

**WPA 23548 of 2019**

**Susanta Kumar Ojha  
Vs.  
State of West Bengal & Ors.**

**Mr. Tanmoy Mukherjee,  
Mr. Amal Kumar Saha,  
Mr. Soumyadip Panda,  
Mr. Souvik Das,  
Mr. Soumava Santra.**

**... for the petitioner**

**Mr. Supratic Roy,  
Mr. Shuvajit Ray.**

**... for the respondent  
Nos. 9 and 10**

**Mr. Pinaki Dhole,  
Mr. Avishek Prasad.**

**... for the State**

1. The writ petitioner is aggrieved about the impugned notification No. 1090-SE (S)/5P-61/15 dated September 17, 2019.
2. In the same, the Assistant Secretary to the Government of West Bengal has held as follows:-

**“With reference to the subject noted above, the undersigned is directed to inform him that the process of allowing benefit of higher scale in favour of Sri Susanta Kumar Ojha, A.T. of Sarisha Konarpur Anchal High School, Dist. Paschim Medinipur as per G.O. No. 57-SE (S) dated 27.01.95 appears to be inconsistent keeping in mind the date of effect and obtaining prior permission from DIS(SE) (the Then).”**
3. Mr. Tanmoy Mukherjee, learned counsel appearing for the writ petitioner has held that the law is

otherwise as held by the Assistant Secretary in the said impugned order dated September 17, 2019. During his argument, he has indicated to the factual aspect of the case to some extent. He has stated that the writ petitioner after being appointed in the school with effect from December 7, 1996 and after being approved therein has been granted the higher scale of pay, pursuant to his higher qualification in the subject of Bengali.

4. He says that at the relevant point of time, the writ petitioner was governed under G.O. No. 57-SE (S) dated January 27, 1995, which allowed grant of higher scale of pay even in case of a non-relevant subject of teaching by the concerned teacher. He says further that subsequently, the writ petitioner have also been allowed the benefits under ROPA-1998.
5. The dispute arose with regard to application of benefit of ROPA-2009 in case of the writ petitioner. Several letters were transmitted between offices seeking clarification if the writ petitioner would be eligible for grant of higher scale of pay as per provisions under ROPA-2009. According to the petitioner, since the benefit has already been extended to him, he cannot be deprived of the corresponding revision of pay in terms of ROPA 2009.
6. Mr. Mukherjee, learned counsel appearing for the writ petitioner has relied on the judgment of the Hon'ble Full Bench of this Court in ***Utpal Kanti Karan vs. State of West Bengal*** reported in ***AIR***

**Online 2024 CAL 122** to submit that the point in issue has already been set at rest by the judgment of the Hon'ble Full Bench, as above.

7. It is submitted that the Court has held the relevant Government notification dated July 13, 1999 promulgating from grant of higher scale of pay with respect to higher qualification in the relevant subject of teaching has only prospective effect. He has indicated to the fact that the petitioner's appointment and obtaining higher qualification in the subject Bengali though not relevant with the subject of his teaching, has been obtained much prior to the date of the said notification that is, July 13, 1999.
8. Mr. Pinaki Dhole, learned counsel is representing the State.
9. Mr. Dhole, learned counsel is of the opinion that the writ petitioner's case is not maintainable.
10. Heard the submissions and perused the materials on record and the judgment of the Hon'ble Full Bench as referred to on behalf of the writ petitioner.
11. In the said impugned order the respondent authority has decided that the process of allowing benefits of higher scale in favour of the petitioner as per G.O. No. 57-SE (S) dated 27.01.95, appears to be inconsistent, in view of the effective date thereof and the condition of obtaining prior permission from DIS (SE).
12. In protest of the said impugned letter dated September 17, 2009 the writ petitioner has submitted a representation that is, dated October 1,

2019 which is still pending to be considered by the concerned respondent authority.

- 13.** The question is whether the higher pay scale pursuant to higher qualification in a non-relevant subject would be granted or not in case of the writ petitioner.
- 14.** The same question has been fully and finally settled by the judgment of the Hon'ble Full Bench as mentioned above.
- 15.** The policy of grant of higher pay scale only pursuant to the higher qualification in the relevant subject of teaching as made by dint of the notification dated July 13, 1999 has been declared to have prospective effect only. Therefore, in case of the writ petitioner who was appointed back in the year 1996 (December 7, 1996), having qualification of B.A., P.G.B.T. and having enhanced his qualification to the post graduate level in subject of Bengali even prior to his joining shall not be governed under the G.O. dated July 13, 1999.
- 16.** In his case, the applicable notification would be G.O. No. 57-SE (S) dated 27.01.95.
- 17.** The District Inspector of Schools, Secondary Education, Paschim Medinipur in its various letters has also indicated about number of classes taken by the writ petitioner in the subject of Bengali which is one of the determining factors if the petitioner would be eligible for the benefit under G.O. No. 57-SE (S) dated 27.01.95.

**18.** The records amply show discharge of duty by the petitioner sufficiently. Therefore, let this writ petition be disposed of with the directions as follows:-

**(i).** The impugned memo of the Assistant Secretary to the Government of West Bengal dated September 17, 2019 be set aside.

**(ii).** Let the respondent no. 2 consider writ petitioner's written representation dated October 1, 2019 and dispose of the same by dint of a reasoned order.

**(iii).** In doing so, the said concerned respondent shall take into account the judgment of the Hon'ble Full Bench of this Court as referred to above and other relevant documents as available with the writ petitioner, to substantiate his case.

**(iv).** In doing so, the concerned respondent may also call for any further record from the relevant department/School if so, necessary.

**(v).** The respondent authority shall grant opportunity of hearing to the writ petitioner.

**(vi).** He shall pass a written order while disposing of the said written representation of the writ petitioner as early as possible, but not later than a period of four weeks from the date of communication of copy of this order.

**19.** Since no affidavits are called for, allegations made in the writ petition, are deemed to have been denied by the respondents.

- 20.** This writ petition being WPA No. 23548 of 2019 is disposed of, along with the pending applications, if any.
- 21.** Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

**(Rai Chattopadhyay, J.)**