

Court No. 22
18.4.2024
(Item No. A-36)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 3746 of 2012

Smt. Chandi Mondal
VS
The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharyya
Mr. Bidhan Biswas
..... for the petitioner
Mr. Sanjib Das
.... For respondent Nos. 1-3

This is a hearing matter upon direction for filing affidavits. However, no affidavit-in-opposition has been filed.

The petitioner claims higher pay scale after acquiring her **M.Sc in Physics**. In **2004** the petitioner qualified **B.Sc (H) in Physics**. On **September 2, 2004** the petitioner was admitted in her M.Sc course. **Physics** is the relevant subject. In **2005** petitioner completed the **Part-I M.Sc in Physics**. On **February 23, 2006** the petitioner was recommended for appointment for the post of **Assistant Teacher** in "**Physics**" in the **6th RLST 2005**. On **April 1, 2006** the petitioner joint **Bajitpur Saradamani Balika Vidyalaya (H.S.), District Purba Medinipur**. On **September 19, 2006** the appointment of the petitioner was approved by the State authority. By a communication dated **October 13, 2009, Annexure P-13** at **page 30** the West Bengal Board of Secondary Education has afforded permission in favour of the petitioner for appearing in the **M.Sc Part – II Examination**.

In the above backdrop the petitioner claims higher pay scale.

Drawing attention to a communication dated **February 3, 2011** issued by the respondent No. 2 **Annexure P-15** at **page 44** to the writ petition Mr. Kamalesh Bhattacharyya, learned counsel for the petitioner submits that, by this impugned decision the respondent No. 2 has rejected the higher pay scale for the petitioner.

Learned counsel for the petitioner then drew attention of this Court to a representation dated **February 3, 2011, Annexure P-16** at **page 45** to the writ petition submitted by the petitioner before the Secretary, School Education, West Bengal. He submits that the said representation has also not received the attention of the State authority.

Mr. Sanjib Das, learned State counsel appears for respondent Nos. 1 to 3 submits that, the Secretary School Education department has not been impleaded in the writ petition. He submits that, from the said representation dated **February 3, 2011**, no endorsement is available whether the same was received by the Secretary of the School Education.

Per contra, Mr. Kamalesh Bhattacharyya, learned counsel for the petitioner referring to a judgment of the Hon'ble Division Bench **In the matter of: Sri Sukesh Majumder Vs. The State of West Bengal & Ors. dated April 21, 2023** rendered

in **MAT 1220 of 2021** submits that, the law is well settled on this score and in the identical facts situation the appellant therein was granted the higher pay scale. He then refers to a judgment delivered by this Court **In the matter of: Sumon Mandal Vs. The State of West Bengal & Ors. dated June 7, 2023** rendered in **WPA 6130 of 2018** and submits that following the view taken by the Hon'ble Division Bench **In the matter of : Sukesh Majumder (Supra)** this Court has also allowed the higher pay scale in favour of the writ petitioner there.

In the light of the above, Mr. Bhattacharyya submits the impugned decision of the respondent No. 2 dated **February 3, 2011, Annexure P-15** at **page 44** to the writ petition should be set aside and the higher pay scale shall be allowed in favour of the petitioner commensurating with her acquiring qualification M.Sc. (Physics).

After considering the rival contentions of the parties and upon perusal of the materials on record it appears that, while acquiring higher qualification the petitioner had followed the due process of law by obtaining the prior permission from her school authority and also the State authority. The petitioner had also acquired the higher qualification on the relevant subject. This Court **In the matter of: Suman Mandal (Supra)** has observed as under:

“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, 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 6 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 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 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.”

In view of the settled law as discussed above, the impugned decision of the respondent No. 2 dated **February 3, 2011, Annexure P-15** at **page 44** to the writ petition stands **set aside** and **quashed**.

The writ petitioner shall be entitled to receive and shall receive the benefit of higher pay scale for acquiring higher qualification i.e. **M.Sc (Physics)** from the date of his preferring the application before the school authority i.e. **November 12, 2009** at **page 28** to the writ petition.

The respondent No. 3 shall take all further and consequential steps to allow the petitioner to obtain the higher pay scale as discussed above in accordance with law positively within a period of **six 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. To give effect to this direction the relevant State authorities shall take all consequential and necessary steps to make the arrear payments to the petitioner along with **interest @ 6% per annum** since **November 12, 2009** till the date of actual tendering of the amount to the petitioner. Such payment shall have to be released positively within a period of **four weeks** to the petitioner from the fixation of necessary pay scale to be fixed by the respondent No. 3 as directed above.

On the above terms this writ petition being **W.P.A. 3746 of 2012** stands **allowed**, without any 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.)