

Court No. 22
19.4.2024
(Item No. A-75)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 21483 of 2014

Ashis Kumar Mandal
VS
The State of West Bengal & Ors.

Mr. Gazi Faruque Hossain
Ms. Varsha Roy
..... for the petitioner
Mr. Gourav Das
.... For the State

The petitioner claims to be an **Assistant Teacher** for the subject **Chemistry** at **Canning David Sassoon High School, District 24 Parganas (South)**.

The petitioner had joined the school on **September 14, 2009**. **Chemistry** is the relevant subject. The petitioner qualified the **Part-I M.Sc Examination** on **July 3, 2009** prior to his appointment. The petitioner then obtained prior permission for pursuing his **M.Sc. Part-II** from the Managing Committee of the relevant school on **December 7, 2009**. The West Bengal Board of Secondary Education granted study leave on **April 20, 2011**. The petitioner then applied before the school for higher pay scale on **April 21, 2011**, **Annexure P-5** at **page 34** to the writ petition. The last date of **Part-II Examination** on **May 20, 2010**.

In the above facts the claim of the petitioner for higher pay scale had been rejected by respondent No. 3 through its impugned order dated **January 3, 2014, Annexure P-9** at **page 50** to the writ petition, which is impugned in this writ petition.

Mr. Gazi Faruque Hossain, learned counsel appears for the petitioner. He submits that, the impugned order of the respondent No. 5 is totally contrary to law and is liable to be set aside. He submits that, law is well settled that in this fact situation the petitioner is eligible to receive higher pay scale. In support, he has relied upon a decision of the Hon'ble Division Bench **In the matter of : Sri Sukesh Majumder Vs. The State of West Bengal & Ors. dated April 21, 2023** rendered in **MAT 1220 of 2021** and a judgment of this Court **In the matter of: Smt. Payel Jana (Panja) vs. The State of West Bengal & Ors.** rendered in **W.P.A. 18770 of 2012**.

Mr. Gourav Das, learned State counsel appears for respondent Nos. 1, 2 and 5.

The submissions on behalf of the parties and the materials before this Court have duly been considered.

Following the ratio **In the matter of : Sri Sukesh Majumder (Supra)**, this Court has delivered the judgment **In the matter of Smt. Payel Jana (Panja) (Supra)** and this Court had observed as under:

“The relevant portions from the said Division Bench judgment in the matter of **Sri Sukesh Majumder (supra)** are quoted below:

“Thus, the crux of the instant lis is as to whether the petitioner has violated any provision laid down by the Government in respect of

obtaining higher qualification prior to being in service and, after achieving the same, praying for higher scale of pay.

The Government of West Bengal, School Education Department, Secondary Branch Order being No. 548-SE (S) dated 24th June 1997 reads as follows:

“No. 548-SE(S) Dated: the 24th June, 1997.
To: The Director of School Education, West Bengal
Sub: Recognition of correspondence courses conducted by the different Universities of India.

The undersigned is directed by the order of the Governor to say that henceforth all the teachers teaching in different state-aided schools will have to take prior permission from the District Inspector of Schools (SE) through the Managing Committee, Ad hoc Committee/Administrator as the case may be if they like to enroll themselves and to appear for the examination conducted through Correspondence/ Distance Mode of education from the UGC-affiliated universities. The Managing Committee of the concerned school shall send such cases to DI (SE) for approval along with their comments, including, inter alia, the relevance of the subject of higher studies and also whether such higher studies are likely to affect the duties of the teacher in the school”

From the aforementioned Government Order it reveals that all the teachers teaching in different State aided schools will have to take prior permission from the DI (Secondary Education) through the Managing Committee, Ad-hoc Committee/ Administrator as the case may be if they wish to enroll themselves and to appear for the examination conducted through

correspondence/distant mode of education from the UGC-affiliated universities.

In this instant case the writ petitioner got admitted to the masters degree course in English in the University of Burdwan in the session 2003-2005 and appeared in the M.A. Part - I examination 2005 and M.A. Final Examination 2006. As such it is evident that the petitioner joined the course for post 6 graduation in English prior to his joining the service which was on the 7th day of March in the year 2006, when he joined the Bishpara High School as an Assistant Teacher of English. So the question of obtaining prior permission from the concerned authority does not arise. As such there is no violation by the petitioner in respect of the aforementioned Government Order.

Next, the Government Order being No. 593-SE (B) dated 27.11.2007 states as follows:

“The School Education Department, Government of West Bengal considers it necessary to publish an order specifying the manner in which a teacher appointed in Honours Graduate/Post Graduate scale of pay will be entitled to claim any additional increment and higher scale of pay upon acquiring Post Graduate/or any Higher Diploma/Degree under Section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005.

1. All the teachers teaching in different State Aided Schools will have to take prior permission from the Managing Committee/Adhoc Committee/ Administrator as the case may be to enroll themselves and to appear for any examination for enhancement of educational qualification. The Managing Committee being ‘Competent Authority’ in such cases will take a

decision in its next meeting and convey its decision to the teacher concerned immediately. A copy of the decision of the Managing Committee will be forwarded to the office of the DI of Schools (SE) of the concerned district.

2. The applicant-teacher thereafter, will, if necessary, apply for Leave/Special Leave/ Study Leave as the case may be (along with the resolution of Managing Committee) to the West Bengal Board of Secondary Education (which is the Competent Authority in this case) through the Managing Committee of the School.

3. The teacher is required to seek prior permission of concerned District Inspector of Schools (SE) (only when he/she wants to claim additional increment/higher scale of pay etc. for obtaining such higher qualification) through the Managing Committee of the School.

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 7 of Schools granting such prayer will be treated as an 'Offender' under West Bengal Schools (Control of Expenditure) Act, 2005].

5. The courses to be studied should be relevant to the subjects studied in Under Graduate Honours/Post Graduate Course of the Applicant Teacher and none other. The Deemed University/University etc. conducting the examination must be affiliated to UGC."

From the aforesaid Government Order it reveals that a teacher who is in service has to obtain prior permission from the concerned

authority and in the instant case the petitioner had joined his course for post graduation in English prior to joining the service as a School Teacher on 07.03.2006. Therefore, no question of prior permission from the authorities concerned is relevant in case of the appellant/ writ petitioner.

So the appellant/ writ petitioner has not violated either of the aforementioned two orders relying upon which the District Inspector of Schools had rejected the prayer for enhanced scale of pay.

It is also a fact that the appellant/ writ petitioner had completed his Masters Degree in English, the subject which he is teaching in school. Needless to mention that the teacher concerned with his higher degree of qualification in the subject which he is assigned to teach shall only contribute to the benefit of the students and the school.

The aforementioned Government Orders/ circulars hence do not stand in the way to granting benefits of higher scale of pay to a teacher on acquiring higher qualification.

As such the impugned order requires to be interfered with and stands set aside.

The impugned Order of the District Inspector of Schools (Secondary Education), Burdwan also stands quashed.

The appellant/ writ petitioner will be entitled to receive the benefit of higher scale of pay for obtaining higher degree of qualification from the date of his preferring the application before the concerned school authority.”

In view of the settled law as discussed above, the impugned order dated **January 3, 2014**, **Annexure P-9** at **page 50** to the writ petition, in the

firm opinion of this Court, cannot sustain in law and accordingly stands **set aside** and **quashed**.

The petitioner shall be entitled to receive and shall receive the higher pay scale for acquiring his higher qualification i.e. Post Graduation in Chemistry from the date of his preferring the application before the school authority i.e. dated **April 21, 2011, Annexure P-5**, at **page 34** to the writ petition.

The respondent No. 5 shall take all further and consequential steps to allow the petitioner to obtain higher pay scale commensurating with his Post Graduation degree as discussed above, positively within a period of **three weeks** from the date of communication of this order including the arrear to be paid to him.

On the above terms this writ petition being **W.P.A. 21483 of 2014** stands **allowed**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)