

Item.  
19

20.06.2025  
ssi

Ct. 551

**WPA 6815 of 2022**

**Partha Sarathi Gayen**

**-vs-**

**The State of West Bengal & others.**

Mr. Sakti Pada Jana  
Mr. Subhajyoti Das  
Mrs. Sudipta Pramanik

....for the petitioner

Mr. Subhas Jana

...for the School Authority

Mr. Supriyo Chattopadhyay  
Mr. Suman Dey

...for the State

1. The writ petitioner is aggrieved by the order dated November 26, 2021 passed by the District Inspector of Schools (S.E.) Kolkata (hereafter “the D.I.”) whereby the D.I. has rejected the petitioner’s claim for higher scale of pay (Post Graduate Scale of Pay) on the ground that the petitioner has not taken prior permission from the District Inspector of Schools before getting “enrolled himself in M.A. Course or appearing in M.A. Part-I and Part-II examination as per G.O. No. 548-SE ( dated 24.06.1997)”.

2. The petitioner joined the school at the post of Assistant Teacher in English on or about October 6, 1991. At the relevant point of time, the petitioner was having the degree of Bachelor of Arts. (with Honours in English). While in service, the petitioner got enrolled in a Master’s Degree course in English upon taking prior permission from the

School Authorities by his letter dated December 4, 2003.

3. The Managing Committee of the School in its meeting held on December 23, 2003 adopted a resolution thereby approving the petitioner's pursuit of Master's Degree in English "for the betterment of the Student of Behala High School (H.S.) as early as possible".

4. Thereafter under the cover of a letter dated April 4, 2005, the Managing Committee of the School forwarded the resolution adopted by the said Managing Committee to the District Inspector of School with a request to grant permission to the petitioner to obtain Post Graduate Degree in English. The D.I. did not respond to the request made by the School Authorities.

5. The petitioner ultimately completed his Masters Degree upon duly qualifying in the examination held therefor in December 2006.

6. After the petitioner had obtained the Master's Degree, the petitioner applied to the School Authorities for enhancement of the petitioner's pay scale i.e. the petitioner sought post graduate scale of pay. The Managing Committee of the School sanctioned the petitioner's request for enhancement of the petitioner's pay (i.e. grant of post graduate scale of pay) in its meeting held on July 18, 2007 and thereafter recommended the petitioner's case for Post Graduate Scale of pay to the D.I. under the cover of the School Authorities' letter dated July 26, 2007.

7. The D.I. did not take any decision on such request

made by the School Authorities and still remained in active.

8. Since the D.I. did not respond to the request made by the School Authorities for sanctioning higher scale of pay to the petitioner upon enhancement of the petitioner's qualification, the petitioner made a representation through his learned advocate on January 27, 2020 requesting the D.I. to take appropriate steps. The D.I. did not budge even then.

9. The petitioner therefore approached this Court by filing a writ petition being WPA 2747 of 2020. The said writ petition being WPA 2747 of 2020 was ultimately disposed of by this Court by an order dated September 23, 2019 (Sic, "September 23, 2021") thereby directing the D.I. to take a decision on the prayer of the petitioner based on the papers forwarded by the authority of Behala High School on July 6, 2019 within a period of twelve weeks from the date of communication of the said order.

10. In due deference, to the said order dated September 23, 2021, the D.I. took up the petitioner's case for higher scale of pay and rejected the same by an order dated November 26, 2021 observing as follows:

*" In the instant case, petitioner obtained M.A. degree from Rabindra Bharati University through Distance mode of education and no such prior permission was taken from the District Inspector of Schools (S.E.) concerned by the petitioner before enrolled himself in M.A. course or appearing in M.A. part-I & part-II Examination as per G.O. No. 548-SE(S) dated 24.06.1997. It is also states the*

*petitioner did not take study leave to appear in M.A. Examination.*

*Right to improve qualification is a right. However this right cannot be established at the cost of eradication of law. An Act is adopted and set up on an altar of law which the govt. is bound to follow. The petitioner by his own desire & right obtained higher qualification without getting prior permission from the District Inspector of Schools (SE) concerned but M.A. degree is neither essential nor required for the purpose of betterment of teaching in the interest of student as the petitioner was appointed against a post meant for honours graduate.*

*Considering the above facts and circumstances, I, the District Inspector of Schools (Secondary Education), Kolkata is not in a position to provide relief to the petitioner as prayed.”*

11. It is this order which has been impugned in the present writ petition.

12. Mr. Jana, learned advocate appearing for the petitioner, at the threshold, submits that the order passed by the D.I. cannot be sustained at all. He submits that the D.I. has based his order on a notification no. 54A-SE (S) dated June 24, 1997 to annul the claim of the petitioner without realizing that the only purpose of the said notification is recognition of the correspondence courses conducted by the different Universities and that the said notification does not have any bearing on a case for grant of any benefit for improving the academic qualification through correspondence course. In support of his contention, Mr. Jana relies on a judgment of the Hon’ble Division Bench of

this Court in the case of *Akhtar Hossain Chowdhury –vs- State of West Bengal* reported at 2013 (2) CHN (CAL) 632.

13. Mr. Jana further submits that it will be apparent from the facts of the case that as the petitioner completed his Post Graduate Qualification in the year 2006, upon qualifying in the examination held therefor in December 2006. In such view of the matter the Government order which would govern the case of the petitioner would be G.O. 1595-SE (S) dated December 26, 2005. Mr. Jana submits that the Hon'ble Full Bench of this Court had an occasion to consider the effect of the aforesaid G.O. dated December 26, 2025 in the case of *Utpal Kanti Karan –vs- State of West Bengal & ors. Reported at 2024 SCC Online Cal 1274*.

14. Mr. Jana further submits that in any case, the petitioner's case could not have been rejected on the ground that the petitioner did not take prior permission of the D.I. of Schools, in as much as, the petitioner had duly taken permission from the Managing Committee of the school and the Managing Committee of the School had forwarded the petitioner's case for pursuit of higher studies to the D.I. prior to the petitioner's completing the aforesaid course. Mr. Jana submits that if the petitioner had applied before the Managing Committee of Schools promptly and there was delay on the part of the Managing Committee of the School in forwarding the petitioner's case to the D.I., the petitioner could not have been blamed therefor. In such regard, Mr. Jana places further reliance on Paragraph 200 (xvii) of the

Hon'ble Full Bench Judgment in the case of Utpal Kanti Karan (supra).

15. Mr. Dey learned advocate appearing for the respondent State authorities submits that the order passed by the D.I. is unexceptionable. He says that although the D.I. has relied on the G.O. dated June 24, 1997, the crux of the matter that remains against the petitioner is that the petitioner was required to take prior permission from the D.I. of Schools prior to obtaining Post Graduate Qualification. He submits that it is evident from the material on record that the petitioner's case for seeking permission of the D.I. was forwarded to the D.I. only on April 4, 2005 by which time the petitioner had already enrolled and had completed a portion of his studies. Mr. Dey submits that such an act cannot be said to be an act in furtherance of seeking prior permission.

16. Mr. Dey further submits that for seeking prior permission, permission must be sought prior to getting enrolled in the course after joining service. Mr. Dey further submits that the G.O. dated December 26, 2005 also speaks of prior permission being taken and such prior permission must have been sought from the D.I. prior to enrollment.

17. Having heard the learned advocates appearing for the respective parties and having considered the material on record, this Court is of the view that the order dated November 26, 2021 passed by the District Inspector of Schools is not fit to be countenanced.

18. After the authoritative pronouncement of the Hon'ble

Full Bench in the case of *Utpal Kanti Karan (supra)*, it is now no longer *res integra* that the case of a candidate which is governed by either the Government order dated June 03, 2002 as revised by the Circular dated March 3, 2004 or by the G.O. dated December 26, 2005 would not be required to seek prior permission from the District Inspector of Schools. Such dictum can be culled out from the underlined portions of paragraph 185 of the aforesaid SCC Online report of *Utpal Kanti Karan (supra)*. The same is quoted herein below:

“185. A teacher with Honours Graduate degree shall be entitled to post graduate scale of pay upon acquiring a post graduate degree without there being a requirement of any prior permission as the Honours graduate and post graduate degree under Sections 14(3) of the Act of 2005 read with the Government Order no. 1595-SE(S) dated 26th December, 2005 are treated alike. The justification is stated in the Government Order no. 735-SE(S)/SP-132/2022 dated 3rd June, 2002. The Government Order no. 1595-SE-(s) dated 26th December, 2005 will have prospective effect. Clause 9 of the Government Order no. 593-SE(B) dated 27th November, 2007 shall not be a bar. All teachers who are otherwise covered by the earlier regulations and/or notification and/or orders issued under West Bengal School Service Commission Act, 1997 and scale of pay has been fixed and/or revised shall continue to receive such benefits and shall not be deprived of any financial benefit solely based on the Government Order dated 27th November, 2007 since the said order in any event can only be applied prospectively. Any teacher pursuing higher education prior

to the introduction of Control of Expenditure Act, 2005 shall be entitled to ex post facto approval for a higher scale of pay provided the Managing Committee has granted permission and the staff pattern permits a teacher with higher qualification in the relevant subject, on the basis of the Government Order dated 3rd June, 2002 as revised by the Circular dated 3rd March, 2004.”

19. In the case at hand, the petitioner got enrolled in the Master’s degree course in the year 2003 and he had sought permission from the Managing Committee of the School on December 4, 2003 which was duly granted by the Managing Committee observing that the same was for the “betterment of the students of Behala School (H.S)”. Therefore the petitioner was indeed pursuing higher education prior to coming into force of the School Teacher grant of Control and Expenditure At, 2005. Nothing has been brought on record by the D.I. or the school that the petitioner’s case fell foul of the notification/Government order dated June 3, 2002 revised by Circular dated March 03, 2024.

20. *Akhtar Hossain Chowdhury*(supra) was a case in which the Hon’ble Division Bench held that the G.O. dated June 24, 1997 was not one that pertained to grant of any benefit for improvement of academic qualification through correspondence course, but it only related to recognition of correspondence courses conducted by the different Universities. *Akhtar Hossain Chowdhury*(supra) has been approved by the Hon’ble Full Bench in the case of *Kanti*

*Karan (supra)*. In such view of the matter, reliance placed by the D.I. of Schools on the aforesaid G.O. dated June 24, 1997 cannot be supported.

21. I find force in the submissions of Mr. Jana that the petitioner having sought for permission from the School Authorities prior to getting enrolled in the course had done his bit. After having sought for permission from the School Authorities which was the only act lying within the domain of the petitioner, the petitioner could not have had any control over the School Authorities to forward the petitioner's case further to the D.I. In such view of the matter, even otherwise the petitioner's case is covered by the dictum of the Akhtar Hossain Chowdhury (*supra*) where it has been held that once a permission has been sought from the D.I. and the D.I. remains silent, the D.I. cannot on such ground later on refuse extension of benefits of higher scale of pay to such teacher on the ground of non-obtainment of prior permission.

22. Insofar as the submission of Mr. Dey that the petitioner had not taken the permission of the D.I. prior to getting himself enrolled in the Master's Degree course is concerned, the same is also taken care of by the fact that the petitioner had duly applied to the Managing Committee of the School prior to the petitioner's getting enrolled in the Master's Degree Course and it was only that act which was within the control of the petitioner. The petitioner could not have directly applied to the D.I. of Schools seeking prior

permission of the D.I.

23. In any case, the said submission of Mr. Dey also does not hold good in view of the recent pronouncement of the Hon'ble Full Bench in the case of Utpal Kanti Karan (*supra*) wherein it has been held that any teacher pursuing higher education prior to the introduction of the said Act of 2005 shall be entitled to ex-post facto approval for a higher scale of pay provided the Managing Committee has granted permission and the staff pattern permits a teacher with higher qualification in the relevant subject, on the basis of the Government order dated March 3, 2004. Here Managing Committee has granted permission as already indicated hereinabove.

24. It has also been held therein that a teacher with Honours Graduate Degree shall be entitled to Post Graduate Scale of pay upon acquiring a Post Graduate Degree without there being any requirement of any prior permission as Honours Graduate and Post Graduate under Section 14 (3) of the Act of 2005 read with the Government Order dated December 6, 2005 are treated alike.

25. As the D.I has rejected the petitioner's case on the sole ground of the petitioner not having a prior permission and there is no other ground cited by the said D.I, the order dated November 26, 2021 is set aside. The said D.I i.e. the District Inspector of Schools (SE), Kolkata is directed to extend the benefit of Post Graduate Scale of pay to the petitioner within a period of eight weeks from the date of

communication of this order, along with all consequential benefits, strictly in accordance with law.

26. With the above observations, WPA 6815 of 2022 is stands disposed of.

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

28. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

**(Om Narayan Rai, J.)**