

Court No. 22

26.9.2023

(Item No. ML-
185)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 32775 of 2014

Archit Banerjee

VS

The State of West Bengal & Ors.

Mr. Siddhartha Banerjee

Mr. Soumajit Majumder

..... for the petitioner

Leave was granted to the petitioner to file a Supplementary Affidavit disclosing the subsequent facts pertaining his service during pendency of the writ petition. Such Supplementary Affidavit, affirmed on May 2, 2023, is on record.

None appears for the State.

The petitioner claimed to be an **Assistant Teacher** joined at ***Ichhar High School (H.S.), District - Purulia.*** The petitioner had joined in the year 2004 after completion of her Honours Graduate degree for the subject Zoology and B.Ed. The petitioner also received his employment as an Honours Graduate Teacher and not as a Post-Graduate Teacher. At the time of appearing for such recruitment process the petitioner had already been pursuing her Post Graduation degree (M.Sc – Zoology) with the Vinoba Bhave University. The petitioner then qualified her Post Graduation in the year 2003. The relevant Post Graduation certificate, **Annexure P-2** at **page 29** to the writ petition. After acquiring the said higher qualification the petitioner applied before the

relevant school authority i.e. respondent Nos. 4 and 5 for receiving the higher pay scale commensurating with his Post Graduation degree, **Annexure P-9** at **page 37** to the writ petition.

The respondent Nos. 4 and 5 then forwarded such request to the respondent No. 3 asking for necessary instructions. The petitioner also made a separate representation before the respondent No. 3 praying for post graduate scale of pay, which is **Annexure P-11** at **page 39** to the writ petition.

The respondent No. 3 did not take any decision on the issue. The petitioner moved the first writ petition being **W.P. 22992 (W) of 2008** when a coordinate bench by its order dated **November 26, 2008** at **page 43** to the writ petition directed the respondent No. 3 to decide the issue.

Pursuant to the said direction of the coordinate bench the third respondent passed the impugned order dated **March 19, 2009, Annexure P-15** at **page 48** to the writ petition rejecting the claim of the petitioner inter alia with the following observation:

“Now, District Inspector of Schools (S.E.), Howrah considered the matter but at the same time rejected owing to the following grounds.

- 1. As per order of Govt. Memo No.548-SE(S) dated 24.6.1997, “.... Henceforth all the teaching in State-Aid Schools will have to take prior permission from the District Inspector of Schools (S.E) through the***

Managing Committee/Ad-hoc-Committee /Administrator as the case may be it they like to enroll themselves and to appear for the examination conducted through Correspondence/Distance Mode of Education from U.G.C. – affiliated Universities”.

- 2) *As per G.O. No.593-SE(B) dated 27.11.2007, “..... all earlier orders published in this matter before the date of coming into effect of West Bengal Schools (Control of Expenditure) Act, 2005. 1595-SE(S) dated 26.12.05 also stands modified”.*
- 3) *As per Memo No.170/U/D dated 8.6.2009 of Addl. District Inspector of Schools (S.E), Uluberia informed, that Sm. Payel Jana, the petitioner completed M.Sc. Part-II Examination from the Vidyasagar University (Distance Education) without the prior permission by the appropriate authority and the last date of the said Examination was 16.2.08 & result was published on 11.4.08. The matter is thus considered and disposed of.”*

Through, the instant writ petition the petitioner had challenged the said impugned decision dated **March 19, 2009, Annexure P-15** at **page 48** to the writ petition passed by the respondent No. 3.

Mr. Siddhartha Banerjee, learned counsel appearing for the petitioner submitted that, the issue is now well settled by a Division Bench of this Court, in favour of the petitioner, ***In the matter of: Sri Sukesh Majumder Vs. The State of West Bengal & Ors., MAT 1220 of 2021 with IA No. CAN 1 of***

2021. The judgment was delivered on April 21, 2023. Following the said pronouncement by the Hon'ble Division Bench, this Court had also delivered its judgment and order dated June 7, 2023 in **WPA 6130 of 2019, In the matter of: Sumon Mandal Vs. The State of West Bengal & Ors.**

On a scrutiny of the impugned order dated **March 19, 2009** it appears that, the claim of the petitioner was rejected with the following observations:

“The following observations are stated below:

- 1. The petitioner joined the post of A.T. in Science at Mathematics Group with having qualification B.Sc. (Bio) B.Ed. in the year 2001 after having been recommended by the School Service Commission, Western Region, Bankura vide memo No. 1516/1(2) RSSC (W/R) Bnk dt. 23.3.2001. The District Inspector of Schools (S.E.), Purulia accorded approved in favour of the petitioner vide memo No. 1143(3) dated 4.5.2001.***
- 2. The petitioner claimed that he passed in M.Sc. in Zoology in the year 1999 and the PERSONAL is serving the Institution till date.***

The G.O. No. 593-SE(B) dated 27.11.2007 contemplates that prayer for Higher Scale of Pay from any teacher with Graduate Degree and Graduate Scale of Pay at the time of entry in service/joining the school, in this case any managing Committee of the School recommence such cases or any District Inspector of Schools

granting such prayer will be treated as of under West Bengal Schools (Control of Expenditure) Act, 2005. In this instant case the petitioner Sri Archit Banerjee appears to have joined the post of Assistant Teacher in Science and Group having qualification B.Sc. (Bio) B.Ed. and in fine he is drawing now graduate of scale of pay. Therefore, the petitioner is not entitled to draw higher scale of pay, accordingly the undersigned regrets to accord relief in favour of the petitioner.

Thus the matter is disposed of and all the concerned parties are hereby informed.”

After considering the submissions made on behalf of the petitioner and on perusal of the materials on record and specifically the plea on which the claim of the petitioner was rejected under the impugned order and upon reading the law laid down by the Hon’ble Division Bench ***In the matter of Sri Sukesh Majumder (Supra)***, it appeared to this Court that, the said Government Order dated **November 27, 2007** had been considered and discussed by the Hon’ble Division Bench in its judgment.

The relevant portions from the said Division Bench judgment ***In the matter of: Sri Sukesh Majumder (supra)*** are quoted below:

“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 enroll 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, Adhoc 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 6 graduation in English prior to her 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 7 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 her 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 her Masters Degree in English, the subject which he is teaching in school. Needless to mention that the teacher concerned with her 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 her preferring the application before the concerned school authority.”

In view of the settled law as discussed above, the impugned order dated **March 19, 2009**, **Annexure – ‘P-15’** at **page 48** to the writ petition, in the firm opinion of this Court, cannot sustain in law and accordingly stands **set aside and quashed**.

The writ petitioner shall be entitled to receive the benefit of the higher scale of pay for acquiring her higher qualification i.e. Post Graduation in Zoology

from the date of her preferring the application before the relevant school authority.

The respondent No. 4 shall take all further and consequential steps to allow the petitioner to obtain the higher scale of pay as discussed above positively within a period of three weeks from the date of communication of this order. The relevant school authority shall consequently release the necessary payment in favour of the petitioner forthwith.

With the above observations and directions, this writ petition being **WPA 32775 of 2014** 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.)