

WPA 8053 of 2020

Mohammad Ali Purkait
Vs.
The State of West Bengal & Ors.

Mr. Sakti Pada Jana,
Ms. Sudipta Pramanik.

... for the Petitioner

Mr. Tapan Kumar Mukherjee,
Mrs. Tuli Sinha.

..... for the State Respondents

1. Admittedly, the writ petitioner's prayer, for permission to be enrolled to obtain higher degree, while in service, has been received by the respondent No. 4/ District Inspector of School, Secondary Education, Malda, on November 28, 2008, but not responded to. The petitioner enters the Master's Degree course and qualifies and completes the same. In such circumstances by dint of the impugned order dated February 25, 2020, the respondent No. 4 has rejected petitioner's prayer for grant of higher pay scale, pursuant and commensurate to his higher qualification, in the relevant subject. Hence, the writ petitioner is aggrieved and has filed the instant case for an appropriate relief.
2. The respondent No. 4 writes in his order dated February 2, 2020 as follows:

“In Para 3 of the Government Order No. 593-SE(B) dt. 27.11.2007 (which was published under Section 14(3) of the West Bengal Schools (control of Expenditure) Act, 2005) it has been clearly mentioned “the teacher is required to seek prior permission of concerned District

Inspector of Schools (when he wants to claim higher scale of pay for obtaining such higher qualification) through the Managing Committee of the Schools". In the instant case the petitioner enrolled himself in Post Graduate Course without having prior permission from the concerned District Inspector of Schools (S.E.).

So, there is a gross violation of Para 3 of Government Order No. 593-SE (B) dt. 27.11.2007"

3. Mr. Jana appearing for the petitioner submits that the law is very well settled as on date, as to the scope of application of the provisions under the Government Order No. 593-SE (B) dated November 27, 2007 (hereinafter refer to as "No. 593"). He would say that petitioner's formal prayer to the School Managing Committee, its approval as to the petitioner's prayer and recommendation thereof, being forwarded to the office of respondent No. 4, would suffice so far as fulfilment of Para 3 of notification No. 593 is concerned. It is stated further that the respondent No. 4, being silent as to the prayer of the petitioner and recommendation of the School Managing Committee to that affect, would amount to deemed permission being granted to the writ petitioner, to enhance his qualification, in order to enable him to pray for higher pay scale commensurate to such higher qualification. In this regard Mr. Jana has relied on the judgment of ***Akhtar Hossain Chowdhury vs. State of West Bengal & Ors.*** reported in **2013 (2) CHN (CAL) 632**. He also informs that the Hon'ble Larger Bench in its judgment of ***Utpal Kanti Karan vs. State of West Bengal & Ors.*** reported in **AIR Online 2024 Cal 122** in paragraph 200 (XVII) has quoted paragraphs 15 and 18 of the decision of ***Akhtar Hossain***

Chowdhury (supra) and recorded its agreement to such finding and decision of the Court.

4. Mr. Jana would further rely on a Division Bench order of this Court dated October 4, 2023 in MAT 1579 of 2019, in this regard. In the same the Hon'ble Division Bench has upheld the order of the Hon'ble Single Judge in which relief was granted to the petitioner on a similar factual background. Thus, Mr. Jana would seek appropriate relief for the writ petitioner.
5. Mr. Mukherjee has represented the State in this case. Mr. Mukherjee is of the opinion that the State authority would function as per the law settled in this regard by the Hon'ble Larger Bench of this Court in the decision of ***Utpal Kanti Karan (supra)***.
6. The brief fact necessary to proceed with the discussion in this case may be narrated as hereinbelow.
7. The petitioner entered into service as an Assistant Teacher in the respondent school with effect from September 5, 2007 as B.Sc. Hons. Graduate and B. Ed candidate. On August 3, 2008 he submitted formal prayer before School Managing Committee seeking permission to undergo higher education for M.Sc. Course. The School Managing Committee approved such prayer of the petitioner in a resolution, in its meeting dated November 3, 2008. Thereafter the Managing Committee has forwarded its recommendation in order to obtain concurrence to its decision to permit the petitioner to obtain higher degree to the respondent No. 4 vide its letter dated November 27, 2008, which was received in office of respondent No. 4 on November 28,

2008. Since thereafter the said respondent has been silent about such letter of the School Managing Committee. However, the petitioner did proceed in terms of the decision of the School Managing Committee to enrol himself in Master's Degree Course and finally qualified his final examination held in May, 2012. The petitioner was granted the certificate of M.Sc. in the year 2014.

8. The petitioner having entered into service in 2007 is governed under the provisions of the West Bengal School (Control of Expenditure) Act, 2005. Section 14 (3) of the said Act provides as follows:-

“14. [Pay of teacher] [Substituted 'Scale of pay etc. of teacher' by West Bengal Act No. 20 of 2016, dated 2.2.2016.].

1. *****

2. *****

3. Every teacher appointed for classes XI and XII, shall be entitled to draw pay meant for Post-graduate qualification and shall not be entitled to claim any additional increment or higher scale of pay for any qualification other than the minimum qualification specified for such post.] [Substituted by West Bengal Act No. 20 of 2016, dated 2.2.2016.]”

9. Therefore in terms of Section 14 (3) of the Act of 2005 the petitioner would be entitled to draw the pay of a Post Graduate Teacher. This aspect has been duly reiterated and upheld by the Hon'ble Division Bench in the case of ***Akhtar Hossain Chowdhury (supra)*** and the Hon'ble Larger Bench in the case of ***Utpal Kanti Karan (supra)***. Therefore, so far as the entitlement of the petitioner is concerned the same is established in terms of the provisions of the statute itself and subject to provision of

the notification issued under the said statute that is No. 593.

- 10.** Notification No. 593 in Para 3 provides that prior permission of the District Inspector of Schools has to be obtained so that after obtaining the degree the concerned person can claim financial benefits and better pay scale. The respondent No. 4 in his impugned order dated February 25, 2020 has held that the petitioner enrolled himself in the Post Graduate Course without having the prior permission from the said authority. He has termed the same to be in gross violation of paragraph 3 of the notification No. 593.
- 11.** However, in this case there is no denial or dispute that the petitioner duly applied before the School Managing Committee for approval and recommendation of the petitioner's prayer to the respondent No. 4, for grant of permission to enroll for Master's Degree. The School Managing Committee has done exactly the same, that is, approved petitioner's prayer for permission allowing him to be enrolled in the M. Sc. Course and in turn, forwarded the same to the office of respondent No. 4. Receipt thereof by respondent No. 4 has not been denied in this case.
- 12.** The question is, if in such circumstances, it can be validly held that the petitioner enrolled himself without having the prior permission from the concerned District Inspector of Schools.
- 13.** The answer must be in negative in so far as, in accordance with record, the petitioner applied for permission duly through the School Managing

Committee. However, the recommendation of the School Managing Committee in favour of the petitioner, though received by the respondent No. 4 has never been answered. Therefore, it appears that the respondent No. 4 has withdrawn its decision as regards the prayer of the writ petitioner for grant of permission to him for entering into the M.Sc. Course. For the reason as above, it can be said that the petitioner's prayer has not been rejected by the respondent No. 4 nor that the prayer of the petitioner or the recommendation of the School Managing Committee was said to be disqualified, to be approved for any other lawful or cogent reason. Therefore, for an action for which the writ petitioner had no manner of contribution or negligence on his part, he cannot be made to suffer to adverse consequences thereof. Here, the reason as to why no answer was received by the petitioner from the respondent/D.I. would be attributable to the respondent and not the petitioner.

14. When by issuing the order No. 593, the respondent has promulgated the rule of seeking prior permission from the District Inspector of Schools, unless such permission is denied expressly, that should have to be considered as a deemed permission granted by the respondent District Inspector of Schools. The Court finds no flaw or laches so far in the petitioner's part in seeking permission before the respondent authority through the School Managing Committee, is concerned.

15. It is therefore considered that the impugned order dated February 25, 2020 by the respondent No. 4/District Inspector of Schools would not be in accordance with the

law, now very well settled, particularly after the verdict of the Hon'ble Larger Bench in this regard. The same is thus liable to be set aside, being illegal and unreasonable.

16. The writ petition being W.P No. 8053 of 2020 is thus allowed with the following directions:-

- (i) Impugned order dated February 25, 2020 is set aside;
- (ii) The respondent No. 4 is directed to immediately accord higher pay scale to the writ petitioner commensurate to his enhanced qualification, in accordance with law;
- (iii) Pay fixation of the petitioner be immediately made effective. The petitioner be paid with the arrear salary in terms of the revised pay scale;
- (iv) The exercise as above by the respondent No. 4 should be concluded within a period of four weeks from the date of communication of this order.

17. Writ petition being W.P. No. 8053 of 2020 is disposed of

18. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)