

19.03.2024
Item No. 12
Crt.No.22
b.r.

WPA 29958 of 2016

Narayan Chandra Barai
-vs-
The State of West Bengal & Ors.

Mr. Robiul Islam
Mr. K.M. Hossain
Mr. Raju Mondal
Mr. Mqsooq Rahaman
Ms. Keya Sutradhar
.... For the petitioner.

Mr. Malay Singh
Ms. Neelam Singh
.... For the State.

Mr. Shamim ul Bari
.... For the School Authority.

This is a hearing matter.

Affidavit of service filed in Court today, is taken on record.

Mr. Rabiul Islam, learned counsel, appears for the petitioner.

Mr. Malay Singh, learned State counsel, appears for respondent nos. 1 to 3.

Mr. Shamim Ul Bari, learned counsel, appears for respondent no.4.

The report of the registry dated **April 18, 2017** shows that despite there being a direction for filing affidavit in opposition on **March 22, 2017**,

respondents chose not to file any affidavit in opposition.

Considering the issue involved in the writ petition and considering the submissions made on behalf of the respondents, this Court is of the view that no fruitful purpose shall be served by keeping this writ petition pending any further and accordingly this Court proceeds for its disposal.

The petitioner was appointed as an **Assistant Teacher (Geography)** at one **Gargaria Subhas High School, District- Bankura** (for short, the school) on **September 13, 2008** under **Geography (Hons.)/PG category**. The appointment of the petitioner was approved on **November 4, 2008, annexure P-1 at page-22** to the writ petition, w.e.f., **September 15, 2008**.

The petitioner on **September 1, 2009** submitted his application before the Managing Committee of the School seeking permission for enhancement of his qualification at the Post Graduate level. The Managing Committee of the school by its resolution dated **September 5, 2009, annexure P-2 at page-23** to the writ petition, granted the permission to the petitioner for enhancement of his qualification. The petitioner came to learn that though the permissions was granted by the School Authority but the same was not

forwarded before the respondent no.3 by the Managing Committee of the school for obtaining prior permission in terms of the **Government Order** issued by School Education Department, Secondary Branch, bearing **Memo No. 548-SE(S) dated June 24, 1997**. The petitioner immediately renewed his prayer on **December 20, 2011, annexure P-4 at page-32** to the writ petition, so that prior permission can be obtained from the office of the **respondent no.3**.

Meanwhile, the petitioner got himself admitted for the **Post Graduation course (M.Sc-Geography)**, which was the relevant subject and completed his Post Graduation on **December 18, 2012**, part of **annexure P-3 at page-28** to the writ petition.

The school authority finally forwarded the application of the petitioner for obtaining prior permission before the **respondent no.3** on **April 22, 2013, annexure P-4 at page-23** to the writ petition. The second reminder was also sent by the school authority on **May 12, 2015** before the respondent no.3, as submitted by Mr. Bari, learned counsel for the school authority.

After completion of the Post Graduation degree (M.Sc-Geography), the petitioner made series of representations during the period **September 20, 2014 till May 2015, annexure P-5 at pages-34**

onwards to the writ petition, before the school authority, so that the petitioner can receive the higher pay scale commensurating with his Post Graduation degree.

Finally, the respondent no.3 rejected the claim of the petitioner by its **impugned decision** dated **June 23, 2015, annexure p-6 at page-37** to the writ petition. The relevant observation from the decision of the respondent no.3 is quoted below:-

“ In reference to the above stated subject, the undersigned has to state that in terms of the School Education Department, Secondary Branch, Govt. of West Bengal’s Memo no. 548-SE(S) dated-24.06.1997, ‘all the teachers teaching in different State aided School will have to take prior permission from the District Inspector of Schools (SE), through the Managing Committee, Ad-hoc Committee/Administrator as the case may be if they like to enrol themselves and to appear for the examination conducted through correspondence/distance mode of Education from the U.G.C. affiliated Universities’.

As per the above stated G.O. a teacher must seek prior permission from the D.I. of Schools (SE) before enrolling his name in a University for enhancing qualification through distance mode of Education, not after obtaining his higher Qualification.

As he submitted relevant papers for post facto permission after raising qualification of Narayan Chandra Barai, A.T. through Distance mode of Education from Vidyasagar University, so 'post facto' permission in favour of the said teacher cannot be accorded."

After considering the submissions made on behalf of the parties and upon perusal of records, it appears to this Court that, the facts narrated above are admitted.

On a close scrutiny of the decision for rejection of higher pay scale taken by the respondent no.3, it appears that the sole plea for rejection was the said Government **Memo No. 548- dated June 24, 1997** as referred to above. The directive under the said Memo dated **June 24, 1997** is that all the teachers teaching in different State-aided Schools will have to take prior permission from the District Inspector of Schools (SE), *inter alia*, through the Managing Committee, if they like to enrol themselves and to appear for the examination conducted through Correspondence/Distance mode of education from the **UGC** affiliated Universities. The Managing Committee of the concerned school '**shall send**' such cases to the jurisdictional District Inspector for approval along with their comments including, *inter alia*, the relevance of the subject of higher studies and

also whether such higher studies are likely to affect the duties of the teacher in the school.

On a meaningful consideration of the said Government Memo, this Court is of the firm view that, the obligation of a teacher comes to an end the moment such teacher applies before the Managing Committee of the concerned school for obtaining prior permission for enhancement of his/her qualification and thereafter it is the obligation of the Managing Committee of the school upon consideration of the application to send the same before the jurisdictional District Inspector of School for obtaining prior permission.

In the facts of this case, the petitioner duly applied for such permission before the Managing Committee of the school on **September 1, 2009** and the Managing Committee granted its permission in favour of the petitioner on **September 5, 2009** by adopting the necessary resolution at **page-23** to the writ petition. The obligation of the petitioner came to an end at that juncture. Then the obligation of the Managing Committee begins to send the application with relevant records to the jurisdictional District Inspector of School which has to be followed by the decision of the jurisdictional District Inspector of School whether to grant or not to grant prior permission to such teacher for enhancement of his qualification. Admittedly, the

petitioner has completed his M.Sc. in Geography being the **relevant subject** on **December 18, 2012 at page-28** to the writ petition already referred to above from an UGC affiliated University. The school also forwarded the application, though delayed in point of time, before the District Inspector on **April 22, 2013, at page-33** to the writ petition followed by a second reminder dated **May 12, 2015**. Thus, no fault or laches could have been and can be attributed to the petitioner.

Inasmuch, as to provide higher pay scale to a teacher with enhancement of qualification is a benevolent policy of the State to encourage the teachers for enhancement of their qualification for the greater interest of the students at large. When all the conditions are fulfilled by the petitioner and the petitioner has duly discharged all his obligation under such benevolent policy, the petitioner being a teacher cannot be deprived of such benevolent policy of the State. The petitioner was all along diligent in pursuing his claim according to the prescription of law. The school authority has never raised any objection with regard to the performance of the petitioner in any manner.

In view of the foregoing reasons and discussions, the decision impugned of the **respondent no.3** dated **June 23, 2015** stands **set aside** and **quashed**.

The **respondent no.3** shall take all necessary and consequential steps to grant the benefit of higher pay scale to the petitioner commensurating with his Post Graduation qualification, w.e.f., **December 19, 2012** forthwith and positively within a period of **four weeks** from the date of communication of this order by causing the necessary **pay fixation**.

The entire arrear amount shall have to be paid to the petitioner, w.e.f., **December 19, 2012 till March 31, 2024** positively within period of **three weeks** after fixation of the pay scale of the petitioner by crediting his bank account where salary of the petitioner is regularly deposited. The respondent no.3 and/or the other relevant State authorities thereafter shall continue to pay the petitioner at the enhanced pay scale as directed above.

With the above observations and directions, this writ petition, **WPA 29958 of 2016** stands **allowed**, without any order as to costs.

The connected applications, pending if any, also stand disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Aniruddha Roy, J.)