

Court No. 22
05.12.2023
(Item No. 4)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 11617 of 2016

Mousumi Mukherjee
VS
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. S. M. Ali
Ms. Tanuja Basak
Sk. Imtiaj Uddin
.... For the petitioner
Ms. Tuli Sinha
.... For the State

Pursuant to the leave granted by this Court on November 22, 2023, the supplementary affidavit affirmed by the petitioner on November 29, 2023 is filed today in Court, the same is taken on record. Copy has already been served upon Ms. Tuli Sinha, the learned State advocate appearing in the matter.

This is a hearing matter.

Despite directions the respondents chose not to file affidavit-in-opposition as would be evident from the previous order dated August 16, 2023 read with the department's report dated April 3, 2017.

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

Ms. Tuli Sinha, learned counsel appears for the State respondents.

None appears for the rest of the respondents.

The petitioner was appointed as an Assistant Teacher for the subject Science and Mathematics as

an honours graduate. She joined in the employment on **November 4, 1997** as would be evident from the approval document being **Annexure P-1 at page 20** to the writ petition. The documents disclosed through the supplementary affidavits today depict that, the petitioner have the Master degree in Mathematics (M.Sc. Mathematics) which was the relevant subject and the examination was held in August 1996 and the result of M.Sc was published on January 1, 1997, at **page 6** to the supplementary affidavit. So when the petitioner had joined her employment as an Assistant Teacher, she had her Master degree on the relevant subject. From the record it appears that, for the first time on or about **September 1, 2006**, at **page 28** to the writ petition the petitioner made a prayer before the respondent No. 4 for granting Higher Pay Scale commensurating with her post graduation degree. On **September 26, 2006** the school authority made a representation before the respondent No. 4 with a prayer for granting Higher Pay Scale to the petitioner, **Annexure P-2 at page 22** to the writ petition. **Annexure P-4 at page 26** to the writ petition is a letter dated **November 8, 1997** written by the school to the respondent No. 4 seeking an approval for the post as M.Sc (Mathematics) by modifying the order of permission issued for appointment for the petitioner.

Since then as mentioned above till today the petitioner has not received the Higher Pay Scale.

Meanwhile the claim of the petitioner for Higher Pay Scale was rejected by the respondent No. 2 by communications dated **December 29, 2008, Annexure P-6** at **page 30** to the writ petition and communication dated **March 9, 2009, Annexure P-7** at **page 31** to the writ petition. The first plea for rejection as would be evident from the said communication dated **December 29, 2008** was that the petitioner had accepted the Honours Scale of pay at the time of receiving her appointment and then after lapse of more than ten years she could not have claimed the M.Sc scale, since she had accepted voluntarily the Honours pay scale at the time of joining of her employment. It was also communicated that the case of the petitioner was not for enhancement of educational qualification. The communication dated **March 9, 2009** mentioned that several bunch of litigations were pending including before a three Judges Bench and the department was to take decision on the issue. It was also mentioned that the Larger Bench had granted an order of stay on the prayer for Higher Pay Scale.

In view of the above, the petitioner claimed the Higher Pay Scale commensurating with her Master degree and also prayed for quashing and cancellation of those two communications dated **December 29, 2008** and **March 9, 2009 being Annexure P-6 and P-7** to the writ petition respectively.

Mr. Ekramul Bari, learned counsel for the petitioner submits that, the petitioner when joined in her service and received the approval with effect from **November 4, 1997, Annexure P-1** at **page 20** to the writ petition, the petitioner had the Post Graduation degree (M.Sc Mathematics) on the relevant subject. Hence, the law is well settled that the petitioner must receive and should have received the Higher Pay Scale and/or from the last date of Post Graduation examination. More specifically he submits that, the petitioner is eligible to receive her Higher Pay Scale with effect from **November 4, 1997**. Mr. Bari referring to **Annexure P-4** at **page 26** to the writ petition submits that, immediately after realizing that the petitioner was appointed with a Post Graduation degree on the relevant subject, the school authority by its communication dated **November 8, 1997** made a representation before the respondent No. 4 praying for Higher Pay Scale for the petitioner. Referring to ROPA 1998 learned counsel submits that, for the purpose of Carrier Advancement Scheme it is provided that, in the facts like this the petitioner shall get the Higher Pay Scale from the date of her approval, since she was appointed with the Post Graduation degree.

Ms. Tuli Sinha, learned State counsel referring to **Annexure P-5** at **pages 27 and 28** to the writ petition, submits that, the petitioner for the first time made a prayer for Higher Pay Scale on or about

September 1, 2006 and thereafter renewed her prayer on **January 20, 2009** before the respondent No. 4 and the Principal Secretary, Education department. She submits that prior thereto there was no claim made by the petitioner for receiving Higher Pay Scale. Referring to the communication of the School **Annexure P-4** at **page 26** to the writ petition, she submits that the school authority merely prayed before the respondent No. 4 for modifying the order of permission for appointment of the petitioner as an M.Sc candidate. She submits that, till today the State authority/respondent No. 4 thought it fit not to alter or modify the permission for appointment of the petitioner and the appointment of the petitioner was made as an Honours Graduate teacher and she is continuing her employment till now as such on the strength such permission, on the basis where of her approval for employment was granted with effect from November 4, 1997. She submits that, the petitioner voluntarily accepted this Honours scale even though she might have Post Graduation degree at the time of appointment and has been carrying out her employment as such. Hence, she can not claim the higher pay scale at this belated stage.

After considering the rival submissions made on behalf of the parties and on perusal of the materials on record, at the outset, it appears to this Court that despite directions the State authority chose

not to file any affidavit-in-opposition. On query being raised by the Court learned State counsel appearing today has failed to indicate whether any issue is pending before the Larger Bench or if there is any order of stay passed by the Larger Bench on the subject matter as contended by the State authority in its impugned decision dated **March 9, 2009, Annexure P-7** at **page 31** to the writ petition. On the contrary Mr. Bari learned counsel for the petitioner submits that, no such issue was pending before the larger Bench neither any order of stay is there. He submits that, there is no embargo for the Court to proceed with the final hearing of this writ petition.

The documents disclosed through the supplementary affidavit affirmed by the petitioner admittedly demonstrate that, the petitioner qualified M.Sc. in Mathematics and joined her employment with such Post Graduation degree for the post of an Assistant Teacher and the approval for her appointment was for Honours Graduate Teacher. The petitioner has been still working as such. On a close scrutiny of the records it appears to this Court that, prior to **September 1, 2006** at **page 28** to the writ petition, the petitioner had not raised any claim for receiving Higher Pay Scale. The school thereafter by its communication dated **September 26, 2006, Annexure P-2** at **page 22** to the writ petition, made a prayer before the respondent No. 4 for granting Higher

Pay Scale to the petitioner commensurating with her Post Graduation degree in Mathematics. The communication of the school dated **November 8, 1997, Annexure P-4** at **page 26** to the writ petition was merely a prayer made by the school before the respondent No. 4 for approval for a post for M.Sc. Mathematics and to modify the permission for appointment of the petitioner suitably. The respondent No. 4 had not accepted the said prayer and the permission for appointment of the petitioner was never modified or altered as prayed for by the school authority. Hence, the petitioner, all along since her appointment, has been working as an Honours Graduate Science Teacher at the school and she has accepted the same throughout. For the first time the petitioner raised her claim for Higher Pay Scale on or about **September 1, 2006** at **page 28** to the writ petition. The school authority made an identical prayer by its communication dated **September 26, 2006** before the respondent No. 4. The respondent No 2 then rejected the prayer for Higher Pay Scale for the petitioner on **December 29, 2008** and **March 9, 2009**.

Challenging such actions and the decisions of the State authority the petitioner filed this writ petition on or about **June 20, 2016**, after lapse of at least about eight years.

In my considered view, since the petitioner had joined with her Master degree though at a post for Honours Graduate candidate but considering the Carrier Advancement Scheme as provided by the State authority, such scheme has to be read harmoniously and keeping in mind that such schemes were introduced for encouraging the teachers for enhancement of qualification for the betterment of the students at large and for imparting education to them. The petitioner having the Post Graduation in the relevant subject **must receive the Higher Pay Scale** commensurating with her Post Graduation degree, in sync with the object of the said benevolent policy decision of the State.

To consider the **cut off date** since when the petitioner shall be eligible to receive the higher pay scale, few facts are required to be noted though discussed hereinabove. For the **first time** the petitioner raised her claim on **September 01, 2006**. The School for the **first time** then made the prayer for grant of higher pay scale in favour of the petitioner before the respondent No. 4 on **September 26, 2006**. The respondent No. 4 and/or the State authority did not take any step immediately and ultimately rejected the claim on **December 29, 2008** and **March 09, 2009**. Challenging the rejection, the petitioner filed the instant writ petition on or about **June 20, 2016**. In the light of these facts the equity demands that the

cut off date should be fixed as **September 26, 2006 and not prior thereto.**

The policy framers made the scheme for Carrier Advancement for the Teachers for imparting better education to the students, such a State policy cannot be negated to the beneficiaries on the contentions of the State authority that at the time of appointment, petitioner has accepted the Honours scale though she had M.Sc. degree and for about a long period she voluntarily rendered her service by accepting that. The policy being a benevolent one, has to be construed liberally, but of course within the parameter of law. In as much as, the learned State counsel, as recorded above, has failed to show that any issue is pending before the Larger Bench or there is any order of stay on the subject matter.

For these reasons the two communications dated **December 29, 2008, Annexure P-6** at **page 30** and **March 9, 2009, Annexure P-7** at **page 31** to the writ petition stand **set aside** and **quashed.**

In view of the foregoing reasons and discussions, the respondent No. 4 shall grant, fix and approve the **Higher Pay Scale** in favour of the petitioner commensurating with her **M.Sc. (Mathematics)** degree, at the scale payable to her in accordance with law with effect from **September 26, 2006** and not before that.

The respondent No. 4 and/or the appropriate authority while calculating the arrears payable to the petitioner since **September 26, 2006** shall include **interest @ 6% per annum** till the date of actual tendering of the amount to the petitioner.

The respondent No. 4 and/or the appropriate authority shall fix the higher pay scale and pay the entire arrears with interest as directed above positively within a period of **six weeks** from the date of communication of this order and then shall continue to go on paying the petitioner the Higher Scale of pay payable to her.

In the event, the respondent No. 4 requires any assistant or co-operation, the respondent Nos. 5 and 6 shall render all such co-operation and assistance to the respondent No. 4 to carry out the direction of this Court within the time as directed above.

With the above observations and directions, this writ petition being **WPA 11617 of 2016** 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.)