

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

**WPA 24438 of 2010
With
CAN 1 of 2012
(Old CAN 1219 of 2012)
With
CAN 2 of 2023
[Applications not in the file]**

**Md. Yahya Molla
-Vs.-**

The State of West Bengal & Ors.

For the Petitioner : *Mr. Ekramul Bari,*
Sk. Imtiaj Uddin.

For the State : *Mr. Arindam Chattopadhyay,*
Mr. Soumik Dey.

Heard on : *10.04.2024*

Judgment on : *19.04.2024*

Partha Sarathi Chatterjee, J.:-

1. Throwing challenge to the legality of the memo *vide.* no. BHT/24/5/(2)/law dated 19th January, 2010 issued by the Additional District Inspector of School (S.E.), Basirhat Sub-Division, North 24 Parganas and praying for a writ of mandamus commanding the concerned respondents to grant post graduate scale of pay and its consequential benefits in favour of the petitioner, the present writ petition was preferred.
2. The facts need to be adumbrated for effective adjudication of the writ petition are as follows:-
 - (i) The petitioner joined the Gabati A.H.M. Senior Madrasah (in short, the Madrasah) as Assistant Teacher in language Group on 01st May, 1998. Petitioner's appointment was duly approved by the District Inspector of Schools (S.E.), North 24 Parganas.
 - (ii) On 6th of September, 2003, by making an application the petitioner solicited permission of the managing committee of the Madrash to pursue M.A. in Arabic from Aligarh Muslim University. Pursuant thereto, the managing committee by adopting a resolution accorded such permission. The petitioner obtained M.A. degree in Arabic in 2004-2005 academic years. The last date of his M.A. examination was on 6th May, 2005.
 - (iii) Subsequent thereto, the petitioner *vide.* his application dated 18th July, 2005 implored the competent authority to grant of higher scale of pay due to enhancement of qualification on the subject relevant to his teaching but despite receipt of such application, the same was kept in suspended animation.

- (iv) Aggrieved thereby, the petitioner moved a writ petition being WP No. 5784 (W) of 2009, which was disposed of by granting liberty to the petitioner to file a representation appending all necessary documents thereto before the Additional District Inspector of Schools within a specified time frame who, upon receipt of such application from the petitioner within the time as stipulated therein, was directed to dispose of the same by passing a reasoned order. The reasoned order was directed to be communicated to the parties thereto.
 - (v) In terms of the order dated 30th June, 2009, the Additional District Inspector of School by passing an order dated 9th January, 2010 refused to accept the petitioner's prayer for grant of higher scale of pay on the grounds that the petitioner's prayer for study leave to pursue M.A. in Arabic had not been granted by the Secretary of West Bengal Board of Madrasah education and despite receipt of prayer for permission to pursue M.A. in Arabic, no response had been made from the end of Director of School Education.
 - (vi) As such, the petitioner has preferred this writ petition to question the propriety of the order dated 19.01.2010 with a further prayer for a direction upon the concerned respondents to grant post-graduate scale of pay in favour of the petitioner.
3. During pendency of the writ petition, the petitioner has retired from service on attaining age of superannuation and as such, by preferring an application further direction was sought for release of terminal benefits on the basis of such higher scale of pay. Both the writ petition and the

application filed in connection therewith were taken up for hearing together.

4. Mr. Bari, learned advocate representing the petitioner argued that the respondents refused to entertain the petitioner's prayer for higher scale of pay on the ground that he enhanced his qualification without obtaining prior permission from the Additional District Inspector of School and study leave duly sanctioned by the West Bengal Board of Madrasah Education (in short, the Board).
5. It was sought to be contended by him that nowhere in Revision Of Pay and Allowances Rules, 1998 (in short, the ROPA Rules, 1998), there was any provision requiring a teacher to obtain prior permission from the competent authority to improve his qualification. He contended that grant of study leave by the Board was not a mandatory requirement for obtaining higher scale of pay.
6. He argued that the only criterion to be fulfilled in getting higher scale of pay was that the teacher had to improve his qualification on the subject relevant to his teaching. He asserted that the petitioner upgraded his qualification in Arabic which is a subject relevant to his teaching.
7. Citing a decision rendered by a Hon'ble Division Bench in WP No.14760 (W) of 2004 (Rabi Kanta Barman vs. District Inspector of Schools (S.E.) & Ors.) reported in 2014(4) WBLR 285, he contended that this writ petition was referred to the Hon'ble Division Bench and while giving answer to the reference, the Hon'ble Division Bench held that prayer for grant of higher scale of pay should not have been denied on the ground that the teacher concerned had improved his qualification without obtaining prior

permission from the D.I. of Schools. In the aid of his such contention, he cited another unreported decision rendered in case of Akhtar Hossain Chowdhury vs. State of West Bengal, reported in 2013 (2) CHN 632. He prays for a direction to grant higher scale of pay in favour of the petitioner and to release his terminal benefits on the basis of such higher scale of pay.

8. In response, Mr. Chattopadhyay, learned advocate appearing for the State made an attempt to refute the claim of Mr. Bari contending that grant of prior permission from the D.I. of Schools and sanction of the study leave from the Board are the mandatory requirements in getting the benefits of higher scale of pay. He asserted that the State had clarified its stand on this issue by issuing administrative order. He asserts that there is no patent error in the order impugned in the writ petition warranting interference of this Court.
9. Indisputably, the petitioner had improved his qualification on the subject relevant to his teaching prior to the West Bengal Schools (Control of Expenditure) Act, 2005. His last date of M.A. examination was 6.5.2005. As such, at the relevant point of time, it was the ROPA Rules, 1998 which would govern the field.
10. By a Memorandum No. 25-SE(B)/1M-102/98 dated Calcutta, the 12th February, 1999 the Government of West Bengal accepted the recommendation of the Fourth Pay Commission. In Rule 12 of ROPA Rules, 1998, the career advancement scheme and issues related thereto were introduced. Hence, to throw some light on the issue, it would be apposite to reproduce the provisions of the Rule 12(3), which are as follows:

“12(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 subject or groups 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 latter.”

11. After the appointment of the petitioner as teacher of the Madrasah on the recommendation of the School Service Commission, a Circular, being No. 155-SE(B)/10M-102/98 Pt. I dated Calcutta, the 13th July, 1999, Government of West Bengal was issued amending Memorandum No. 25/SE(B)/IM-102/ 98 dated 12th January, 1999 with effect from 26th June, 1999, in the manner indicated herein below:

“12(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 subject or groups 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 latter, provided that such higher qualified teachers in the relevant subject or group is justified as per approved staff pattern of other school, if said teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission.”

12. The petitioner joined in the school on 1.5.1998 i.e. prior to 26th June, 1999 and as such, the proviso which was inserted in Rule 12(3) subsequent to the appointment of the petitioner cannot be applied retrospectively. Admittedly, no issue relating to staff pattern has been raised by the Additional D.I. of Schools.

13. Notably, the issue whether the grant of prior permission is a mandatory requirement to avail of the benefits of higher scale of pay or not, is no more *res integra*. In the judgement of Rabi Kanta Barman (*supra*), the issue has been set at rest holding that the Government Order dated 24.12.1997 deals with the subject regarding recognition of the degree acquired through correspondence and/or distance course conducted by the recognised Universities of West Bengal. The Hon'ble Division Bench in an unequivocal terms observed that despite having knowledge about the existence of the Government Order dated 24.12.1997, while framing ROPA Rules, 1998 the Government did not feel it necessary to incorporate the pre-condition like obtaining prior permission from the D.I. of Schools to avail of the benefits of higher scale of pay. Eventually, taking note of the provisions of Rule 12(3) of ROPA Rules, 1998, a proposition was laid down therein that a teacher's prayer for higher scale of pay cannot be denied on the plea that he had enhanced his qualification without obtaining prior permission from the D.I. of Schools concerned.
14. Needless to observe that any executive and/or administrative order cannot override any Rule having statutory force. A Rule may delegate a power to the executives to issue any order, notification or circular etc. to advance the purpose of the Rule and to implement the provision of the Rule in an effective manner. Such delegated power can never be exercised to override any statutory provision. In judgment of C. L. Verma vs. MP, reported in 1989 Supp2 SCC 437, it was ruled that in case of conflict between administrative order and statutory rules, the latter shall prevail.

15. In the Rule 12(3) of ROPA Rules, 1998, grant of study leave has not been made *sine qua non* for obtaining higher scale of pay due to enhancement of qualification on the relevant teaching subject. No materials have been brought to the notice of the Court to lead it to infer that academic activities of the school were hampered for the reason that the petitioner pursued the M.A. or appeared in M.A. examinations. It is noteworthy that no circular or rule has been placed before me showing that the study leave has or had been made mandatory precondition for grant of higher scale of pay nor has any judgment of any higher forum putting its seal of approval on issue that grant of study leave is *sine qua non* for grant of higher scale of pay.
16. In the case at hand, in his order, the Additional D.I. of Schools himself observed that on 6.9.2003, the petitioner sought for permission from the Madrasah to appear at M.A. examination in the academic year of 2004-05. The managing committee accorded the permission 25.10.2003. The petitioner's prayer for permission was forwarded to the Director of School on 7.2.2005 but the same was kept in suspended animation. On the other hand, the Board refused to grant study leave on the ground that the petitioner could not annex the copy of permission obtained from Director of School Education.
17. Therefore, from the order impugned itself, it transpires that the Director of School Education left the application for permission unattended and the Board refused to grant study leave on the plea that no copy of the permission had been annexed. Such actions on the part of the State and the Board cannot be stated to be in conformity of the doctrine of reasonableness.

18. In view of such foregoing analysis the only analogy which can be drawn is that the Additional District Inspector of School has misdirected himself in rejecting the petitioner's prayer for higher scale of pay on the ground of his failure to secure prior permission and sanction of study leave before enhancement of his qualification.
19. As a result, the order dated 19th January, 2010 passed by the Additional District Inspector of School is quashed. The District Inspector of Schools is directed to grant higher scale of pay in favour of the petitioner from the date of last M.A. examination i.e. from 6th May, 2005 and release the arrears of salary and other admissible dues in favour of the petitioner. It is made clear the petitioner's terminal benefits shall be calculated on the basis of such higher scale of pay in favour of the petitioner.
20. The school authority and D.I. of Schools taking appropriate coordinated efforts shall complete all the requisite formalities including despatch of pension-related papers to the competent authority to ensure so that the petitioner can get his retirement benefits without unnecessary delay.
21. The entire exercise shall be completed within a period of 8(eight) weeks from the date of receipt of the copy of this order.
22. With this observation, the writ petition along with connected applications is disposed of, however, without any order as to the costs.
23. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
24. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)