

WPA 18657 of 2019

**Smt. Pratima Das
Vs.
The State of West Bengal & Ors.**

Mr. Amales Ray,
Mr. Mousumi Bhowal,
Mr. Ishan Bhattacharya,

... for the Petitioner.

Mr. Debapriya Guha,

... for the Respondent No. 4-8.

Mr. Supriya Chattopadhyay,
Mr. Arindam Ghosh,

...for the State

1. In the present writ petition, the petitioner has sought for the relief by quashing of the impugned order dated August 22, 2019 of the respondent no. 3/District Inspector of Schools, Secondary Education, Kolkata (hereinafter referred to as “the D.I.”) and also for grant of dearness allowance to her at the rate applicable to the post-graduate teachers, with effect from November 16, 2011.
2. The petitioner has challenged the order of the D.I. dated August 22, 2019, by dint of which the respondent D.I. has turned down the petitioner’s prayer for grant of post-graduate scale of pay to her.

3. The factual background of the case may be narrated here, in a nutshell. The petitioner was qualified in Masters degree in the year 2005. Vide the appointment letter dated November 15, 2011, the petitioner was appointed in the school namely Balika Siksha Sadan with effect from November 16, 2011 and her service was confirmed vide letter dated November 28, 2014.

4. By dint of a letter dated April 17, 2017, the school authority proposed for approval of the petitioner's service, against a regular, permanent post of Assistant Teacher, in the said school, which fell vacant, due to retirement of a teacher, namely, Mrs. Bindu Singh, on July 1, 2011.

5. The said proposal of the school is on the basis of the provisions as promulgated in the Government Notification No. 1691 – SE (S)/4A – 53 /2001 dated September 20, 2001 (herein after referred to as No. 1691).

6. Mr. Ray, learned advocate appearing for the petitioner submits that the petitioner being appointed and confirmed in service with a Masters degree qualification and having fulfilled the necessary criteria in terms of the notification

No. 1691, is eligible for being regularized at a pay scale commensurate to that payable to the post-graduate teachers. However, instead the respondent/D.I. has allowed the petitioner 'graduate' pay scale while approving her, notionally with effect from November 16, 2011 and financially with effect from August 20, 2019, in the said impugned order dated August 22, 2019. Mr. Ray has raised serious objections and grievance of the petitioner as to the said order as impugned in this case, for the reason that the impugned order not only suffers from non-compliance with the relevant rules and laws, but also is bereft of any consideration as to the pertinent facts related in this case. He submits that approval of the petitioner has been sought for as against a post, the incumbent of which used to draw the post-graduate pay scale. Therefore, the petitioner's approval as against the said post should also bear the similar pay scale to be payable to her, particularly when the petitioner fulfills the essential criteria in terms of qualification, necessary to be granted for such pay scale and also the other criteria as prescribed in the Government Notification, that is, No. 1691.

7. Therefore, Mr. Ray says that the impugned order may be set aside and necessary direction may be issued against the respondent no. 3, the D.I. for grant of appropriate pay scale to the petitioner.

8. Upon queries being made in this regard and due to the reason of enormous co-operation from the respondent State, through its learned counsel Mr. Chattopadhyay, the Court has learnt that the retired school teacher, namely, Mrs. Bindu Singh, used to be paid with a scale, meant for post-graduate teacher. A report to that extent has been filed by the State respondent, which is taken on record. Learned counsel representing the school authority has also submitted a report, confirming that the earlier incumbent in the said post, received post-graduate scale of pay during her service period.

9. Having heard the learned counsels for the parties and after perusal of the record, the Court has come to the following conclusion:-

The petitioner who was earlier qualified in Masters degree, in the year 2005, has been appointed in the school vide appointment letter dated November 15,

2011. Since thereafter, she has been working therein continuously and uninterruptedly.

10. On September 20, 2001, a notification dated come into effect, that is, No. 1691. The same has provided as follows:-

“Sub: Filling up of the Vacant Posts within the Govt. sanctioned strength of the Schools in receipt of D.A. from the Government.

*In terms (d) of section 15 of School Service Commission Act, 1997 it has been stipulated selection of Teachers for the Schools in receipt of D.A. from the Govt. will not be made by School Service Commission. Consequently, the Director of School Education in terms of his Memo. No. * 1736(21)-GA dated 01.11.99 had issued a guidelines for selection of teachers against Govt. sanctioned posts in D.A. getting schools.*

Authorities of some D.A. getting schools have approached the Govt. in the Education Department to fill up the vacant posts against sanctioned strength of such D.A. getting schools by placing the teachers working beyond the Govt. sanctioned strength since for non-consideration of their candidature at the time of filling up of the post within the Govt. sanctioned strength the senior teachers are being deprived.

Govt. in the Education Department has since considered the matter at length and decides to permit the authorities of such D.A. getting schools to fill up the vacant post within the sanctioned strength by placing properly qualified teachers already working in the school for the Secondary / Higher Secondary Section but not in receipt of D.A. from the Govt. on fulfillment of the following conditions: -

(1) Such teachers working beyond the sanctioned strength should be placed whenever any vacancy arises within the sanctioned strength in strict adherence to the norms of the staff pattern in case of Normal Section (V to X). In case of H.S. Section only those teachers who possess Hons. / Master

Degree in the subjects in which the vacancy arises should be considered.

(2) Before placement it is to be confirmed that the teachers to be placed within the sanctioned strength had minimum qualification and was within the prescribed age limit at the time of initial appointment.

(3) The managing committee whenever a vacancy arises will approach the concerned D.I. of Schools for permission order, alongwith a copy of resolution resolving the placement of concerned teacher alongwith academic certificates of the incumbent.”

11. Therefore, by dint of the said notification, an enabling provision has been made for approval of the teachers in unsanctioned posts in school, against the vacant sanctioned posts, upon fulfillment of certain conditions as mentioned therein.

12. In terms of Clause 3 of the notification No. 1691, the school has recommended for approval of the petitioner as against a sanctioned, permanent vacant post vide its order dated April 17, 2017. Along with the recommendation letter, the school has forwarded to the Office of the respondent no. 3/D.I., the other requisite documents. The school has recommended for the petitioner's approval against a sanctioned vacant post, where earlier the Assistant Teacher Ms. Bindu Singh was engaged, who retired on July 1,

2011 and who used to receive a post-graduate scale of pay.

13. In the impugned order dated August 22, 2011, the respondent no. 3, D.I. has mentioned that the petitioner did possess minimum qualification at the time of her initial appointment as per requirement under G.O. No. 1691 and The Right Of Children To Free And Compulsory Education Act, 2009. The said respondent has ultimately directed that approval of appointment of the petitioner that is, Pratima Das, appointed as an Assistant Teacher in Science and Maths group in the normal section of Balika Siksha Sadan, 87, Vivekananda Road, Kolkata-700006, is accorded thereby, notionally with effect from November 16, 2011, that is, the date of actual initial appointment of the writ petitioner and financially with effect from August 20, 2019. That she will be entitled to receive dearness allowance as per pass graduate scale of pay, having been placed in the normal section of school.
14. As discussed earlier, the retired teacher in whose place and vacancy, the petitioner has

been approved, used to draw the post-graduate scale of pay.

15. The petitioner being duly qualified with the post-graduate degree in relevant subject and having fulfilled the other criteria, as mentioned in the G.O. No. 1691, is entitled to be granted similar pay scale and there is no cogent or comprehensible reason as to why she may be discriminated from such grant of pay scale, equal to the previous incumbent in the said post.
16. The other aspect necessary to be mentioned in this order is with regard to the effective date of grant of financial benefits to the writ petitioner. The respondent no. 3/ D.I. in his order dated August 22, 2019, has considered the same to be August 20, 2019 without assigning any reason, as to why it has to be so fixed. The Court, finds such fixation of date for actual financial benefit to be granted to the petitioner, to be unreasoned and irrational, being bereft of any just and proper reason. Instead, the Court finds that the school has proposed the petitioner's placement as against the said sanctioned permanent vacant post on April 17,

2017. Also that she has discharged duty as against the said post, from even prior to placement of her service, in the said post. Therefore, the petitioner would be eligible for grant of actual financial benefit from the said date from when the school places her as against the sanctioned permanent vacant post, particularly when the petitioner has been working therein continuously and without any break.

17. For the reasons as above, the Court finds the impugned order of the District Inspector of Schools, Secondary Education, Kolkata dated August 22, 2019 to be irrational, unreasoned and arbitrary which cannot be maintained in the eye of law. Hence, the same is liable to be set aside.

18. The present writ petition be disposed of with the following directions:-

- 1) Impugned order dated August 22, 2019 is set aside.
- 2) Let the respondent no. 3, D.I. immediately issue appropriate order, to grant the petitioner approval as against the vacant permanent sanctioned post

which was earlier occupied in the school by Ms. Bindu Singh (now retired) notionally with effect from November 16, 2011 and with actual financial benefit with effect from April 17, 2017, at post graduate scale of pay.

3) Let the order as above, be complied with by the respondent no. 3/ D.I. immediately and not beyond the period of four weeks from the date of communication of copy of this order.

19. With the directions as above, the Writ Petition No. 18657 of 2019 is allowed and disposed of.

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

(Rai Chattopadhyay, J.)