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29.08.2024
Court No. 25
D.Hira

**WPA 28355 of 2006
With
CAN 1 of 2024**

**Saikat Kumar Bera
Vs.
State of West Bengal & Ors.**

**Mr. Balai Lal Sahoo.
... for the petitioner**

**Mr. Bhakti Prasad Das.
... for the State**

1. Affidavit of service filed in Court today is taken on record.
2. The present writ petition is directed against an order of the District Inspector of Schools (Secondary Education) South 24 Parganas/respondent No.3 [hereinafter referred to as "DI"], dated August 22, 2006. By virtue of the said order the respondent No.3 has refused the petitioner's prayer for grant of post graduate scale of pay after his obtaining Master of Science Degree, for the reason that the petitioner did not obtain any prior permission of the said Authority, in terms of G.O.No. 1334-SE(S) dated November 3, 2004 [hereinafter referred to as "No.1334"].
3. Upon recommendation of the West Bengal School Service Commission the writ petitioner was appointed in the school/respondent No.4, on and from July 20, 2004. His service was approved vide order dated December 7, 2004. Before entering into the service, the petitioner had enrolled himself for the Master's Degree course and completed his Part-I examinations. After joining in the service the petitioner, with permission of the school managing committee, underwent study leave and appeared for

the Part-II examination of the Master's Degree course. The petitioner states that the West Bengal Board of Secondary Education has allowed him study leave from August 24, 2004 to October 12, 2004. The petitioner's Part-II examinations ended on October 12, 2004. He has ultimately qualified and obtained Master's Degree.

4. Subsequently the petitioner has prayed before the school authority for granting him pay scale meant for post graduate qualification, which was allowed by the same, in the resolution of the managing committee dated May 7, 2005. However, the DI has ultimately rejected his prayer as above vide the impugned letter dated August 22, 2006, which is under challenge in the present writ petition.
5. Mr. Sahoo learned counsel appears for the writ petitioner. He submits that application of G.O.No.1334 is only erroneous in case of the writ petitioner in so far as the writ petitioner was qualified with the Master's Degree, much before coming into force of the said notification. That, since the said notification would not have any retrospective effect, consideration of the petitioner's case in the light of the same would not be maintainable. He would further say that the petitioner on being transferred thereafter for more than once, is now employed in some other school, that is the added respondent No.5. However, since the date of joining in the present school, the petitioner has been allowed post graduate scale of pay by the concerned respondent authority, with effect from the date of his appointment in the present school. Mr. Sahoo would emphasise that in accordance with the Rules prevalent on the date of the petitioner's qualifying in the Master's Degree, he would be eligible for grant of

higher pay scale, as prayed for by him. He would say that the impugned order of DI is erroneous and illegal and the same is liable to be set aside. He has sought for the adequate relief for the petitioner.

6. Respondent/State is also represented. Mr. Das, learned counsel for the State has however, supported the impugned order granted by the DI. He would say that the petitioner would not be eligible for grant of higher pay scale and thus the writ petition should be dismissed.
7. Therefore, admittedly the writ petitioner had enrolled himself for the Master's Degree course and completed Part-I examination, before his induction in service. Hence obtaining mandatory prior permission from the DI, in such an eventuality, is not only misconceived but impossible too. On the similar factual background, the Larger Bench of this Court has now settled the law for good, in the case of **Utpal Kanti Karan vs. State of West Bengal & Ors.** reported in **2024 SCC OnLine Cal 1274**, in following words:

“272. On the basis of the aforesaid discussion we answer the reference in the manner following:-

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(g) If a teacher has partially completed higher study before entering service he/she would come under purview of G.O No. 1595-SE(S) dated 26th December, 2005 and the question of taking permission from DIS-SE concerned would not arise.

**** ** ** ** ** ** ”**

8. Therefore the ratio in the decision as above squarely applies in the factual background of the present case too.
9. Nonetheless, the Court also notices that the respondent DI, has relied on a notification to negate

the petitioner's claim for higher pay scale, which comes into force, much after the date of completion of the course by the petitioner, including examinations thereof. It is also worth noting that the petitioner has been allowed higher scale of pay meant for post graduate teacher, since after joining in the present school on transfer.

10. ROPA 1998 provides as follows:

“12. Career Advancement Scheme and Related Issues

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(3)All teachers, including physical education teachers and librarians of secondary schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications with effect from the 1st January, 1996 or the date of improving qualifications whichever is later.”

11. The provision as above being read with the ratio of the judgment of *Utpal Kanti Karan (supra)*, leads the Court to the obvious finding that the impugned order dated August 22, 2004, passed by the respondent/DI, is erroneous, misconceived and illegal, thus liable to be set aside. The Court also finds that the petitioner would be eligible for grant of pay scale meant for post graduate candidates, with effect from the date subsequent to the date of his last date of examination, as mentioned above.

12. Hence, the present writ petition is allowed with the following directions:

(i)The impugned order dated August 22, 2006, be set aside.

(ii) The District Inspector of Schools (Secondary Education) Purba Medinipur at Tamluk/added

respondent No.6 is directed to immediately allow post graduate scale of pay to the writ petitioner, in accordance with law, till the date from when he has already been paid the higher pay scale in the present school.

(iii) Revised pay fixation be immediately issued for the said period. Arrear, if any, be immediately paid.

(iv) The District Inspector of Schools (Secondary Education) Purba Medinipur at Tamluk/added respondent No.6 shall conclude the entire exercise as above, maximum within a period of three weeks from the date of communication of copy of this order.

- 13.** This writ petition being WPA No. 28355 of 2006 is disposed of, along with the pending applications, if any.
- 14.** Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.
- 15.** Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)