

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Om Narayan Rai

WPA 14042 of 2021

Gobinda Chakraborty

v.

The State of West Bengal & Ors.

For the petitioner : Mr. Ekramul Bari
MrImtiaj Uddin

For the Respondents : Mr. Manoj Malhotra
Mr. Suman Dey

Heard and Judgment on : 15-07-2025

Om Narayan Rai, J.:-

- 1.The petitioner assails a communication dated December 29, 2020 issued by the Deputy Director of Accounts, School Education Department by reason whereof the petitioner's retiral and pensionary benefits have been withheld. The said communication observes as follows:

"PG Scale allowed as per Order No.1595-SE(S) dt.16.12.2005 but this order is applicable for SSC recruited teacher only justify".
2. The petitioner had joined Anandanagar High School (HS) as an Assistant Teacher with effect from July 24, 1989 and the petitioner's

appointment to such post was duly approved by the relevant District Inspector of Schools (SE) by a memo dated December 16, 1989.

3. While in service, the petitioner was desirous of pursuing a master's degree course in mathematics and therefore the petitioner sought for permission of the School Authorities. The School Authorities forwarded the petitioner's request to the relevant District Inspector of Schools and the District Inspector of Schools by a Memo dated August 17, 2004 allowed the petitioner to pursue such master's degree course.
4. Upon such permission being granted, the petitioner enhanced his qualification and obtained a post graduate degree of (M.Sc (Maths)) upon emerging successful in the examination held therefor in the year 2006.
5. After having obtained master's degree as aforesaid, the petitioner applied for higher scale of pay before the appropriate authority. The petitioner's request was granted and the Additional District Inspector of Schools issued a Memo dated June 20, 2011 thereby sanctioning postgraduate scale of pay in favour of the petitioner with effect from January 1, 2007 in terms of GO No. 1595-SE(S) dated December 26, 2005. The petitioner enjoyed such enhanced scale of pay throughout his service career and ultimately retired from his services on August 31, 2020 upon attaining the age of superannuation.

6. It is the petitioner's case that the petitioner was allowed to opt for revision of pay under the different ROPA Rules that came into effect from time to time and the petitioner's pay was revised and re-fixed by the relevant District Inspector of Schools (SE) from time to time in terms of the option exercised by the petitioner for revision of his pay in terms of the ROPA Rules.
7. After retirement of the petitioner upon superannuation, as aforesaid, the pension papers of the petitioner were submitted to the relevant District Inspector of School by the School Authorities. Upon receipt of such papers, the Deputy Director of Accounts raised an issue as regards irregularity in the grant of higher scale of pay to the petitioner on December 29, 2020. The observation made by the Deputy Director of Accounts is as follows:-

		NO
9	<i>Last pay shown in Part D (Pay certificate) tallies with the last pay recorded in the Part E (Pay Statement)</i>	<i>P.G. scale allowed as per order no 1595 SE(S) Dt. 16.12.2005 but this order is applicable for SSC recruited teachers only justify</i>

8. In view of the aforesaid objection, that was raised by the Deputy Director of Accounts, School Education Department, the petitioner's pension and other retiral benefits have been withheld. The petitioner has also been asked to refund the amount that had been paid upon the petitioner being granted higher scale of pay pursuant to the petitioner's having obtained Master's Degree in Science Maths as

aforesaid. Feeling aggrieved, the petitioner has approached this Court by way of the instant writ petition.

9. Mr. Bari, learned advocate appearing for the petitioner invited the attention of this Court to a Memorandum bearing No.25-SE(B)IM-102/98 dated February 12, 1999 (hereafter ROPA 1998) and placed Rule 12(3) thereof. Relying on the said provision, Mr. Bari submitted that in terms of the aforesaid Rule, the petitioner was entitled to a higher scale of pay upon the petitioner having obtained master's degree relevant to the subject, which he was teaching in the relevant school.
10. Mr. Bari also submitted that, in any case, even it is assumed that the petitioner was wrongly accorded higher scale of pay, then also, payments made to him could not be subsequently recovered from him by the respondent State Authorities, that too after his retirement. He relied on a judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih***¹.
11. Mr. Dey, learned advocate appearing for the State respondents invited the attention of this Court to the Order No.1595-SE(S) dated December 26, 2005 and submitted that a perusal of the said Memorandum would itself make it evident that in terms of the said Memorandum only such persons could be granted higher scale of pay, who had been appointed by the West Bengal School Service Commission.

¹ (2015) 9 SCC 334

12. It is further submitted that it will be apparent from the letter dated June 20, 2011 issued by the Additional District Inspector of Schools, Ranaghat Sub-division, Nadia that the petitioner had been granted higher scale of pay in terms of the said GO dated December 26, 2005. It is then submitted that when the said GO itself was not applicable to the petitioner, the petitioner could not have been granted the enhanced scale of pay.
13. Heard the learned advocates appearing for the respective parties and considered the material on record.
14. The issue as regards the law which would be applicable to a teacher, who claims higher scale of pay upon having enhanced his/her qualification has been recently settled by the Hon'ble Full Bench of this Court in the case of **Utpal Kanti Karan v. State of West Bengal & Ors**². In said judgment the Hon'ble Full Bench has held that enhancement of pay on acquisition of higher qualification during the service career is dependent upon the relevant rules operating at the time of acquisition of higher qualification and cannot be claimed as a matter of right, in absence of Rules.
15. It is evident that at the time when the petitioner had acquired higher qualification (M.Sc. in Maths) the petitioner's pay scale was governed by Rule 12(3) of ROPA 1998. The said Rule reads as follows: -

“(3) All teaching including Physical Education Teachers and Librarians of Secondary Schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall

² 2024 SCC OnLine Cal 1274

get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualifications, whichever is later.”

16. A perusal of the aforesaid Rules makes it clear that a teacher, who had improved or would improve his/her qualification in the subjects or groups relevant to his/her teaching/appointment would be entitled to get higher scale of pay appropriate to his/her qualification with effect from 1st January, 1996 or the date of improving the qualifications, whichever is later.
17. When the petitioner was appointed and the petitioner's appointment was approved by the District Inspector of Schools (i.e. July 24, 1998) the School Service Commission Act, 1997 had not come into effect. That being so, the petitioner's services would not be governed by the aforesaid GO dated December 26, 2005. To that effect the decision of the Deputy Director of Accounts is correct but that cannot be a reason to deny the petitioner, the benefit of higher scale of pay, since the petitioner is otherwise is entitled to pay in terms of ROPA 1998. The petitioner's services would be governed by Rule 12(3) of the ROPA 1998 since at the time the petitioner was appointed the same were in force and his pay had been revised in terms thereof. It is nobody's case that the subject in which the petitioner acquired the higher qualification was not relevant to the subject that the petitioner taught.
18. It is settled law that if there are two sources of power and the same has been exercised by mentioning one source (i.e. a provision of law in an Act, Rule, Regulation or Notification) which is found to be inapplicable

then even if it is found that the power could not have been exercised under the said provision that has been mentioned, exercise of such power will *ipso facto* not be invalidated if such exercise can be supported by the other source thereof (i.e. the other provision of law in an Act, Rule, Regulation or Notification). (See: **High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat**³)

19. In view of the fact that grant of higher scale of pay can be said to have been rightly done in terms of ROPA 1998 and can be supported by Rule 12(3) of the ROPA Rules, invocation of the provisions of GO dated December 20, 2005 by the Additional District Inspector of Schools would not make any difference and the grant itself cannot be said to be illegal on that score.

20. Even otherwise, in view of the judgment of the Hon'ble Supreme Court reported in **Rafiq Masih** (supra), such recovery from the petitioner is unsustainable. Paragraph 18 of the said judgment may be noted in the said context:

18. *It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid*

³ (2003) 4 SCC 712

accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

21. If, even otherwise, recovery could not have been made in view of the law laid down by the Hon'ble Supreme Court as aforesaid, the question of withholding of pensionary and other retiral benefits of the petitioner does not arise.
22. In such view of the matter, the communication dated December 29, 2020 made by the Deputy Director of Accounts, School Education Department (Annexure P/4 at page 24 of the writ petition) is set aside.
23. The respondent nos.3, 4 and 8 are directed to take steps to release the pensionary and other retiral benefits to the petitioner in terms of the petitioner's entitlement within a period of four weeks from the date of communication of this order. It is clarified that the petitioner's pay scale would not be tinkered with on the ground that the petitioner is not entitled to postgraduate scale of pay, in view of the provisions of Rule 12(3) of ROPA 1998.
24. The petitioner has also prayed for interest at the rate of 18% per annum on the arrears of pension and other retiral benefits. The respondent authorities shall consider such request of the petitioner for grant of appropriate interest and shall grant such interest to the petitioner as authorities may consider fit and proper inasmuch as the petitioner's pension and other retiral benefits have, thus, far been withheld for the

wrong decision of the authorities themselves and not for any fault of the petitioner.

25. With the above observations, WPA 14042 of 2021 stands disposed of.

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

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

(Om Narayan Rai, J.)

S.R. (ARC)