

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 1220 of 2021

With

IA No. CAN 1 of 2021

Sri Sukesh Majumder

-Vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Sudip Ghosh Chowdhury

Ms. Bina Baidya

Mr. Argho Das

For the State : Ms. Kakali Samajpaty

Heard On : 24.01.2023

Judgement Delivered On : 21.04.2023

Supratim Bhattacharya, J.:- In this instant appeal the Judgement of the Hon'ble Single Bench dated 8th of April, 2021 in the writ petition being WPA 22089 of 2017 is under challenge. The challenge in the writ petition was thrown by the present appellant to the decision of the District Inspector of Schools (for short DI), (Secondary Education), Burdwan, through which the said DI has rejected the prayer of enhanced scale of pay made by the appellant/writ petitioner.

The fact of the case is that the appellant/writ petitioner joined the Bishpara High School, Hooghly on 07.03.2006 as an Assistant Teacher. On 09.01.2007 the appellant completed his Masters of Arts Part-II from Burdwan University through correspondence. Thereafter the appellant joined the Jhapandanga Pareshnath Vidyamandir on 24.09.2013 on transfer by the Central School Service Commission (for short the Commission). Thereafter the appellant applied for granting him higher scale of pay. After which the managing committee of the said school adopted a resolution in favour of the appellant/ writ petitioner and forwarded the same before the DI (Secondary Education) on 26.07.2016.

Being unable to obtain any fruitful result the appellant/ writ petitioner preferred a writ petition before this Hon'ble Court, being WP 4459 (W) of 2017, wherein the Hon'ble Single Bench disposed of the said writ petition directing the DI, (Secondary Education), Burdwan, to consider and decide the said

representation in accordance with law after affording reasonable opportunity of hearing to the writ petitioner after taking into consideration the ROPA Rules. As per the direction of the Hon'ble Single Bench, the District Inspector of Schools (Secondary Education), Burdwan, passed an order dated 18.07.2017 rejecting the prayer of the appellant/writ petitioner praying for additional increment/higher scale of pay, as a result of which the instant appeal has been preferred.

The Learned Counsel appearing on behalf of the appellant /writ petitioner during his arguments has submitted that the appellant/ writ petitioner had commenced his post graduate course in English in the year 2005, that is prior to joining his service, as an Assistant Teacher in the Bishpara High School on 07.03.2006. He further submitted that as the said appellant had pursued his M.A. course prior to joining his service, so question of taking permission from the employer/authority does not arise. He further submitted that the appellant /writ petitioner had pursued his masters degree in English, that is the subject which he teaches in the school.

Relying upon these points the Learned Counsel prayed for enhanced scale of pay and thus allowing the instant appeal. He further submitted that the Hon'ble Single Bench misinterpreted the statutes and the Government Orders and has thus come to an erroneous finding.

The Learned Counsel appearing on behalf of the State respondents has relied upon the fact that no permission was sought for by the appellant/writ

petitioner while pursuing the post graduate course. He further submitted that where no permission has been taken from the appointing authority as regards to higher studies, the appellant cannot seek higher scale of pay and as a result of which the prayer of the appellant/ writ petitioner praying for higher scale of pay on the basis of his achieving Masters Degree has been rejected time and again. He further submitted that Government Orders and the ROPA Rules do not support the contentions of the appellant/writ petitioner. Embarking on the aforementioned points, the Learned Counsel has supported the impugned Judgement and Order and thus prayed for rejection of the instant appeal.

On going through the impugned order it reveals that the writ petition was dismissed on the ground that the writ petitioner without taking prior permission from the DI (SE) obtained post graduate qualification which is in violation of the Government Order No. 548-SE (S) dated 24.06.1997 and in violation of the Government Order dated 27th November 2007.

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 enrol 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

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.

MAT 1220 of 2021 with IA No. CAN 1 of 2021 stands accordingly allowed.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)