

18.09.2023
SL. 17
Court no.22
b.r.

W.P.A. 23614 of 2007

Lipi Sen (Biswas)
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak
Mr. Bulbul Yeasmin
.... for the petitioner.

Mr. Bhaskar Prasad Vaisya, Ld. AGP.
Mr. Gourav Das
.... For the State.

On the prayer of Mr. Ekramul Bari, learned Counsel appearing for the petitioner, time to file affidavit-in-reply stands extended till today and the same is filed in Court today and is taken on record.

This is a hearing matter on affidavits.

The petitioner had worked as an **Assistant Teacher at Barasat Priyanath Balika Vidyalaya, District-24 Parganas (North)**. By virtue of the approval issued by the **respondent no.3 annexure P-2 at page-22**, the appointment letter dated **August 7, 1987, annexure P-3 at page-21** was issued by the relevant school. The final approval for the permanent employment against a permanent post for the petitioner issued by the **respondent no.3 dated May 24, 1988** is also available being **annexure p-4 at page-22** to the writ petition. The petitioner was

appointed as a teacher in the **Science-Group** with **B.Sc.(Hons.)** qualification.

The averments made in **paragraph-7** in the writ petition shows that, the petitioner obtained **Honours Degree** from **Calcutta University in Anthropology in the year 1985**. In **paragraph-18** in the writ petition, the petitioner has pleaded that she has completed post-graduate course from Calcutta University before joining the school but the result was published in the year 1988.

Initially there was an allegation of overdrawn benefit against the petitioner by the respondent no.3. The petitioner **retired on March 31, 2022**.

Challenging, *inter alia*, the said allegation of overdrawal, the petitioner filed this writ petition in the **year 2007** along with other reliefs. The reliefs claimed by the petitioner in the instant writ petition are quoted below:-

“a) A writ of or in the nature of Mandamus commanding the respondents, their agents, servants, subordinates, employees and/or assignees to rescind, cancel and/or assignees to rescind, cancel and/or withdraw the purported letter of the District Inspector of Schools (SE) North 24 Parganas issued under Memo No. 460/G dated 20.8.07 as well as letter of the Secretary of Barasat Priyanath Balika Vidyalaya, P.O. Barasat, District- North 24-Parganas issued on 19.9.07 being annexure “p5” collectively to this petition and further

command them not to disturb the honours pay scale which is being enjoyed from the date of appointment of the petitioner.

- b) A writ of or in the nature of Mandamus commanding the respondents to grant post graduate scale of pay in terms of post graduate qualification of the petitioner in the relevant subject.*
- c) A writ of or in the nature of Certiorari commanding the respondents to produce entire original records before this Hon'ble Court so that conscionable justices may be done between the parties by quashing the purported order of the District Inspector of Schools (SE) dated 20.8.2007 being annexure "5" to this petition.*
- d) A writ of or in the nature of prohibition prohibiting the respondents from exercising powers not warranted under the statute.*
- e) Rule NISI in terms of prayer (a) to (d) as above.*
- f) An ad-interim order of injunction restraining the respondents from giving effect or further effect to the purported letter dated 20.8.2007 issued by the District Inspector of Schools (SE) North 24-Parganas under Memo No. 460/G being annexure "p5" and further restrain them from taking any step or further step from disturbing and interfering with the scale of petitioner which was granted w.e.f. 10.8.87 till the disposal of the writ application.*
- g) To make the rule absolute.*
- h) And pass such other further order or orders as to Your Lordships may seem fit and proper.*

And your petitioner as in duty bound shall ever pray.”

Pursuant to the direction made by the co-ordinate Bench, an affidavit-in-opposition was filed on behalf of the respondent no.3 affirmed on December 5, 2022. Today affidavit-in-reply affirmed on January 31, 2023 has been filed.

Mr. Ekramul Bari, learned counsel appearing for the petitioner at the threshold submits that in so far as **prayer (a)** in the writ petition is concerned, the petitioner has received the same and the petitioner has no further claim on the said prayer.

Mr. Gourab Das, learned State Counsel also confirms such stand of the petitioner.

In such view of the matter, the relevant impugned decision of the **respondent no.3** dated **August 20, 2007 annexure P-5 at Page-25** to the writ petition will have no further effect and force in any manner and accordingly, the same stands **quashed**.

Mr. Bari then submits that, the writ petition now survives in so far as **prayer (b)** thereto is concerned.

Drawing attention to the representations, **annexure p-7 at pages 30 to 35** which were way back of **April 7, 1988, February 24, 1990 and September 12, 1994**, learned counsel for the petitioner submits that the petitioner was raising her

demands for granting post graduate pay scale since the petitioner had qualified **M.Sc in Anthropology** in 1988 and had pursued the same. Referring to **annexure p-8 at page 36** to the writ petition, learned counsel for the petitioner submits that on **July 3, 1988**, the Managing Committee of the relevant school also decided to send the necessary proposal, acknowledging the post graduation degree of the petitioner, for her higher pay scale before the **respondent no.3**. Referring to **annexure p-9 at page-40** to the writ petition, learned counsel submits that **Assistant Secretary of the Department of Education** by its communication dated **August 10, 1990** informed the respondent no.3 and requested to furnish the relevant document before it with regard to the admissibility of higher scale of pay in favour of the petitioner. He submits that, till then no decision has been taken by the respondent no.3 and/or any appropriate authority of the State as to whether the petitioner can be granted the higher pay scale commensurating with her post graduation degree for which the petitioner was pursuing her claim since 1988 as referred to above.

Referring to a circular from **annexure R-1 at page-24** to the affidavit-in-opposition affirmed on behalf of the respondent no.3, learned counsel for the petitioner submits that, the respondent no.3 in its

affidavit has negated the claim of the petitioner on the strength of an alleged circular **bearing No. 447-Edn (S)/4A-8/93 dated June 18, 1994**. In the said circular, the State Authority decided that the qualification on **Anthropology** would not be given any credit for granting higher pay scale and the relevant subject should be Botany, Zoology etc. He submits that the said circular dated June 18, 1994, firstly, cannot be treated to have a retrospective effect which is otherwise merely an administrative circular in nature and secondly, the same does not speak for giving any retrospective effect thereto. Inasmuch as, the petitioner has been pursuing with her claim for higher pay scale commensurating with her post graduation degree in **Anthropology since 1988** as referred to above, which is much prior to the said circular and the same is lying on the desk of the respondent no.3 without paying any heed thereto.

Mr. Bari then submits that the subject **“Anthropology”** was treated as a relevant subject for a teacher in the **science group (Biology)** as in the instant case, the law is well settled. In support, Mr. Bari has referred to the following decisions of the co-ordinate Benches of this Court:-

- (i) ***In the matter of Abdus Sattar -vs- State of West Bengal & Ors rendered in C.O. No. 5690(W) of 1995;***

(ii) (ii) Madhusudan Biswas -vs- State of West Bengal & Ors. rendered in C.O. No. 2391(W) of 1995;

(iii) Dr. Mehboob Hassan -vs- State of West Bengal & Ors. rendered in WP No. 6914(W) of 2014.

None of these judgements are appealed from and have been accepted and acted upon by this State, as submitted by Mr. Bari.

On the strength of the above submissions, Mr. Bari submits that the petitioner should be granted the higher pay scale commensurating with her **post graduation degree in Anthropology** and the writ petition should be allowed in terms of **prayer (b)** therein.

Mr. Gourav Das, learned State Counsel appears for respondent nos. 1 to 3 referring to the averments made in paragraph-4 and the Sub-paragraphs thereunder from the affidavit-in-opposition filed on behalf of the respondent no.3 submits that, in view of the said Memorandum dated June 18, 1994 and the clarification thereupon dated **February 7, 1995 annexure R-1 and R-2 at pages 24 and 25** to the said affidavit-in-opposition, any graduate bio-science teacher, as the petitioner herein, who has obtained or will obtain post graduate degree in **Anthropology** shall not be entitled to the higher scale of pay for such

improvement of qualification, since such improvement **is not relevant to their appointment/teaching.** He submits that, this being the prevailing State policy, the petitioner is also bound by the said policy and cannot claim any relief under **prayer(b)** to the writ petition. He further submits that even if the Court will consider to grant any relief to the petitioner several factors are needed to be looked into and examined with regard to the qualification of the petitioner as claimed by her and for that purpose, the respondent no.3 before whom the claim of the petitioner is pending since 1988 may be referred to for a decision.

After considering the rival contentions of the parties and upon considering the materials on record at the threshold, it appears to this Court that, in this pending writ petition since 2007, an affidavit-in-opposition was filed on behalf of the respondent no.3 affirmed on December 5, 2022. The Affidavit-in-reply was affirmed on January 31, 2023.

The petitioner, on record, it appears that has been pursuing her claim before the respondent no.3 immediately after her appointment since 1988-1990.

The principle defence taken by the learned State Counsel against **prayer (b)** to the writ petition are based on the said two memoranda dated **June 18, 1994 and February 7, 1995 annexure R-1 and R-2** to the affidavit-in-opposition. On a meaningful

reading of the said two memoranda, it appears to this Court that, these are merely administrative instructions without containing any provisions for retrospective operation. By way of an administrative instruction, without having any retrospective operation being mentioned therein, the State respondent cannot apply those with retrospective effect. The day petitioner has joined she had the qualification of **Master Degree in Anthropology**. After verifying all these factors and qualifications of the petitioner, the appointment of the petitioner was duly approved by the respondent no.3 and the appointment was made at the relevant school and the petitioner worked till her retirement on **March 31, 2022**. She was appointed admittedly as a B.Sc.(Hons) candidate for the subject **science group (Biology)**. Her entire payment and employment benefit as honours candidate has been released and the petitioner has accepted those. The State employer at this belated stage, in any event, cannot contend any irregularity with regard to the appointment of the petitioner or with regard to the appointment of the petitioner in the relevant subject. The respondent authority has accepted the same and acted thereupon. The State authority is estopped from contending anything to the contrary at this belated stage.

In so far as, the averments made by the petitioner in **paragraphs 10 and 11** in the writ petition, the respondent no.3 has dealt with the same in **paragraphs 11 and 12** in its affidavit-in-opposition. In which, no contrary stand was taken by the respondent no.3 save and except the reliance was placed on the said two memoranda **annexure R-1 and R-2** to the affidavit-in-opposition. **Paragraphs-15 to 18** in the writ petition are the relevant pleadings made by the petitioner with regard to her claim in terms of **prayer (b)** to the writ petition for receiving the higher pay scale commensurating with her Master Degree qualification. Such pleadings have been dealt with by the respondent no.3 in its affidavit-in-opposition at **Paragraphs 15 to 17**. The averments made in the affidavit-in-opposition show no specific denial with regard to the existence, veracity or correctness of the claim of the petitioner and the connected representations made by her pursuing her claim, save and except the stand taken in the light of the said two memoranda as stated above.

The Court cannot travel beyond the pleadings filed and the evidence relied upon by the parties. An averment made by the petitioner in its pleading when not specifically denied nor any evidence to the contrary is brought on record to rebut the case of the petitioner, the ***Doctrine of Non-Traverse*** is attracted.

In any event neither the parties nor the Court can make out a third case, which is not there in the pleadings filed by the parties.

In the matter of : Dr. Meheboob Hassan (supra), the co-ordinate Bench after relying upon the other two judgements referred to above, namely, ***Madhusudan Biswas (supra) and Abdus Sattar (supra)*** has observed as under:-

“ Petitioner further contends that persons having qualification of M.Sc in anthropology and having the combination of Botany and Zoology in B.Sc cannot be called by the authority as not relevant science subject for the purpose of teaching science in the said school as Assistant Teacher. Petitioner has annexed to the Writ Petition various documents of the university authorities certifying/confirming that the Anthropology is a Science subject which could not be disputed by the Respondents.

*The petitioner has relief on an unreported judgement of this Court dated 10th November, 2006 in **C.O. No. 2391(W) of 1995 (Madhusudan Biswas –vs- State of West Bengal and Others)** where similar issues was involved relating to application of the said circular dated 10th June, 1994, retrospectively by the authorities denying the benefit of higher scale of pay as per Post Graduate Degree to the petitioner on the ground that Anthropology in M.Sc. with B.Sc. in Bio-Science (Botany and Zoology) is not a science subject and not relevant and was not taken into consideration for the purpose of*

granting pay higher scale to the Post Graduate Degree obtained by the petitioner prior to the date of the aforesaid circular dated 10.06.1994 to which this court has held that the said Circular cannot be given retrospective effect and the petitioner cannot be deprived of the higher scale of pay when the petitioner has obtained the post Graduate degree and joined service prior to the date and issuance of the said memorandum/circular.

*The petitioner has relied on another unreported judgement of this court, dated 19.12.2007, in a similar case being **WP No. 503(W) of 1999 (Rafikul Islam -vs- State of West Bengal and others)** where this court has taken a similar view.*

Petitioner has relief on another unreported judgement dated 10th November, 2006 in C.O. No. 5690(W) of 1995 (Abdus Sattar -vs- State of West Bengal and Others). In the said case petitioner had obtained M.Sc degree in Anthropology in 1985 and petitioner was appointed on 11th June, 1985 and respondent authority by applying the said circular/memorandum dated 10th June, 1994 retrospectively had deprived the petitioner of higher scale of pay by refusing to take into consideration petitioner's Post Graduate Degree of M. Sc. In Anthropology and in the said case also Managing Committee of the School had adopted a resolution in favour of the petitioner for granting Post Graduate Scale of pay. In the said case also respondent authority had similarly contended that the Post Graduate degree in M.Sc in anthropology

was not sufficient qualification for appointment to the post of Life Science/Bio Science as an Assistant Teacher in Science Group (Bio Science) and he was not entitled to the post Graduate Scale of pay in connection with his said Service and in the said case petitioner had Botany and Zoology combination in Graduation and court not accepting the contention of the State respondents allowed the writ petition by passing the order relevant portion of which as follows:

“ 9.....

- (ii) On a perusal of the circular dated 10th June, 1994 it will appear that the same is prospective in nature and it is to be given retrospective effect.”*

It is not in dispute that the petitioner fulfilled the criteria of the relevant Government circulars of possessing requisite qualification at graduate level, i.e. combination of Botany and Zoology in B.Sc. examination and possessing Post Graduate Degree of M.Sc. in Anthropology at the time of his appointment on 1st May, 1992 and which is already recorded in the order of approval of the appointment and as such he is entitled to the scale of pay of a Post Graduate and this benefit cannot be denied to him by applying the impugned circular retrospectively.

In present case the state respondents could not deny the fact that the appointment of the petitioner was properly approved with effect from 1st May. 1992 and that the petitioner had combination of Botany and

Zoology in B.Sc. and M.Sc. in Anthropology which he had obtained prior to the appointment in the school in question and much prior to the date of issuance of the aforesaid impugned memorandum dated 7th February, 1995 and which cannot be given a retrospective effect in the case of the petitioner.

Considering the facts and circumstances of the case and submission of the parties and respectfully following the aforesaid judgements of this Court, Writ Petition is disposed of by setting aside the impugned order dated 7th December, 2012, passed by the District Inspector of Schools (S.E.), North 24-Parganas and I direct the respondents concerned to make payment to the petitioner at the pay scale of Post Graduate from the date of his appointment and all the consequential benefits and to pay all arrears to the petitioner within 8 weeks from the date of communication of this order.

This writ application WP.No.6916(W) of 2014 is disposed of. There will be no order as to costs.”

Upon reading all the three judgements of the co-ordinate Benches, this Court is also in respectful agreement with the ratio laid down thereunder.

Inasmuch as the claim stands pending before the State Authority since about 1988-1990 and to that there is no denial by the respondent no.3 in its affidavit-in-opposition. The only defence was on the basis of the said two memoranda which, in considered

view of this Court, are not tenable in law in the facts of this case. More so the ratio laid down by the coordinate Bench in the judgements referred to above are also holding the field.

Considering the long pendency of this writ petition and considering the fact that the petitioner has already retired in 2022, this Court is of the considered view that, there is no requirement of any remand before the respondent no.3 to decide the issue. The petitioner is eligible to receive her claim in law.

In view of the foregoing discussions and reasons, the **respondent no.3** shall immediately give benefit of higher pay scale to the petitioner commensurating with her **post graduation degree in Anthropology** since **August 10, 1990, annexure p-9 at page 40** to the writ petition, being the date when at least the **Assistant Secretary of the Education Department** had the knowledge of the post graduation degree of the petitioner.

The respondent no.3 shall forthwith issue the necessary communication to the petitioner in this regard in terms of this order positively within a period of **two weeks** from the date of communication of this order and shall disburse the entire payment including the arrear positively within a further period of **four weeks** from the date of the above communication to

be issued to the petitioner by the **respondent no.2**. The **respondent no.3** shall also take all necessary and consequential steps so that the necessary revised Pension Payment Order can be issued in favour of the petitioner accordingly.

With the above observations and directions, this writ petition, **WPA 23614 of 2007** stands **allowed**, without any order as to costs.

Parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)