

10.06.2025
Sl. No. 84
g.b.
Court No.551

W.P.A. 14018 of 2021

Moumita Bhattacharjee
-Vs-
The State of West Bengal & Ors.

Mr. Sakti Pada Jana
Mr. Subhajyoti Das
Mrs. Sudipta Pramanik
.....For the Petitioner
Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey
.....For the State

1. The petitioner is aggrieved by an order dated May 4, 2021 for rejection of her claim for post graduate scale of pay passed by the Additional District Inspector of Schools (Secondary Education), Uluberia Sub-Division, Howrah whereby the petitioner's claim for higher scale of pay (post graduate scale) has been declined.
2. It may be recorded that despite a direction for filing affidavit-in-opposition having been passed as far back as on November 10, 2021, no affidavit-in-opposition has been filed by the Respondents till date.
3. The petitioner was appointed as an assistant teacher in Siberhan High School (H.S.) on July, 2011. At the time when the petitioner was appointed, the petitioner was holding a degree of

B. A. (Hons.) in Education and the petitioner was already enrolled in a post graduate course being the course of Master of Arts in Education under the Rabindra Bharati University.

4. To be precise the petitioner's date of enrollment, as is evinced from the enrollment certificate of the petitioner is November 4, 2010. The petitioner completed her post graduate course in the year 2013, upon passing the examination therefor, which was held in the year 2012.

5. Having obtained such post graduate qualification the petitioner made a claim for higher scale of pay i.e. the post graduate scale of pay. The petitioner's request for such post graduate scale of pay was forwarded by the school authorities to the Additional District Inspector of Schools (Secondary Education), Uluberia Sub-Division, Howrah under the cover of the school authorities letter dated February 19, 2019.

6. Despite the request of the petitioner having been forwarded to the said Additional District Inspector of Schools (S. E.) when the same

remained unresponded, the petitioner approached this court by filing a writ petition being WPA 2745 of 2021 which was disposed of by an order dated 9th March, 2021 thereby directing the Additional District Inspector of Schools (Secondary Education), Uluberia Sub-Division, Howrah to dispose of the petitioner's request by a reasoned order within a period of eight weeks from the date of such order.

7. It was only thereafter that the Additional District Inspector of Schools considered the petitioner's claim and rejected the same by the impugned order dated May 4, 2021. The reason which weighed that the Additional District Inspector of Schools (S. E.) in rejecting the petitioner's claim is as follows:

"It appears that as per provision of Para 3 of order no. 593-SE (B) dated 27.11.2007, prior permission is required for claiming higher scale of pay and the petitioner, though have the scope to seek permission from the competent authority for continuing her studies. But she did not."

8. Mr. Jana, learned advocate appearing for the petitioner submits that the order impugned in the writ petition is not worth its salt on at least three counts. Firstly, he draws the attention of the court to an Hon'ble Division Bench judgement of this court rendered in the case of ***Md. Adeel Uz Zaman Vs. The State of West Bengal & Ors. (MAT 825 of 2020 with CAN 1 of 2021)*** where it has been held that if a candidate has already enrolled himself prior to his appointment and that he had already participated in Part I examination and successfully completed it, he is not required to obtain any prior permission to enroll himself for the purpose of appearing in the future examination for enhancement of his education qualification as contemplated in clause 3 of the Government Order dated 27th November, 2007.

9. Mr. Jana submits that the present writ petitioner is entitled to claim parity with the appellant in the aforesaid case of ***Md. Adeel Uz Zaman (supra)*** inasmuch as in the case at hand as well, the writ petitioner had enrolled herself in

the post graduate course prior to her being appointed in service.

10. Secondly, Mr. Jana further relies on the Hon'ble Full Bench judgement of this court in the case of ***Utpal Kanti Karan Vs. State of West Bengal reported at 2024 SCC Online 1274*** and submits that in any case seeking prior permission in terms of the clause 3 of the Government order dated November 27, 2007 can no more be made a pre-condition for the purpose of grant of post graduate scale of pay, in view of the aforesaid judgement. Paragraph 200(xviii) of the said judgement has been relied on for the said purpose by Mr. Jana.

11. Thirdly, Mr. Jana relies on a Co-ordinate Bench Judgement of this Court in the case of ***Chaitali Banerjee Vs. State of West Bengal reported at (2019) 2 CHN (Cal) 568*** wherein in somewhat similar circumstances benefit of higher scale of pay was directed to be extended to the petitioner in that case.

12. Mr. Dey, learned advocate appearing for the State respondents has little to submit in view of the authoritative pronouncements of the Hon'ble Division Bench and Full Bench of this Court, which have been indicated hereinabove.

13. 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 May 4, 2021 passed by the Additional District Inspector of Schools (S.E.), Uluberia Sub-Division, Howrah does not merit sustenance.

14. The Enrolment Certificate (at page 27 of the writ petition) of the petitioner read cumulatively with the Admit Card (at page 28 of the writ petition) and the Mark Sheet for M. A. Part-I examination (at page 29 of the writ petition) makes it clear that the petitioner had been enrolled in the Master's Degree course in Education on November 04, 2010 i.e. before she joined her service in this school.

15. The petitioner was appointed as Assistant Teacher in the school on July 20, 2011. The

petitioner had already been pursuing the Master's degree course in Education for more than eight months on the date she was appointed as an Assistant Teacher in the school.

16. A Co-ordinate Bench of this court, in the case of ***Chaitali Banerjee*** (supra) has held that in cases where a candidate has joined services after having enrolled in a Master's degree course no permission is required to be taken. In the said case while interpreting clause 1 of the said Notification dated November 27, 2007, the Coordinate Bench held that the expression "and" used in clause 1 is conjunctive meaning thereby that the act of enrollment would imbibe within it the act of participating in the examination as well. The said judgment has been considered by the Hon'ble Full Bench in the case of ***Utpal Kanti Karan (supra)*** and has not been adversely commented upon.

17. Further the Hon'ble Division Bench of this Court in the case of ***Md. Adeel Uz Zaman (supra)***, which has been approved by the Hon'ble

Full Bench in the case of **Utpal Kanti Karan** (*supra*) has held thus:

*“8. There cannot be any doubt that the appellant was appointed on 21st July, 2019 in Science and Maths Group against a sanctioned vacancy and at the relevant point of time he had only B.Sc. Honours degree in Chemistry. It was on the basis of such qualification he was appointed as a Science Teacher in Chemistry of the said college. This appointment letter shows that the authority concerned was aware of all facts that he was pursuing higher studies. In fact, the document disclosed clearly reveals that he had completed his part-I examination in M.Sc. and was pursuing his higher studies. It is in the backdrop of such fact that we need to consider the Government Order dated 27th November, 2007. Clause 1 of the said order is applicable when the teacher concerned is yet to enroll himself in the course and to appear in the examination for enhancement of education qualification. The very fact that he had already enrolled himself prior to his appointment and that he had already participated in the said examination and successfully completed M.Sc. part-I, in our considered opinion he is not required to obtain any prior permission to enroll himself for the purpose of appearing in the future examination for enhancement of his educational qualification as contemplated in clause 3 of the Government Order dated 27th November, 2007. In such view of the matter the decision cited by the Government Pleader passed by a learned Single Judge in Purna Chandra Misra (*supra*) has no manner of application.*

9. *Learned Government Pleader has also relied on two decisions of the Hon'ble Apex Court in the cases of U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd. reported in 1995 Supp (3) SCC 456, paragraph 6 and High Court of Judicature for Rajasthan v. P.P. Singh reported in (2003) 4 SCC 239, paragraph 40, in support of his argument that any claim for higher benefits cannot be allowed unless the prior permission is taken. In U.P. Avas Evam Vikas Parishad (supra), at paragraph 5 another judgment of the Apex Court in Life Insurance Corporation of India v. Escorts Ltd. : (1986) 1 SCC 264 was referred in which the distinction between approval and permission was considered, in the context of Section 29 (1) of the Life Insurance Corporation of India Act. It was observed that the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous act. In our respectful reading of the said two decisions it does not appear to us that there is any embargo under the statute or the relevant rule to grant any ex post facto permission if there is sufficient reasons otherwise to grant permission.*

10. *There cannot be any doubt that a person with higher qualification would be expected to have better knowledge in the subject and the students are likely to be benefited by reason of acquiring such higher qualification. The benefit of higher qualification is no doubt benefit of the teacher in terms of money but the students are the beneficiary of such acquired knowledge. The*

institution is as such benefited. It would be the endeavour of all schools to have academic excellence and it is the duty of the State to encourage academic excellence in all the institutions since the ultimate beneficiary would be the students. We feel that some guidelines should be in place to decide a case like the present one as absence of any such guidelines may lead to arbitrary rejection of a deserving candidate.

11. *We are not unmindful of the fact that the West Bengal Schools (Control and Expenditure) Act, 2005 was enacted to provide for the control of expenditure in the schools in West Bengal and unless the authorities are of the opinion that such expenditure towards payment of the higher salary of a teacher would be a futile exercise or would not be beneficial to the schools or the students, the authorities may decline payment of higher scale of pay. Higher scale of pay would encourage the teacher and would be a motivating factor which ought not to be ignored. The consideration for denying higher scale of pay could be that, already there are sufficient numbers of teachers having Honours/post-graduate degree on the same subject in the institution and, as such, payment of higher scale of pay would not be a burden on exchequer. In other words staff pattern may not justify any higher qualified teacher in a particular subject. In the present case appellant is in receipt of honours graduate of pay, staff pattern cannot be a bar for extending the benefit of post graduate scale of pay. We also observe that the relevant Rule does not prevent the authorities from giving an ex-post-facto approval if occasion so arises.*

18. The case of ***Md. Adeel Uz Zaman (supra)*** was one where the person concerned had got himself enrolled in the master's degree course and had completed Part- I thereof prior to appointment. The facts of the said case differ with this case to the extent that in this case at hand the petitioner had been enrolled and had been pursuing the course for more than eight months at the time of her appointment though the petitioner was yet to participate in the Part I examinations. However, such difference of fact would not make the ratio of the judgment in the case of ***Md. Adeel Uz Zaman (supra)*** inapplicable to the facts of the case, inasmuch as the said judgment too holds that "Clause 1 of the said order is applicable when the teacher concerned is yet to enroll himself in the course and to appear in the examination for enhancement of education qualification." Thus once enrolment is done prior to joining service the requirement of seeking prior permission ceases to exist.

19. This Court is conscious of the fact that the Additional District Inspector of Schools

(Secondary Education), Uluberia Sub-Division, Howrah has declined the petitioner's claim for higher scale of pay by relying on clause 3 of the Notification/Circular dated November 27, 2007. The same would not, in the opinion of this Court, make the case of the Additional District Inspector of School any better. This Court is of the view that since both clauses 1 and 3 speak of prior permission to be taken by the person intending to enhance his qualification while in service, the interpretation as regards the stage at which such permission is to be sought must also be the same notwithstanding the fact that the permission is to be sought from different authorities (i.e. clause 1 provides for prior permission to be taken from the Managing Committee, clause 3 thereof speaks of prior permission of the District Inspector of Schools).

20. This Court also finds substance in the submission of Mr. Jana that the Hon'ble Full Bench judgment in the case of Utpal Kanti Karan (*supra*) which has approved the Hon'ble Division Bench judgment in the case of ***Akhtar Hossain***

Chowdhury v. State of West Bengal & Ors. has, in fact knocked the bottom out of the said Circular dated November 27, 2007 by holding that the same cannot override the statute. In such connection, the following extract of the said Hon'ble Full Bench judgment in the case *Utpal Kanti Karn (supra)* may be noted,

xvii) “In **Akhtar Hossain Chowdhury v. State of West Bengal & Ors.**, reported in **2013 (2) CHN (Cal) 632** the argument of Mr. Moitra that paragraph 3 of the circular dated 27th November, 2007 cannot override the provisions of the West Bengal Schools (Control of Expenditure Act, 2005) was accepted as would be evident from paragraphs 15 to 18 of the said decision. The said paragraphs read:

“15. Mr. Moitra also submits that that Para 3 of the aforesaid circular dated 27th November, 2007 cannot override the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005.

16. Mr. Moitra invites our attention to Section 14(3) of the aforesaid Act, 2005 and submits that the appellant/petitioner is entitled to draw pay of post graduate upon acquiring post graduate degree. The said section 14(3) is set out hereunder:

“(3) Every teacher of a school shall, if appointed in the Honours Graduate or Postgraduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquitting Post-graduate degree, in the manner as may be specified by order.”

17. It is true that a circular cannot override the specific provisions of the Act. In the present case, the appellant/petitioner was admittedly appointed in the school as Honours

Graduates with B.Ed degree. As a matter of fact, at the time of joining the school qualification of the appellant was Honours Graduate in Mathematics and B.Ed. Subsequently the said appellant acquired post-graduate degree. Therefore, in terms of Section 14(3) of The West Bengal Act, XIV of 2005 appellant herein is entitled to draw pay of postgraduate teacher. Furthermore, Para 3 of the Office order dated 27th November, 2007 has not been specifically violated in the present case since the appellant also sought for prior permission from the concerned District Inspector of Schools for undergoing post graduate studies through the managing committee of the school and such permission was never denied by the said District Inspector of Schools.

18. Considering the aforesaid facts, we are of the opinion that the District Inspector of Schools should not have rejected the claim of the appellant/petitioner for higher scale of pay even after acquiring higher qualification i.e. M.Sc in Mathematics". (emphasis supplied)

We are in agreement with the said decision."

21. The Additional District Inspector of Schools has declined the petitioners request for higher scale of payment on the sole ground of non-compliance with clause 3 of the said circular dated November 27, 2007. At the time when the said order was passed, the judgment of the Hon'ble Single Bench in the case of Chaitali Banerjee (supra) as well as the Hon'ble Division Bench

judgment in the case of ***Md. Adeel Uz Zaman (supra)*** had already been passed. The said Additional District Inspector of Schools was therefore aware that the law governing the field required no prior permission to be sought by persons who had been enrolled in master's degree courses prior to their appointment and that in fit cases the District Inspector of Schools was required to grant ex post facto permission. The Additional District Inspector of Schools therefore could not have rejected the petitioner's claim on the ground of non-compliance with clause 3 of the circular dated November 27, 2007.

22. Since the State Respondents have not used any Affidavit in Opposition and the order impugned does not reveal any other ground justifying refusal to grant the higher scale of pay to the petitioner, it would be futile to remit the matter back to the District Inspector of Schools for considering grant of ex post facto permission in the instant case.

23. In such view of the matter the order dated May 4, 2021 passed by the Additional District Inspector of Schools (Secondary Education), Uluberia Sub-Division, Howrah is hereby set aside.

24. The respondent authorities are directed to take appropriate steps for the purpose of granting and making all admissible payments in terms of the petitioner's entitlement to post graduate scale of pay, to the petitioner in accordance with law.

25. With the aforesaid observation WPA 14018 of 2021 stands disposed of.

26. Urgent photostat certified copy of this order, if applied for, be supplied to the parties after completion of all necessary formalities.

(Om Narayan Rai, J.)