

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 8604 of 2016

Debabrata Pal

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Ujjal Ray
: Mr. Arpa Chakraborty
: Sk. Abdur Rahim

For the State : Mr. Arindam Chattopadhyay
: Ms. Lipika Chatterjee

Judgment on : **06.03.2026**

Rai Chattopadhyay, J. :-

- 1.** The writ petitioner has challenged an order dated April 19, 2016, of the respondent/District Inspector of Schools (Secondary Education), Paschim Medinipur [in short "DI"], disallowing and rejecting the petitioner's prayer for post graduate scale of pay.
- 2.** The reason shown for such rejection of the said prayer of the writ petitioner is in view of the provisions under the West Bengal Schools (Control of Expenditure) Act, 2005, section - 14 thereof in particular and the notification No.593-SE (B) dated November 27, 2007 [in short "No.593"].
- 3.** Let relevant provisions as mentioned above be quoted herein bellow:

Section 14 of the West Bengal Schools (Control of Expenditure) Act, 2005:-

“14 (1) Every teacher of a school shall, if appointed in the post of Undergraduate teacher category, be entitled to draw pay in the scale of pay in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than the qualifications specified for such post.

(2) Every teacher of a school shall, if appointed in the post of Graduate teacher category, be entitled to draw pay in the scale of pay in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than the qualifications specified for such post.

(3) Every teacher of a school shall, if appointed in the Honours Graduate or Postgraduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order.”

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Notification No.593-SE (B) dated November 27, 2007

“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 of Schools granting such prayer will be treated as ‘Offender’ under West Bengal Schools (Control of Expenditure) Act, 2005]

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7. No such prayer for higher scale of pay from any teacher with Graduate Degree and Graduate scale of pay at the time of entry into service/joining the schools will be entertained no matter whether he/she has secured this higher qualification before or after introduction of West Bengal Schools (Control of Expenditure) Act, 2005.”

4. The respondent’s contention is that the writ petitioner admittedly is a bachelor degree (pass) category teacher. He has been

recommended by the School Service Commission and appointed in service on June 16, 1997, as per his qualifications as mentioned above. Therefore, by virtue of operation of law, the writ petitioner would not be eligible to claim any other pay scale than that has been recorded at the time of recommending his name, his appointment and approval of service. That the provision under Section-14 of the Act of 2005 specifically bars grant of any other pay scale to the writ petitioner.

5. By relying on paragraphs 4 and 7 of the notification No.593, the respondent authority has contended that permission to obtain a higher degree cannot be granted to a teacher who has been inducted in service with a graduate degree or graduate scale of pay; that the situation remains unaltered irrespective of whether the higher degree has been obtained by the teacher before or after promulgation of the said Act of 2005.
6. Hence, the writ petitioner's prayer for grant of higher pay scale is rejected vide the said impugned order.
7. The writ petitioner was inducted as an assistant teacher in the respondent school on and from June 16, 1997 in the Language group and in B.A. (Pass) category. Later his service has been approved. The petitioner writes to the Secretary of the school in his representation dated January 2, 2007, disclosing his intention to pursue Post Graduate course and seeking permission for the same. Allegedly, his application as above has never been placed by the Secretary, before the Managing Committee of the said school. Subsequently also, the petitioner has sent repeated representations to the Secretary as well as the Headmaster of the school seeking permission to pursue higher course, but to no avail. However, prayer of the petitioner for sanction of study leave was

allowed by the Managing Committee in its resolution in view of the fact that the petitioner has already placed his prayer as above before the West Bengal Board of Secondary Education. Later the Secretary of the school vide his representation dated September 30, 2008, writes to the Board about the petitioner having appeared in MA examination and resolution of the school for granting him the study leave for the period from February 13 2007, to March 14 2007. Such approval was granted by the Board vide the letter dated November 28, 2008.

8. After being qualified with the Master Degree the petitioner has submitted representation to the respondent/DI, dated November 23, 2011, seeking grant of post graduate scale of pay pursuant to his higher qualification, with effect from the date following the last date of his examination. The petitioner's first writ petition was WP No. 2002 (w) of 2010, in which the Court directed the respondent/DI to consider the writ petitioner's prayer for grant of higher pay scale. The resultant order is that dated April 19, 2016, which is impugned in this case and by dint of which the petitioner's prayer as above has been turned down by the said respondent. Reasons for such decision by the DI have been discussed above.
9. In this case, the State has supported the impugned order and the reasons of rejection of the writ petitioner's prayer, assigned by the respondent/DI. It says that, according to the qualification of the petitioner at the time of induction in service and the category of post to which he has been appointed, he is entitled to only the graduate scale of pay, as per the provisions of law. It is submitted that due to change in policy, by dint of promulgation of the Act of 2005, enhancement of qualification after entering into the service

may be permissible in general but not for grant of higher pay scale or that will breach the statutory provision.

- 10.** The reasons shown by the DI in the said impugned order for rejection of the prayer for grant of higher pay scale to the petitioner stands contrary to the law settled by this Court in various judgments on the subject. The latest thereof is held by the Court in the Larger Bench's judgment of ***Utpal Kanti Karan versus the State of West Bengal [2024 SCC Online Cal 1274]***, in the following words:

"186. In exceptional circumstances the claim of a teacher for a higher scale of pay even where the Managing Committee has not forwarded the application with its resolution may be considered. It is clarified that if the teacher could demonstrate that he has taken all reasonable steps expected of him for obtaining prior permission from the District Inspector and the Managing Committee is responsible for the delay in forwarding the request for permission to the District Inspector shall consider the application on the basis of the circular or Government Order existing on the date of application. In absence of any guideline which the District Inspector of School is required to follow in the event it is found that a teacher before joining the institution was already pursuing higher studies or has completed post graduate degree but for some unavoidable reasons permission as contemplated under the Government Order dated 27th November, 2007 could not be obtained, the Government Order dated 27th November, 2007 shall not stand in the way. The District Inspector shall consider such representation on merits. The reason for denying higher scale of pay could be that already there are sufficient number of teachers having Honours/Post Graduate degree on the said subject in the institution and in such circumstances payment of higher scale of pay would be a burden on the exchequer. The State should have due regard to the fact that a person with higher qualification would be expected to have better knowledge in the subject and the students are likely to be benefited by reason of his acquiring such higher qualification. The date relevant for the purpose of conferring higher financial benefits would be the date of publication of result and not convocation, that is, the ceremonial conferment of the degree.

A teacher is entitled to higher scale of pay once the result is published and the convocation shall relate back to the date of the result. Any other interpretation would be harsh, absurd and arbitrary."

- 11.** In the said judgment the Court has categorically discussed that staff pattern of the school has no bearing as to grant of higher scale of pay to a teacher, upon his qualifying with the higher degree. Relevant portion of the judgment may also be quoted here:

"204. The staff pattern introduced vide Government order dated 8th July, 1974 and 4th September, 1998 is for the purpose of equitable distribution of the available posts as to enable pass degree holder to also complete for appointment as Assistant teacher. The issue of staff pattern *vis a vis* higher scale of pay was explained by Justice Dipankar Datta as His Lordship then was before His Lordship's elevation as the Chief Justice of Bombay High Court and thereafter to the Hon'ble Supreme Court of India in *Shivaji Chakraborty v. State of West Bengal* (WP 9657(w) of 2009) decided on 23rd June, 2010 in the following words:

"Once a teacher with pass-degree is appointed, the object for which such Government Orders were introduced is sub-served. The said Government Orders do not lay down any restriction on a teacher from enhancing his educational qualification. It has to be remembered that enhancing of educational qualification by a teacher serves two-fold purpose : (i) the likelihood of hike in pay in the absence of available channel of promotion a teacher encourages to enhance his qualification and thereby the prospect of stagnation in service is averted and (ii) to some extent at least the students to whom lessons are imparted are benefited by the knowledge the teacher has derived after successfully obtaining the Master's Degree. At the time the petitioner was appointed or when he enhanced his qualification after permission was accorded, there was no statutory provision in the field that could stand in the way of he being granted the higher scale of pay for acquiring higher qualification. The petitioner was granted permission by the Additional District Inspector and based on such permission, he obtained necessary study leave in accordance with the Leave Rules and his leave has also been sanctioned by the Board. The

ultimate success that the petitioner achieved by obtaining Master's Degree would be set at naught if the State respondents are now allowed to deny his claim based on a law which was not in existence on the date right accrued in his favour to have higher scale of pay offered to him. It is settled law that a vested right cannot be taken away by an enactment, unless of course, such enactment has retrospective operation. As already been noted, the Act has not been given retrospective operation provisions of Section 16 of the Act may also be taken note of in this connection which reads as follows:

“16. Notwithstanding anything contained elsewhere in this Act, the terms and conditions of service of a teacher or a non-teaching staff in the employment of a school immediately before the commencement of this Act, shall not be varied to his disadvantage in so far as such terms and conditions relate to the appointment of such teachers and nonteaching staff to the post held by them immediately before the commencement of this Act”.

Therefore, the act cannot stand in the way of the petitioner being offered the higher scale of pay.

(emphasis supplied)

Undoubtedly persons similarly placed as Shivaji Chakraborty would be entitled to higher scale of pay on enhancement of their qualification and we are in agreement with the view expressed in this regard.”

12. The Court in the said judgment has further promulgated that beneficial interpretation should be given in favour of the grantee [paragraph No. 248 of the judgment]. It has also been held that Sections 14 and 20 of the Act of 2005 do not limit the freedom to acquire higher qualifications; they only prevent *automatic entitlement* to higher pay for such acquisitions. The principle is that any higher pay scale benefit is policy-based, not statutory, unless expressly provided.

13. Considering the law settled vide the various judicial pronouncements on the subject, it is found that in the fact situation of the present case, the writ petitioner is entitled to be

granted with the benefit of the higher pay scale, pursuant to his obtaining post graduate qualification. In the said impugned order the respondent/DI has failed to consider the settled legal position as above which has rendered the said impugned order as null and void in the eye of law. Therefore, the impugned order dated April 19, 2016, of the respondent/DI is not sustainable and is liable to be set aside.

- 14.** For all the reasons as above, the instant writ petition No. WPA 8604 of 2016 is allowed with the direction that the writ petitioner is entitled to be granted the post graduate scale of pay with effect from the following date of the last day of his M.A. examination.
- 15.** The respondent No.3/the District Inspector of the Schools (Secondary Education) Paschim Medinipur shall immediately made effective the refixation of pay scale of the writ petitioner accordingly, maximum within a period of 4 weeks from the date of communication of copy of this judgment.
- 16.** Arrear pay as stands due and payable is to be disbursed within a period of 3 months from the date of communication of copy of this judgment.
- 17.** The writ petition No. WPA 8604 of 2016 stands disposed of.
- 18.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)