

WPA 6014 of 2021

Mousumi Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Samimul Bari

... for the Petitioner.

Mr. Asim Kumar Ganguly,

Mr. Subhajit Chowdhury

... for the State.

1. This matter needs to be adjudicated to determine the issues that whether the petitioner would be eligible for grant of higher pay scale in accordance with her qualification, in spite of having opted for and entering into the service as a pass graduate category teacher. An order of the District Inspector of Schools, (Secondary Education), Barrackpore, North 24 Parganas **dated January 4, 2021** is under challenge in the instant writ petition. By dint of the same the petitioner's prayer for grant of higher pay scale to her for her higher qualification has been turned down by the said respondent.
2. Mr. Ganguli, learned Additional Government Pleader, has raised vehement objection to the prayer of the petitioner for grant of higher pay scale and has supported the impugned order dated January 4, 2021. His foremost contention is that the petitioner in accordance with her own volition, has opted for being appointed in the post of pass graduate category teacher. That being so, according to Mr. Ganguli, the law does not permit the petitioner to change stance and seek for benefit other than for the post, what she has opted for. He says that for these reasons and facts, there would not be any impropriety or illegality in the order

of the respondent/District Inspector of Schools (Secondary Education), dated January 4, 2021, as impugned in the instant case. Mr. Ganguli has strongly relied on the Special Bench's judgment of this Court in the case of **Utpal Kanti Karan vs State of West Bengal & Others [2024 SCC OnLine Cal 1274]**, on **paragraph 272(a)** thereof, in particular. He says that in accordance with the decision of the Special Bench, the petitioner having joined the school having voluntarily declared her pass qualification only and in that category, would not be entitled to post graduate scale of pay, unless she is covered by the government order **No. 735-SE(S)/SP-132/2002** [in short "No.735"] as revised by circular **No. 1334- SE(S)** dated November 3, 2004 [in short "No. 1334"]. He says that the petitioner is not covered in the manner as directed by the Hon'ble Special Bench, in the said judgment. For the reasons as above, the respondent says that the impugned order as above requires no interference by this court as well as the prayer of the petitioner in the present writ petition is also liable to be rejected.

3. Contrarily, the petitioner says that she has been recommended and approved by the respective Authorities as a M.A.,B.Ed qualified incumbent. As such, she is entitled for higher pay scale, commensurate to her higher qualification. In this regard, learned advocate Mr. Shamim-ul Bari, who has represented the petitioner, has relied on the notification **No.155 SE(B)** dated July 13, 1999 [in short "No.155"].
4. In the recommendation letter of the petitioner dated **January 7, 1999**, the West Bengal Regional School Service Commission, Southern Region, has mentioned the qualification of the petitioner as "**M.A., B.Ed.**". It has also been mentioned "**Treated as Pass Degree**

Holder in History and selected as such". The approval letter of the petitioner has also mentioned her qualification as "**M.A., B.Ed.**" and "**Opted for Pass graduation with B.Ed.**"

5. Fact remains that at the time of filling up of the form, the results of the petitioner in the Master Degree course, was not declared. Therefore, she has applied for in the pass category of post. Also that the petitioner has been subjected to the same examination as that for the Honours category of incumbents, in the process. That has rendered her subject to no different standard of examination, vis-a-vis a higher degree holder.
6. No.155 has provided that the teachers who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications. It has also provided that a teacher appointed through the West Bengal School Service Commission, shall be granted a scale of pay as per his/her qualification mention by the West Bengal School Service Commission. So far as the qualification mentioned by the School Service Commission, in case of the petitioner, according to the unimpeachable record, the same is "**M.A., B.Ed**". Similar declarative statement is there in the approval letter of the writ petitioner.
7. In No.735 it has been mentioned that "*It is a fact that Hons. Graduate candidates have to compete with the Post Graduate Candidates on the same set of syllabus and same set of question papers in the test held by the W.B.S.S.C for selection of teachers. Moreover, the W.B.S.S.C prepare a single panel in a subject from amongst the selected Hons. and Master degree holders*".

8. The Hon'ble Special Bench, in the judgment of **Utpal Kanti Karan (supra)**, in para- **272(a)**, has dealt with enhancement of pay on acquisition of higher qualification during the service career of a person. This is, however, not the case of the present petitioner. Be that as it may, the court has directed that grant of higher pay scale to a person, who has joined the school with pass graduate degree after February 12, 1999, should be subject to that the teacher is covered vide **No. 735 or 1334**. Upon consideration of the factual background of this case and the provision made in No.735, it can be stated that the petitioner who had appeared at the master degree examination prior to the date of her filling up of the form, though result was not published then and has been appointed as a subject teacher (which is not a phenomenon for a pass graduate category teacher), being mentioned with her qualification "**M.A., B.Ed**", cannot be deprived of the benefit of the post graduate scale of pay. It may happen that the petitioner should have rectified her qualification with the School Service Commission, after her result in master degree course and before her recommendation and appointment, which she has not done. For the said reason, if the petitioner is declined grant of higher pay scale in spite of her due compliance with the relevant rules as discussed above, that would certainly cause jeopardy and prejudice to the petitioner and suffer from impropriety and lawlessness. There is no question of any back door entry in this case as has been apprehended by the Hon'ble Special Bench, in the judgment as mentioned above. This is for the reason, I reiterate, that the petitioner has been subjected to same set of syllabus and examination with the other incumbents in the selection process with higher degree and aspiring for higher level of posts.

9. Hence, the impugned order dated January 4, 2021, of the respondent District Inspector of Schools (Secondary Education), Barrackpore, North 24 Parghanas, by dint of which it has turned down the prayer of the petitioner for grant of higher pay scale, appears to be irrational and not in confirmation with the law.

10. Hence, the writ petition is allowed with the following directions:
 - 1) The impugned order of the District Inspector of Schools, Secondary Education, Barrackpore, North 24 Paraganas dated January 4, 2021 is set aside.

 - 2) The petitioner is eligible to be granted with the higher pay scale, meant for post-graduate teachers.

 - 3) Respondent/ District Inspector of Schools, Secondary Education, Barrackpore, North 24 Paraganas is directed to immediately give effect of the refixation of pay scale of the petitioner, as per the higher scale of pay as directed above, with effect from the appropriate date in accordance with law, within a period of three weeks from the date of communication of copy of this order.

 - 4) Arrear salary shall be disbursed to the writ petitioner within a period of three months from the date of communication of copy of this order.

11. Since no affidavit-in-opposition has been called for in the case, the allegations in the writ petition are deemed to have denied by the respondents.

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

(Rai Chattopadhyay, J.)