

23.04.2024

Sl. No.11.

Ct. No. 35

s.g.

WPA/26317/2017

Subrata Saha

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari,

Sk. Imtiaj Uddin,

....for the petitioner.

Mr. Bhaskar Prasad Vaisya, A.G.P.

Mr. Sagnik Chatterjee,

.... for the State.

The writ petitioner is aggrieved with the order passed by the District Inspector of Schools, Secondary Education Kolkata respondent no.3, dated 2nd June, 2017, refusing to grant him the higher scale of pay, pursuant to his obtaining higher qualification.

The reasons as mentioned in the said order dated 2nd June, 2017 would be inter alia that, firstly, the writ petitioner has not obtained prior permission in terms of the existing rules, before enrollment into the post-graduate course. Secondly, it has been stated that the authority was not satisfied about that the writ petitioner has joined M.Sc classes, without neglecting his duties in the school as a teacher. On these scores, the prayer of the writ petitioner for grant of pay was turned down.

Mr. Bari is representing the writ petitioner. He has mentioned at the outset, regarding the Larger Bench decision of this Court in Utpal Kanti

Karan v. State of West Bengal. 2024 SCC Online Cal 1274 He says that the said issue has already been settled by the Larger Bench of this Court, by holding that the candidate/teacher who has enrolled for the higher degree, before entering into service, could not be required to obtain compulsory prior permission from the authority and in his case such requirement should be relaxed. Mr. Bari says that in view of the law as settled in this way, the said judgement dated 27th February, 2024 of the Hon'ble Larger Bench would be applicable squarely in case of the writ petitioner, that the impugned order would be a nullity in the eye of law and liable to be set aside.

The other point as canvassed on behalf of the writ petitioner is that the M.Sc degree, until and unless is cancelled by the concerned University, which has granted the same to a successful aspirant, on any ground whatsoever, the validity of the same and the benefits flowing from such a valid degree could not be denied to a teacher, by the respondent authority. Mr. Bari has relied on a Division Bench judgement of this Court, reported in (1998) 1 CLJ 283 (Khagendra Nath Paul -Vs.- The State of West Bengal & Ors.) , on this proposition. A further reference has been made of a judgement of this Court in WPA 28490 of 2016 in which similar law has been followed. Mr. Bari says that said principle would squarely be applicable in this case. He seeks an appropriate order for the writ petitioner.

The State respondent has contested this case by filing affidavit-in-opposition. The grounds stated by the District Inspector of Schools/

respondent no.3 in its order dated 2nd June, 2017, has been replicated in the said affidavit-in-opposition.

The writ petitioner obtaining higher degree, that is M.Sc degree, during course of his employment is not disputed in this case. Fact remains that the writ petitioner has joined in school in the midst of his M.Sc course. Before joining he had already completed 1st and 2nd semesters of the course.

A similar kind of situation has been categorically dealt with by the Hon'ble Larger Bench of this Court in its judgement in Utpal Kanti Karan v. State of West Bengal 2024 SCC Online Cal 1274 It has held that the writ petitioner who have enrolled himself for higher qualification, prior to joining as a teacher, would not be required to seek prior permission as a mandatory event, in terms of Government notification. It would suffice that the person seeks permission for the examinations for which he has to appear post joining his employment.

The writ petitioner has duly fulfilled these conditions. The writ petitioner has already enrolled, before joining the service. In his case, therefore, requirement of seeking prior permission before joining the course would be an impractical proposition. In this case, before joining he has already enrolled himself and completed two semesters thereof. After joining, the writ petitioner has obtained permission and study leave from the managing committee of the school. He, therefore, has attended examinations

and qualified. So far as this writ petitioner is concerned, this Court finds no violation any of the service condition and/or rules and regulations, so that his claim for pay scale pursuant to his higher qualification, can be discarded.

At this stage, the Court is also inclined to take guidance from the findings of the Hon'ble Division Bench of this Court as relied on by Mr. Bari in this case. In the case reported in (1998) 1 CLJ 283 (Khagendra Nath Paul -Vs.- The State of West Bengal & Ors.), the Hon'ble Division Bench has been pleased to hold that a degree of a person has to be given adequate credit until and unless the same is cancelled by the concerned University, which is the only authority to grant or cancel the degree to a person. The said ratio is also applicable in case of the writ petitioner here.

One can find no causal connection therefore, with the validity and credence of the petitioner's degree to his obtaining prior permission, before his enrollment for the course. So far as higher degree is concerned, the validity of petitioner's degree cannot be questioned and that pursuant to the rules, he would be entitled to the higher pay scale, on the basis of the same.

Therefore both the grounds found by the said competent authority, for rejection of petitioner's prayer for grant of higher pay scale, would not be justified, reasonable and lawful. Rather that has led to brazen violation of the

settled law, which is evident from the discussion as above.

Under such circumstances, in consideration of the facts and circumstances of the present case this Court finds that the impugned order of the respondent no.3, District Inspector of schools, Secondary Education, Kolkata, dated 2nd June, 2017 would not be based on cogent and just reasons and as such is unreasonable, arbitrary and that way illegal. The same is liable to set aside.

The writ petition as above is thus allowed and disposed of with the directions that the impugned order dated 2nd June, 2017 is set aside.

The concerned respondent authority is directed to immediately grant the benefit of higher pay scale to the writ petitioner pursuant to his higher qualification with effect from the date of his obtaining M.Sc degree.

Necessary steps be immediately taken, within three weeks from the date of communication of this order, for revision of pay, pursuant to fixation thereof fresh.

The writ petition is thus disposed of.

(Rai Chattopadhyay, J.)