

11.11.2024
Ct. No. 25
Sl. No.2
KB

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 18377 of 2021

**Rabi Lochan Garai
-versus-
State of West Bengal & Ors.**

**Md. Manuwar Ali
Ms. Moumita Karmakar
... For the petitioner.**

**Mr. Swapan Kr. Datta, Sr. Adv & Ld. AGP
Mr. Tapas Kr. Mondal
... For the State.**

1. The only issue relevant to be determined in this writ petition, is if the provisions under G.O. No.593-SE(B) dated 27.11.2007 (hereinafter referred to as G.O. No.593) as regards obtaining prior permission from the District Inspector of Schools by the petitioner, in order to subsequently claim higher scale of pay pursuant to achieving higher qualification, would be relevant or not.

2. The writ petitioner entered into service on and from November 21, 2013. Before that, for the academic session 2012-2014, he enrolled himself for the Master's Degree Course. Thus, before entering into service, he joined the Master's Degree Course. However, he was inducted in the service and approved as a Honour's Graduate teacher.

3. After entering into service the petitioner sought permission to continue with his Master's Degree Course before the school authority, which was in turn recommended and sent by the head of the Institution, for permission by the respondent District Inspector of Schools.

4. Thereafter, the writ petitioner was transferred to the present school under the respondent District Inspector of Schools (Secondary Education) Bankura (hereinafter referred to as 'DI'). His service has been approved and his application, to be granted with the higher scale of pay, commensurate with his M.Sc. Degree, which he obtained in the year 2017, was filed before the School Managing Committee. The Managing Committee recommended the same to be granted and forwarded duly before the respondent District Inspector of Schools.

5. The petitioner, being aggrieved with the alleged inaction of the District Inspector of Schools, Secondary Education, Bankura, who has remained silent and not acted yet as to his prayer for grant of higher scale of pay pursuant to his higher qualification of M.Sc. Degree, has filed the present case.

6. Mr. Ali for the petitioner has mentioned the relevant facts of the case and submitted that before induction in the service, the writ petitioner had no scope to seek "prior permission" before the concerned

authority, in so far as he had already enrolled himself for the Master's Degree Course, before induction in service. He says that the petitioner only continued to pursue the said course and completed it during his service period i.e. in the year 2017.

7. Mr. Ali has also pointed out to the amended provision of the Control and Expenditure Act, 2005 and submits further that in accordance with the same the writ petitioner, who is an Honour's Graduate candidate, would be entitled to the Post Graduate scale of pay.

8. So far as the applicability of the G.O. No.593 in case of the petitioner, is concerned, Mr. Ali is of the opinion that the law in that regard is settled, by dint of the judgment of the Larger Bench of this Court, in **Utpal Kanti Karan Vs. State of West Bengal & Ors. reported in 2024 SCC Online Cal 1274**. He would say that according to the verdict of the case as above, the said Government Order would not be applicable in case of the petitioner, as the petitioner has already been enrolled for the higher degree course, before entering into the service. He says that had it been the case, that the petitioner desired to enroll himself for higher degree, after entering into the service, there might have been a requirement to take prior permission, in terms of G.O. No.593, to claim higher scale of pay subsequently.

9. In this regard, he would also refer to a judgment of Division Bench of this Court, dated 11.02.2021, (in **MAT 825 of 2020 with CAN 1 of 2021** in **Md. Adeel Uz Zaman Vs. The State of West Bengal & Ors.**).

10. Thus Mr. Ali would seek a mandatory direction upon the respondent authority to allow higher scale of pay to the writ petitioner.

11. Mr. Datta is representing the State. He would raise strong objection to the contentions and prayer of the writ petitioner and seek dismissal of the writ petition.

12. Mr. Datta would say that at the time of entering into service by the writ petitioner in the year 2013, the G.O. No. 593 was already in force and the petitioner should have entered into service with full knowledge of the relevant conditions as provided therein. According to Mr. Datta, having entered into service the writ petitioner should have complied with the condition in G.O. No.593, having full knowledge thereof, at the time of being inducted into service.

13. Mr. Datta would further indicate about the defect of parties in this case. He would say that the petitioner was not initially inducted into service under the District Inspector of Schools, (Secondary Education) Paschim Medinipur against which the petitioner has

some grievance. However, the District Inspector of Schools, Secondary Education, Paschim Medinipur has not been made a party in this writ petition. Therefore, the present respondent District Inspector of Schools (Secondary Education) Bankura would not be in a position to answer whatever allegations are there against the said office at Paschim Medinipur.

14. Mr. Datta would further say that since the writ petitioner completed his M.Sc. Degree Course on February 2, 2017, before which the provision above of the Control and Expenditure Act of 2005 was already in place, the petitioner cannot bypass the said amended provision which provides for no entitlement of the incumbent for additional increment or higher scale of pay, excepting what has been drawn by him at the time of induction in the service.

15. Heard submissions.

16. Perused the statutory provisions and the judgments as relied upon by the respective parties.

17. Admittedly, the petitioner was inducted in service after his enrolment and entering into the Master's Degree Course in Mathematics. At the time of entering into service of the writ petitioner, the Notification being G.O. No. 593, was in force.

18. Para 3 of G.O. No. 593, would require a teacher to seek prior permission to obtain a higher

degree, in case if at a subsequent stage he would seek higher pay scale on the basis of his such higher degree.

19. It is undeniable that when the petitioner enrolled himself for higher degree before entering into service, he could not have been considered as a “teacher” as enumerated in the said Notification. For the petitioner there was not any scope before being inducted in service, to seek permission from the District Inspector of Schools, who has become the approving authority for him only after his entering into the service.

20. This aspect has been exhaustively considered and decided by the Hon’ble Larger Bench of this Court in the case of **Utpal Kanti Karan (supra)**. The Court has decided that for an Assistant Teacher, who has enrolled himself for a higher degree course, prior to being inducted in the service, would not be required to seek prior permission in terms of G.O. No.593, in order to seek and obtain higher scale of pay at a subsequent stage, after entering into service.

21. Therefore, the arguments advanced on behalf of the respondent regarding the petitioner’s requirement for mandatory compliance of the provision under G.O. No.593, does not appear to be convincing.

22. In the affidavit-in-opposition, the State respondent has, after discussing the factual aspects of the case, has principally founded its grounds on alleged

non-compliance of the relevant provisions in G.O. No. 593, which as per discussion as above, would not be applicable in case of the present petitioner.

23. It is evident that the law in this regard is well settled pursuant to the amended provision of the 2005 Act, as well as the Larger Bench's decision in **Utpal Kanti Karan's case(supra)**.

24. Hence, this case is being disposed of with the direction upon the respondent no.3, District Inspector of Schools, Secondary Education, Bankuara to consider and dispose of the petitioner's representation for grant of higher scale of pay, as pending before it, after due consideration thereof and in strict terms of the law settled, as discussed above.

25. The said respondent shall grant opportunity of hearing to the petitioner and also allow him to rely on the relevant statutory provision as well as the judgment of the Court, as is applicable in this case.

26. The petitioner's application for grant of higher pay scale shall thus be decided by the respondent in accordance with law and immediate necessary steps for re-fixation of his salary shall be taken within a period of four weeks from the date of communication of the order upon deciding the application in terms of the law.

27. There shall be no order as to costs.

28. All parties shall act on a server copy of this order duly downloaded from the official website of this Court.

(Rai Chattopadhyay, J.)