

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 12690 of 2018

***Biswajit Mazumdar
Vs.
The State of West Bengal & Ors.***

For the Petitioner : Mr. Subhajyoti Das
: Ms. Sudipta Pramanik

For the State : Mr. Pinaki Dhole

Heard on : 08/05/2025

Judgment on : 08/05/2025

Rai Chattopadhyay, J. :-

- (1). Like in innumerable other matters, in the present writ petition the Court finds that prayer of the writ petitioner for grant of higher pay scale, pursuant to his enhanced qualification, has been rejected by the respondent, by citing the reason of non-compliance with the provision under clause 3 of the G.O.No. 593-SE(B) dated November 27, 2007.
- (2). Facts remains that the petitioner after having entered into the service with effect from September 26, 2008, as an

Assistant Teacher, in B.Sc Honours category in the subject Physics and with his desire to enhance qualification, has sought permission before the school managing committee to pursue Master Degree in Physics through distance mode. Vide its resolution dated September 7, 2009, the managing committee of the school has approved his prayer as above and sent its recommendation to that effect with all necessary papers, to the office of the Additional District Inspector of Schools (Secondary Education) Bashirhat, 24 Parghanas (North), vide its letter dated October 31, 2014. Study leave was granted to the petitioner by the West Bengal Board of Secondary Education vide letter dated February 5, 2015.

- (3). This is, however, post-facto sanction of study leave by the Board since the petitioner has appeared in M.Sc examination much prior to that. He has appeared for Part-I examination from July 20, 2010 to July 24, 2010 and for Part-II from September 19, 2011 to September 24, 2011. Therefore the last date of the petitioner's examination has been September 24, 2011. His final mark-sheet is dated December 17, 2011 and his certificate is dated July 7, 2012.
- (4). Next comes his prayer before the school managing committee for grant of higher scale of pay to him, in consequence of his higher qualification of Post-graduate Degree in Physics. Vide letter dated June 29, 2015, the head of the institution sends recommendation for that and prayer to that effect, to the Additional District Inspector of Schools.

- (5). Vide letter dated December 22, 2015 the Additional District Inspector of Schools (Secondary Education) Bashirhat, 24 Parghanas (North) has written to the Commissioner of Schools Education that as the school authority did not seek permission regarding higher study in favour of the petitioner, no permission was accorded from the end of Additional District Inspector of Schools (Secondary Education) Bashirhat, 24 Parghanas (North), in terms of G.O.No. 593-SE(B) dated November 27, 2007. That, in the meantime the petitioner was qualified with the M.Sc Degree and the school authority has prayed for higher scale of pay for him. With these averments and necessary documents, approval of the Commissioner has been sought for.
- (6). The petitioner's prayer as above was again referred by the Deputy Director of School Education (G.A) to the Additional District Inspector of Schools (Secondary Education) Bashirhat, 24 Parghanas (North) to complete the circle of travel of the petitioner's prayer as above, at the very first office from where it had started its prolonged but unsuccessful treks. The Deputy Director of School Education (G.A) writes to the recipient to dispose of the matter in terms of clause 3 of the G.O.No 593-SE(B) dated November 27, 2007.
- (7). Finally the decision comes in the form of the order of the Additional District Inspector of Schools (Secondary Education) Bashirhat, 24 Parghanas (North), dated July 5, 2018, rejecting the petitioner's prayer as above. The reasons shown may be summarised below: (i) the petitioner did not seek prior permission for higher studies from the concerned

District Inspector of School (Secondary Education) through the managing committee to claim higher scale of pay; and (ii) clause 3 of the G.O.No 593-SE(B) dated November 27, 2007 has not been complied with by him by not following the process as above;

- (8). The procedure prescribed under the said notification is that, in order to be eligible for grant of higher pay scale, upon obtaining a higher degree, the teacher has to seek prior permission before being enrolled for such post graduate course [as per clause 3 of G.O.No 593-SE(B) dated November 27, 2007]. The word '*seek*' assumes ample importance. Dictionary meaning of the same is '*ask for something from someone*' or '*attempt or desire to obtain or achieve*'. To seek, is to ask for or make attempt to obtain.
- (9). Therefore, necessary formalities for compliance with the said provision of the notification would be completed, the moment the applicant seeks, that is, asks for or makes attempt to get, prior permission. As per the said notification the applicant teacher has to seek prior permission from the District Inspector of Schools (Secondary Education), through the managing committee of the school and not in any other manner. Therefore, according to the said notification, there are stages only upon compliance of which an applicant's prayer as above, would reach to the desk of the District Inspector of Schools (Secondary Education). First is that an application has to be made before the managing committee of the school, seeking permission. Thereafter, the managing committee of the school would or would not approve the prayer of the said incumbent. In case it approves, it would

forward the same for permission/approval of the District Inspector of Schools (Secondary Education), who in turn, would either approve or disapprove the same. However silence or inaction either on the part of the school managing committee or the District Inspector of Schools (Secondary Education), to perform in terms of the said notification is not to be ladened with the incumbent, who has otherwise discharged his duty under the clauses as enumerated in the said notification, by seeking permission to the school authority. The notification has not provided for seeking permission by the applicant/teacher, directly from the District Inspector of Schools (Secondary Education). The managing committee of the school is the only competent and proper channel through which the applicant/teacher can seek prior permission before the District Inspector of Schools (Secondary Education).

- (10). Admittedly, in this case, the petitioner has submitted his application seeking prior permission before the managing committee of the school and the same has been approved by the managing committee in its resolution dated September 7, 2009. In view of the provision under clause 3 the G.O.No. 593-SE(B) dated November 27, 2007, the petitioner's liability is discharged, the moment he seeks for prior permission before the school authority. The word 'seek' appearing in clause 3 of the said notification would not require receipt of any formal order of grant of prior permission to the petitioner. The petitioner should be considered to have duly satisfied the conditions prescribed in clause 3 of G.O.No. 593-SE(B) dated November 27, 2007, the moment he seeks for prior permission. Seeking prior permission by the

petitioner would be sufficient as per clause 3 of G.O.No. 593-SE(B) dated November 27, 2007, for him to be eligible for grant of the scale of pay meant for the post graduate teacher, in the event the petitioner qualifies with a higher Degree. It is reiterated that as per provision of the said notification, as also stated, similarly, in the impugned order dated July 5, 2018, the petitioner would not be required to seek prior permission of the District Inspector of Schools (Secondary Education) directly, but only through the managing committee of the school, as per the said notification.

- (11). Furthermore, the Hon'ble Larger Bench of this Court has held in the case of ***Utpal Kanti Karan Vs. State of West Bengal*** reported in ***2024 SCC OnLine Cal 1274*** that the said notification would not have any statutory force. That, in an appropriate case, the petitioner would be covered under the substantive law as enumerated in the West Bengal Schools (Control of Expenditure) Act, 2005.
- (12). On the discussions as made above, the grounds laid down by the Additional District Inspector of Schools (Secondary Education), Bashirhat, 24 Parghanas (North) in his order dated July 5, 2018, appear to be baseless and de-hors the notification, which it has relied on. Instead, it is found that in terms of the said notification, the petitioner would be eligible for grant of higher pay scale, having duly complied with the provisions as enumerated there in. Hence, the instant writ petition should be allowed by setting aside the said impugned order dated July 5, 2018.

(13). It is directed that:

- (i) WPA 12690 of 2018 is allowed;
- (ii) the impugned order dated July 5, 2018 by the respondent/ Additional District Inspector of Schools (Secondary Education), Bashirhat, 24 Parghanas (North) is set aside;
- (iii) the petitioner shall be eligible for grant of higher pay scale, pursuant to his being qualified with the M.Sc Degree and with effect from the following day of last date of his examination as stated above;
- (iv) the District Inspector of Schools (Secondary Education), Bashirhat, 24 Parghanas (North) shall immediately take steps for refixation of salary of the petitioner accordingly, maximum within a period of 3 weeks from the date of communication of this order;
- (v) arrear salary shall be paid to the petitioner within 2 months from the date of communication of this order;

(14) Since no affidavit-in-opposition has been called for in the case, the allegations in the writ petition are deemed to have denied by the respondents.

(15) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)