

WPA 23653 of 2019

Ganesh Chandra Paul
Vs.
The State of West Bengal & Ors.

Mr. Rejaul Alam.

... for the Petitioner

1. Being aggrieved by the office memorandum dated June 27, 2019, issued by the District Inspector of Schools, Secondary Education, Purba Medinipur, the petitioner has moved the present case.
2. The matter relates to not granting the petitioner a higher pay scale pursuant to his improved qualification. The petitioner joined in service as an Assistant Teacher as a Chemistry (Hons.) graduate candidate, on and from September 20, 2008. At the time of joining, the writ petitioner was a qualified candidate in M. Sc. Part I degree course. After joining in service he duly sought permission from the Managing Committee of the school to appear in Part II examinations of the M.Sc. degree and was granted such permission. The West Bengal Board of Secondary Education, by dint of its letter dated December 9, 2013, approved/sanctioned study leave on full pay, to the petitioner, for appearing in M. Sc. final examination. Ultimately, the results of M. Sc. final were published on June 19, 2009.
3. After obtaining Master's Degree and on the basis of such improved qualification, the writ petitioner sought for enhancement of his pay scale so that it

would be commensurate with his improved qualification. Though initially the respondent authority was reluctant to consider his prayer as above, but subsequently pursuant to an order of this Court the matter was considered. The resultant order is that dated June 27, 2019, which is impugned in this case.

4. By dint of the said order the concerned respondent authority/District Inspector of Schools, Secondary Education, Purba Medinipur, found as follows :-

“4. Whereas the petitioner was sponsored by the West Bengal School Service Commission with qualification B. Sc. (Hons.) and whereas he did not take prior permission for obtaining such higher qualification from the District Inspector of Schools (SE), Purba Medinipur, no relief can be given to the petitioner”

5. Thus, petitioner’s prayer for revised pay scale was rejected. Hence, this writ petition.

6. Mr. Sk. Alam is appearing for the writ petitioner. He submits that upgradation in qualification entitles the writ petitioner, as per the prevalent rules, for enhanced scale of pay. He indicates that the petitioner has obtained higher degree after entering into service and therefore pursuant to the same he would be entitled to a higher pay scale.

7. By referring to the impugned order dated June 27, 2019. Mr. Alam says that the grounds for rejecting the writ petitioner’s legitimate claim of the higher pay scale, commensurate to his improved qualification are not only arbitrary but also illegal. He says that the respondent’s action is subject to review by this Court having suffered from impropriety and illegality and the impugned order

as above would be thus liable to be set aside. He further emphasises that on the basis of the facts and circumstances the Court may pass directions upon the respondent authority to grant the writ petitioner's salary at an appropriate scale.

8. In spite of due service, the respondent authorities are not represented in this case. Their absence shows their reluctance in contesting in this matter. Hence, it is taken up for adjudication in absence of the respondent authorities.

9. The law is now well settled by dint of a Full Bench decision of this Court in the case of ***Utpal Kanti Karan vs. State of West Bengal (WPA 9921 of 2007)***, (vide judgment dated February 7, 2024). The ratio thereof is applicable to the facts and circumstances of the present case.

10. The respondent authority has placed reliance on the Government Order No. 593-SE(B) dated November 27, 2007 to reject petitioner's prayer for revision of pay scale on the ground of non-compliance of the provision thereof. In paragraph 3.1 of the impugned order dated June 27, 2019, the District Inspector quotes as follows:-

"3.1. As per para 3 of G.O. No. 593-SE (B) dated 27.11.2007. The teacher is required to take 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 qualification through the Managing Committee of the school."

11. Basically the respondent has denied writ petitioner's prayer due to the reason that no prior permission has been sought for by him for enhancement of qualification which would have

been the unavoidable and mandatory condition for claiming additional increment/higher scale of pay by him, upon improving qualification, in terms of the said Government Order dated November 27, 2007.

12. In this regard the Hon'ble Full Bench of this Court in the case of **Utpal Kanti Karan** (*supra*), has been pleased to find the same, that is, No. 593-SE(B) dated November 27, 2007, to be illegal, unlawful and non est in the eye of law.

13. The petitioner had enrolled for the M. Sc. Course before entering into the service. Therefore, before entering into the service there would have been no question for taking any permission from the concerned respondent authority by the petitioner for his enrolment. On the other hand, since the petitioner was in the midst of the course, he declared his completed degree as his qualification at the time of entering into the service.

14. There is no challenge to the fact of the writ petitioner taking permission of the Managing Committee or being granted the study leave by the Board, before pursuing the Part II examination of M. Sc. degree. Therefore, the stage from when the service of the writ petitioner was under control of the concerned respondent authority, there has not been any latches on part of him in taking permission before hand to pursue the rest of the course and thus to duly follow the prescribed procedure.

15.In the facts and circumstances of the case, there would have been no scope for the writ petitioner to take any “prior permission” in its literal meaning, of the concerned authority before entering into the course, in terms of notification dated November 27, 2007. While interpreting the Government Order as mentioned above, the concerned respondent authority should have approached to it, in a pragmatic manner and with an open mind set. Or else the same would definitely result into an impossibility, depriving a person from his vital rights, as it is in case of the writ petitioner. In that case non application of mind and unreasonableness of the action of the respondent authority, would hit the impugned decision of the authority hard. This shall also be morally defeating for the teachers, who shape the formative years of a child. Enhancement of qualification should always be appreciated and encouraged and a closed minded approached towards implementation of a rule, would be detrimental to the same.

16.Government Order dated November 27, 2007, is aimed towards preventing suppression of information by any aspirant, so that the primary duties of a teacher as discharged by him is not hampered and jeopardised in any way. Petitioner’s case cannot be considered to have fallen in that category, in so far as, there has been due information and duly obtained study leave obtained before hand by the petitioner, before appearing in M. Sc. Part II examinations.

17.Therefore, on the discussion as above, it appears that rejecting the writ petitioner’s prayer of grant

of the higher pay scale on the ground of his not obtaining prior permission before enrolment in the course, is blatantly unreasonable and also contrary to the law settled in this regard. Under such circumstances the same would be liable to be set aside.

18. Hence, the order of the District Inspector of Schools, Secondary Education, Purba Medinipur, dated June 27, 2019, is hereby set aside.

19. Writ petition being WPA 23653 of 2019 is allowed.

20. Let the District Inspector of Schools, Purba Medinipur, immediately record the improved qualification of the writ petitioner and take steps for revision of his scale of pay, commensurate to his improved qualification, that is, M. Sc. Such revision of pay scale shall be done with effect from the date of the results of M. Sc. Part II of the writ petitioner that is June 19, 2009.

21. Since no affidavit-in-opposition has been filed in this case the allegations made in the writ petition are understood to have been denied by the concerned respondent.

22. Arrear, if any, shall be paid within the period of four weeks from the date of this order.

23. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)