

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

Present:

**The Hon'ble Justice Rai Chattopadhyay**

**WPA 10986 of 2019**

**Himadri Sekhar Das**  
**VS**  
**The State of West Bengal & ors.**

**For the Petitioner** : Mr. Ekramul Bari,  
: Mr. Siddhartha Sankar Mondal,  
: Sk. Imtiaz Uddin.

**For the State** : Mr. Saikat Chatterjee.

**Heard on : 11/11/2024**

**Judgment on : 11/11/2024**

**Rai Chattopadhyay, J. :-**

1. In this writ petition the petitioner has challenged the order of the Commissioner of School Education, West Bengal/respondent No. 2 dated February 22, 2019.
2. The respondent No.2 has delivered the said order in compliance with the directions of this Court dated November 13, 2018, passed in writ petition No. 13424 (w) of 2017 (Himadri Sekhar Das vs. State of W.B. & Ors.). The Commissioner of School Education/respondent No. 2, has held therein that the petitioner did not obtain any prior permission from the District Inspector of Schools, Secondary Education, Purba Medinipur (hereinafter referred to as DI)/respondent No. 3, before enrolment in the course of M.Sc. Degree and appearing in the examinations therefor. Hence, it has decided that the petitioner has obtained the Post Graduate qualification without the prior permission of the respondent No. 3/DI, which has been held to be in clear

violation of Para 3 of the G.O. No. 593-SE(B) dated November 27, 2007 (hereinafter referred to as No. 593). Therefore, the Commissioner of School Education/respondent No. 2 has held that in terms of Para 3 of No. 593, the petitioner would not be entitled for grant of Post Graduate scale of pay. Hence, he has regretted such prayer of the petitioner.

- 3.** The matter relates to the petitioner's prayer before the appropriate authority, for grant of post graduate scale of pay to him. The petitioner was recommended by the School Service Commission for appointment and thus was appointed as an Assistant Teacher in Mathematics with B.Sc. (Honours) qualification, in the school namely, Rasan Nehru Vidyapith (H.S.). He has joined in the said school on July 19, 2002. His service was approved by respondent No. 3/DI vide order dated December 3, 2002.
- 4.** On April 7, 2008 the petitioner applied for permission to take admission at Netaji Subhas Open University for obtaining Master's Degree in Mathematics through distance mode. The prayer of the petitioner as above was consented to by the school authority, vide resolution thereof dated June 28, 2008. It was resolved further that the petitioner's application as above would be sent to the DI for grant of prior permission.
- 5.** The petitioner thereafter enrolled himself in the Master's Degree course and finally qualified therein pursuant to publication of result of final examination, on June 12, 2012. Thereafter, on December 10, 2012, the petitioner had applied before the School Managing Committee for grant of post graduate scale of pay to him. Petitioner's prayer for grant of higher pay scale was also allowed by the School Managing Committee vide resolution dated December 14, 2012. It was again resolved that such prayer of

the petitioner and recommendation of the School Managing Committee shall be forwarded to the respondent No. 3/DI for approval.

6. So far as the writ petitioner is concerned, he has been working continuously and uninterruptedly in the said school since the date of his appointment and has been assigned the duty to take classes in higher secondary section, regularly. According to the staff pattern also, the petitioner would be eligible to be granted with the higher pay scale of a Post Graduate category teacher.
7. Since no steps have ever been taken by the respondent No. 3/DI with respect to the petitioner's prayer for grant of higher pay scale, the earlier writ petition was filed by him, that is, WP No. 13424 (w) of 2017. In the same the Court directed for consideration of the petitioner's prayer as above. The resultant order is that assailed in the present writ petition, dated February 22, 2019.
8. Mr. Bari, learned advocate appears for the writ petitioner. Mr. Bari says that the writ petitioner would be governed under the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005 (hereinafter referred to as '2005 Act'). With reference to the relevant provisions thereof, that is, under Section 14(3) of 2005 Act, Mr. Bari would say that it is a substantive right of the writ petitioner in accordance with the law that he be granted with the post graduate scale of pay, subject to the staff pattern of the school.
9. Mr. Bari would further say that such substantive legal right being available in case of the writ petitioner, his claim for higher pay scale, cannot be declined by the respondent authority on the basis of alleged non-compliance with certain regulatory provisions made under the substantive legislation. In that

respect, he would further submit that subject to the staff pattern of the school, the legal right of the writ petitioner to be granted with the post graduate scale of pay pursuant to his obtaining higher qualification, is undeniable and otherwise the action of the respondent authority should be termed as a gross illegality and to be set aside.

10. Mr. Chatterjee, is appearing for the State respondent. He would submit that the notification No. 593 has provided the norms in terms of Section 14 of the 2005 Act, to lay down the process as to when an Honours Graduate teacher shall be entitled to draw pay meant for Post Graduate qualification in terms of Section 14 Sub-section 3 of the 2005 Act. Therefore, according to the said respondent, compliance by the petitioner with the norms as prescribed in the notification No. 593 would be compulsorily to be followed in such view of the facts. According to Mr. Chatterjee the decision of the Commissioner of School Education in the impugned order dated February 22, 2019 is just, legal and proper. He says that no interference as to the same is warranted at all. He insists the writ petition should be dismissed.

11. It is necessary that Section 14(3) of 2005 Act be extracted here:-

***“14. [Pay of teacher] [Substituted 'Scale of pay etc. of teacher' by West Bengal Act No. 20 of 2016, dated 2.2.2016].***

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***(3) [ Every teacher appointed for classes XI and XII, shall be entitled to draw pay meant for Post-graduate qualification and shall not be entitled to claim any additional increment or higher scale of pay for any qualification other than the minimum qualification specified for such post.] [Substituted by West Bengal Act No. 20 of 2016, dated 2.2.2016.]”***

12. Pertinent is to note the approval order of the writ petitioner, that is, dated December 3, 2002. The petitioner has been approved in

service as a B.Sc. (Honours) in Mathematics with B.Ed. qualified Assistant Teacher. It is also be noted that the petitioner has been imparting teaching to the students of Class XI and XII, to which fact there is no objection raised on behalf of the respondent. In view of the facts as above it is found that the petitioner would be entitled to draw the pay scale meant for Post Graduate qualification. Section 14(3) of the 2005 Act, allow such substantive right in favour of the writ petitioner for drawing pay scale meant for Post Graduate qualification.

13. Fact remains that the petitioner has obtained M.Sc. Degree in the relevant subject. The same is an undisputed fact in the case. The question is whether pursuant to obtaining Post Graduate Degree, the petitioner can seek for espousal of the substantive right of him for grant of pay scale meant for Post Graduate qualification in terms of Section 14(3) of the 2005 Act, even not being equipped with any formal permission of DI, to pursue M.Sc. course, in terms with notification No. 593. Or should he be obliged to mandatorily comply with the prescribed norms in notification No. 593. The question also is, and whether in absence of compliance of the norms in notification No. 593, if any, the substantive right of the petitioner in terms of the said statutory provision, can be denied to him or not.
14. The well settled principle of law is that rules of procedure are the hand-maidens of justice and law. The substantive law cannot be made subservient to whatever regulatory measure existing for implementation thereof.
15. In this regard the wording of the Hon'ble Justice V. R. Krishna Iyar, may be borrowed with utmost humility and respect, as follows:-

In the case of **State of Punjab vs. Shamlal Murari** reported in **(1976) 1 SCC 719**. The Hon'ble Justice Iyar has held as follows:-

***“8. \*\*\*\*\* This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by the court. We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, though procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time. \*\*\*\*\*”***

Similar view has been taken by the same Court in the recent time, that is, in the judgment of **HDFC Bank Ltd. vs. Union Bank of India** reported in **(2023) 5 SCC 627**, which is as follows:

***“32. It could thus be seen that the principle of ex debito justitiae has been emphasised. This Court in A.R. Antulay [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] held that no man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. It has been held that the rules of procedure are the handmaidens of justice and not***

***the mistress of justice. It has further been held that if a man has been wronged, so long as the wrong lies within the human machinery of administration of justice, that wrong must be remedied.”***

16. So far as the petitioner is concerned, apparently and undisputedly, before enrolling himself to the Master's Degree course and later on, for seeking higher pay scale he has applied before the School Managing Committee. On both the occasions the School Managing Committee granted his prayer. It recommended petitioner's prayers for approval before the respondent No. 3.
17. On careful perusal of the order of the Commissioner of School Education as impugned in this case, it appears that the said respondent has denied receipt of any such recommendation of the School Managing Committee by it.
18. Let us not dispute this fact recorded in the impugned order by the Commissioner of School Education. Let us take it, that prayer of the writ petitioner on both the occasions have never been forwarded to the office of the respondent No. 3 or 2, as case may be. Ever then, the question remains whether such irregularity, on the part of the school authority, to which the petitioner has no role to subscribe, can deny him with the benefit, which the law has provided to him.
19. It is pertinent to note that the Hon'ble Larger Bench of this Court in the case of ***Utpal Kanti Karan vs. State of West Bengal & Ors.*** reported in ***2024 SCC OnLine Cal 1274*** has held with regard to notification No. 593 that, the same does not carry any statutory force. Therefore, the regulatory norms as prescribed in notification No. 593, if taken not to have been complied with in

the process, the substantive right of the person, emanating from the provisions of the statute, can hardly be declined to him for the said reason, excepting any other reason, which the statute would itself had provided if any, as disqualification.

- 20.** In such view of the fact the Court finds that declining petitioner's prayer for grant of post graduate scale of pay, only for the reason of alleged non-compliance with Para 3 of notification No. 593, would amount to deprivation of the writ petitioner of the legal rights to which he is entitled in terms of the statute itself, that is Section 14(3) of the 2005 Act. Noticeable is that excepting the reason of non-compliance with the provisions of notification No. 593, no other ground has been stated by the respondent No. 2 in his order dated February 22, 2019.
- 21.** However, on the premises as above, the said ground is found to be untenable and thus the order impugned, that is, dated February 22, 2019 appears to be de hors the law and thus illegal and liable to be set aside.
- 22.** For the reason as above this writ petition should succeed.
- 23.** Writ petitioner being WPA 10986 of 2019 is allowed with the directions as follows:-
  - (i) The impugned order dated February 22, 2019 passed by respondent No. 2/Commissioner of School Education is set aside;
  - (ii) The respondent No. 3 is directed to take immediate steps for grant of pay scale meant for Post Graduate qualification, to the petitioner with effect from the day, subsequent the date of his final result in M.Sc. course;
  - (iii) Appropriate pay fixation be immediately made, as regards the petitioner;

- (iv) The petitioner shall be paid arrear, if any, with immediate effect;
- (v) The entire exercise as above shall be concluded within a period of three weeks from the date of communication of copy of this order.

**24.** Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

**25.** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**