

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 15931 of 2017

**Dipak Kumar Duley
Vs.
State of West Bengal & Ors.**

For the Petitioner : Mr. Sourav Prasanna Mukherjee

For the State : Mr. Pinaki Dhole

: Mr. Rajat Dutta

Heard on : **23/04/2025**

Judgment on : **23/04/2025**

Rai Chattopadhyay, J. :-

- 1) An order of the District Inspector of Schools, Secondary Education, Bankura dated February 10, 2017 is under challenge in the instant writ petition.
- 2) The writ petitioner is the Assistant Teacher of Purandarpur High School, Bankura in Social Science group. He has been recommended by the West Bengal Regional School Service Commission (Western Region), Bankura for appointment as a Pass Graduate category Teacher on January 25, 2001 and according to the same has been appointed in the said school as a Pass Graduate category Assistant Teacher on February 5, 2001.
- 3) With permission of the Managing Committee of the School, the petitioner took admission in M.Sc. course for the subject Geography, in January 2009, through distance course at Vinayak Mission University. The academic session was for 2009 to 2011. The petitioner

has ultimately qualified and obtained M.Sc. degree in Geography subject through correspondence course in 2011.

- 4) Upon enhancement of his qualification to the Masters degree, he therefore, has prayed for grant of higher pay scale to him, meant for Post Graduate qualified Assistant Teachers.
- 5) Such prayer of the petitioner has been ultimately turned down by the respondent/District Inspector of Schools, Secondary Education, Bankura by dint of the said impugned order dated February 10, 2017. The grounds thereof may be summarized as below:-
 - The petitioner was appointed on recommendation of the School Service Commission as a Pass Graduate category Teacher.
 - Therefore, in terms of Section 14(2) of the West Bengal Schools (Control of Expenditure) Act, 2005, the petitioner would not be eligible for grant of any other pay scale than for the category of teachers in which he has been initially appointed that is, Pass Graduate category of teachers.
 - That the petitioner did not take prior permission from the District Inspector of Schools before enrolling himself for enhancement of his qualification; thus the petitioner has flouted the conditions prescribed under GO No. 593-SE(B) of 27.11.2007 to be eligible for grant of higher pay scale, pursuant to higher qualification, if any.
 - Finally, that the petitioner has taken part in the examination either by taking medical leave or casual leave but not study leave, which is not promisable under the law.
- 6) For the reasons as above, the petitioner's prayer for grant of higher pay scale, pursuant to his higher qualification, has been declined by the respondent/District Inspector of Schools, Secondary Education, Bankura. Hence this writ petition.
- 7) Mr. Mukherjee has represented the writ petitioner. Mr. Mukherjee has strongly relied upon the judgment of the Hon'ble Larger Bench of this Court reported in ***Utpal Kanti Karan Vs. State of West Bengal &***

Ors. reported in **2024 SCC OnLine Cal 1274**. In particular, he has relied on Paragraph 273 (a) thereof which speaks as follows:-

“273.

a). 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.

For example, a teacher joined the school with a pass graduate degree and during his service career the teacher enhanced his qualification and claimed higher scale of pay on the basis of the said degree. The said claim has to be decided on the basis of the relevant rules existing at the time of his acquiring higher qualification. If he has joined the school with a pass graduate degree after the government circular dated 12th February, 1999 he would not be entitled to post graduate scale of pay unless the teacher is covered by the Government Order No. 735-SE(S)/SP-132/2002 as revised by the Circular No. 134-SE(S) dated 3rd November, 2004. Any other interpretation would encourage a back door entry. A teacher upon acquiring higher qualification can always compete in the recruitment process for a post commensurate with the higher qualification and therefore the question of stagnation does not arise. However, the State shall formulate a scheme for incentives to teachers who may have joined the school with a pass graduate degree but enhanced his/her qualification with the permission of the Managing Committee and the D.I irrespective of the staff pattern as such incentive would encourage teachers to perform better and it will act as a cushion against stagnation.”

- 8) Mr. Mukherjee says that, according to the decision of the Hon’ble Larger Bench, the petitioner who has joined the School as a Pass Graduate category teacher after promulgation of ROPA rules, 1991, would be eligible for grant of higher pay scale, pursuant to his higher qualification, since the petitioner is covered by the Government Order No. 735-SE(S)/SP-132/2002, as revised by circular no. 1334-SE(S) dated November 3, 2004.
- 9) Mr. Mukherjee has further relied on a judgment of this Court dated August 6, 2024 in **WPA 26981 of 2016, Satyajit Ghosh Vs. State of West Bengal and Ors.** to submit that on the similar factual background, the Court has earlier granted relief to the petitioner by allowing his prayer for grant of higher scale of pay. For the reasons as above, Mr. Mukherjee insists that the present writ petition may be allowed and the petitioner may be granted relief of higher pay scale from an appropriate date. Mr. Mukherjee has further stated that the

Hon'ble Larger Bench has decided that the notification no. 593-SE(B) of 27.11.2007 should not consider to have any statutory force to prevail over whatever substantive law has been provided in the statute itself.

- 10) To the contention and prayer of the writ petitioner as above, the State respondent being represented by Mr. Dhol, assisted by Mr. Dutta, has raised vehement objection. Mr. Dhol would submit that according to the decision of the Hon'ble Larger Bench of this Court in the case of ***Utpal Kanti Karan (supra)***, a teacher who has entered into service in the Pass Graduate category, shall not be entitled to higher scale of pay merely because he has acquired higher qualification subsequent thereto. It is submitted that, enhancement of pay on acquisition of higher qualification during service career has been held by the Hon'ble Larger Bench to be 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.
- 11) So far as the present case is concerned, according to the respondent at the relevant point of time, that is, at the time of the writ petitioner achieving Master's degree in the year 2011, the applicable law has been the West Bengal Schools (Control of Expenditure) Act, 2005. The State has put forth an argument that, according to Section 14(2) of the 2005 Act, the petitioner would be eligible only for such scale of pay in which category, he has been ultimately appointed after being recommended by the School Service Commission. In case of the present petitioner, therefore, the appropriate category would be the Graduate category in so far as the petitioner has been recommended and appointed in the year 2001 as a Graduate category teacher.
- 12) There is another limb of argument advanced by Mr. Dhol, that is, at the relevant point of time of being qualified with Master's degree, the petitioner should be considered to be governed under the notification no. 593-SE(B) of 27.11.2007 also, which prohibits grant of higher pay scale to a teacher, upon obtaining higher qualification unless and until the petitioner enrolled himself for the higher course with the permission of the District Inspector of Schools.
- 13) It is stated that, admittedly in this case, the petitioner has not obtained any prior permission from the District Inspector of Schools, Secondary Education, Bankura before enrolling himself for the Master's degree course, therefore, the prohibitory clause as enumerated in the notification no. 593-SE(B) of 27.11.2007 shall also

come into operation in case of the writ petitioner. Mr. Dhol says that in such view of the facts, there can be found no error, impropriety or illegality in the order of the District Inspector of Schools, Secondary Education, Bankura dated February 10, 2017. Hence, no interference by this Court is warranted as to the same, he says.

- 14)** It is most respectfully noted that the Hon'ble Larger Bench of this court in the Judgment of **Utpal Kanti Karan (supra)** has held that a teacher who has entered service in the Pass Graduate category shall not be entitled to higher scale of pay, merely because he has acquired higher qualification subsequent thereto. The Court 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)** The petitioner's date of appointment is on February 5, 2001. He has qualified with the M.Sc. degree through correspondence course in the year 2011. During the intermittent period that is, in the year 2005 the West Bengal Schools (Control of Expenditure) Act, 2005 has been promulgated. Therefore, from the date of promulgation of the Act of 2005, the petitioner is governed under the provisions thereof. For the petitioner, the relevant provision would be that, under Section 14 (2) of the Act of 2005 which is as under:-

"14 (2) Every teacher of a school shall, if appointed in the post of Graduate teacher category, be entitled to draw pay in the scale of pay in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay for acquiring any qualification other than the qualifications specified for such post."

- 16)** The Hon'ble Larger Bench in the judgment of **Utpal Kanti Karan (supra)** gives an example that a teacher, who joined in the school with a Pass Graduate degree and enhanced his qualification during his service to claim higher scale of pay on the basis of said degree, the said claim has to be decided on the basis of relevant rules existing at the time of his acquiring higher qualification.
- 17)** The petitioner has made out a case that the relevant rules applicable in his case, is that under Government Circular No. 1334-SE (S) dated November 3, 2004. However, no mention has been made if the

petitioner even denies application of the provisions of 2005 Act in this case.

- 18)** We have already discussed the provisions under the 2005 Act. Let us now see as to the provisions enshrined in the Circular No. 1334-SE(S) dated November 3, 2004.
- 19)** The same has provided for different categories of teachers in the manner, as follows:-
- Firstly, the Honours Graduate teachers of Honours/Post Graduate category of Non-Government Secondary Schools, including Madrasas, appointed through West Bengal School Service Commission, who has obtained Post Graduate degree in subject relevant to their appointment, prior to their joining in School; such category of teachers shall be eligible for Post Graduate Scale of pay from the date of joining.
 - The Honours Graduate teachers of Honours/Post Graduate category, who have completed their examination before joining but results were published after joining; this category of teachers shall be deemed to have been eligible to get the Post Graduate Scale of pay, from the date of publication of results of such Post Graduate degree relevant to their appointment.
 - The Honours Graduate teachers of Honours/Post Graduate category of Non-Government Secondary aided Schools including Madrasas appointed through SSC and who have improved or will improve qualification after joining the posts with due permission from the authority competent to issue such permission; such category of teachers shall be eligible for Post Graduate scale on successful result of the last examination leading to the Post Graduate degree, relevant to their appointment from the day following the last date of examination (both theoretical and practical).
- 20)** Therefore, on careful consideration of the provisions made in the notification no. 1334-SE(S) dated November 3, 2004, it appears that the same has provided three eventualities for Honours/Post Graduate category teachers, as to when they can be granted with the Post Graduate scale of pay. Firstly, in the event of their qualification obtained prior to their joining in school, secondly, in the event of their joining in the course for higher degree before induction in service but

results were published after their joining and thirdly, has improved their qualification and obtained higher degree after joining in service. It is pertinent to note that the Government Notification No. 1334-SE(S) dated November 3, 2004, has not spelt about any provision, entitling a teacher joined in school as a Pass Graduate category teacher who during his service, has enhanced his qualification. Hence, the arguments advanced on behalf of the writ petitioner in this regard, as discussed above, does not inspire much confidence in the mind of this Court.

- 21) Be that as it may, the Act of 2005 has been promulgated later on in the year 2005. Hence, the substantive provisions thereof cannot be overruled by any notification which is dated prior to the date of promulgation of the statute, unless and until the same is saved. At the cost of reiteration, it may be stated that Notification No. 1334-SE(S) dated November 3, 2004, has not made any provision to safeguard rights of a passed graduate category entrant.
- 22) The Court is interested also to take into consideration the findings of the Hon'ble Larger Bench in the case of **Utpal Kanti Karan (supra)** that a teacher, if applied as a pass graduate candidate and appointed in the pass graduate category, shall not be entitled to claim higher scale of pay after his appointment, the reason being that, a teacher who has not competed with the higher qualified candidates at the time of entering into service, cannot be allowed increment or higher scale of pay, after enhancing his qualification later on.
- 23) The other point raised by the petitioner in this case is with regard to no necessity of the petitioner to comply with the provisions under GO No. 593-SE(B) of 27.11.2007, in the event when the petitioner seeks higher pay scale, pursuant to his higher qualification. The petitioner has argued that, provisions thereof would not be attracted in so far as the Hon'ble Larger Bench in the Judgment as above, has already settled that GO No. 593-SE(B) of 27.11.2007 shall not have any statutory force. The finding of the Hon'ble Larger Bench of this Court in the case of **Utpal Kanti Karan (supra)** as above, is self-explicit. Even if the petitioner is considered not to be governed under the provisions of GO No. 593-SE(B) of 27.11.2007, there would be no doubt about the petitioner to be within the four corners of the statutory provision as per Section 14 (2) of the West Bengal Schools (Control of Expenditure) Act, 2005. It is already been discussed earlier that, as per the said provision, the petitioner cannot be treated as eligible for grant of higher pay scale.

- 24)** The judgment relied on by the writ petitioner of this Court in case of ***Satyajit Ghosh (supra)*** is distinguishable on the facts of the case. Firstly, in the said case, the writ petitioner was appointed as an Honours graduate category teacher. Therefore, in the said case, the petitioner was governed under the provision of Section 14 (3) of the Act of 2005 unlike the present petitioner who is governed under Section 14 (2) of the 2005 Act.
- 25)** On the discussion as made above, the Court finds that in the instant case, the writ petitioner would not be entitled to any relief from this Court. Hence, the writ petition no. WPA 15931 of 2017 is dismissed.

(Rai Chattopadhyay, J.)