

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 26981 of 2016

**Satyajit Ghosh
Vs.
State of West Bengal & Ors.**

For the Petitioners : **Mr. Md. Manuwar Ali,
Ms. Moumita Karmakar.**

For the State : **Mr. Swapan Kumar Dutta,
Id. A.G.P.,
Mr. Pradyot Kumar Das.**

Heard on : 06.08.2024

Judgment on : 06.08.2024

Rai Chattopadhyay, J.

1. The writ petitioner is aggrieved that his prayer for grant of post-graduate scale of pay on the basis of his higher qualification has been turned down by the District Inspector of School, Secondary Education, Murshidabad (hereinafter referred to "D.I.") vide his order dated 10th August, 2016.
2. Hence, he filed this writ petition, to challenge the said order.
3. The petitioner has contended inter alia, that after being appointed in school with effect from 11th February, 1993 as an Assistant Teacher in

Honours Graduate Category, the petitioner has been serving there continuously.

4. Later on, in the year 2009 he has concluded his M.Sc. degree course. Before entering into the course, the petitioner has sought for permission of the school authority by dint of his letter dated 9th May, 2006, the petitioner has enclosed that letter with the writ petition.
5. Pursuant to the consent of the school authority, the writ petitioner enrolled himself in the Master Degree course and thereafter, completed the course in January 2009.
6. Subsequently, vide letter dated 8th January, 2015 the petitioner has prayed before the D.I. for grant of post-graduate scale of pay to him pursuant to his M.Sc. qualification.
7. The first round of litigation was by dint of filing W.P.A. No. 4560 (W) of 2016 dated 3rd May, 2016, challenging the inaction of the said respondent authority in considering petitioner's prayer as above.
8. The Court directed for considering and disposal of the petitioner's prayer for grant of higher pay scale.
9. The resultant order of the D.I. dated 10th August, 2016 is pursuant to the said order of the Court. In the said impugned order dated 10th August, 2016, the D.I. has inter alia, opined that the petitioner would be covered under the provisions of West Bengal Schools (Control of Expenditure Act), 2005 and therefore, also under the Memo no. 593-SE(B) dated 27th November, 2007 (hereinafter referred to as Memo No. 593). The D.I. has mentioned about infringement of paragraph nos. 1, 2

and 3 of the said Memo No. 593, by the petitioner, by not fulfilling the criteria mentioned therein, i.e, not obtaining prior permission of the D.I. before enrolling for MSc degree, to seek higher pay scale on the basis of the same.

10. On this ground, the D.I. has rejected writ petitioner's prayer for grant of higher pay scale.

11. Mr. Manuwar Ali, learned counsel appearing for the writ petitioner has submitted that the statutory provision entitles the petitioner for grant of higher pay scale upon improvement of his qualification.

12. Under such circumstances, rejection of the same citing any executive order is not maintainable in the eye of law, he says . To fortify his such argument, Mr. Manuwar Ali, learned counsel appearing for the petitioner has referred to Section 14 sub-section 3 of the Act of 2005 which is extracted below:-

"14. Scale of pay etc. of teacher.-

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(3). Every teacher of a school shall, if appointed in the Honours Graduate or Post-graduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order."

13. He has relied on relevant portion of the order dated 16th October, 2012 in appeals being MAT no. 1459 of 2012 and no. 514 of 2019. By referring to those, he has submitted that the Courts have time and again acknowledged the beneficial effect of higher qualification of a teacher so far as his expertise to impart education, is concerned and

has also emphasized provisions of the statute itself which entitles the writ petitioner to draw pay of a post-graduate category of teacher.

- 14.** Mr. Swapan Kumar Dutta, learned Government Pleader is representing the State. He is of the opinion that in case the writ petitioner seeks to claim higher scale of pay, pursuant to his higher qualification, in that case due compliance by him with the provisions of memo no. 593 is unavoidable, in so far as the same has laid down the guidelines as to the necessary preconditions, which are required to be fulfilled by him before enhancing of qualification an assistant teacher to be eligible for grant of higher pay scale.
- 15.** He has referred to the order itself to submit that according to the school authority the petitioner has never sought for any permission before enrolling for higher degree course. He has also indicated from there that the school authority has never adopted any resolution in this regard.
- 16.** The recording of D.I. in the impugned order as regards the submission of the teacher-in-charge that the petitioner appeared in the examination by taking casual leave only has also been highlighted.
- 17.** The said observation of the D.I. in the impugned order is however, contrary to the document placed along with the writ petition that is petitioner's request letter seeking permission for enrolment in a higher degree course, dated 9th May, 2006.

- 18.** Learned counsel for the respondent has no comment to offer as regards the said letter which as a matter of fact, is bearing the endorsement of receipt of the same by the school.
- 19.** The other document relied on by the writ petitioner is also pertinent to take note of, that is, forwarding the recommendation by the Head of the Institution on 7th September, 2006. As regards this document also, there is no dispute raised on behalf of the respondent. In view of the materials as above, the submission of the teacher-in-charge of the school, before the DI and as noted in the impugned order dated 10th August, 2016, appears to be unfounded and baseless.
- 20.** We have already noted about the statutory provision applicable in case of the petitioner that is vide Section 14(3) of the 2005 Act. The same entitles a competent teacher to draw pay meant for post graduate qualification.
- 21.** So far as incompetence of the petitioner for grant of postgraduate scale of pay, according to the respondent, is due to his alleged non-compliance with the provisions of memo No. 593. That is to say, the petitioner before enrolling himself for the higher degree course, has not obtained prior permission of the D.I. It is already noted that the petitioner has submitted letter to the school seeking such permission on 9th May, 2006 and that the school managing committee, after according sanction to his such prayer, forwarded its recommendation to the D.I. vide letter dated 7th September, 2006.

22. In such view of the facts, it cannot be said in the strictest sense, that the writ petitioner has failed to obtain any prior permission, in terms of the said memo No.593. Evidently, the writ petitioner has duly proceeded through the proper channel, whereas, he or the school, has not been sent with any reply from the office of the respondent /D.I. In such an event, unless a rejection order is received as to the prayer of the petitioner, from the respondent/D.I., the same should be deemed to have been accorded by the said respondent. After all, the petitioner cannot be held responsible for the DI not to respond to the recommendation of the school authority, granting him permission to pursue a higher degree course. The allegation against the petitioner regarding infringement of the provision of the said memo No. 593, is unsustainable. Therefore, the court finds that in this case, the petitioners prayer for grant of higher pay scale could not have been denied by the respondent, on the ground of his not obtaining prior permission from the D.I., in terms of the memo No. 593, the same being otherwise lawful and in accordance with the statutory provision.

23. It is pertinent to note relevant provision of memo no. 593-SE(B) dated 27th November, 2007 to understand the perspective in a better way. Let the same be extracted as follows:-

“1. All the teachers teaching in different State Aided Schools will have to take prior permission from the Managing Committee/Ad hoc-Committee/Administrator as the case may be to enrol themselves and to appear for any examination for enhancement of educational qualification. The Managing Committee being ‘Competent authority’ in such cases will take a decision in its next meeting and

convey its decision to the teacher concerned immediately. A copy of the decision of the Managing Committee will be forwarded to the office of the D.I. of Schools (S.E.) of the concerned district.

2. The applicant teacher, thereafter, will, if necessary apply for leave special leave Study Leave as the case may be (along with the resolution of Managing Committee) to the West Bengal Board of Secondary Education (which is the Competent Authority in this case) through the Managing Committee of the school.

3. The teacher is required to seek prior permission of concerned District Inspector of Schools (S.E.) (Only when he/she wants to claim additional increment/higher scale of pay etc. for obtaining such higher qualification) through the Managing Committee of the school.”

24. On the contrary, he could be entitled to be provided with the higher pay scale in terms of the statutory provision as discussed above and steps taken by him in confirmation with the prescribed rules and regulations as mentioned above.

25. Under such circumstances, this Court is of the considered opinion that declining petitioner’s prayer for grant of higher pay scale by citing the provisions in memo no. 593-SE (B) dated 27th November, 2007 by the D.I. would not be just, fair, proper and legal.

26. Such decision vide the impugned order dated 10th August, 2016 is liable to be set aside.

27. Hence, this writ petition is allowed and disposed of with the directions as follows:-

- (1) The impugned order dated 10th August, 2016 is set aside.
- (2) The respondent District Inspector of Schools, Secondary Education, Murshidabad is directed to take immediate steps for grant of post-

graduate pay scale to the writ petitioner commencing from the date subsequent to the date of his result in M.Sc. degree course and fixation of his salary accordingly, immediately but not later the period of ten days, from the date of communication of copy of this order.

(3) The petitioner shall be eligible for payment of arrear salary, which may be paid to him within a period of four weeks from the date of communication of copy of this order.

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

29. This writ petition being WPA No. 26981 of 2016 is disposed of, along with the pending applications, if any.

30. Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)