

18.11.2025
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MAT 142 of 2025
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IA No.: CAN No. 1 of 2025
Sri Pradip Kumar Biswas
– *Versus* –
The State of West Bengal & Others

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das,
Mrs. Sudipta Pramanik
... for the Appellant.

Mr. Supriyo Chottopadhyay,
Mr. Gourav Das,
Ms. Sayantanee Bhattacharya
... for the State/Respondents.

1. The present appeal has been preferred assailing the judgment dated 23.12.2024 passed in the writ petition being WPA 20199 of 2021 which was preferred challenging an order dated 3rd August, 2020 passed by the respondent no.3 herein rejecting the appellant's prayer for grant of post graduate scale of pay.

2. The case has a chequered history. The appellant namely Pradip Kumar Biswas (hereinafter referred to as Pradip) was appointed to the post of assistant teacher in Basudebpur High School (hereinafter referred to as the said school) with a qualification of B. Sc with diploma in Physical Education. Such appointment was approved *vide* memo dated 02.09.1993 issued by the respondent no.3. The said school thereafter submitted a proposal for change of the Pradip's group from science and mathematics group to physical education/work education group recording his qualification as B.Sc. B.P.Ed. Such proposal was duly approved *vide* memo dated 26.09.1996 issued by the respondent no.3. In the midst thereof, Pradip improved his qualification by obtaining the Master of Physical Education in the year

2000 from Nagpur University with permission of the school authorities and the last date of the said examination was 17th June, 2020. Thereafter he applied for post graduate scale of pay and such prayer was duly forwarded by the school authorities to the respondent no.3 *vide* memo dated 29.05.2001 and 21.07.2005. As his claim was kept in abeyance, he was constrained to prefer a writ petition being WPA 3417 (W) of 2006 which was dismissed by an order dated 13.04.2006 applying the provisions of the West Bengal (Control of Expenditure) Act, 2005 (hereinafter referred to as the 2005 Act). Aggrieved thereby, Pradip preferred a mandamus appeal being FMA 174 of 2008 which was disposed of by an order dated 28.09.2012 directing the respondent no.3 to sanction the benefit of higher scale of pay to the appellant from the day following the date on which the post graduate examination was completed. In compliance with the said order the respondent no.3 *vide* memo dated 16th June, 2017 sanctioned the post graduate pay of scale in favour of the appellant subject to the order that may be passed in the recalling application being CAN 5603 of 2017 filed by the State in the appeal being FMA 174 of 2008. In the midst thereof, the contempt application preferred by Pradip being CPAN 313/2013 alleging violation of the order dated 28.09.2012 was disposed of by an order dated 21.06.2017 with a direction that it would be open to Pradip to mention the application for recall before the appropriate Bench for consideration. Even thereafter no step was taken by the respondents for releasing the higher scale of pay. Aggrieved thereby, Pradip again preferred a writ petition being WP 4030 (W) of 2018 which was disposed of by an order dated 6th July, 2018 directing the respondent no.3 to immediately grant the benefit of higher pay of scale as per the order dated

28.09.2012 recording the undertaking given by Pradip that he would refund the additional benefit arising out of the higher pay of scale in the event the order dated 28.09.2012 is recalled/modified. Aggrieved by the said order, State again preferred an appeal being MAT 1455 of 2018 which was taken up for hearing along with the recalling application by a coordinate Bench of the Court and the said recalling application was dismissed by an order dated 20.12.2019. In the midst thereof, Pradip retired on 30.04.2019. The appeal being MAT 1455 of 2018 was thereafter finally heard and disposed of by an order dated 03.02.2020 directing the respondent no.3 to pass a reasoned order in favour of the appellant for extending the benefit of higher pay of scale with an observation that it would not be open for the respondent no.3 to deny the claim on the basis of the decision in '*Sauvik Ghosh*'. Pursuant to the said order the respondent no.3 passed an order *vide* memo dated 3rd August, 2020 refusing Pradip's claim. Aggrieved thereby, Pradip preferred the writ petition being WPA 20199 of 2021 and the order passed in the same had been impugned in the present appeal. By the said order Pradip's claim was again relegated to the respondent no.3 for consideration. However, the issue as to whether the '*G.O. dated 8.3.2000 can be a bar in extending the benefits of the higher pay scale to the petitioner*' was answered observing that '*the circular dated 8th March, 2000 could not have been applied in the case of the petitioner*'.

3. Mr. Jana, learned advocate appearing for Pradip argues that the learned Single Judge erred in law in relegating the matter for further consideration to the respondent no.3 being oblivious of the fact that the said respondent had earlier allowed Pradip's prayer dealing with the issue of staff pattern of the school *vide* memo

dated 16.06.2017. Such decision attained finality after dismissal of the recalling application filed on behalf of the State by an order dated 20.12.2019.

4. He contends that Pradip entered into service prior to promulgation of the West Bengal School Service Commission Act, 1997 (hereinafter referred to as the 1997 Act) and he acquired the higher qualification in the year 2000. On the date Pradip was approved in the Work Education/Physical Education group, the Revision of Pay and Allowances Rules, 1998 was operative (hereinafter referred to as ROPA, 1998) which provided *inter alia* that a teacher would be entitled to higher scale of pay appropriate to his/her qualification if such higher qualified teacher in the relevant subject or group ‘is justified as per approved staff pattern of that school’. In the order passed by the respondent no.3 on 03.08.2020 it has already been found that Pradip at the material time was the second teacher in the group and the other teacher, namely, Pradip Biswas, was not having post graduate qualification and he had subsequently expired. The third teacher in the said school, namely, Pradip Mitra Mazumder was junior to Pradip and he had also been shifted to another group and that as such Pradip is the sole teacher in the Work Education/Physical Education in the said school. Such facts stand recorded in the order dated 03.02.2020 passed in MAT 1455 of 2018 upon considering the staff pattern as placed. The finding of the respondent no. 3 in the order dated 03.08.2020 that ‘*the petitioner was the second teacher of the aforesaid group as per staff pattern and graduate scale of pay is admissible*’, is thus *ex-facie* erroneous.

5. Mr. Chattopadhyay, learned AGP appearing for the State respondents denies the contention of the appellant and submits that the issue involved is no longer *res integra* and has already been decided through

the judgment delivered in the case of *Utpal Kanti Karan versus State of West Bengal*, reported in (2024) SCC Online Cal 2274. Having accepted the appointment and approval in a post of graduate teacher, the petitioner cannot turn back and claim post graduate scale of pay. The grant of such higher scale of pay is also not justified as per the approved staff pattern of the concerned school.

6. He contends that after the coming into effect of the 2005 Act, there is no room for allowing the benefit of higher scale of pay to teachers who possess or acquire a higher qualification than was necessary for the purpose of appointment to the post. The fundamental premise that has to be considered is the staff pattern in a school and that as such the learned single Judge had rightly directed the respondent no.3 to decide '*as to whether the approved staff pattern of the concerned school permits extending the benefit of higher scale of pay to the petitioner*' and there is no infirmity in the said order.

7. In the appeal being MAT 1455 of 2018 the Court upon considering the memo dated 04.09.1998 observed *inter alia* that '*three teachers were working under Work Education/Physical Education Group in the said School. Name of the writ petitioner/respondent Pradip Kr. Biswas featured at Serial No.2 of the staff pattern under the relevant group of Work Education/Physical Education*'. As Pradip Biswas had died on 15.12.2013 and Pradip Mitra Majumder had been shifted to Social Science Group with effect from 16.09.1995, the respondent no.3 in the order dated 03.08.2020 also arrived at a finding that at the material point of time Pradip was second teacher in the group as per staff pattern.

8. The memo dated 04.09.1998 provides that in a high school in the Work Education/Physical Education Group there would be two posts and the incumbents

must have qualification as mentioned in memo dated 08.01.1998. Indisputably, Pradip fulfills the provisions of the said memo and that as such relegation of the issue for further consideration would be an idle formality and would unnecessarily delay the disbursement of the benefits to Pradip, who has already retired on 30.04.2019 and the legal proceedings had continued for a period of about 20 years. Once the Court holds that Pradip is entitled to the benefit of post graduate scale of pay, the Court can itself grant the relief.

9. The learned single Judge while passing the impugned order also did not take into consideration the memo dated 22.11.1993 by which it was clarified that all teachers of secondary schools *‘with higher qualification of post graduate degree or the equivalent amount in relevant subjects will get higher scales of pay in relaxation of the above noted staff pattern’*. The said memo was clearly applicable to Pradip as his entry and approval in the Work Education/Physical Education Group was on 26.09.1996 and prior to promulgation of the 1997 Act and the 2005 Act.

10. In the case of *Utpal Kanti Karan (supra)* it was decided that the 2005 Act cannot have any retrospective operation nor will stand as a bar in extending benefit of higher scale of pay in the event the staff pattern permits. Pradip’s claim being an appointee prior to promulgation of the 1997 Act and the 2005 Act would come under the purview of the relevant rules operating at the time of acquisition of higher qualification. Thus the judgment delivered in the case of *Utpal Kanti Karan (supra)* does not stand in the way towards Pradip’s claim for post graduate scale of pay.

11. For the reasons discussed above the learned single Judge erred in law in relegating matter for further

consideration to the respondent no.3 and accordingly the impugned order is modified and the respondents are directed to grant the benefit of higher scale of pay and all consequential benefits as per the order dated 28.09.2012 passed in FMA 174 of 2008 to the appellant within a period of 6 weeks from the date of communication of this judgment.

12. With the above observations and directions the appeal and the connected application are disposed of.

13. There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)