

WPA 15805 of 2021

Rekha Mahata
Vs.
The State of West Bengal & Ors.

Mr. Shamimul Bari
... for the petitioner

Mr. Jahar Lal De,
Mr. Abdus Salam.
... for the State

1. The subject matter of this writ petition is the petitioner's challenge to the order of rejection by the respondent/District Inspector of Schools (Secondary Education) Purulia [hereinafter referred to as the "DI"], to the prayer of the petitioner for grant of post-graduate scale of pay to her, pursuant to her acquiring post-graduate qualifications and the impugned order is that dated August 16, 2021, of the respondent/DI.

2. The facts of the case is required to be stated here in brief. The petitioner was initially appointed on January 2, 1999 and was transferred thereafter. She had joined the transferred post on August 1, 2001 and her service was approved therein vide memo dated January 22, 2007, with effect from the date of her appointment there. She joined and had been approved as a B.A.(Honour's), B.Ed. teacher, in the said school. Later, the petitioner had sought for permission to get admission for a postgraduate course, before the school managing committee, which was approved by a resolution of the school managing committee in resolution dated September 29, 2012. The managing committee forwarded the petitioner's prayer as above along with its approval and recommendation for the same, to the DI, vide

letter dated September 24, 2013. The same has however never been attended by the DI, by either approving or rejecting the petitioner's prayer or the proposal of the school. The writ petitioner, however, took admission in the M.Sc. course in the meantime, in Vidyasagar University and acquired post-graduate degree in her subject of teaching that is Geography. For the same her prayer for grant of study leave was duly sanctioned by the respondent/West Bengal Board of Secondary Education [hereinafter referred to as the "Board"].

3. Now, it was time for her to pray for commensurate pay scale, in accordance with her higher qualification. Her prayer as above was approved by the school managing committee in its resolution dated September 9, 2015. Her prayer for grant of higher pay scale as well as approval and recommendation of the school managing committee as to the same, had been duly forwarded to the DI, vide letter dated December 9, 2015. On May 2, 2016, the petitioner received the post facto approval and permission by the Additional District Inspector of Schools (Secondary Education) Purulia [hereinafter referred to as the "ADI"], to her prayer for appearing in post-graduate examination.

4. However, in 2021, the respondent/DI was knocked out of his comatose, to grant the petitioner an opportunity of hearing on August 11, 2021 and thereafter, to ultimately pass his order dated August 16, 2021, which is impugned in the present case.

5. Let us have a glance to the order of the DI dated August 16, 2021, to look into and find out as to the reasons stated by him for rejecting grant of post-graduate pay scale to the petitioner. The DI has discussed the factual background of the case and has recorded finally, as follows:

“Therefore, I am of the opinion that Smt. Mahato is not entitled to get Post Graduate Scale of Pay for having qualification M.A in Geography in accordance with Law because:-

1. She enrolled in M.A in Geography in Vidyasagar University and also appeared the said exam, as an in-service Assistant Teacher without prior permission of the concerned District Inspector of School (SE), Purulia.

2. In the instant case, Smt. Mahato acquired her post graduate qualification on 13.07.2015, i.e after promulgation of West Bengal School (control of expenditure), Act, 2005 as well as issuance of G.O No.593-SE(B) Dt.27.11.2007. In clause no.3 of G.O No.593-SE(B) Dt.27.11.2007, The teacher is required to seek prior permission of concerned District Inspector of School (SE), (only when he/she wants to claim additional increment/higher scale of pay etc. for obtaining such higher qualification) thorough the Managing committee of the school.”

I regret to give any relief to the applicant. All concerned are being informed accordingly.”

6. Mr. Shamimul Bari, learned advocate appearing for the petitioner would submit by referring to the judgment of this Court in **Akhtar Hossain Chowdhury vs State of West Bengal** reported in (2013) 2 CHN 632 and the following judgment of the Hon’ble Co-ordinate Bench of this Court in **Pranoy Kumar Mondal vs The State of West Bengal in WPA 15533 of 2019** vide order dated 03/10/2023, that the law in this regard, is now well settled. He says

that the moment the school has forwarded the petitioner's application to the DI, seeking permission for acquiring higher qualification, the obligation of the petitioner and the school authority has come to an end. That, pendency of the application before the respondent/DI, without any result, shall have no consequence, if the petitioner has acquired his higher qualification in the meantime. He would submit that the decision of the respondent/DI is dehors the law as settled, and for this reason, the order impugned is not maintainable in the eye of law. He seeks relief for the petitioner.

7. Mr. Jahar Lal De has represented the State respondent. He would support the order of the DI, as impugned in this case and submit that the petitioner having been governed under the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005, would have to mandatorily comply with the provisions under Notification No. 593-SE(B) dated November 27, 2007 [hereinafter referred to as "No. 593"]. He would therefore say that the impugned order is flawless and needs not to be interfered into

8. The sole reason for which the respondent/DI has rejected the petitioner's prayer for grant of higher pay scale is the alleged noncompliance by her with the provision in clause No.3 of the notification No.593. The same speaks as follows:

“ 3. The teacher is required to seek prior permission of concerned District Inspector of Schools (SE) (only when he/she wants to claim additional increment/higher scale of pay etc. for obtaining such higher qualification) through the Managing Committee of the School.”

9. Hence, according to the same, in order to claim the benefit of higher pay scale on the basis of enhanced qualification, a teacher has to obtain prior permission of the DI to enter into the higher course, which he intends to undergo to enhance his qualification.

Allegedly the petitioner would not be entitled for grant of higher pay scale for the reason that before entering into the higher course, she has not obtained permission from the respondent/DI, which goes in contravention with the provision of the notification No.593, as stated above.

10. Similar facts and issues have been dealt with by this Court in *Akhtar Hossain Chowdhury's* case (supra). The Court has held that pendency of the petitioner's application before the authority without any result would be inconsequential, so far as grant of higher pay scale to him is concerned, in the event he has successfully completed the higher degree course in the meantime. The ratio squarely applies in case of the present petitioner too.

11. It is pertinent to mention that subsequently the Hon'ble Larger Bench of this Court, in the case of *Utpal Kanti Karan reported in 2024 SCC Online Cal 1274* has relied on and upheld the decision in *Akhtar Hossain Chowdhury's* case (supra). The Court has also held that the statutory right of a teacher under section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005, would supervene the provisions whatsoever, in the executive order vide notification No.593.

12. The petitioner was appointed in the category of Honour's Graduate and B.Ed. qualified teacher. Hence, in terms of section 14(3) of the Act of 2005, she would be eligible for grant of higher scale meant for postgraduate teachers, upon enhancement of qualification. The said statutory provision does not speak about requirement of any prior permission to enter into the higher course, in order to claim benefit of commensurate higher pay scale at a subsequent period. That is the norm formulated by dint of notification No. 593. The same, having no force of a statute cannot

override the provisions under the Act of 2005, as mentioned above, which provision is not, however, qualified with any condition whatsoever, while providing for grant of high pay scale to a Honour's Graduate teacher, upon his being qualified with the higher degree.

13. Fact remains that the writ petitioner has submitted her application to the school managing committee, praying for grant of permission to commence her Master's degree course. The same was forwarded to the DI after being approved and recommended by the managing committee.

14. It is also worth mentioning that permission to the petitioner has been in-fact granted by the Additional District Inspector of Schools (Secondary Education) Purulia, vide letter dated May 2, 2016, on post facto basis. Let the relevant portion be extracted therefrom:

“Sub:- Post-facto Permission for P.G in Geography in favour of Rekha Mahato, A.T of the School.

In reference to the above noted subject, the undersigned has to permit him to appear at M.Sc. in Geography through distance mode from Vidyasagar University for 2012-14 session on Post-facto basis.”

15. Hence, on the date of the respondent/DI passing the impugned order it would not be proper to say that permission of DI has not been obtained by the petitioner. After duly making the prayer to seek permission to enter into the post graduate course, through the school managing committing, there remains no further responsibility of the petitioner in this regard. It is then for the respondent/DI only, to respond to the petitioner's prayer, within a reasonable period of time. An application of the petitioner as above cannot be allowed to be kept pending in perpetuity, which is bound to fail the tests of reasonableness, in so far as in absence of

any specifically stipulated period within which the respondent /DI would consider and decide on the prayer of the petitioner as above, the said respondent has to act within the reasonable period of time after receipt of the said application. In that eventuality, the ratio decided in the case of *Akhtar Hossain Chowdhury* (supra) would be squarely applicable in this case and whether or not the respondent/DI has granted permission in response to the application of the petitioner to pursue the higher degree course, would be inconsequential at the time of allowing her the higher pay scale, as commensurate to her higher qualification. It would not then be improper, in case the prayer of the writ petitioner for permission, is rejected within a reasonable period of time, to construe the same to be the deemed permission of the said respondent authority. In case of the present petitioner, deemed permission of the respondent would be further fructified as the letter of the same dated May 2, 2016 followed up, to grant the petitioner permission as prayed for, post-facto.

16. In view of the above discussions and reasons, the impugned order dated August 16, 2021 cannot sustain in law and the same stands set aside and quashed.

17. The present writ petition is allowed with the direction upon the respondent/DI to immediately grant post graduate scale of pay to the petitioner, with effect from the appropriate date, in accordance with law. Her salary re-fixation shall be made immediately and she shall be granted with the arrear salary, as stands due. The entire exercise as above, shall be concluded by the respondent/DI, within a maximum period of three weeks from the date of communication of copy of this order.

18. With the above observations and directions the writ petition being WPA 15805 of 2021 is allowed.

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

(Rai Chattopadhyay, J.)