

S/L 47
29.07.2025
Court. No. 19
Sourav

WPA 5993 of 2010

Bikash Chandra Majumdar
Vs.
State of West Bengal & Ors.

Mr. Kamalesh Bhattacharjee
Mr. Md. Yusuf Ali

...for the petitioner.

Mr. K. M. Hossain

...for the State.

1. The subject matter of challenge in the instant writ petition is the order dated 24.02.2010 as passed by the respondent no. 3/authority being the D.I. of Schools (Secondary Education), Malda whereby and whereunder the writ petitioner was declined to grant higher scale of pay as prayed for by the writ petitioner.
2. In course of hearing, Mr. Bhattacharjee, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to the order under challenge dated 24.02.2010 as has been annexed at Page Nos. 85 to 88 of the instant writ petition. It is submitted by Mr. Bhattacharjee that from the said order under challenge, it would reveal that the writ petitioner was appointed as Assistant Teacher in the school of the respondent no. 5/authority with effect from 03.11.1997 with the educational qualification B.A. in Sanskrit.
3. It is submitted by Mr. Bhattacharjee that from the said order under challenge, it would reveal that undisputedly, the writ petitioner at the time of his

appointment has cleared his B.A. (Honours) Part-I examination which was equivalent to B.A. (Pass) examination at that material time. It is further submitted by Mr. Bhattacharjee that from the order under challenge, it would reveal further that since the writ petitioner failed to produce a provisional graduation certificate within 20.11.1997, his appointment was cancelled.

4. It is further submitted on behalf of the writ petitioner that subsequently after completion of B.A. (Honours) Part-II examination, the writ petitioner produced his graduation certificate with the respondents/authorities and in consequence thereof, the cancellation of his appointment was withdrawn and the writ petitioner was put in service soon thereafter with effect from the date of his initial appointment i.e., on and from 03.11.1997 as would be revealed from Page No. 52 of the instant writ petition. It is submitted further that during the period of interregnum i.e., in between 20.11.1997 to 25.04.2001, the writ petitioner had not only passed his B.A. (Honours) examination but also he had completed M.A. in Bengali from University of Burdwan through correspondence.
5. It is further submitted by Mr. Bhattacharjee that the Government of West Bengal by issuing a memo dated 26.04.1997 has accepted the recognition of degrees obtained through correspondence/distance mode conducted by Vidyasagar University or University of Burdwan. It is further submitted by Mr. Bhattacharjee

that after rejoining in service when the writ petitioner approached the respondent no. 3/authority with a prayer for grant of higher scale of pay that was turned down by the respondent no. 3/authority by passing the order under challenge.

6. It is further submitted by Mr. Bhattacharjee that while passing the order under challenge, the respondent no. 3/authority had failed to consider that the prayer of the writ petitioner ought to have been considered under the provisions of Scale of Pay of Teachers and Non-Teaching Staff (ROPA 1998) instead of West Bengal Schools Control of Expenditure Act 2005 and further, the respondent no. 3/authority has failed to visualize that the subjects Sanskrit and Bengali pertain to same group.
7. It is thus submitted by Mr. Bhattacharjee that the instant writ petition may be allowed in terms of the prayers made in the instant writ petition.
8. Per contra, Mr. Hossain, learned advocate appearing on behalf of the respondent/State at the very outset draws attention of this Court to paragraph no. 272 of the judgment as passed in WPA 9921 of 2007 (Utapal Kanti Karan vs. State of West Bengal & Ors.) as decided by a Special Bench of this Court on 07.02.2024. It is candidly submitted by Mr. Hossain that in view of the proposition of law as enunciated in the case of Utpal Kanti Karan (supra) there cannot be any iota of doubt that the respondent no. 3 while passing the reasoned order under challenge has wrongly applied the

provisions of West Bengal Schools (Control of Expenditure) Act, 2005.

9. It is further submitted by Mr. Hossain that since the respondent no. 3/authority in its reasoned order under challenge has dealt with the G.O. dated 27.11.2007 appropriate course of action would be to remand the matter before the DI for fresh consideration.
10. Such contention is, however, disputed by Mr. Bhattacharjee by placing memo no. 57(SE)(S) dated 27.01.1995. It is submitted by Mr. Bhattacharjee that G.O. of 2007 has got no manner of application since Sanskrit and Bengali pertain to same group.
11. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties it reveals that undisputedly the writ petitioner was appointed in the school of the respondent no. 5 on 03.11.1997, however, for some reason or other his said appointment was cancelled with effect from 25.11.1997.
12. Sufficient materials have been placed before this Court that by issuing a memo dated 25.04.2001 the said cancellation letter was withdrawn and he was reinstated in his service with effect from 03.11.1997.
13. It is further appears to this Court that since the writ petitioner has acquired higher qualification that is Masters in Bengali from Burdwan University during the period between 25.11.1997 and 25.04.2001 there was no occasion on the part of the writ petitioner to seek

approval from the respondent no. 2/authority since he was not in service.

14. In view of such, this Court has no hesitation to hold that the respondent no. 3/authority has failed to visualize that in the case of the writ petitioner obtaining prior permission from the respondent no. 3 is practically impossible.
15. As rightly argued by Mr. Bhattacharjee that since the writ petitioner was already recruited as Assistant Teacher with academic qualification in BA with Sanskrit and since he has enhanced his qualification in MA in Bengali and since Sanskrit and Bengali pertain to same subject group the respondent no. 3/authority ought not to have rejected the prayer of the writ petitioner for grant of higher scale of pay.
16. This Court thus while allowing the instant writ petition set aside the order dated 24.02.2010 as passed by the respondent no. 3/authority.
17. Consequently, the respondent no. 3/authority is hereby directed to grant higher scale of pay to the writ petitioner from the date of improvement of qualification by the writ petitioner that is from 23.12.2000.
18. In doing so the respondent no. 3 is further directed to take appropriate steps for issuance of revised pay slip in favour of the writ petitioner with effect from September, 2025 and revised scale of pay is to be disbursed from the said month and year that is September, 2025.

19. The arrears of pay shall have to be calculated by the respondent nos. 3 and 5/authorities conjointly positively by the last day of November, 2025 and the entire arrears of pay shall have to be disbursed to the writ petitioner without any interest in four equal installments out of which first installment is to paid by the last day of March, 2026, second installment is to paid by the last day of June, 2026, third installment is to paid by the last day of September, 2026 and the fourth and last installment is to paid by the last day of December, 2026.
20. The respondent no. 2/authority is hereby directed to ensure the availability of the fund for payment of the arrears of salary to the writ petitioner as indicated supra.
21. The time limit as fixed by this Court is mandatory and peremptory.
22. Liberty is given to the learned advocate-on-record for the writ petitioner to communicate the server copy of this order to the respondent no. 3/authority forthwith.
23. Respondent no. 3/authority is directed to act on the basis of the server copy of this order.
24. With the aforementioned observation, the instant writ petition being WPA 5993 of 2010 is disposed of.
25. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)