

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 4604 of 2021

Dhananjay Ghosh

vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Malay Bhattacharya.

For the State : Mr. Mrinal Kanti Ghosh.

Heard on : 11.04.2025

Judgment on : 11.04.2025

Rai Chattopadhyay, J.

1. Affidavit-of-service filed in Court today, be taken on record.
2. The writ petitioner being aggrieved by dint of the order of the District Inspector of Schools, Secondary Education, Bankura dated March 5, 2020, has moved the present writ petition to challenge the same, with the prayer for setting aside of the same.
3. The subject matter of the writ petition relates to rejection of the petitioner's prayer for grant of higher pay scale, pursuant to his higher qualification.
4. The petitioner has joined as an Assistant Teacher in Mathematics at Sonamukhi B.J High School on December 6, 2007. He has been appointed as a B.Sc. Honours category teacher in the subject 'Mathematics'. The petitioner's service has been approved in due time.

5. On May 10, 2008, the petitioner has applied before the competent authority that is, the School Managing Committee for permission to get admitted in M.Sc. course through the correspondence course.

6. The School Authority, though having granted permission to the writ petitioner as he has prayed for, has not forwarded its recommendation to the D.I. in terms of the prevalent rules.

7. It is in this perspective, that the D.I., by dint of the impugned order dated March 5, 2020 has declined the petitioner's prayer for grant of higher pay scale, in so far as according to the said respondent, by not obtaining permission of the District Inspector of Schools, Secondary Education, Bankura, the petitioner has violated the mandates as provided in notification No. 593-SE(B) dated November 27, 2007.

8. Mr. Malay Bhattacharya, learned counsel appearing for the petitioner has submitted that the petitioner having been duly applied for prior permission has performed his part of duty, in terms of the notification as above.

9. In this regard, he has referred to the previous order of this Court dated November 11, 2024 to submit that on the similar factual background, the Court has granted the higher pay scale to the writ petitioner.

10. Mr. Mrinal Kanti Ghosh, learned counsel representing the State has raised strong objections as regards the contentions and prayer of the writ petitioner, for the reason that admittedly, the mandate of the rules in terms of the notification No. 593-SE(B) dated November 27, 2007, that the person concerned would be required to seek prior permission from the District Inspector of Schools, Secondary Education, Bankura and admittedly also in the present case there is no prior permission having been sought for by the petitioner before enrolling himself for the

course through correspondence. Hence, the petitioner cannot sustain his prayer as above.

11. In this regard, Mr. Ghosh has relied on an order of the Hon'ble Coordinate Bench dated May 16, 2024 to submit that upon considering the relevant notification, the Court in the said case has been pleased to turn down the petitioner's prayer as above.

12. Having heard learned counsel for the respective parties and perused the orders of the Court referred to by the respective parties and the materials available on record, the Court decides as follows;

13. In the present case, the petitioner is governed under the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005 (hereinafter referred to as '2005 Act').

14. The particular provision thereof may be quoted as hereinbelow:-

"14. Scale of pay etc. of teacher;

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(3). Every teacher of a school shall, if appointed in the Honours Graduate or Post-graduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order."

15. Therefore, the petitioner is entitled for grant of higher pay scale upon fulfilment of the condition as prescribed under Section 14(3) of the 2005 Act as mentioned above.

16. Notification No. 593-SE(B) dated November 27, 2007 requires that prior permission be taken before a teacher intends to undergo course for higher study on the basis of which, he may seek enhancement of his pay, at a later point of time.

17. The proper channel for an Assistant Teacher to seek permission of the D.I. would be through the School Managing Committee. So far as the writ petitioner is

concerned, admittedly he has applied before the School Managing Committee on May 10, 2008 for such permission and has been granted the same.

18. After having applied before the competent authority, the petitioner as the incumbent, shall not have any further responsibility or control over the fact that if, the recommendation of the School Managing Committee or his prayer as above, has been further transmitted to the D.I. by the Managing Committee or not.

19. In such circumstances, so far as the compliance of part of the writ petitioner as an incumbent of the provision under the notification No. 593-SE(B) dated November 27, 2007 is concerned, in the considered opinion of the Court, the same has been duly exhausted by the writ petitioner. In view of the particular facts of the case as above, the responsibility cannot be slapped against the writ petitioner for not obtaining any prior permission by him.

20. On the basis of the discussion as above, the reasons shown by the District Inspector of Schools, Secondary Education, Bankura in the impugned order dated March 5, 2020 appears to be not maintainable. Instead, in terms of Section 14 (3) of the West Bengal Schools (Control of Expenditure) Act, 2005, the writ petitioner shall have a statutory right for grant of higher pay scale, which cannot be defeated, the petitioner having been duly eligible, for such grant.

21. In similar circumstances, this Court in WPA No. 10986 of 2019 vide judgment dated November 11, 2024 has held that the petitioner after being qualified with the higher degree should therefor, be granted with the pay scale meant for post graduate category of teachers.

22. The Court finds no reason to deviate from the decision as taken earlier by this Court in the backdrop of similar facts and circumstances.

23. Hence, the Court finds it proper to dispose of this writ petition by allowing the writ petition with the following directions:-

(i). Impugned order dated March 5, 2020 of the respondent District Inspector of Schools, Secondary Education, Bankura is set aside;

(ii). The writ petitioner is eligible and shall be granted the higher scale of pay meant for post graduate category of assistant teachers, with effect from the appropriate date, in accordance with law;

(iii). The pay fixation would immediately be made, within a period of three weeks from the date of communication of copy of this order;

(iv). The arrear as stands due and outstanding as per the pay fixation of the writ petitioner shall be paid within a period of two months from the date of communication of copy of this order.

24. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.

25. With the above observations and directions, the writ petition being No WPA 4604 of 2021 is disposed of, along with the pending applications, if any.

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

(Rai Chattopadhyay, J.)

D. Hira