

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 11485 (W) of 2015

Ambika Charan Majhi

Versus

The State of West Bengal and Others

For the Petitioner : Mr. T. P. Halder, Adv.

For the State : Mr. Supriyo Chattopadhyay, Adv.
Ms. Iti Dutta, Adv.

Heard on : 13.01.2025

Judgment on : 28.02.2025

Ajay Kumar Gupta, J:

1. The writ petitioner herein has prayed for a direction upon the respondent authorities particularly, respondent No. 4 for allowing Higher Scale of pay to the Petitioner on acquiring higher qualification of Honours degree from his initial appointment dated 7th October, 1988 and allow him cash benefit for the period 7th October, 1993 to 1st May, 2002 and also consequential relief thereof.

2. The background facts, which led to filing of this writ petition, may be adumbrated as under: -

3. The Petitioner was appointed as Assistant Teacher of a High School in the district of Purba Medinipur, i.e. Pichhabani Baniniketan High School in Social Science group. The Petitioner also holds an honours graduate degree in B.Com. (Hons), B.A. (Special) History and Bengali with B.Ed. Degree as such he prayed for higher scale of pay, which was duly submitted by the School Authorities after adoption of the resolution and forwarded the relevant document to the concerned District Inspector of Schools (SE) being Respondent No. 4 for taking decision on the entitlement of the Petitioner for higher scale of pay.

4. The Respondent No. 4 had not done anything pursuant to the recommendation made by the School Authorities; the Petitioner

herein had moved a Writ Petition in the year 2005 before this Court being WP No. 12312 (W) of 2005.

5. After hearing, a Single Bench of the this Court vide order dated 06th September, 2005, *inter alia*, directed the Respondent No. 3, District Inspector of Schools, of the said writ petition to consider the claim of the petitioner for grant of higher scale of pay on acquiring higher qualification of Honours degree in the relevant teaching subject without any further delay but positively within a period of four weeks from the date of communication of the order after giving the petitioner an opportunity of being heard and also taking note of the relevant rules and regulations as are applicable.

6. The respondent authority, however, in spite of notice to the petitioner on twice occasions, did not comply with the order of this Court passed in aforesaid writ petition.

7. That being the position of inaction or non-action on the part of the respondent authority, the writ petitioner filed another Writ Petition in the year 2009 being W.P. No. 23459 (W) of 2009.

8. After hearing the parties, the Single Bench of this Court further directed vide order dated 08.02.2013, *inter alia*, as follows:

“I again direct the respondent no. 3 herein, i.e. the District inspector of Schools (SE), Purba Medinipur to consider the claim of the petitioner for grant of higher scale of pay positively within a period of four weeks from the

date of the communication of the order after giving the petitioner as well as the school authorities an opportunity of being heard and to intimate his decision to the petitioner as well as the school authorities within a week thereafter. The time frame fixed by this order must be regarded as peremptory.

The District Inspector of Schools (SE), Purba Medinipur will also permit the petitioner to cite earlier decisions of this Court passed under similar circumstances at the hearing. Needless to say, that while passing this direction for consideration of the claim of the petitioner, the Court has not expressed any opinion about the eligibility of the petitioner or his entitlement to the claim he makes. That is left to be decided by the respondent no. 3 in accordance with the rules and regulations governing the field.”

9. In pursuant to the said order dated 08.02.2013, D.I. of Schools (SE), Purba Medinipur after hearing the Petitioner, passed a final order on 08.07.2013 as, *inter alia*, follows:

“In pursuance of the Order No. 372 Edn(B) dated 31.07.81 in No.- 2(B), Order No. 400 Edn(B) dated 10.09.1991 and Order No. 796 (S) dated 22.11.93 the petitioner is allowed notional benefit from 07.10.93 to 01.05.2002 and Cash Benefit from 01.05.2002 to upto date.”

10. As per G.O. No. 57 SE(S), dated 27.01.95 the petitioner is eligible for getting Hons. Scale from his initial appointment dated 07.10.88. As per G. O. No. 373(B) Annexure 2(b) (ROPA) 1981), G.O. No. 400 Edn(B) dated 10.09.91 and G.O. No. 796 Edn (S) dated 22.11.93, the petitioner is eligible for getting the Hons. Scale after 5 years from his date of appointment i.e., 07.10.93. As per G.O. No. 33 Edn(B) Clause 16(3), dated 07.03.90, G.O. No. 155 SE(B) dated 15.07.99 the petitioner is eligible for getting Hons. Scale according to his higher qualification/teaching not subject according to the post. So, a question arises from the Order of the D.I. dated 08.07.2013 that why the petitioner is not eligible for getting cash benefit for the period 07.10.93 to 01.05.02 instead of notional benefit.

11. Therefore, feeling aggrieved with the order of D.I. of Schools (SE), the Writ Petitioner has filed this Writ Petition challenging the final order dated 08.07.2013 passed by D.I. of Schools (SE), Purba Medinipur and same is third round of litigation. Hence, the present writ petition.

12. Affidavit-in-opposition and reply have been called for, subsequently, filed accordingly and same was exchanged by and between the parties. The matter has been heard in presence of both parties.

13. It was submitted by the learned advocate appearing on behalf of the petitioner that in terms of General Order in ROPA 1981 G.O. No.372 (B) N.B. Annexure-1-2(b) it is stated that:

“(a) All existing Secondary School teachers who have improved their qualifications relevant to their teaching subjects will get the higher scale on qualification basis without any restriction.

(b) All existing Secondary School teachers who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on qualification basis after five year’s teaching counting from the date on which higher qualifications was obtained.

(c) In future Secondary School teachers will be allowed higher pay scale on qualifications basis only when they obtain such higher qualification in the subject relevant to their teaching/appointment.”

14. It was further submitted that the present petitioner has taken extra 6 classes per week in Additional Book Keeping, History, Bengali for the interest of the school apart from his own subject and also for the academic need of the school subject to the approval of Managing Committee of the school vide Resolution No. 03 dated 25.04.94 with submission to D.I. Memo No. 15 dated 18.01.1996 and Resolution No. 10 dated 13.05.1998 with submission to D.I. Memo

No. 32 dated 22.07.1998. Moreover, he has taken more than 6 classes per week in Class XI, XII Commerce Section was approved by Managing Committee Resolution No. 16 dated 04.02.2008 forwarded by Head Master and was submitted to D.I. (SE), Purba Medinipur with Memo No. NIL dated 24.03.2008. The attached staff pattern by the concerned authority and class routine from 07.10.88 upto date is approved by school authority in terms of G.O. 400 Edn (B) dt. 10.09.1991 with higher qualification relevant to teaching subjects will get higher scale from the date of improving qualification. Similar situated case, Mr. Pannalal Mahato got higher scale of pay as such the present petitioner is also eligible for Hons. Scale from the date of appointment i.e. 07.10.88.

15. The present petitioner applied to D.I. (SE), Purba Medinipur on 23.05.08 with M.C. resolutions and referential case of Pannalal Mahato Vs. State and DI's Memo No. of Chakradhar Mahato but the petitioner had not yet got Hons. Scale as per rule in the eye of law. Though, he is eligible for the Hons. Scale of pay.

16. The petitioner further averted that while the petitioner joined as Assistant Teacher on 7th October, 1988 in the said school his appointment was approved by the District Inspector of Schools (SE) on 15th December, 1988. The school was upgraded from X Class High School to XII Higher Secondary School on 8th March, 2002 with

Commerce Stream. While the said school was upgraded, there was no teacher for teaching in Commerce Stream. The said school took resolution and recommended the petitioner to take classes for teaching Commerce Stream in the School. However, he was granted Higher Scale of Pay in a very casual manner with effect from 7th October, 1993 (Notionally) and cash benefit with effect from 1st May, 2002.

17. Petitioner filed supplementary affidavit contending therein that initially he was appointed as an Assistant Teacher in Social Science group having educational qualification B.Com (Hons.) in Accountancy with B.Ed. Degree and, accordingly, the School Authority submitted documents at the time of approval of appointment of the petitioner on 2nd December, 1988 under Ref No. 30(88) showing educational qualification of the petitioner B.Com (Hons.) in Accountancy with B.Ed. Degree and the same was duly received by the office of the District Inspector of Schools (S.E.), Midnapore on 3rd December, 1988.

18. The petitioner averted that in spite of submission of documents showing educational qualification of the petitioner B.Com (Hons.) in Accountancy with B.Ed. Degree, the District Inspector of Schools (S.E.), Midnapore approved appointment of the petitioner

through G.O. No. 4067-S dated 6th October, 1988 (Annexure "P-2") showing his educational qualification B.Com with B.Ed. Degree and, thereafter, released salary of the petitioner treating him as a "Pass Graduate Teacher".

19. The petitioner further states that after his joining to the post of an Assistant Teacher in Social Science Group having educational qualification B. Com (Hons.) in Accountancy with B.Ed. Degree, he approached the School Authority for granting higher scale of pay on 20th November, 1989 on the ground that the petitioner was taking more than 6 additional Book Keeping classes in Class IX and X beyond his normal classes in Geography subject.

20. The petitioner also passed Special B. A. both in Bengali and History and, as such, he was taking classes in Bengali and History also. On the basis of prayer submitted by the petitioner, the School Authority approached the District Inspector of Schools (S.E.), Midnapore on 28 November, 1989 through a letter under reference no. 34(89) by annexing class routine of 1988-89 and 1989-90 and the same was duly received by the office of the District Inspector of Schools (S.E.), Midnapore on 30th November, 1989. It will also be evident from the Service Book of the petitioner that he possessed

educational qualifications B. Com (Hons) in Accountancy with B.Ed. plus Spl. BA in English and History.

21. The petitioner further averred that as no steps were taken by the District Inspector of Schools (S.E.), Midnapore in relation to grant of higher scale of pay in favour of the petitioner as he possesses B.Com (Hons) Degree in Accountancy, a reminder was given by the School Authority on 15th September, 1992 under Ref. No. 25(92) and the same was duly received by the office of the District Inspector of Schools (S.E.), Midnapore on 16th September, 1992 but no positive result. Finally, in pursuance to this Court's order, the D.I. of Schools allowed notional benefit from 07.10.93 to 01.05.2002 and Cash Benefit from 01.05.2002 to up to date though it is contrary to Government orders.

22. In reply, the Learned Counsel appearing on behalf of the Respondent authorities opposes the prayer of the Petitioner and further submitted that the petitioner was appointed as Assistant Teacher in a X Class High school in social Science Group in pass category though the Petitioner herein possesses qualification of B.Com. (Hons.) degree. No subject in commerce stream studying in normal section as it was up to Class High school having Economic, Geography as the Pass Subject the petitioner was appointed as

Geography teacher in the school on 07.10.88 and automatically his appointment was approved as Pass Graduate teacher and used to draw salary in Pass Graduate Scale since his joining in the said school and without any objection he has accepted the salary of Pass Graduate teacher and waived his right to pray for higher scale of pay.

23. The said School, in question, was upgraded to Higher Secondary School with Commerce Stream in the session 2002-2003 and the petitioner was allowed by the school authority to take classes in commerce subject in the Higher Secondary Section since the upgradation. Therefore, in terms of G.O. No. 865(SE) dated 06.12.1994, G.O. No. 57- SE dated 27.01.1995 and G.O. No. 155(SE) dated 13.07.1999, the petitioner is entitled to get Hons. Graduate Scale of Pay with effect from 01.05.2002 as per the upgradation made for the session 2002-03.

24. It was further submitted by the learned counsel appearing on behalf of the State that the prayer for entitlement of Honours Graduate Scale of Pay since his joining with effect from 07.10.88 is not maintainable at all.

25. The petitioner was appointed as an Assistant Teacher in Social Science Group but he has no Honours Degree in the Subject taught in social science Group as he has a qualification as Graduate

of B. Com (Hons.) and having Economic Geography as Pass subject, he was appointed in the social science group as a teacher in geography. Accordingly, in his approval of appointment qualification has been noted as B.Com. B.Ed. The petitioner never raised any objection to such appointment and has been drawing Pass Graduate scale of pay since joining.

26. It was further submitted that as the petitioner does not possess any Hons. Degree in any subject of social science group. He was not entitled to Hons. Scale since joining. As a result, the petitioner was appointed as Assistant Teacher in Social Science Group as a teacher in Geography with equivalent of B.Com. B.Ed. on 07.10.1988 and his appointment was duly approved by the respondent no. 4 vide office Memo dated 15.12.1988 and, accordingly, he used to draw pass graduate scale of pay since his date of joining.

27. Petitioner never challenged the said order of the District Inspector of Schools (SE) dated 15.12.1988 or at the time of fixation of pay under ROPA Rules 1990 or 1998 waived his right to claim benefit from the date of approval as pass graduate teacher as it was known to him that he was working in Social Science Group.

28. In pursuant to the order dated 08.02.2013 passed by this Hon'ble High Court, the respondent no. 4 has passed reasoned order allowing rightly the cash benefit of Hons. Graduate Scale of Pay on and from 01.05.2002 because the petitioner has possessed Honours degree in commerce Subject which has begun to teach since the upgradation of X-Class High School to XII-Class Higher Secondary School with Commerce Stream with effect from 01.05.2002. Therefore, upon resolution and recommendation of School Authority since there was no teacher for teaching in Commerce Stream, the petitioner is entitled to get Hons. Graduate scale of pay with effect from 01.05.2002 with the upgradation to class-XII Higher Secondary school with commerce Stream as the petitioner has qualification B.Com. (Hons). He is never entitled to get Honours Graduate Scale of Pay since his joining with effect from 07.10.1988.

29. Considering the submissions of both sides and on perusal of the record, it appears in ROPA'81, Order No. 372-Edn(B) dated 31.07.1981 in N.B. under Annexure-1- 2(b) stated that the existing teacher improving his qualification in a subject which is not relevant to their teaching subject will be allowed higher scale on qualification basis after 5 years teaching counting from the date on which higher qualification was obtained.

30. It is not disputed that the Petitioner was initially appointed as an Assistant Teacher of a High School in the district of Purba Medinipur, i.e. Pichhabani Baniniketan High School in Social Science group. The Petitioner also holds an honours graduate degree in B.Com. (Hons), B.A. (Special) History and Bengali with B.Ed. Degree as such he prayed for higher scale of pay, which was duly submitted by the School Authorities after adoption of the resolution and forwarded the relevant documents to the concerned District Inspector of Schools (SE) being Respondent No. 4 for taking decision on the entitlement of the Petitioner for higher scale of pay.

31. It is not that he has not raised objection for not granting higher pay scale for higher qualification. From very beginning, his school authority recommended his case for higher scale of pay on the basis of resolution as well as Government orders to the D.I. of Schools but same was not considered in due course as such petitioner filed earlier two writ petitions with a prayer for granting him higher scale of pay but same was not considered in spite of directions of this Court.

32. In pursuant to the Notification No. 400-Edn(B) dated 10.09.1991 a amendment was made in the Order No. 372-Edn(B) Dt. 31.7.1981 wherein it is stipulated that all the existing secondary

school teachers who were appointed with higher qualification in subjects not relevant to their teaching or who improved their qualification subsequent to their appointment in subjects not relevant to their teaching or who improved their qualification subsequent to their appointment in subject not relevant to their teaching will be allowed higher scale on qualification basis w.e.f. 01.04.1981 or after 5 years teaching counting from the date on which higher qualification was obtained whichever is later.

33. The point, therefore, arises for consideration as to whether a teacher appointed to the post sanctioned for the pass graduate could be allowed to higher scale of pay for his higher qualification, who have improved or will improve their qualification in the subject or group not relevant to their teaching on qualification basis w.e.f. 01.04.1981 or after 5 years teaching counting from the date on which higher qualification was obtained.

34. The writ petitioner had improved his higher qualification prior to his appointment. His appointment was as an Assistant Teacher in social science group. The said appointment was initially provisional and same was duly approved by the District Inspector of Schools vide Memo No. 4067-S dated 06.10.1988. The Petitioner made a representation to the School Authority, who in turn took resolution

and recommended his case for higher scale of pay to the D.I. of Schools indicating therein that the Petitioner has completed his teaching for 5 years on 07.10.1993 with satisfaction. Accordingly, his case was resolved unanimously that his application will be sent to the D.I. of Schools, Midnapore to enable him to get Honours Scale but D.I. of Schools sat tight over the matter though the Government order was very clear that all existing Secondary School teachers who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on qualification basis after five years' teaching counting from the date on which higher qualifications was obtained. Petitioner had obtained or improved his qualifications prior to his appointment and it is not disputed by the respondents. So, his case automatically falls under ROPA' 81, Order No. 372-Edn(B) dated 31.07.1981 in N.B. under Annexure-1- 2(b) and subsequent amendment thereof.

35. Subsequently, the Government of West Bengal, Education Department amended the Order No. 372-Edn(B) dated 31.07.1981 in N.B. under Annexure-1- 2(b) vide G.O. No. 400 Edn(B) dated 10.09.91 and G.O. No. 796 Edn (S) dated 22.11.93, the petitioner is eligible for getting the Hons. Scale after 5 years from his date of appointment i.e., 07.10.93.

36. Amended provision of G.O. No. 400 Edn(B) dated 10.09.91 reads as follows:

“(b) All existing Secondary School Teachers who were appointed with higher qualifications in subjects not relevant to their teaching or who improved their qualifications subsequent to their appointment in subjects not relevant to their teaching will be allowed the higher scale on qualification basis with effect from the 1st April, 1981 or after five years' teaching counting from the date on which higher qualification was obtained whichever is later.”

37. Later, the Government of West Bengal, Education Department issued G.O. No. 796 Edn (S) dated 22nd November, 1993 the same is enumerated herein below: -

The undersigned is directed to say that it has come to the notice of this Department that higher scale of pay is not being granted to some teachers of Secondary Schools despite their having higher qualifications of post-graduate degree or the equivalent in the relevant subjects. This is, presumably, due to lack of suitable provisions for teachers with higher qualifications in Social Science Group and for adequate number of teachers with higher qualifications in Language Group and Science

Group in terms of the staff pattern laid down in G.O. No.772-Edn.(S) dated 8th July, 1974 and G.O. No.60-Edn.(S) dated 15th January, 1972 for High Schools and Junior High Schools respectively.

2. In this Department Memo no 372-Edn(S) dated, the 31st July, 1981, read with Memo No. 33- Edn. (S) dated, the 7th March, 1990 the higher scale of pay to the teachers of Secondary Schools having higher qualification has already been granted.

3. It is now clarified that all such teachers of Secondary Schools and Junior High Schools including Madrasahs of various types with higher qualification of post-graduate or the equivalent in relevant subjects will get higher scales of pay in relaxation of the above noted staff pattern.

4. This order will take effect from the date of issue of this clarification. All concerned have been informed."

38. In addition, the Joint Secretary to the Government of West Bengal vide memo No. 712-SE (S)/5P-135/2012 dated the 25th April, 2013 approved Post Graduate Scale of pay in respect of Sri Ajoy Kumar Bera, another Assistant Teacher of Pratappur High School, Purba Medinipur and allowed the benefit of Higher pay scale in similar circumstances case with the present writ petitioner.

Therefore, the Government of West Bengal cannot treat the case of the Petitioner in different manner, therefore, it is a clear case of discrimination in the same nature of case.

39. Considering all aspects and combined reading of all three aforesaid Order No. 372 Edn(B) dated 31.07.81 in No.- 2(B), Order No. 400 Edn(B) dated 10.09.1991 and Order No. 796 (S) dated 22nd November, 2013, the Petitioner is entitled to his higher scale of pay after 5 years teaching counting from the date on which, he was appointed. Therefore, it may be concluded that higher scale of pay should be allowed to the petitioner w.e.f. 07.10.93 till his retirement. As the petitioner has already retired, the DI of Schools, particularly, Respondent No. 4 shall take appropriate steps to process and grant the higher scale of pay in cash benefit w.e.f. 07.10.93 till his retirement for his higher qualification. The entire process shall be completed as early as possible preferably within eight weeks from the date of communication of this order without further delay.

40. Consequently, the writ petition being No. **WPA 11485 (W) of 2015** is disposed of with above observations. All connected applications, if any, are also, thus, disposed of. However, in the facts and circumstances, there shall be no order as to costs.

41. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

42. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)