

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

**Present:
The Hon'ble Justice Rai Chattopadhyay**

WPA 2615 of 2018

**Ashok Kumar Chowdhury
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Ekramul Bari,
: Sk. Imtiaj Uddin.

For the State : Mr. Bhaskar Prasad Vaisya,
: Mr. Sagnik Chatterjee.

**Heard on : 28/06/2024
Judgment on: 28/06/2024**

Rai Chattopadhyay, J.

1. In the impugned order dated January 4, 2018, the respondent No.3/ District Inspector of Schools, Secondary Education, Malda (hereafter DI), has held firstly that, as per prevalent rule a candidate must have to study Geography as a combination subject carrying 300 marks in the degree course, for appointment to the post of assistant teacher in Geography under Social Science Group. Finally, the said authority has decided that the petitioner has been appointed for teaching the subject Geography of Social Science Group in normal section which includes subjects, Geography and History. However, the higher qualification that is, M.Com degree obtained by the petitioner is non-relevant to Geography/History, that is, non-relevant to appointment /teaching of the petitioner teacher, so far as the subject Geography, in the Social Science Group, is concerned. The respondent No.3 has

relied on para 16(3) of ROPA 1990 [Memorandum No. 33-Edn(B) dated March 7, 1990], which says that only those teachers, who have higher qualification in the subject or group relevant with their teaching or appointment, shall get higher scale of pay appropriate to their qualification.

2. The DI has reached to a finding in the said impugned order, that higher qualification of the petitioner, that is, M.Com degree in the subject “Economic Geography”, is non-relevant to the subject Geography, in the Social Science Group, therefore non-relevant to the appointment/teaching of the petitioner and would not entitle him to be benefitted under ROPA 1990.
3. Thus, benefit of higher pay scale was declined to the petitioner. Being aggrieved, the petitioner has filed the present case.
4. It requires consideration of the Court as to whether the M.Com degree of the petitioner on the subject “Economic Geography”, would be relevant or not with the subject which he has been teaching, that is, Geography in the Social Science Group. Also that, in case the higher qualification of the petitioner is relevant with the subject in which he is imparting teaching, whether he would be entitled to the benefit of higher pay scale or not.
5. Extensive arguments have been advanced on behalf of the petitioner as well as the respondent State. I have considered the same. I have also perused minutely, the records of the case. On the basis of the same, the following is my decision.

6. I note the relevant government orders to find out the law as regards the issues, as above.

G.O. No. 372-Edn.(B) dated July 31, 1981 (hereafter G.O. 372)

“(1) All existing Secondary School teachers will be allowed annual increments in the revised scales of pay provided that untrained teachers will have to get themselves trained within 5 years from April, 1981 failing which their increment will be stopped till they get themselves trained.

(2)(a) All existing Secondary school teachers who have improved their qualifications relevant to their teaching subjects will get the higher scale on qualification without any restriction;

(b) All existing Secondary School teachers who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on qualification basis after five years' teaching counting from the date on which higher qualification was obtained.

(c) In future, Secondary school teachers will be allowed higher pay scale on qualification basis only when they obtain such higher qualification in the subject relevant to their teaching/appointment.”

G.O. No 33-Edn.(B) dated March 7, 1990 (hereafter ROPA 1990)

“All teachers and librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subject or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications with effect from the 1st January, 1986 or the date of improving qualification whichever is later. This principle shall apply mutatis mutandis to the teachers/librarians

of other institutions/organisations as mentioned in Annexure-1.”

G.O. No 400-Edn.(B)/IM-45/91 dated September 10, 1991 (hereafter G.O. 400)

"All existing Secondary School Teachers who were appointed with higher qualifications in subjects not relevant to their teaching or who improve their qualification subsequent to their appointment in subjects not relevant to their teaching will be allowed the higher scale on qualification basis with effect from the 1st April, 1981 or after five years' teaching counting from the date on which higher qualification was obtained, whichever is later."

G.O. No 401-Edn.(B)/IM-45/91 dated September 10, 1991 (hereafter G.O.401)

"In the said Memorandum, for sub-paragraph (3) of paragraph 16, viz" (3) All teachers and librarians of Secondary' Schools who have improved/ will improve their qualification/ or who were appointed with higher qualification in the subject or group relevant to their teaching/ appointment shall get higher scale of pay appropriate to their qualifications, with effect from 1stJanuary, 1986, or the date of improving qualification whichever is later" the following shall be substituted—"

7.The writ petitioner was appointed on May 5, 1986. At the time of appointment, he was required to fulfil any of the following eligibility criteria:

B.A. Honours in Geography,	or
M.A. in Geography ,	or
B,Com (Honours)	or
M.Com.	

8. The petitioner was a Masters' in Commerce with the subject "Economic Geography". Thus, he fulfilled one of the eligibility criteria.

Hence, he was appointed as an M.Com Assistant Teacher, on and from May 5, 1986. His service was approved, as against the Social Science Group, vide order dated August 25, 1986, with effect from the date of his appointment. He was allowed the post graduate scale of pay, which stood revised after promulgation of ROPA 1990. He was allowed to draw the revised scale of pay accordingly.

9. However, with effect from April 1992, a portion of his salary has been regularly deducted, pursuant to the verbal direction of the District Inspector of the Schools, Secondary Education, Malda on the ground of its being overdrawn. The petitioner has alleged that before undertaking such harsh and punitive measures against him, the respondents have not granted him any opportunity of hearing, thereby violating the principles of natural justice. The writ petitioner was downgraded to the graduate scale of pay and a total amount of Rs. 28,127.15/- was withdrawn on the allegation of being overdrawn by the petitioner from May 5, 1986 to March 31, 1992.
10. The petitioner protested vide his letter dated May 22, 1992, before the DI as well as the school authority. The respondent No.4/managing committee of the school decided over that, against the petitioner. The said respondent had upheld the impugned action of withdrawing higher pay scale, earlier granted to the petitioner. It had upheld allowing the petitioner the graduate scale of pay.
11. The petitioner filed a writ petition [WP No. 28100 (w) of 2012]. In the same, vide an order dated August 1, 2017, the managing committee of the school was directed to consider and decide as to the propriety of the plea of the writ petitioner regarding wrongful recovery of the allegedly overdrawn amount by the writ petitioner. This time, the decision of the managing committee was otherwise. It held that the

impugned action of withdrawal of salary of the petitioner has been unreasonable as the petitioner possessed a post graduate degree and his appointment was approved in the Social Science Group. The Headmaster of the school made a prayer before the DI, vide letter dated September 11, 2017, to refund to the petitioner the portion of salary earlier deducted, to the tune of Rs. 28,127.50/-. The DI has dealt with the same in the said impugned order dated January 4, 2018. Finally eligibility of the petitioner to the higher scale of pay, as well as prayer for refund of the deducted salary, have been rejected by the DI.

- 12.** On the date of his appointment, that is, May 5, 1986, G.O.372 was in force. The relevant portion thereof is quoted above. According to the same, relevant subject teachers would be entitled to higher scale of pay forthwith whereas non-relevant subject teachers would be allowed the same after five year's teaching from the date on which higher qualification was obtained. It has also made a provision prospectively, that higher pay scale on qualification basis would be allowed only when a person obtains higher qualification in the relevant subject only.
- 13.** The writ petitioner's case would fall under clause (2) sub-clause (c) thereof, that he would be entitled to higher pay scale in case his higher degree would be relevant to the subject which is taught by him. Subsequently in ROPA 1990, similar provision has been made that a teacher would be entitled to higher scale of pay appropriate to their higher qualification only when such higher qualification is in the subject or group, relevant to their teaching/appointment.

- 14.** The respondent/DI has decided that the petitioner's M.Com degree is non-relevant to Geography subject in the Social Science Group. Also that it is non-relevant to the Social Science Group, as the same is comprised with the subjects History and Geography. Thus the authority finds that the petitioner's higher educational qualification is non-relevant to appointment/teaching of the petitioner. Hence he would not be entitled to higher scale of pay as per the provisions of ROPA 1990.
- 15.** This appears to be a changed stand of the respondent, at a subsequent period of time. It is worth noticing that the 'M.Com' degree was one of the options in the requisite qualification of a candidate, at the time of appointment of the writ petitioner. It is well understandable that 'M.Com' degree course would not include Geography as an optional subject carrying 300 marks. The authority, at the time of advertisement to seek applications, was not unknown of the said fact. Therefore, knowingly and consciously, the petitioner was appointed as an Assistant Teacher with M.Com qualification to teach Geography in the Social Science Group. The petitioner's letter of approval dated August 25, 1986, speaks eloquently about this fact. The petitioner has been allowed the higher scale of pay on the basis of qualification and relevance with the subject taught. He has been awarded increments and revision of pay also, on the same scale. The said approval letter dated August 25, 1986, is still in vogue.
- 16.** After adopting such a policy for the petitioner for a prolonged period of time, without questioning the applicability of the higher scale to the petitioner, a sudden unilateral change thereof after a considerable period of his appointment, would be unjust, unreasonable, and arbitrary.

17. A memorandum No.1497-GA dated June 25, 1992 (hereafter memo 1497), of the Director of School Education, is also worth discussion. It has been stated that **“Under the existing rules a candidate for appointment to the post of Asstt. Teacher for Geography under the Social Science Group must have to study Geography as a combination subject carrying 300 marks in the degree course.”** Apparently respondent’s decision in the said impugned order, is founded on the reason as above, in memo 1497. However, it appears to be an exercise, blindfolded and erroneous. Nowhere in memo 1497, the Director of School Education, has mentioned regarding its applicability retrospectively.
18. The petitioner has been appointed in the year 1986 and since the very inception, he has been treated as a Geography teacher in Social Science Group with higher qualification of Masters degree in Commerce. He has also been granted the higher scale of pay from initiation of his service. The memo No.1497 cannot be made effective retrospectively with effect from the date of appointment of the petitioner. On careful consideration of the language employed therein, one can definitely find the same guideline having made applicable with effect from the date of its promulgation, that is, June 25, 1992. Therefore, in the petitioner’s case, the same would not apply. It is also worth noting that the petitioner’s approval letter still subsists.
19. The judgment as referred to by the respondent, that is, of **Gousul Ajam’s** reported in **2017 SCC OnLine Cal 9255**, would not be applicable in this case being distinguishable on the facts which were different in that case. In the same, the Court has not dealt with a case where one of the eligibility criteria for appointment of the concerned

petitioner was a degree, which the respondent authorities have declined to accept subsequently as valid, proper and relevant to his teaching/appointment. A judgment decides with respect to the particular facts of the case, which has been adjudicated.

20. The Hon'ble Supreme Court holds ***in Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation*** reported in **(2022) 9 SCC 286** : *".....every judgment must be read as applicable to the particular facts proved, or assumed to be proved. The generality of the expressions which are found in a judgment cannot be considered to be intended to be exposition of the whole law. They will have to be governed and qualified by the particular facts of the case in which such expressions are to be found."*
21. On the above premise, this writ petition should succeed.
22. Hence, **WPA 2615 of 2018** is allowed.
23. The impugned memo dated January 4, 2018, is hereby set aside.
24. The respondent No.3/District Inspector of Schools, shall forthwith allow grant of higher scale of pay to the writ petitioner with effect from the date from when such benefit has been withdrawn from him till the date when, after upgradation of the said school, he has been again granted the said benefit of higher pay scale; accordingly pay fixation of the petitioner be immediately revised.
25. The writ petitioner shall be refunded with the amount, deducted from his salary, immediately.

26. The writ petitioner shall also be entitled to be paid the arrears, if any, in accordance with the higher scale of pay. The same shall be paid within a period of fortnight from the date of this order, along with the interest at the savings bank present interest rate, in a nationalised bank.
27. Since no affidavit is called for in this case, the allegations made in the writ petition is understood to have been denied by the respondent.
28. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)