

WPA 12237 of 2008

Gayatri Ganguly (Bhattacharya)

Vs.

The State of West Bengal & Ors.

Mr. K. M. Hossain

Mr. Kazi Ardan Ali

... for the Petitioner.

1. The subject matter of the writ petition is with regard to grant of higher pay scales to the writ petitioner in accordance with the honour's category pay scale for a particular period and after that in accordance with the post-graduate category pay scale and the petitioner has challenged the order of the District Inspector of Schools, Secondary Education, South 24 Paraganas (hereinafter referred to as "the D.I.") dated May 14, 2008 in this regard, in the present writ petition.
2. By dint of the said impugned order dated May 14, 2008, the D.I. has rejected the petitioner's prayer for grant of higher pay scale. The order of the D.I., as above, is principally based on two reasons. Firstly, that the petitioner has obtained her Master's Degree in a subject, different from her subject of teaching thus, not in a relevant subject and that the petitioner

has never sought for prior permission of the competent authority. Secondly, the petitioner has enhanced her qualification without taking any prior permission from the competent authority, that is, the Managing Committee of the School and the District Inspector of the Schools, Secondary Education, South 24 Paraganas.

3. Hence, the petitioner's prayer for grant of higher pay scale to her has been rejected. Being aggrieved with the said impugned order dated May 14, 2008, the petitioner has filed the present case.
4. In spite of service of notice, none appears for the said respondent/State. Hence, this matter is taken up for adjudication in absence of the said respondent/State.
5. Mr. K.M. Hossain has appeared for the petitioner. He has submitted that the petitioner has entered into service in the year 1991, that is, with effect from October 1, 1991 in a school which was a junior high school at the time of appointment of the petitioner. Hence, in spite of the petitioner being qualified with the Honour's Graduate degree, could not have been placed in the Honour's Graduate category

of pay scale. But instead she was placed in a Graduate pay scale.

6. In the year 2000, that is, with effect from May 1, 2000, the said school was upgraded as a secondary school. Since thereafter, the petitioner has been regularly assigned duties in classes IX and X. In such view of the fact, the school authority has written to the D.I. vide letter dated June 6, 2006 that the petitioner may be granted with the Honour's Graduate category of pay scale, since the school has been utilizing her service for higher classes, though inadvertently at the time of upgradation and while filing staff pattern, the school has erroneously mentioned the petitioner's name as a Graduate category teacher. The said letter of the school authority has never been answered or the prayer has never been allowed by the D.I.

7. It is stated further that, vide her letter dated September 15, 2001, the petitioner has prayed for permission to pursue the Master's Degree course in Bengali, before the Headmaster of the said school. Subsequently, she enrolled herself in the course as well as appeared in the examinations thereof pursuant to the permission granted by the school authority in

this regard. For the purpose as above, the prayer of the petitioner for sanction of study leave has been allowed by the West Bengal Board of Secondary Education vide its letter dated July 19, 2004. Her Part II examinations ended on September 30, 2002. The petitioner was granted certificate in the Master's Degree course in Bengali, dated January 28, 2003.

8. Since thereafter, the petitioner has made several prayers for grant of appropriate pay scale in her favour, meant for post-graduate category of teachers. Such prayer of her has been rejected by the respondent/D.I. by dint of the impugned order for the reasons as stated above.

9. According to Mr. K.M. Hossain, neither of the reasons as cited by the respondent/D.I. in the impugned order, would be maintainable in view of the prevalent rule at the relevant point of time. Mr. K.M. Hossain has stated that the petitioner would be governed under ROPA, 1998 and according to Rule 12(3) of ROPA, 1998 the petitioner would be entitled to get higher scale of pay, appropriate to her qualification. He says that, pursuant to the said provision of the rules, the petitioner has prayed for two-fold reliefs in the present

petition. Firstly, that she may be granted with the Honour's Graduate pay scale with effect from the date of upgradation of the school, that is, May 1, 2000 and thereafter, upon her being qualified with the Master's Degree, she may be granted with the pay scale meant for post-graduate category of teachers, with effect from the relevant date in accordance with law.

10. Let the relevant rule be quoted as hereinbelow:-

"12. Career Advancement Schemes and Related Issues:

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(3) 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 group 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 later."

11. The petitioner had entered into service in 1991 with the Honour's Graduate degree in the subject Sanskrit. The petitioner says that she is entitled as per the said Rules, for Honours Graduate category pay scale, with effect from the date when the school was upgraded, that is, from May 1, 2000. According to the said Rule, the teachers who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment, shall be entitled to get commensurate pay scale. The

petitioner's case squarely falls within this bracket. The petitioner, though having Honours graduate qualification, was granted Graduate scale of pay in view of the fact, that at the time of her entering into service, the school was a junior high school and there was no scope to pay the petitioner the Honours graduate pay scale in the said school. Therefore, with effect from the upgradation of the school, and from May 1, 2000, the petitioner would be safeguarded under Clause 12 (3) of the ROPA, 1998 and be entitled for a commensurate pay scale as per her qualification at the time of her appointment, that is, Honour's graduate qualification.

12. The other prayer of the petitioner is with regard to further enhancement in her pay scale, commensurate to her Post-graduate qualification. According to Rule 12(3) of ROPA, 1998, the petitioner would be entitled if she improves her qualification after entering into the service and in a subject or group relevant to her appointment. So far as the Rules are concerned, there is no provision made therein, to oblige the petitioner to seek prior permission from the D.I. before enrolling herself for higher qualification. In such view of the fact, the

grounds taken by the D.I. in the said impugned order, that no prior permission having been taken by her, her prayer for grant of higher pay scale cannot be allowed, appears to be straightaway in contravention with the Rules which is applicable in case of the petitioner, that is, ROPA, 1998. Furthermore, the Court is constrained to find it not be correct to state that the petitioner has not obtained any prior permission. On her part, the petitioner has duly applied before the Headmaster of the school for grant of permission to be enrolled in the higher course, vide her letter dated September 15, 2001. She being on the receiving end, has thus duly discharged her duty, in the process of obtaining prior permission of the D.I. for the rest part thereof, she cannot be held to be responsible.

13. So far as the other reasons cited by the D.I. in the impugned order, regarding the petitioner having obtained the Master's Degree in a subject different from the subject of her appointment, the Court finds that in terms of Rule 12(3) of ROPA, 1998, enhancing qualification, either in the subject or the group, would be sufficient for a teacher to be entitled for higher pay scale. Undoubtedly, the

petitioner, though have not pursued the higher degree course, in the subject relevant but, in such a subject, which is comprised in the same language group. Such objection of the D.I. is therefore, unfounded and not maintainable.

14. Therefore, on the discussion as above, the Court finds that the impugned order of the D.I. dated May 14, 2008 is not supported with the Rules applicable in case of the present petitioner, that is, ROPA, 1998. Being in contravention with the provisions under the said Rule, the said impugned order is not eligible to stand any further, being illegal and not sustainable in the eye of law.

15. The Court finds it proper to set aside the impugned order, as above, and allow the present writ petition, with the following directions:-

- i) The impugned order dated May 14, 2008 by the District Inspector of Schools, Secondary Education, South 24 Paraganas, is set aside.
- ii) The petitioner's prayers in the writ petition in terms of prayer (a) and (b) of the writ petition, are allowed.

- iii) Let the D.I./respondent no. 3 grant Honours graduate scale of pay to the writ petitioner, with effect from May 1, 2000 till September 30, 2002.
- iv) Let the D.I./respondent no. 3 grant post-graduate scale of pay to the petitioner, with effect from the subsequent day of the last date of her Part-II examinations, that is, from October 1, 2002.
- v) The writ petitioner, having already retired from the service, re-fixation of her pension be made immediately, maximum within a period of 4 weeks from the date of communication of copy of this order. The Pension Payment Order be revised accordingly, within the said stipulated period.
- vi) Arrear pay in terms of this Court's order, as above, be immediately disbursed to the petitioner, maximum within a period of two months from the date of communication of this order.

16. With the directions as above, the writ petition is allowed and disposed of.

17. Since no affidavit-in-opposition has been called for in the case, the allegations in the writ petition are deemed to have been denied by the respondents.

18. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)