

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

Ct.55117.06.25
Item No.23Sws.M

WPA 17503 of 2022

**Halsana Washim Raja
Vs
The State of West Bengal&Ors.**

Mr. Sakti Pada Jana
Mr. Subhajyoti Das

...for the petitioner

Ms. Kakali Naskar

...for the State

1. Heard learned advocates appearing for the respective parties.
2. The petitioner is aggrieved by an order dated March 10, 2022 passed by the District Inspector of Schools (Secondary Education), Murshidabad (hereafter 'the DI') whereby the DI has declined the petitioner's request for Post Graduate Scale of Pay on the ground asthat the petitioner has been appointed through the West Bengal School Service Commission, the petitioner's pay was required to be fixed in terms of the petitioner's qualification mentioned by the West Bengal School Service Commission in terms of the provision of G.O. No. 155-SE (B) dated 13.07.1999.
3. The petitioner joined Sarbangapur J.K.S.A. Vidyapith (H.S.) as Assistant Teacher in Mathematics on September 15, 2007. At the

material point of time when the petitioner joined the school, the petitioner was holding a degree of Bachelor of Science (with Honors in Mathematics).

4. On or about August 5, 2007, i.e. just prior to joining service in the school, the petitioner had enrolled in the Master's Degree Course in Mathematics in Netaji Subhas Open University.
5. While in service, the petitioner sought the permission of the Managing Committee for the purpose of pursuing such higher degree course. The Managing Committee of the school adopted a resolution on December 19, 2007 thereby approving the petitioner's pursuit for such higher degree course and thereafter forwarded such resolution to the DI under the cover of a letter dated March 19, 2008, thereby requesting the DI to take necessary action in the matter of granting prior permission to the petitioner "*to sit for M.Sc. (Math) Examination under Netaji Subhas Open University.*" The DI of Schools did not respond to such communication made by the Managing Committee.
6. The petitioner, however continued with the Master's Degree Course and ultimately obtained the degree of Master of Science in Mathematics upon having successfully qualified in the Part II examination therefor, held in the year 2009.

Subsequently, the School made another request by its letter dated June 12, 2021² to the DI requesting the said DI to grant permission and approve payment of higher scale of pay to the petitioner pursuant to the petitioner having acquired Master's Degree in Mathematics. The said DI remained silent even on such representation.

7. The petitioner thereafter made a representation to the DI through his learned advocate. The DI of Schools remained inactive even then.
8. The School thereafter followed up by two representations dated October 10, 2018 and March 24, 2021 both of which met with the same fate as that of the earlier ones.
9. Being aggrieved by the inaction of the respondent/DI the petitioner approached this Court by filing WPA 13773 of 2021 which was disposed of by this Court by an order dated September 7, 2021 thereby directing the said DI to pass a reasoned order on the petitioner's representation in the form of demand justice of the petitioner within a period of twelve weeks from the date of communication of the order.
10. Upon such order being passed in WPA 13773 of 2021 the said DI took up the petitioner's case and disposed of the same by the order dated March 10, 2022, observing as follows:

“Let me now consider as to whether the petitioner acquired the said Post Graduate Degree in the manner as specified by the Govt. Order. The petitioner joined as Assistant Teacher with qualification B.Sc. (Hons.) in Mathematics through concerned School Service Commission on 15.09.2007 and that material point of time his pay was regulated under provision of ROPA, 98 and it is required to mention the relevant portion of Govt. orders which is applicable in the instant case in arriving to a specific conclusion.

The provision of G.O. No. 155-SE (B) dt. 13.07.1999 which is arising out of from ROPA 1998 lays down that.....If a teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission. As the concerned School Service Commission recommended the petitioner for Hons. Category teacher by mentioning only Hons. Degree hence I am of the opinion that as the aforesaid Govt. order stands as bar to approve the claim of the petitioner thus the prayer of the petitioner is rejected. Thus the matter is disposed of from this end in compliance with the order of the Hon’ble High Court.”

11. Mr. Jana, learned advocate appearing for the petitioner submits that the Government Order dated July 13, 1999 which has been relied on by the DI is wholly inapplicable to the petitioner’s case. He invites the attention of the Court to a

subsequent Notification dated June 3, 2002 and submits that the Notification dated July 13, 1999 relied on by the DI stood amended by the subsequent Notification of June 3, 2002. He further submits that the petitioner's case in fact would be covered by the order No. 1595-SE(S) dated December 26, 2005 and presses clause 'C' thereof.

12. Mr. Jana further submits that the order passed by the DI of Schools cannot withstand even a moment's scrutiny in view of several judgments of this Court. He submits that when in the instant case the Managing Committee of the school has approved the petitioner's pursuit of higher qualification and also recommended the petitioner's case for grant of higher scale of pay to the D.I. the petitioner's claim could not have been rejected at all. He relies on the judgment passed by the Hon'ble Full Bench of this Court in the case of ***Utpal Kanti Karan vs. State of West Bengal*** reported at **2024 SCC Online (Cal) 1274** to buttress his such submission.

13. Mr. Jana also refers to a Division Bench Judgment of this Court in the case of ***Akhtar Hossain Chowdhury vs. State of West Bengal & Ors.*** reported at **2013(2) CHN (Cal) 632** and

submits that upon the ratio of the said judgment being approved by the Hon'ble Full Bench of this Court the case of *Utpal Kanti Karan (supra)*, since the DI has maintained silence despite repeated representations and follow ups by the school authority eventhe requirement of prior permission of the DI of Schools for the purpose of pursuing higher education should be deemed to have been met by the petitioner in the case at hand.

14. Mr. Jana submits that the judgment of *Utpal Kanti Karan (supra)* rendered by the Hon'ble Full Bench of this Court has taken note of the Government Order dated December 26, 2005 and that the petitioner's case is fully covered by the said Government Order. Mr. Jana further submits that since the petitioner has been appointed to the post of Assistant Teacher in the school on September 15, 2007, West Bengal Schools (Control of Expenditure Act), 2005 (hereafter the said Act of 2005) had come into force, the petitioner's case could not be said to be governed by the G.O. dated July 13, 1999 as amended by the circular dated June 3, 2002.

15. Learned advocate appearing for the State hands up a copy of Memo No. 479-H dated May 16, 2025 issued by the DI to the said learned advocate whereby the DI has obviously, reiterated what has

been stated in the order dated March 10, 2022 impugned in the writ petition. The said Memo is taken on record.

16. Mr. Jana also relies on the following judgments of this Court in support of his submissions :-

1. *Amlan Singha vs. The State of West Bengal &Ors. (WPA 16288 of 2024)dated July 2, 2024;*
2. *Partha Pratim De vs. The State of West Bengal &Ors. (WPA 947 of 2020)dated January 17, 2025;*
3. *Arman Ali Mondal vs. The State of West Bengal &Ors. (WPA 4092 of 2020) dated March 12, 2025;*
4. *Moumita Bhattacharjee vs. The State of West Bengal &Ors. (WPA 14018 of 2021) dated June 10, 2025;*

17. Having heard the learned advocates appearing for the respective parties and having considered the material on record this Court is of the view that the order dated March 10, 2022 passed by the DI which has been impugned in this writ petition cannot be sustained.

18. Firstly, the said order bases itself on the G.O. dated July 13, 1999 which, as has been rightly pointed out by Mr. Jana, is not at all applicable to the petitioner. This Court is of the view that since the petitioner had been appointed to the post of Assistant Teacher in the school on September 15, 2007, by which time the said Act of 2005 had come

into operation, the Government Order dated December 26, 2005 which had been issued in exercise of powers conferred by Section 14(3) of the said Act of 2005 would govern the petitioner's case for higher scale of pay on the ground of enhancement of qualification.

19. The judgment of the Hon'ble Full Bench of this Court in the case of *Utpal Kanti Karan (supra)*, serves as a guiding light in the present case. Paragraph 185 thereof is relevant for the present purpose and the same is extracted hereinbelow:

185. A teacher with Honours Graduate degree shall be entitled to post graduate scale of pay upon acquiring a post graduate degree without there being a requirement of any prior permission as the Honours graduate and post graduate degree under Sections 14(3) of the Act of 2005 read with the Government Order no. 1595-SE(S) dated 26th December, 2005 are treated alike. The justification is stated in the **Government Order no. 735-SE(S)/SP-132/2022** dated 3rd June, 2002. The **Government Order no. 1595-SE-(s)** dated 26th December, 2005 will have prospective effect. Clause 9 of the **Government Order no. 593-SE(B)** dated 27th November, 2007 shall not be a bar. All teachers who are otherwise covered by the earlier regulations and/or notification and/or orders issued under West

Bengal School Service Commission Act, 1997 and scale of pay has been fixed and/or revised shall continue to receive such benefits and shall not be deprived of any financial benefit solely based on the Government Order dated 27th November, 2007 since the said order in any event can only be applied prospectively. Any teacher pursuing higher education prior to the introduction of Control of Expenditure Act, 2005 shall be entitled to ex post facto approval for a higher scale of pay provided the Managing Committee has granted permission and the staff pattern permits a teacher with higher qualification in the relevant subject, on the basis of the Government Order dated 3rd June, 2002 as revised by the Circular dated 3rd March, 2004.(Emphasis supplied by underlining)

20. Thus once it is found that the Government Order dated December 26, 2005 applies, the entitlement of the petitioner becomes almost certain in view of the underlined observations of the Hon'ble Full Bench in the case of *Utpal Kanti Karan (supra)*.

21. Since the DI has not rejected the petitioner's claim on the ground of non-obtainment of prior permission, this Court is not delving deep into that aspect except observing that in the facts of the present case such ground would not be available to the DI. Firstly, since this Court has held that the case of the petitioner is governed by the Government Order dated December 26, 2005, that

itself would protect the petitioner's case from the clutches of the Government Order dated 27th November, 2007 that mandated taking of prior permission of the DI. Secondly, since in the case at hand the petitioner had duly applied to the Managing Committee for prior permission and the same had been forwarded and recommended to the DI by the Managing Committee of the School therefore, the requirement of taking prior permission would be deemed to have been met. Such are the observations of the Hon'ble Full Bench in the judgment of *Utpal Kanti Karan (supra)* which approved the ratio of the Hon'ble Division Bench in the case of *Akhtar Hossain Chowdhury (supra)* in the following extract:

xvii) In Akhtar Hossain Chowdhury v. State of West Bengal, reported in (2013) 2 CHN 632 the argument of Mr. Moitra that paragraph 3 of the circular dated 27th November, 2007 cannot override the provisions of the West Bengal Schools (Control of Expenditure Act, 2005) was accepted as would be evident from paragraphs 15 to 18 of the said decision. The said paragraphs read:

"15. Mr. Moitra also submits that Para 3 of the aforesaid circular dated 27th November, 2007 cannot override the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005.

16. Mr. Moitra invites our attention to Section 14 (3) of the aforesaid Act, 2005 and submits that the appellant/petitioner is entitled to draw pay of post

graduate upon acquiring post graduate degree. The said section 14(3) is set out hereunder:

“(3) Every teacher of a school shall, if appointed in the Honours Graduate or Postgraduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order.”

17. It is true that a circular cannot override the specific provisions of the Act. In the present case, the appellant/petitioner was admittedly appointed in the school as Honours Graduate with B.Ed degree. As a matter of fact, at the time of joining the school qualification of the appellant was Honours Graduate in Mathematics and B.Ed. Subsequently the said appellant acquired postgraduate degree. Therefore, in terms of Section 14(3) of The West Bengal Act, XIV of 2005 appellant herein is entitled to draw pay of postgraduate teacher. Furthermore, Para 3 of the Office order dated 27th November, 2007 has not been specifically violated in the present case since the appellant also sought for prior permission from the concerned District Inspector of Schools for undergoing post graduate studies through the managing committee of the school and such permission was never denied by the said District Inspector of Schools.

18. Considering the aforesaid facts, we are of the opinion that the District Inspector of Schools should not have rejected the claim of the appellant/petitioner for higher scale of pay even after acquiring higher qualification i.e. M.Sc in Mathematics.”

(emphasis supplied)

We are in agreement with the said decision.”

22. In such view of the matter, the order dated March 10, 2022 passed by the District Inspector of

Schools (Secondary Education), Murshidabad is set aside. The said District Inspector of Schools is directed to extend the benefits of Post-graduate Scale of Pay to the writ petitioner and to take steps to make payment of all consequential benefits to the petitioner in terms of the petitioner's entitlement to such Post graduate scale of Pay forthwith, strictly in accordance with law.

23. WPA 17503 of 2022 stands allowed as above.

24. There shall, however, be no order as to costs.

25. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai , J.)