

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 16169 of 2021

Triparna Mukherjee

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Siddhartha Sankar Mandal,

: Ms. Arunima Das Sharma

For the State : Mr. Supriyo Chattopadhyay, ld. A.G.P.,

: Ms. Iti Dutta.

Heard on : **17/03/2025**

Judgment on : **17/03/2025**

Rai Chattopadhyay, J. :-

1. The issue involved in the present writ petition that whether in terms of provisions under notification no. 593-SE(B) dated November 27, 2007, the prayer of the writ petitioner for grant of higher pay scale should be rejected or not. Similar issue has already been dealt with and decided by the Hon'ble Larger Bench in its judgment of this Court in the case of **Utpal Kanti Karan vs. State of West Bengal & Ors.** reported in **2024 SCC OnLine Cal 1274**.

Let the relevant paragraphs there from be quoted hereinbelow:-

“114. Curiously, Order No. 1595-SE dated 26th December, 2005 was issued by the Governor in exercise of power under Sub-Section 3 of Section 14 of the Act of the West Bengal School (Control and Expenditure) Act, 2005 and such order of the Governor is being modified by an executive Order No. 593-SE(B) dated 27th November, 2007 by order

of the Joint Secretary, School Education Department, Government of West Bengal and not by the Governor in exercise of His power. This action is impressible and therefore the Order No. 593-SE(B) dated 27th November, 2007 is illegal, unlawful and nonest in the eye of law”.

“272. On the basis of the aforesaid discussion we answer the reference in the manner following:-

***** ** ** ** ** ****

(g) If a teacher has partially completed higher study before entering service he/she would come under purview of G.O No. 1595-SE(S) dated 26th December, 2005 and the question of taking permission from DIS-SE concerned would not arise.

***** ** ** ** ** ** ”***

2. The petitioner who is the Assistant Teacher of Gar Chandibari High School at North 24 Parganas was appointed, pursuant to the recommendation of the West Bengal Regional Service Commission, South Eastern Region, Barasat, dated September 18, 2007, in the subject English and in Hons/PG category of post. She joined there on November 19, 2007. Her service was duly approved at a subsequent date.
3. The petitioner had enrolled herself to pursue the Masters degree course through Rabindra Bharati University through correspondence course, prior to joining in service, that is, on September 20, 2006. Her Part-I examination was concluded even prior to her joining and the last date of M.A Part-II examination was on January 11, 2009.
4. After joining in the service, the petitioner has duly applied for study leave to appear in Part-II examination before the School Managing Committee and was granted the same.

5. After having qualified in the Masters degree the petitioner has ultimately prayed for grant of higher pay scale to her, pursuant to her higher qualification in the Masters degree in the relevant subject of English.
6. In spite of her several requests through various letters, the respondent authorities have not yet considered those and allowed the petitioner's prayer as above, by granting her the pay scale meant for post graduate teachers.
7. The petitioner on usual basis takes classes of higher secondary section in the school. In support thereof, the class routine allotted to the writ petitioner, has also been cited.
8. Parties have exchanged affidavits in this case.
9. Ms. Iti Dutta, learned counsel is representing the State.
10. The unitary line of defence of the respondent State is that the petitioner would not be eligible for grant of higher pay scale in terms of provisions of G.O. No. 593-SE(B) dated November 27, 2007, in so far as she has not complied with the provision made therein, that in order to be eligible for grant of higher pay scale, the person should have mandatorily obtained the prior permission of the District Inspector of Schools, before enrolling herself in the Masters degree course.
11. Since the petitioner has already entered into the course by enrolling herself much prior to her being recommended and appointed as the Assistant Teacher, the question of prior permission does not arise in her case. This situation has been elaborately dealt with and decided by the Hon'ble Larger Bench in the decision as mentioned above.
12. In this regard, the quoted portions are very relevant and this Court fully relies on the said part of the Hon'ble Larger Bench's judgment.

- 13.** On the basis of the same, the Court is constrained to hold that the defence line as adopted by the respondent State not to consider petitioner's prayer for grant of higher pay scale on the basis of provisions of compulsory prior permission as per G.O. No. 593-SE(B) dated November 27, 2007, would not be tenable in her case and also in view of the fact that the same having no statutory force cannot override the earlier G.O. No. 1595-SE(S) dated December 26, 2005.
- 14.** In such circumstances, the Court is constrained to find that the alleged inaction on part of the respondent State authority is subversive of the law as propounded on the subject and holds the field.
- 15.** In such circumstances, the Court finds it proper to dispose of the present writ petition with the following directions:-
- (i) The respondent no. 3 is directed to take immediate steps for grant of pay scale meant for Post Graduate qualification, to the petitioner with effect from the day, subsequent to the last date of her final examination in M.A. course.
 - (ii) Appropriate pay fixation be immediately made, as regards the petitioner, within a period of four weeks from the date of communication of this order.
 - (iii) The petitioner shall be paid arrear amount of salary within a period of two months from the date of communication of this order.
- 16.** With the above observations and directions, the writ petition being WPA 16169 of 2021 is disposed of, along with the pending applications, if any.
- 17.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)