

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

**WPO No. 616 of 2019
AMLAN SINGHA
VS
THE STATE OF WEST BENGAL AND ORS.**

For the Petitioner	: Mr. Shaktipada Jana, Advocate.
For the Respondents	: Mr. Anand Farmania, Advocate. Mr. Indumouli Banerjee, Advocate.
Heard on	: 22.02.2024.
Judgment on	: 22.02.2024.

RAI CHATTOPADHYAY, J.:

The Court: The writ petitioner is the permanent teacher appointed in Balarampur Abhoy Ashram Naitalim Vidyapith (HS), on 28.08.2008. He has been appointed as against a sanctioned post in the said school.

The writ petitioner is aggrieved that allegedly, illegally and arbitrarily his prayer for payment of enhanced scale of pay has been rejected by the Commissioner of School Education, West Bengal vide order dated 03.09.2019, in spite of his acquiring higher qualification.

The necessary factual back ground of this case may be narrated in a nutshell as follows:-

At the time of appointment on 28.08.2008 the writ petitioner was qualified with a B.Sc. degree in computer science and B.Ed. However, at the said point of time he was under going the course of Master Degree in Computer Science (MCA). By that time he had already completed all other semesters of the Master Degree (MCA) course excepting the final Semester. At this juncture he got appointment in the school as named above.

Before appearing in the 5th Semester of MCA, he sought permission from the concerned school and the school had adopted a resolution on 11.11.2008, granting him permission to appear in the 5th Semester of MCA examination. He was granted study leave by the school authorities for the said purpose. Subsequently, the writ petitioner was qualified in the examination of Masters of Computer Application. After improving his qualification, the petitioner applied before the school authority for grant of higher scale of pay to him vide letter dated 20.07.2009.

The Writ Petitioner alleges that though the school authorities have recommended and forwarded his prayer for grant of higher scale of pay to the concerned respondent authority, that is, (District Inspector) seeking permission, the said respondent has not acted in terms of the prayer and such permission has never been granted to the writ petitioner. This has prompted the petitioner to file the first case before this Court which is WP No.289 of 2019. In the same, the Court directed the concerned

respondent to consider petitioner's prayer for grant of enhanced scale of pay.

The resultant order is dated 03.09.2019, which is impugned in this case. The Commissioner of School Education, West Bengal has mainly relied on the ground that the writ petitioner has not sought prior permission in terms of Government order dated 27.11.2007. Therefore, he opined that the stipulations in the said Government Order would not allow the writ petitioner to be granted the enhanced scale of pay as claimed, having not obtained higher qualification pursuant to the prior permission granted by the concerned authority. Thus, the prayer of the writ petitioner for grant of higher scale of pay was rejected.

The writ petitioner has challenged here the said impugned order dated 03.09.2019. Mr. Jana, learned counsel representing the writ petitioner, has submitted by referring to the averments and documents in the writ petition that at the time of entering into the service with effect from 04.09.2008, the writ petitioner was already enrolled in the MCA course, though he joined the service as a B.Sc. qualified honours' graduate candidate. According to Mr. Jana, under such circumstances, the provisions under the notification dated 27.11.2007 which has provided for a candidate to prior permission to enhance his qualification whenever he wants to claim additional increment/higher scale of pay, would not be applicable, in case of the present writ petitioner.

Mr. Jana has further submitted that after obtaining higher qualification the writ petitioner would be entitled the higher scale of pay and in view of the specific facts and circumstances of the present case, petitioner's not taking prior permission would not be any hindrance for him to seek and get such a benefit.

Mr. Jana has relied on a Division Bench Judgment of this Court in MAT 825 of 2020 with CAN 1 of 2021 (Md. Adeel Uz Zaman versus The State of West Bengal & Ors.) dated 11.02.2021.

In a like situation, the Hon'ble Court, in that case, was pleased to hold that since the candidate was already participating in the M.Sc. course at the time of his induction in service, he would not be requiring for obtaining prior permission to enrol himself for the purpose of appearing in the future examinations for enhancement of his educational qualification as contemplated in Clause 3 of the Government Order dated 27.11.2007.

In holding so, the Hon'ble Division Bench has cited several other judgments of the Hon'ble Apex Court also. Mr. Jana submits that this is a settled proposition of law and in the case of the present petitioner the same would apply. He has sought for setting aside of the impugned order and necessary further order to be passed by this Court.

Mr. Anand Farmania, learned counsel, appeared on behalf of the State respondent through video conference. He has submitted, on the basis of the Government Order dated 27.11.2007, that the provision

necessitating obtaining prior permission before enrolling for higher degree, is a mandatory one which would require a candidate who is making changes as regards his initial credential disclosed, by enhancing his qualification to claim additional increment or higher scale of pay, to seek prior permission of the concerned District Inspector of School, in terms of Clause 3 of the said notification. So far as the allegation of the writ petitioner regarding inaction of the concerned authority in granting him permission/higher scale of pay, he submits further that the authorities would act only on the recommendation of the Managing Committee of the school concerned and not otherwise. In this case he divulges his specific instruction that no prayer of the writ petitioner has ever been forwarded to the concerned authorities, to be acted on by the Managing Committee of the concerned school. He says that without the requisite documents having been forwarded by the School Committee, the authorities would not be in a position to apply mind and take a decision with respect to the writ petitioner and until and unless it receives the prayer and copy of the relevant documents, the said authorities shall have actually no role to play, so far as writ petitioner's prayers are concerned.

Let Clause (3) of the notification No.593 SE(B) dated 27.11.2007, be quoted as herein below:-

“The teacher is required to seek prior permission of concerned District Inspector of Schools (SE) (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.”

Considering all, as discussed above, this Court is of the opinion that the particular facts of the present case should not call for application of Clause 3 of the Government Order dated 27.11.2007, in the strict sense of it that a teacher would require prior permission for enhancement of qualification, to claim higher scale of pay. The fact of this case is that the writ petitioner had already enrolled himself and completed majority portion of the MCA course at the time of his induction in service. Under such circumstance, the application of Clause for permission, prior to entering into a course of higher qualification appears to be a fallacy and redundant to be applicable in his case. On the contrary, in terms of the ratio decided in the judgment of *Md. Adeel Uz Zaman*, as referred to above, he would not be required to obtain any prior permission for enhancement of the educational qualification as contemplated in Clause 3 of the Government Order dated 27.11.2007.

Let the relevant portion of the said judgment, be extracted, as herein below:-

“In fact, the document disclosed clearly reveals that he had completed his part-I examination in M.Sc. and was pursuing his higher studies. It is in the backdrop of such fact that we need to consider the Government Order dated 27th November, 2007.

Clause 1 of the said order is applicable when the teacher concerned is yet to enroll himself in the course and to appear in the examination for enhancement of education qualification. The very fact that he had already enrolled himself prior to his appointment and that he had already participated in the said examination and successfully completed M.Sc. part-I, in our considered opinion he is not required to obtain any prior permission to enroll himself for the purpose of appearing in the future examination for enhancement of his educational qualification as contemplated in clause 3 of the Government Order dated 27th November, 2007. In such view of the matter the decision cited by the Government Pleader passed by a learned Single Judge in Purna Chandra Misra (supra) has no manner of application.”

Therefore, to the mind of this Court the enhanced qualification of the writ petitioner should be acceptable and considered for grant of higher scale of pay to him, subject to the fact that all necessary and satisfactory documents are forwarded to the concerned authority for consideration as regards the case.

In this case, however, according to the respondent authorities, the School Authorities have not forwarded the relevant documents as yet to the same. This has been however denied on behalf of the writ petitioner by referring to a copy of forwarding letter as annexed in the writ petition.

This Court cannot help but notice that no receipt stamp is endorsed on the copy of the said letter as annexed in the writ petition. Under such circumstances, this Court is inclined to pass the following orders:-

- i. The impugned order dated 03.09.2019 is hereby set aside.
- ii. The respondent authority shall consider afresh the case of the writ petitioner in the light of the discussion as above and in consideration of the adequate, sufficient and necessary documents having been forwarded to it by the school authorities in connection with the prayer of the writ petitioner as above.
- iii. The respondent school authorities, if not has already forwarded the prayer of the writ petitioner, along with the relevant documents to the District Inspector/respondent for due consideration, the same shall be forwarded within a period of seven days, from the date of service of copy of this order.
- iv. The District Inspector of School Secondary Education (Kolkata) shall consider and dispose of afresh the prayer of the writ petitioner for grant of enhanced scale of pay in the light of the findings of this Court, in this judgment, as above, within a period of two weeks from the date of receipt of all the necessary documents and in the light of the findings in this judgment.

The writ petition being WPO/616/2019 is disposed of.

(RAI CHATTOPADHYAY, J.)

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