

17.9.2024 Sekhar Ch. Bhunia-vs--State of West Bengal & Ors..
ct.25, sl. 244
sk Mr. Ekramul Bari
 Sk. Intiaj Uddin
 ...for the petitioner.

Mr. Manuwar Ali
 ...for the State respondent nos. 1 to 3.

1. An order of the Director of School Education, Government of West Bengal dated March 9, 2011 is under challenge in this case, in which the same has rejected petitioner's prayer for grant of higher pay scale, pursuant to his higher qualification.
2. The petitioner having achieved Master's Degree has prayed for enhanced scale of pay before the concerned respondent authority. Initially by dint of an order dated December 3, 2009, petitioner's prayer was turned down. This Court had set aside the said order of the Director of School Education dated December 3, 2009 and directed for consideration afresh, of the petitioner's prayer for grant of higher scale of pay.
3. The petitioner was appointed on August 26, 1994. His service was approved on November 29, 1994. In 2007, the petitioner was shifted from Social Science Group to Work

Education/Physical Education Group i.e. vide Memo dated September 27, 2007. Before that the petitioner enhanced his qualification to the Master's Degree, pursuant to the approval granted by the Managing Committee of the School vide resolution dated November 21, 1998.

4. Vide resolution dated May 24, 2006 the Managing Committee approved his prayer for grant of higher pay scale and forwarded such recommendation of it, to the District Inspector of School, Kolkata. The matter was referred by the District Inspector of Schools to the Director of School Education, West Bengal, who earlier turned down petitioner's prayer as stated above.
5. Pursuant to the order of the High Court, the petitioner's prayer for grant of higher pay scale has again been considered and the resultant order is dated March 9, 2011, which is impugned in this case.
6. The reason as stated by the Director of School Education in the impugned order, for rejecting petitioner's prayer for grant of higher pay scale is twofold. Firstly, that it has held petitioner's prayer for grant of higher pay scale not to be eligible in terms of relevant provision of the

West Bengal School (Control of Expenditure) Act, 2005 and secondly, similarly that, it is not maintainable in terms of Government Order No. 593-SE (B) dated 27.11.2007. The said respondent authority has also held in the said impugned order that the petitioner having been appointed as a pass graduate candidate, would not be eligible to claim the benefit of equal pay for equal work with that of the post graduate teachers.

- 7.** It has also relied on a Memo No. 61-SE(S) dated January 30, 1996, which appears to be with regard to applicability of incremental benefit to a teacher. Thus the same is found not concerned with of the subject matter of the writ petition.
- 8.** Upon perusal of the impugned order, it appears that the reasons upon which the concerned respondent authority has founded its order to deny the petitioner higher scale of pay pursuant to his higher qualification, are only non-maintainable. The same is for the reason that the petitioner having completed his higher qualification much prior to coming into force of the Act 2005, i.e. in the year 1998-1999, his prayer as above is never covered under the

provisions of the 2005 Act, as mentioned above.

In other words, the said Act shall have no manner of application in case of the petitioner for granting or rejecting him the benefit of higher scale of pay pursuant to his higher qualification in the relevant subject.

9. Mr. Ali for the respondent has stated that, since petitioner has prayed before the authority, for grant of such prayer of him, only in the year 2007, therefore in his case, 2005 Act would be aptly applicable. This Court finds no force in the same, in so far as for grant of benefit to the petitioner as prayed for, the relevant date would be the date of his qualifying with such higher degree. In this case, on the said relevant date, admittedly the Act of 2005 has not come into force.

10. Therefore, in view of the provision in ROPA 1998, by dint of which the conditions of service of the petitioner would be governed at the relevant point of time, the petitioner would be entitled for grant of higher pay scale, pursuant to his obtaining higher degree and qualification, irrespective of the provisions of a subsequent legislation, that is 2005 Act, which would not be applicable in case of the petitioner.

11. Considering all as above, the Court finds it proper to set aside the impugned order being dehors the law as well as being the result of erroneous application of mind and erroneous appreciation of extraneous facts and non-consideration of the relevant facts of the case. In this regard, the ratio of the decision of Hon'ble Division Bench of this Court, in case of **State of West Bengal & Ors. Vs. Jayanti Basak & Anr. in MAT 513 of 2014** (vide order dated December 4, 2023) as relied on by Mr. Bari for the petitioner, squarely applies in case of the petitioner.

12. Hence, writ petition No. WPA 8224 of 2011 is allowed with the following directions:

- i) The impugned order of the Director of School Education, West Bengal dated March 9, 2011 is set aside;
- ii) The concerned respondent authority is directed to grant the petitioner pay in terms of the scale commensurate to the Master's Degree, with effect from the date following the date of his result in the Master Degree examination;

- iii) Pay fixation of the petitioner in terms of the M.A scale of pay be made immediately;
- iv) The respondent authority shall take steps in this regard, including payment of arrear salary, if any, to the petitioner, within a period of three weeks from the date of communication of this order.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)