

Form J(2)
Sl.No.121
Nandita

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Ajay Kumar Gupta

W.P.A. 12755 of 2009

Gurupada Ghosh

Vs.

The State of West Bengal & Ors.

For the petitioner	:	Mr. Sandip Ghosh, Adv. Mr. Partha Sarkar, Adv.
For the Respondent/State	:	Mr. Supriyo Chattopadhyay, AGP Ms. Sayantani Bhattacharjee, Adv.
Heard on	:	August 06, 2025
Judgment on	:	August 06, 2025

Ajay Kumar Gupta, J. :

1. Affidavit-of-service, filed in Court today on behalf of the petitioner, is taken on record.
2. The writ petitioner has approached this Court by challenging the order dated April 06, 2009 issued by the O.S.D. & E.O. Joint Secretary, thereby rejected the prayer of the petitioner for higher scale of pay on account of acquiring the M.A. Degree in Bengali.
3. The petitioner was an Assistant Teacher of Bandel Vidyamandir and his prayer was rejected on the ground that he had acquired

Higher Qualification without obtaining permission from the D.I. of School.

4. Learned counsel appearing on behalf of the petitioner submits that prior to appearance in the examination, he had prayed for permission from the Managing Committee of the school and by the resolutions of the Managing Committee meeting his prayer was allowed for appearing in the M.A. Examination in Bengali under Burdwan University and his leave was granted. Copy of resolution is annexed as P-5 and P-6 of the writ petition. It is clear from the said annexure that he had obtained permission. Despite of the said facts, his prayer of higher scale of pay was rejected as aforesaid.
5. The learned counsel for the petitioner has placed reliance of the Judgement in the case of **Shantanu Saha Vs. The State of West Bengal & Ors.**¹ particularly paragraph no. 3 thereof to bolster his contention that permission from D.I. of School was not required at that point of time, when he acquired higher education. The Co-ordinate Bench held as under:-

“Learned Advocate for the State further argued that the petitioner cannot be given any higher scale of pay since he did not obtain permission from the District Inspector of School before appearing in the M.Sc. Examination. In this respect he has drawn my attention to the circular dated 24th June, 1997 issued by the Deputy Secretary of the Government of West Bengal, Education Department, Secondary Branch. It

¹ 2009 (1) CLJ Calcutta 639

appears that under the said circular it has been stated therein that in order to get higher scale of pay on account of enhancement of higher qualification, a teacher is to obtain prior permission from the District Inspector of School. However, we must not forget that the petitioner obtained the higher qualification in M.Sc. (Math) in the year 1992 and at the time the circular dated 24th June, 1997 was not in existence. As such from the plain reading of the said circular it must be said that it has got no applicability so far as the case of the petitioner is concerned. That apart, if we look into the documents which have been annexed along with the writ petition, then it will appear that the petitioner obtained prior permission from the school authority and the Managing Committee of the school granted such permission in favour of the petitioner. It further appears that the said Managing Committee referred the matter to the West Bengal Board of Secondary Education for sanctioning the leave which granted in favour of the petitioner for appearing in the examination in question. It appears from Annexure P-3 that the Secretary of the Board of Secondary Education informed the school authority that the Managing Committee of the school was competent enough to sanction such leave. It means that total liberty was given to the Managing Committee for sanctioning the study leave in favour of the petitioner and the school Managing Committee in fact allowed such prayer of the petitioner.”

6. Learned counsel has also placed reliance of a Larger Bench judgment passed in the case of ***Utpal Kanti Karan Vs. State of West Bengal & Ors.***² to support his contention that individual who obtained higher education entitles to higher scale of pay.
7. Per contra, the learned counsel appearing on behalf of the State respondent vehemently opposes the prayer of the Petitioner and further submits that the petitioner is not entitled of higher scale of pay because he did not obtain prior permission before obtaining higher qualification from the higher authority and Judgment of the Larger Bench cited by the Petitioner is not at all applicable in the present facts and circumstances of this case as the case of the petitioner is totally different.
8. Having heard the submission of the Learned Counsel for the parties and upon perusal of the records and judgments referred by the side of the petitioner, this Court is of the view that it is well settled position of law that individual, who acquire higher qualification, is entitled to higher scale of pay as per rules. Petitioner has enhanced his higher qualification i.e. M.A. Bengali in the year 1990.
9. Judgment passed by the Co-ordinate Bench of this Hon'ble High Court in the case of ***Shantanu Saha (supra)*** is very clear and explicit that when the petitioner acquired higher qualification, at the time the circular dated 24th June, 1997 was not in existence and the Managing Committee of the school was competent enough

² 2024 SCC OnLine Cal 1274

to sanction such leave. This Court also concurred with the view taken by the Co-ordinate Bench.

10. Furthermore, the Larger Bench in ***Utpal Kanti Karan (supra)*** held that enhancement of pay on acquisition of higher qualification during the service career is depend 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. In the present case, respondent has not denied that there are no rules for granting higher scale of pay, when individual acquires higher qualification during the service career. The impugned order under challenge by the petitioner only indicates the rejection was due to non-obtaining permission from the D.I. of School and no leave was obtained prior to appear in the examination for enhancement of his educational qualification. This issue has been decided by the Learned Single Bench of this Court in the judgment above referred in detail. Therefore, the petitioner is entitled to get higher scale of pay on the basis of higher qualification enhanced in the year 1990 till his service career and therefore there is no impediment in granting of such benefit of higher scale of pay.
12. Considering the above facts and circumstances, the writ petition has sufficient ground and reason to allow and with above observation, **WPA 12755 of 2009** is, thus, **allowed**.

13. The impugned order passed by the O.S.D. & E.O. Joint Secretary dated 6th April, 2009 found to be without cogent reasons. Therefore, same is hereby set aside.
14. It is admitted fact that the petitioner was Assistant Teacher of Bandel Bidyamandir, Hooghly and has already superannuated from his service on 30th September, 2011. He is entitled to get higher scale of pay from the date of obtaining his higher education. Let his retiral benefits including pension should be fixed afresh and disbursed all consequential benefits within 8 weeks from the date of communication of this judgment. Calculation shall be made in accordance with law.
15. Interim order, if any, stands vacated.
16. There shall be no order as to costs.
17. The parties are to act on the server copy of this Judgment duly downloaded from the official website of this Court.
18. Urgent Photostat certified copy of this Judgment, if applied for by the parties, shall be supplied as expeditiously, subject to compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)