

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 22595 of 2016

Tapan Kumar Sadar

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Himadri Barua
Mr. Biswajit Das

For the State : Mr. Mrinal Kanti Ghosh

Heard on : May 16, 2024

Judgment on : May 16, 2024

Aniruddha Roy,J.

1. This is a hearing matter upon direction of affidavits.
2. The registry note dated April 27, 2017 shows that despite there being direction on March 23, 2017, the respondents did not file affidavit-in-opposition.
3. Considering the long pendency of the writ petition since 2016 and considering the issue involved in the writ petition, this Court proceeds for its final disposal on the basis of the existing records.
4. Mr. Himadri Barua, learned counsel appears for the petitioner.

5. Mr. Mrinal Kanti Ghosh, learned State counsel appears for respondent Nos. 1 to 3.

Facts:

6. The petitioner claims to be an Assistant Teacher appointed on **October 30, 1987** for the subject **Bio-Science**. The relevant subject of the petitioner is **Zoology**. At the time of appointment the petitioner was an Honours Graduate in Zoology with B.Ed. To enhance qualification the petitioner applied before the Managing Committee of the **Basanti High School (H.S.), District 24 Parganas (South) (for short, the School)**. The Managing Committee of the school by its resolution dated **June 26, 2001, annexure P-3 at page 32** to the writ petition, permitted the petitioner to undergo and to acquire higher qualification, **M.Sc. (Zoology)**. The Managing Committee forwarded all documents before the respondent No. 3 immediately to grant prior permission in favour of the petitioner, **annexure P-3 at page 33** to the writ petition. The said request of the Managing Committee of the school with all its documents was received by the office of the respondent No. 3 on **July 23, 2002**, as would be evident from the office endorsement made by the office of the respondent No. 3 on the face of the said document. The petitioner then submitted its representation dated **October 10, 2002** before the Head Master of the school with regard to his claim for prior permission to undergo M.Sc.(Zoology), **annexure P-4 at page 34** to the writ petition. The Managing Committee of the school under its resolution dated **September 27, 2003, annexure P-5 at page 35** to the writ petition, duly approved the study

leave for the relevant period. The Managing Committee under its resolution dated **December 4, 2004, annexure P-8** at **page 38** to the writ petition, agreed and approved to grant the petitioner Higher Pay Scale commensurating with his Post Graduation degree. The certificates of the relevant University **annexure P-6** at **pages 36 and 37** to the writ petition, respectively show that the date of commencement of the M.Sc Part –I was on **July 18, 2003** and the publication of M.Sc. Part-II result on **March 18, 2004**. The school also represented by its letter dated **December 15, 2005** before the respondent No. 3 to grant Higher Pay Scale to the petitioner commensurating with his Post Graduation degree, **annexure P-9** at **page 40** to the writ petition. There were several representations made by the school authority before the respondent No. 3 with a request to enhance the pay scale of the petitioner. The last representation was dated **February 21, 2008, annexure P-12** at **page 44** to the writ petition, submitted by the petitioner himself before the respondent No. 3.

7. In the above back drop, the previous writ petition **W.P. 20523 (W) of 2008** was filed by the petitioner. The same was disposed of by a co-ordinate bench by an order dated **September 9, 2008, annexure P-13** at **page 45** to the writ petition, directing the respondent No. 3 to dispose of the representation of the petitioner by passing a reasoned order in the manner and mode directed therein.

8. Pursuant to the said direction in the previous writ petition the respondent No. 3 passed its reasoned order dated **September 14/15, 2011,**

annexure P-14 at **page 53** to the writ petition, rejecting the claim of the petitioner, *inter alia*, with the following finding:

“The petitioner applied to school authority for enrolment of his name in the University and Managing Committee granted the same. But the School authority did not recommend the name of the petitioner for getting permission from District Inspector of Schools (Sec. Edn), South 24-Parganas before his enrolment to the Vidyasagar University.

The Managing Committee approved the study leave of the petitioner for appearing in the M.Sc. Examination. But Managing Committee has no such power to approve the study leave, only the West Bengal Board of Secondary Education has power to grant study leave after getting recommendation from District Inspector of Schools (S.E.), South 24-Parganas.

The petitioner as well as the School authority violate the G.O. No. 548-SE(S) dated 24.6.1997.

So, the undersigned cannot grant the post graduate scale to Tapan Kr. Sardar for above-mentioned reasons.

Thus, the W.P. 20523(W) of 2008 is disposed of and all concerned is to be informed accordingly.”

The petitioner has assailed the said impugned reasoned order dated **September 14/15, 2011** through the instant writ petition.

SUBMISSIONS:

9. Mr. Himadri Barua, learned counsel appearing for the petitioner submits that, the petitioner has completed his M.Sc. from a recognized

University. Zoology is the relevant subject. The petitioner submits that, even prior to the commencement of M.Sc. Part – I the school submitted its application with all documents before the respondent No. 3 on **July 23, 2002, annexure P-3** at **page 33** to the writ petition, requesting the District Inspector of Schools to grant prior permission for the petitioner to acquire M.Sc. (Zoology). The respondent No. 3 did not pay any heed thereto. Learned counsel then submits that, several representations were made both by the school and the petitioner before the respondent No. 3 to grant Higher Pay Scale in favour of the petitioner commensurating with his Post Graduation degree, the respondent No. 3 did also not pay any heed thereto. Ultimately, the previous writ petition was moved and pursuant to the direction made therein the impugned order was passed on **September 14/15, 2011**.

10. Referring to the said impugned order, learned counsel for the petitioner submits that, the sole plea for rejection of the claim of the petitioner for Higher Pay Scale was that the petitioner did not take any step to obtain prior permission from the respondent No. 3 in terms of the **Government Order bearing No. 548-SE(S) dated June 24, 1997**. He submits that, the record shows that, way back on **July 23, 2002** the Managing Committee after according its consent in favour of the petitioner to acquire higher qualification sent and transmitted all relevant records before the respondent No. 3 with a request to grant prior permission in favour of the petitioner but the respondent No. 3 sat idle on the issue, for which neither

the petitioner nor the school can be blamed. The petitioner's right to receive Higher Pay Scale was therefore denied in an illegal, wrongful and arbitrary manner and without application of mind. In support, the learned counsel for the petitioner had relied upon a judgment of a co-ordinate bench ***In the matter of: Md. Ismail Mollah Vs. The State of West Bengal & Ors. reported at 2014 SCC Online Cal 13803 : (2014) 3 Cal LT 1 : (2014) 3 Cal LT 461.***

11. In the light of the above, learned counsel for the petitioner prays for quashing of the said impugned reasoned order passed by the respondent No. 3 dated **September 14/15, 2011** and further prays for issuance of mandamus upon the State authorities to grant Higher Pay Scale to the petitioner commensurating with his Masters degree in accordance with law.

12. Mr. Mrinal Kanti Ghosh, learned State counsel submits that, the record shows no prior permission was applied for before the respondent No. 3 as it is required to be applied in law through the Managing Committee of the school. He further submits that, the said Government Order dated **June 24, 1997** states that before enrolment for Post Graduation Distance Course, prior permission is required to be obtained. In the instance case, in absence of such prior permission being applied for and not being granted by the respondent No. 3 in favour of the petitioner, the Higher Pay Scale claimed by the petitioner was rightly rejected under the said impugned order passed by the respondent No. 3. He further submits that, the impugned order shows that the respondent No. 3 after considering all the relevant materials has

passed the same with due application of mind. He further submits that, the school authority without following the due process of law granted study leave to the petitioner which is not valid in the eye of law.

13. While distinguishing the decision ***In the matter of: Md. Ismail Mollah (Supra)*** learned State counsel submits that in that case the fact situation was totally different and the District Inspector of Schools granted permission, since the same was not denied by him. He submits that, in the instant case there was no application submitted before the District Inspector of Schools before enrolment, so the question of granting any prior permission did not arise.

14. In the light of the above, the learned State counsel submits that, the impugned decision should not be interfered with and the writ petition should be dismissed.

DECISION:

15. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court reiterates that despite opportunity granted by the Court to file affidavits-in-opposition, no such affidavit was filed. So, the statements made in the writ petition are not controverted in the eye of law.

16. The materials on record show that, the Managing Committee of the School duly granted permission to the petitioner prior to the petitioner had undergone for his Post Graduation degree. The Managing Committee of the school on **July 23, 2002** forwarded all the relevant records before the

respondent No. 3 with a request to grant prior permission in favour of the petitioner for acquiring Post Graduation degree. The certificates of the relevant Universities, **annexure P-6** at **pages 36 and 37** to the writ petition, show the commencement of M.Sc. Part-I was on **July 18, 2003** and the publication of result was on **March 18, 2004**. There was no explanation as to why the respondent No. 3 despite receiving the said request to grant prior permission to the petitioner from the Managing Committee of the school on **July 23, 2002**, admittedly prior to the commencement of the M.Sc. Part-I examination, did not take any step whatsoever and sat over the issue totally idle.

17. The respondent No. 3 is a creature of statute. Its duties and obligations are bound by the provisions of the relevant law and by the executive instructions issued from time to time. In the event, such statutory and State authority fails to discharge its duties strictly in accordance with law, no blame or liability can be foisted upon anybody else.

18. The petitioner, as the Teacher in the instant case, has complied with all its statutory obligations and similarly, the Managing Committee of the school has also complied with all its statutory obligations the moment it has sent all documents before the respondent No.3 requesting to issue prior permission in favour of the petitioner for acquiring higher qualification. Then the obligation of the respondent No.3 began, which he has failed to discharge contemporaneously. Subsequently, through the said impugned order he could not have taken and cannot take the plea that in absence of prior

permission the benefit for Higher Pay Scale cannot be granted to the petitioner, which is a right of the petitioner.

19. The observation of the co-ordinate bench relevant in the instant case

In the matter of: Md. Ismail Mollah (Supra) is quoted below:

“In view of the settled proposition of law as decided by a Division Bench of this Court by a judgment delivered on October 16, 2012 in the matter of Asim Kumar Adgiri v. State of West Bengal (In re: M.A.T. 1459 of 2012) and the relevant portions of the above decision are set out below:-

‘It is true that a circular cannot override the specific provisions of the Act. In the present case, the appellant/petitioner was admittedly appointed in the school as Honours Graduate with B.Ed degree. As a matter of fact, at the time of joining the school qualification of the appellant was Honours Graduate in Mathematics and B.Ed. subsequently the same appellant acquired post-graduate degree. Therefore, in terms of Section 14(3) of the West Bengal Act, XIV of 2005 appellant herein is entitled to draw pay of post-graduate teacher. Furthermore, para 3 of the Office order dated 27th November, 2007 has not been specifically violated in the present case since the appellant also sought for prior permission from the concerned District Inspector of Schools for undergoing post graduate studies through the managing committee of the school and such permission was never denied by the said District Inspector of Schools.

Considering the aforesaid facts, we are of the opinion that the District Inspector of Schools should not have rejected the claim of the appellant/petitioner for higher scale of pay even after acquiring higher qualification i.e. M.Sc in Mathematics.

Accordingly, we set aside and quash the decision of the District Inspector of Schools, as communicate to the appellant/petitioner, under office memorandum dated 15th March, 2011.

For the identical reasons, we also set aside the impugned order under appeal passed by learned Single Judge.”

20. In as much as, from the subject mentioned in the said Government memo dated **June 24, 1997**, it appears to this Court that, it was related to recognition of correspondence courses conducted by the different Universities of India. The content of the said Government Memo speaks of prior permission from the District Inspector of Schools has to be applied through the Managing Committee of a school for a Teacher who is willing to undergo a Post Graduation degree through a Distance Course from a recognized University. The memo further speaks that the Managing Committee of the concerned school shall send such cases to District Inspector of Schools for approval along with their comments and other relevant materials mentioned therein. This Court is of the firm view that, the records in the instant case would show that the provisions of the said Government Memo had duly complied with by the concerned Teacher and the Managing Committee of the school but the District Inspector of Schools sat idle on the issue since 2002.

For such inaction on the part of the District Inspector of Schools the petitioner cannot be blamed neither can suffer. The right of the petitioner cannot and should not be defeated.

21. In view of the foregoing reasons and discussions, the impugned reasoned order dated **September 14/15, 2011 annexure P-14** at **page 53** to the writ petition stands **set aside** and **quashed**.

22. The respondent No. 3 is directed to take all necessary and consequential steps to grant Higher Pay Scale to the petitioner commensurating with his Post Graduation degree in the relevant subject with effect from **March 18, 2004**, being the date of publication of the result, as the last date of examination is not available on record.

23. The respondent No. 3 shall calculate the arrear payable to the petitioner, in accordance with law, together with interest @ **6% per annum from April 18, 2004 till the date of retirement of the petitioner**, as this Court has been informed by the learned counsel for the petitioner that the petitioner has **retired in January 2024**.

24. The respondent No. 3 shall carryout the exercise for calculation of **arrear with interest**, as directed above, and transmit and send the same before the appropriate State authority for payment positively within a period of **five weeks** from the date of communication of this order. Such appropriate authority then shall disburse the necessary payment by crediting the bank account of the petitioner to be furnished by him, positively within a

period of **three weeks** from the date of receiving the calculation and instructions from respondent No. 3.

25. The respondent No. 3 shall also communicate a copy of this order to such appropriate payment disbursing authority of the State along with its instruction for payment.

26. With the above observations and directions, this writ petition **W.P.A 22595 of 2016** stands **allowed**, without any order as to costs.

27. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)