocate.
3. On the prayer of Ms. Samanta, learned State advocate, time to file affidavit in opposition stands extended till today. The affidavit in opposition affirmed on August 14, 2023, filed in Court today, is taken on record.
4. On the prayer of Mr. Kamalesh Bhattacharyya, learned counsel for the petitioner, time to file affidavit in reply stands extended till today. The affidavit in reply affirmed on September 8, 2023, filed in Court today, is taken on record.
5. This is a hearing matter upon completion of affidavits.
6. The petitioner's employment was approved by virtue of an approval issued by the **respondent no.3 dated February 4, 2002, annexure p-2 at page-34** to the writ petition. This said approval was accorded following the direction of a Co-ordinate Bench dated **March 2, 2001 passed in WP No. 2801 of 2001** filed by the petitioner. The third last paragraph at

page 35 to the writ petition of the said approval shows that the approval of the petitioner was for the post of **Assistant Teacher** of the relevant school with only **Bachelor of Arts (B.A.)** qualification, the approval was effected from **January 1, 2002**.

7. Prior to the approval and joining the school, the petitioner already in **1993** had qualified the post graduation degree, namely, **Master of Arts (M.A.)** in **Bengali** which was the relevant subject as would be evident from **annexure p-1 at page-33** to the writ petition. So when the petitioner joined his employment, he had the M.A. Degree. **Annexure p-3 at page 36** is a resolution of the Managing Committee of the relevant School dated **November 12, 2005**, which depicts that as on that date, the school had also acknowledged the Master Degree of the petitioner acquired in 1993. From the averments made in **paragraph 12 at page 13** to the writ petition, it would further depicts that the petitioner duly applied through proper channel of the school authority for sanction of scale for post graduation, since the petitioner had the relevant qualification. This averment has been dealt with by the respondent no.3 in **paragraph-7** of its affidavit in opposition, affirmed on August 14, 2023. It appears that this contention of the petitioner was not specifically denied as required to be done in law, if one has to traverse it. The

contention of the respondent no.3 appears at **Sub-paragraph-vii to Paragraph-5** of the affidavit in opposition supports the averment of the petitioner.

8. **Annexure p-7 at page-42** to the writ petition shows that at the first instance, the respondent no.3 through its decision dated **June 9, 2007** had rejected the claim of the petitioner on the plea that in view of the provisions laid down under the **West Bengal Schools (Control of Expenditure) Act, 2005** (for short, the 2005 Act), there is no provision to allow the post graduate pay scale.

9. Being aggrieved by the said decision, the petitioner filed a writ petition being **WP No. 4821(W) of 2007**. By an order dated **January 13, 2011, annexure p-8 at page-43** to the writ petition, a Co-ordinate Bench **set aside** the said decision of the respondent no.3 dated **June 9, 2007** and remitted the matter back before the said authority to take a fresh decision with reason.

10. In terms of the direction of the Co-ordinate Bench, the impugned order dated **April 13, 2011, annexure p-9 at page-51** to the writ petition was passed.

11. Assailing the said impugned order dated **April 12, 2011**, the instant writ petition has been filed.

12. Mr. Kamalesh Bhattacharyya, learned counsel for the petitioner referring to the **date of approval** and appointment of the petitioner submits that, the 2005 Act was not even promulgated and in effect at that point of time. Hence, the rejection of the prayer of the petitioner for higher pay scale by applying the provisions of the said 2005 Act was totally illegal, wrongful, arbitrary and the impugned order is accordingly liable to be set aside and the petitioner should be granted higher pay scale as claimed for.

13. Relying upon the provisions under **Sub-rule 3 to Rule 12 to ROPA-1998**, Mr. Bhattacharyya submits that the **petitioner is entitled to receive the higher pay scale from January 19, 1996 or the date of improving qualification whichever is later** provided that such higher qualified teachers in the relevant subjects or group is justified as per the approved staff pattern of the school. Since in the instant case, the petitioner's employment was approved with effect from **January 1, 2002**, the petitioner must get the benefit from that day.

14. Mr. Arindam Ghosh, learned State counsel has at the threshold reiterated the stands taken in the affidavit in opposition and referring to **Section 14(2) of the 2005 Act**, he submits that the petitioner not being appointed as an Hons. Graduate or Post Graduate teacher and being appointed with a simple B.A. degree is not entitled to receive the said higher pay scale.

15. He further relies upon **Clause-VII** of a **Government Order bearing No. 593-SE(B)/ES/O/B/1M-98/2007 dated November 27, 2007**. He submits that in view of the said provisions under the said Government Order, the petitioner being a teacher with a simple B.A. degree is not eligible to receive the higher pay scale as claimed by him.

16. In the light of the above, the learned State counsel supports the impugned order and submits that there is no infirmity or illegality at all in it.

17. Considering the rival contentions of the parties and considering the materials on record, it appears to this Court that facts are admitted as narrated above. It is an admitted fact that the petitioner's employment approval was issued by the respondent no.3 on February 4, 2002 **with**

effect from January 1, 2002, annexure p-2 at page 34 to the writ petition. The approval was made on the basis of the B.A. degree only. The resolution of the Managing Committee of the school dated **November 12, 2005** shows that, the petitioner when appointed had the M.A. degree in the relevant subject and such fact was acknowledged by the school and such fact would also be evident from the document being **annexure p-1 at page-33** to the writ petition. Hence the admitted fact is that the petitioner has qualified his M.A. in 1993 prior to joining his service.

18. On a close scrutiny of the impugned order, it appears to this Court that the sole plea taken for rejection of the claim of the petitioner for granting higher pay scale was the application to the provision of 2005. The 2005 Act was notified after receiving assent of the **Governor on August 19, 2005** and came into effect on and from **December 26, 2005**. The petitioner having been appointed in 2002, the question of application of the provisions of 2005 Act did not and could not and/or does not and cannot arise in the fact of this case.

19. Learned counsel for the State-respondents has also not shown neither argues as to whether there was any other rule or service condition which could govern the employment of the petitioner with a bar

that, in the fact of this case, the petitioner could not and cannot claim higher pay scale commensurating with his Master Degree in the relevant subject with which he was possessed since 1993, much prior to his appointment.

20. Grant of higher pay scale commensurating with the higher qualification of a teacher, is a benevolent policy of the State for encouraging the teachers for enhancement of their qualification for imparting education to the students at large for their benefit. Such a policy is required to be construed liberally in favour of the teacher, but of course, within the framework of law.

21. Since from record, it appears that there is no provision creating a bar for the petitioner to claim the higher pay scale commensurating with his Master Degree, which he had, even prior to joining of his employment though he was appointed as a B.A. teacher, this Court is of the considered view that, such higher pay scale shall be granted to the petitioner with effect from the date of his effect of approval of employment, i.e. **January 1, 2002**, in consonance with the provisions laid down under **Sub-rule 3 to Rule 12 of ROPA-1998** implemented by **the Government Memorandum dated February 12, 1999**.

22. In view of the forgoing reasons and discussions, the impugned order dated **April 12, 2011 annexure p-9 at page-51** to the writ petition **stands set aside and quashed.**

23. The respondent no.3 is directed to approve and grant higher pay scale commensurating with the M. A. Degree of the petitioner with effect from **January 1, 2002** forthwith. All the arrear payments with effect from **January 1, 2002** shall be paid to the petitioner along with interest @ **6% per annum.**

24. The entire exercise as directed above including the grant of higher pay scale with the arrear with interest shall be carried out and completed by the **respondent no.3** positively within a period of **six weeks** from the date of communication of this order.

25. The **respondent no.3** within such period of six weeks shall forward the necessary records and documents to the **respondent no.2** and the respondent no.2 shall carry out all the consequential steps to give effect to the direction made by this Court and release the payment in favour of the petitioner positively within a period of **three weeks** from the date of

receiving the records and papers and the requisition of fund from the respondent no.3.

26. With the above observations and directions, this writ petition, **WPA 11881 of 2011** stands **allowed**, without any order as to costs.

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

(Aniruddha Roy, J.)