

11.11.2024
Item No.50
RP
Ct. No.7

WPA 17217 of 2022
Meghnath Roy
Vs.
The State of West Bengal & Ors.

Mr. Saktipada Jana
Mr. Subhajyoti Das
Mrs. Sudipta Pramanik
..... for Petitioner
Ms. Rupsha Chakraborty
..... for State

1. The petitioner has prayed for setting aside the order of the Commissioner of School Education, West Bengal dated January 10, 2022 whereby his prayer for higher scale of pay stood rejected.
2. Initially, the petitioner has joined as an Assistant Teacher in Geography in Sahebda Beldanga Jr. High School and his appointment was approved by the concerned District Inspector of Schools (SE), Bankura by a Memo No.3195 dated 10th December, 2009. At the time of such appointment the petitioner was an honours graduate. He made a prayer before the ad hoc committee of the said school to pursue his M.A. course through distance education mode and the committee of the said school in a resolution, adopted in the meeting held on 7th February, 2011, granted permission to the petitioner for pursuing his MA course. Thereafter, the petitioner took admission in the Vidyasagar University in the month of July 2010 for pursuing MA course. He completed his

Part-I examination held in the month of June 2011. He passed MA Part-II examination and the last date of such examination was July 24, 2013. In the meantime, the petitioner joined as an Assistant Teacher in Domjur Joychanditala High School (H.S.). After the petitioner obtained his Master degree qualification he applied before the concerned authority for higher scale of pay. The said authority rejected the prayer of the petitioner. Challenging such decision the petitioner filed a writ petition, being WPA 6439 of 2018, which was disposed of by an order dated 13th June, 2018 thereby setting aside the decision of the District Inspector of Schools with a direction upon the authority to give higher scale of pay to the petitioner from the date following the last date of the final examination of the Post Graduate course. The aforesaid order was challenged by the State of West Bengal in MAT 514 of 2019. The Hon'ble Division Bench by an order dated December 16, 2019 disposed of the appeal by directing the Commissioner of School Education to decide the issue of granting higher scale of pay to the petitioner within a stipulated time after granting an opportunity of hearing to the petitioner, the School Authority and the District Inspector of Schools or their representatives and to dispose of the matter by passing a reasoned order within the time limit

stipulated therein. Pursuant to the direction passed by the Hon'ble Division the Commissioner of School Education passed an order on January 10, 2022 thereby rejecting the claim of the petitioner for higher scale of pay. The said order of the Commissioner of School Education dated January 10, 2022 is under challenge in this writ petition.

3. Heard the learned advocates for the parties. The Hon'ble Division Bench while passing the order dated December 17, 2019 took note of the fact that when the petitioner joined the present school he was already pursuing his higher studies but the only mistake possibly he had done was not to seek the permission in terms of Clause 3 of the Government Circular dated November 27, 2007. After noting the aforesaid fact the Hon'ble Division observed as follows.

“We do not find any guideline which the District Inspector of Schools is required to follow in the event it is found that a teacher before joining in the institution was already pursuing his higher studies but for some unavoidable reasons, permission as contemplated under G.O. dated 27th November, 2007 was not sought for from the District Inspector of Schools or the Managing Committee failed to take

steps in this regard. We have also not found out any relevant Rules which sets out any guideline as to the factors to be taken into consideration by the D.I. either in allowing or disallowing higher scale of pay upon obtaining higher qualification. Possibly, these are the difficulties for which the communication dated 8th June, 2017 was made from the Deputy Director of School Education to the District Inspector of Schools to refer such cases where the said authorities are facing difficulties.

There cannot be any doubt 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 the higher qualification of a teacher. The benefit of higher qualification is not only restricted to monetary benefit of the teacher but is also extended to the students and the institution in which he is working as a teacher. It would be the endeavour of all schools to have academic excellence and it is the duty of the welfare State to encourage academic excellence in all the institutions since the ultimate beneficiary would be the students. We feel that same guideline should be in place to decide a case like the present one as absence of any such guidelines may lead to arbitrariness.

We are not unmindful of the fact that the West Bengal Schools (Control and Expenditure) Act, 2005

was enacted to provide for the control of expenditure in the schools in West Bengal and unless the authorities are of the opinion that such expenditure towards payment of the higher salary of a teacher would be a futile exercise or would not be beneficial to the schools or the students, the authorities may decline payment of higher scale of pay. Higher scale of pay would encourage the teacher and would be a motivating factor which ought not to be ignored. The consideration for not denying higher scale of pay could be that, already there are sufficient number of teachers having Honours/ post-graduate degree on the same subject in the institution and, as such, payment of higher scale of pay would not be a burden on exchequer.

We also observe that the relevant Rule does not prevent the authorities from giving an ex post facto approval if occasion so arises.”

After making the aforesaid observation the Hon’ble Division Bench directed the Commissioner of School Education to decide the issue of granting higher scale of pay to the petitioner in accordance with Section 14 of the West Bengal Schools (Control and Expenditure) Act, 2005. The order dated 27th November, 2007 and the observations made by the Hon’ble Division Bench which could be treated as a

guiding factor for considering the case of the petitioner.

4. After going through the order of the Commissioner of School Education dated January 10, 2022 this Court finds that the Commissioner of School Education specifically noted that it cannot be denied that a post graduate teacher is expectedly beneficial to the students. It was further observed that the benefit of the students is a factor to make any expenditure from the State Exchequer. However, further noting the aforesaid fact the Commissioner of School Education rejected the prayer for higher scale of pay only on the ground that if the financial benefit is allowed to the petitioner for his MA degree then it will be a burden on the State Exchequer. The ground on which the prayer for higher scale of pay was rejected cannot be accepted by this Court. When the Commissioner of School Education specifically observed that the service of a post-graduate teacher is expectedly beneficial to the students and also that the Hon'ble Division bench directed the Commissioner of School Education to take a decision after taking into consideration the observations of the Hon'ble Division Bench, the Commissioner of School Education failed to appreciate the observations of the Hon'ble Division Bench in its true

perspective. In view thereof, this Court is inclined to interfere with the order of the Commissioner of School Education dated January 10, 2022.

5. For the aforesaid reasons, the order of the Commissioner of School Education dated 10th January, 2022 is set aside and quashed.

6. The Hon'ble Special Bench in a batch of writ petitions, the lead case being WPA 9921 of 2007 (Utpal Kanti Karan vs. The State of West Bengal & Ors.) approved the decision of the Hon'ble Division dated December 16, 2019 passed in MAT 514 of 2019. This Court, therefore, holds that since the petitioner was pursuing his post-graduate course at the time of joining the present school and nothing has been brought on record to show that the prayer for prior permission was rejected by the concerned authority, this Court is of the considered view that the petitioner is entitled to higher scale of pay. Accordingly, the District Inspector of Schools (SE), Howrah, being the 3rd respondent, is directed to grant higher scale of pay to the petitioner with effect from the date following the last date of examination of the post-graduate course and to re-fix the pay scale of the petitioner. The said respondent shall also calculate the amount which the petitioner is entitled

on account of such refixation. Such decision is to be taken by the 3rd respondent as expeditiously as possible but positively within a period of four weeks from the date of receipt of the server copy of this order.

7. With the aforesaid observation and direction, this writ petition stands disposed of.
8. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties. Upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)