

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 1244 of 2025
+
IA No. CAN 2 of 2025

The State of West Bengal & Ors.
Versus
Ratna Saha & Ors.

For the Appellants : *Mr. Sanjib Das.*

*For the Writ Petitioner/
Respondent No.1* : *Mr. Saibal Acharyya,
Mr. Dwarika Nath Mukherjee.*

Hearing is concluded on : *4th December, 2025.*

Judgment On : **4th December, 2025**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by the State and its functionaries challenging an order dated 22.01.2025 passed by the learned single Judge in the writ petition being WPA 18602 of 2018. The facts of the case have been elaborately stated in paragraph 5 of the impugned order.

2. Mr. Das, learned advocate appearing for the appellants contends that though the writ petitioner, namely, Ratna Saha (hereinafter referred to

as Ratna) obtained the post graduate degree in Physical Education in the year 1999, she suppressed such qualification while applying for appointment to the post of Assistant Teacher and having been appointed in a graduate category, she is not entitled to post graduate scale of pay.

3. He submits that the impugned order was passed without taking into consideration the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005 (hereinafter referred to as the 2005 Act) which debars a teacher from claiming additional increment of higher scale of pay for acquiring any qualification other than the qualification specified for the post in which appointment was granted.

4. He further argues that even in the event Ratna is entitled to the post graduate scale of pay, such benefit has been erroneously directed to be granted from the date of the appointment of Ratna being oblivious of the fact that she never prayed for grant of such benefits for a long period of about 16 years. Though she was appointed in the year of 2001, she prayed for grant of post graduate scale of pay by submitting a representation on 28.12.2017 and the writ petition was preferred praying for issuance of necessary direction upon the appellants to consider the said representation. In view thereof, the benefits ought not have been granted from the date of appointment moreso when there is no explanation as regards the delay which had occurred.

5. He further submits that the recommendation letter issued by the West Bengal School Service Commission (hereinafter referred to as the Commission) would reveal that Ratna was appointed in a graduate category

post. Her post graduate qualification does not even stand reflected in the order of approval issued by the concerned District Inspector of Schools and as such Ratna could not have claimed post graduate scale of pay.

6. Mr. Acharyya, learned advocate appearing for the writ petitioner denies and disputes such contention and submits that the issue as regards grant of post graduate scale of pay to Physical Education teachers is no longer *res integra* and the said issue has been decided in the cases of *Baishali Banerjee Vs. State of West Bengal &ors* reported in (2008) 2 WPLR 720 as well as in the case of *Utpal Kanti Karan Vs. State of West Bengal &ors.*, reported in 2024 SCC OnLine Cal 1274.

7. He further submits that in the application form there was no space for disclosure of post graduate qualification while participating in the recruitment examination. In view thereof, it cannot be stated that she deliberately and/or consciously suppressed her post graduate qualification at the time of entering into service.

8. As regards the delay in seeking such post graduate scale of pay, as urged by Mr. Das, Mr. Acharyya submits that Ratna did make a prayer for grant of post graduate scale of pay before the school authorities as would be explicit from the memo dated 11.09.2007 by which the school authorities forwarded Ratna's claim to the Additional District Inspector of Schools.

A copy of the said memo has been brought on record by a supplementary affidavit in the present appeal.

9. In reply, Mr. Das submits that the veracity of the document dated 11.09.2007 is doubtful inasmuch as, upon an enquiry conducted by the concerned Additional District Inspector of Schools, it has been ascertained that no such document was found to be on record. In support of such contention, he has drawn our attention to a memo dated 17th October, 2025 annexed to the exception to the supplementary affidavit.

10. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

11. The argument advanced on behalf of the State respondents that Ratna had suppressed her post graduate qualification has been rightly discounted by the learned single Judge since while applying for the post there was no column in the application form towards disclosure of such qualification.

12. The issue as regards entitlement of post graduate scale of pay to teachers in the Physical Education and Work Education group has been considered in the judgment delivered in the case of *Baishali Banerjee (supra)*. Dealing with the judgments cited, the learned single Judge rightly observed that in Physical Education there is no such distinction between pass category and honours category and that as such Physical Education teachers with Masters degree in Physical Education would be entitled to post graduate scale of pay notwithstanding the fact that post graduate degree in Physical Education was not necessary for appointment as Assistant Teacher of Physical Education. The 2005 Act also cannot have any retrospective operation nor will stand as a bar in extending benefit of higher

scale of pay moreso when Ratna's claim was not considered contemporaneously. The circulars operating on the date of appointment of Ratna and the provisions of the ROPA Rules permitted grant of post graduate scale of pay. We do not find any infirmity in the reasoning of the learned single Judge.

13. Records would reveal that Ratna obtained the M.P.Ed degree in the year 1999. Her name was recommended by the Commission on 20th March, 2001 and she was appointed in the self-same year. On the date of such appointment, Ratna was entitled to the post graduate scale of pay and the grant of such benefit was not contingent upon an application to be made by the teacher. The provisions do not provide that such benefits can be granted only if a representation to that effect is submitted within a stipulated time. It is a benefit, which has been granted on the rudiments of a policy decision adopted by the State. The breach of such decision has persisted over a time and there had been a continuous default on the part of the appellants to grant the actual benefits to Ratna which gave rise to a recurring cause of action each time she was paid a salary which was not computed in accordance with the rules.

14. In the said conspectus, the learned single Judge had rightly directed the grant of the benefits from the date of appointment without any interest on arrears.

15. The order impugned does not suffer from any infirmity and as such we are not inclined to interfere with the same.

16. Accordingly, the appeal and the connected application are dismissed.

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

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

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)