

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 5242 of 2019

**Usharati Das
VS
The State of West Bengal & ors.**

For the Petitioner	: Mr. Sakti Pada Jana, : Mr. Aninda Bhattacharyya, : Mr. S. Sarkar : Mr. S. Shah : Mr. K.P. Santra
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For the State	: Mr. Supriyo Chattopadhyay, : Ms. Iti Dutta.
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Heard on: 27/01/2025

Judgment on: 27/01/2025

Rai Chattopadhyay, J. :-

1. The issue involved in the present writ petition is with regard to the applicability of the Government Notifications No. 593-SE(B) dated November 27, 2007 [hereinafter referred to as “No. 593”] and 1595-SE(S) dated December 26, 2005 [hereinafter referred to as “No. 1595”], in case of the petitioner. The petitioner has challenged an order of the Additional District Inspector of Schools (Secondary Education), Kharagpur Sub-division,

Paschim Medinipur dated January 21, 2019. The said authority has rejected the petitioner's prayer and declined to grant her the higher scale of pay, pursuant to her being qualified with the post graduate degree. The rejection of the petitioner's prayer as above has been founded on the ground of non-compliance with the Government Order No. 593.

2. Let the factual background of the case be stated as follows:-

The petitioner having been recommended by the West Bengal Regional School Service Commission, has joined the respondent School on September 1, 2009 as an Assistant Teacher in Honours graduate category. Her service was approved vide letter dated September 6, 2010, as an Assistant Teacher BA (Honours). Thereafter, with the permission of the School Managing Committee vide its resolution dated August 7, 2010, she enrolled herself for higher education in the relevant subject of her teaching, through distance mode. Later on, she was qualified in the M.A. Course and her last date of examination was January 20, 2014.

3. After being qualified in the Masters degree course, the petitioner seeks to be granted with the higher pay scale and prays for the same.

4. On the factual background as above, the Additional District Inspector of Schools (S.E.), Kharagpur Sub-Division, Paschim Medinipur, has applied the provisions under G.O. No. 593 and turned down the petitioner's prayer on the ground that no prior permission of the said authority was ever taken by the petitioner, before enrolling herself in the Masters degree course. Hence, that has amounted to violation of the G.O.No. 593 and disentitles the petitioner from being granted with the higher pay scale.
5. During hearing of the case, the written instruction of the District Inspector of Schools (S.E.), Kharagpur, Paschim Medinipur [hereinafter referred to as "DI"] dated January 27, 2005 is submitted in Court, in which the said respondent authority has relied on the provisions under Government Order No. 593, to say that the teachers are required to seek prior permission of the DI, through Managing Committee of the School, if he/she wishes to claim higher scale of pay for obtaining higher qualification.
6. The issue as to grant of higher pay scale to a teacher, who has enrolled himself for the higher course after joining the service has been dealt with by the Hon'ble Larger Bench of this Court in the judgment ***Utpal Kanti Karan-vs-State of West Bengal & Ors. reported in 2024, SCC Online Cal 1274***. It has held

that in that case the relevant rules would govern grant of appropriate pay scale to the incumbent.

7. Hence, comes the question as to whether the petitioner can be considered to have duly fulfilled her duty to obtain prior permission of the authority, before enrolling herself for the Masters degree course, in order to be eligible for grant of higher pay scale, subsequent to her qualifying in the Masters degree course.
8. The Government Order No. 1595 has provided in exercise of power under Section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005. It says that a teacher of a School who has been appointed through the West Bengal School Service Commission in the Honours or Post Graduate teacher Category and has improved qualification after joining the post and with prior permission of the competent authority, shall be entitled to draw pay of Post-Graduate teacher category, from the day next following the last date of such examinations.
9. The portion of G.O.No. 593 is also required to be mentioned, as follows:

“1. All the teachers teaching in different State Aided Schools will have to take prior permission from the managing Committee/Adhoc Committee/Administrator as the case may be to enrol themselves and to appear for any examination for enhancement of educational

qualification. The managing committee being 'Competent Authority' in such cases will take a decision in its next meeting and convey its decision to the teacher concerned immediately. A copy of the decision of the Managing Committee will be forwarded to the office of the D1 of Schools (SE) of the concerned district.

2. The applicant-teacher thereafter, will, if necessary, apply for Leave/Special Leave/Study Leave as the case may be (along with the resolution of managing Committee) to the West Bengal Board of Secondary Education (which is the Competent Authority in this case) through the Managing Committee of the School.

3. 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."

- 10.** So far as the petitioner's case is concerned, she has after joining, duly applied for promotion before the School Managing Committee, which is the proper channel to forward the request of the petitioner to the respondent/District Inspector of School (S.E.), Kharagpur, Paschim Medinipur. Therefore, the Court is of considered view that, after making application for grant of prior permission before the authority competent to grant such

permission, the liability or the responsibility of the writ petitioner in terms of the Government Notification as above is duly discharged. In terms of the said notification and that No. 593 too, the petitioner would not be obliged to apply directly to the respondent/DI, for grant of such permission. There is also no minimum time period prescribed, for an incumbent to apply for such prior permission.

11. The Court has also held in the case of ***Utpal Kanti Karan*** (supra), as follows:

“In case of any conflict between the government order dated 26th December, 2005 and order dated 27th November, 2007 it is needless to mention that the order dated 26th December, 2005 shall prevail. In fact, the government order of 26th December, 2005 was issued in exercise of power under Section 14(3) of the 2005 Act. Although, it has been argued that for the purpose of making rules the assent of the Governor is not required and inadvertently it has been mentioned that “The Governor is pleased hereby to specify” in the earlier Government order all the applications pending prior to 27th November, 2007 are required to be decided on the basis of the Rules existing during the interregnum period and any benefit accrued cannot be taken away. Moreovre, the Secretary School Education department has admitted that the said G.O. No. 593-SE(B) dated 27th November, 2007 has not been published in the

“Kolkata Gazette Extraordinary” and hence cannot have any statutory force”.

12. That being so and following the findings of the Hon’ble Larger Bench in the judgment of ***Utpal Kanti Karan*** (supra), the Court finds the petitioner to be eligible for grant of higher pay scale, in accordance with law.
13. Accordingly, on the discussion as above, the impugned decision of the Additional District Inspector of Schools (S.E.), Kharagpur Paschim Medinipur dated January 21, 2019 appears to be erroneous and not maintainable. The same is liable to be set aside.
14. Hence, this writ petition is allowed, with the following directions:
 - i) The impugned order dated January 21, 2019 passed by the respondent no. 4 is set aside.
 - ii) Let the respondent no. 4 immediately grant post graduate scale of pay to the writ petitioner from the date subsequent to the last date of her examinations in Part-II of the Master Degree Course.

- iii) Let the said respondent no. 4 issue pay fixation afresh for the writ petitioner with effect from the date as mentioned above and release the arrear amount of salary, as stands due outstanding according to the re-fixation pay to the writ petitioner.
- iv) Let the entire exercise as above be concluded within a period of six weeks from the date of communication of copy of this order.

- 15.** With the above observations and directions the writ petition being WPA 5242 of 2019 is disposed of.
- 16.** Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.
- 17.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)