

07.01.2025
Court No. **25**
I.B

WPA 20130 of 2021

Md. Wasim Ali
Vs.
State of West Bengal & Ors.

Mr. Sakti Pada Jana, Adv.

... for the petitioner

Mr. Bhaskar Prasad Vaisya, Ld AGP
Mr. Suman Dey, Adv.

... for the State

1. In the present case the writ petitioner has challenged the impugned action of the respondent/District Inspector of Schools (Secondary Education), Murshidabad (hereinafter referred to as "DI"), by sending the letter dated February 09, 2021 to the Commissioner of School Education, Government of West Bengal, thereby seeking clarification in the matter of and not granting the petitioner the higher scale of pay.

2. It is necessary that the factual background of the case be narrated in a nutshell which is as follows:-

i. The petitioner was recommended by the West Bengal Regional School Service Commission, Northern Region, for appointment in the school namely; Nowapara Junior High

School. He was appointed vide letter dated December 13, 2013 and joined in service on December 17, 2013. His service was approved by dint of the order of the respondent/District Inspector of Schools (Secondary Education), Murshidabad/ respondent no.3 (hereinafter referred to as the 'DI') on January 17, 2014.

ii. On May 08, 2017, the petitioner had applied for permission to enter into the Master's Degree course to enhance his qualification. His application as above before the Managing Committee of the School was duly approved and forwarded to the DI for granting prior permission.

iii. The DI has granted permission to the petitioner for admission in MSc course on September 25, 2017. Hence the petitioner entered into the Master's Degree course and completed the same being duly qualified. His last date of examination was on December 29, 2019.

iv. Later on August 13, 2020 the writ petitioner has applied for grant of pay scale meant for post graduate category of teachers. His prayer as above was allowed by the Managing

Committee of the School and recommendation therefor was made by it before the DI.

v. Next comes the impugned letter dated February 09, 2021 by the DI which speaks as follows:-

“In reference to the subject cited above I am sending herewith the prayer of Md. Wasin Ali, AT, Nowapara Jr. High School, P.O – Nowapara Simulia, P.S Berhampore, Dist- Murshidabad seeking necessary instruction forwarding Post Graduate scale of pay in favour of Md. Wasim Ali.

It is to be stated that Md. Wasim Ali has completed all necessary formalities to obtain Post Graduate Degree and may be given in the higher scale of pay as per existing rules. But as he is posted in Junior High School and as the Govt. changed the qualification for recruitment of Assistant Teachers from Upper Primary to Secondary section to Pass Graduation only so the question arises whether Md. Wasim Ali will be allowed Post Graduate scale of pay or not for obtaining his higher qualification.

So I would request you to render necessary instruction in this regard at an early date.”

3. Mr. Jana is appearing for the petitioner. He would ventilate the grievance of the petitioner that the petitioner cannot be considered to belong to any other category, far less any category beneath the same as has been recommended for him by the School Service Commission in its letter of recommendation. He relies on the relevant document annexed with the writ petition to submit that the School

Service Commission has recommended the petitioner as a Honours Graduate candidate and later on he has been appointed and approved in service in the same category. Therefore, according to him, it would now be impermissible under the law for the said respondent to raise any doubt or question as regards his eligibility to a particular pay scale, on the ground that the petitioner has been posted in a Junior High School. He would submit further that as per the prevalent rules at the time of appointment of the writ petitioner, the petitioner has been recommended for being appointed in a Junior High School, which is actually irrelevant at a later stage while granting him the Post Graduate category pay scale, to which the petitioner would be otherwise eligible in law. According to Mr. Jana, posting of the writ petitioner would be inconsequential so far as his prayer for grant of higher pay scale is concerned.

4. On the other hand Mr. Jana, would submit that the writ petitioner has duly complied that the relevant provision of the rules existent on the day, regarding obtaining prior permission of DI and such permission has been granted to him vide letter of DI dated September 25, 2017. Hence after due compliance with the relevant

rules and obtaining prior permission of the competent authority and being qualified in the Master's Degree course, the writ petitioner would be eligible as per law to be granted with the higher scale of pay meant for post graduate teachers. In such view of the fact, the petitioner would say that the impugned action of the respondent/DI, seeking clarification if Post Graduate scale of pay can be granted to the petitioner in view of his posting in a Junior High School, is only erroneous and in contravention to the rules applicable. Thus it is unwarranted and illegal. Instead, it is urged that the petitioner would be entitled for grant of higher scale of pay pursuant to his post graduate degree, as envisaged in the said letter itself i.e. dated February 9, 2021.

5. Mr. Der is representing the State. He would raise strong objection on the contention and prayer of the writ petitioner in this case. He would rely upon the amended provision of West Bengal Schools (Control of Expenditure) Act, 2005, pursuant to the West Bengal Schools (Control of Expenditure) (Amendment) Act, 2017. He would submit that pursuant to the amended provision of Section 14(2) which has envisaged that a teacher appointed for class VI to VIII and IX and X shall be entitled to draw pay meant for graduate teacher, the prayer of

the petitioner is not competent to be allowed. He would submit that admittedly the petitioner has been appointed in a Junior High School, thereby imparting education to the students from class VI and VIII. Therefore, as per the amended provision of the Act, as stated above he would not be entitled to draw any other pay scale excepting that meant for graduate teachers, Mr. Dey says.

6. Mr. Jana appearing for the petitioner would refer to a judgement of this Court in WPA 17003 of 2021 dated December 17, 2024 to submit that so far as Amendment Act of 2017 is concerned, the Court has held that the same to have no retrospective effect. He would submit that the respondent in this case has made an endeavour to apply the Amendment Act of 2017, retrospectively in case of the writ petitioner insofar as the writ petitioner has been appointed and granted permission by the School Managing Committee for induction in MSc, prior to coming into force of the said Amendment Act.

7. Mr. Dey for the State has submitted again regarding the judgement of this Court dated December 17, 2024 to be not applicable in case of the present writ petitioner since according to

him the two cases are distinguishable as per the factual background of each of those. In the other case Mr. Dey has stated that the writ petitioner completed the MSc course prior to coming into force of the 2017 Amendment Act, whereas the present case is based on different facts that before the petitioner having qualified in the MSc course, the Amendment Act of 2017 came into force. Thus he challenges the applicability of the ratio decided in the judgement dated December 17, 2024 as above, as to the facts of the present case.

8. So far as applicability of 2017 Amendment Act in case of the present writ petitioner and his entitlement namely, to the pay scale meant for graduate teachers, as submitted on behalf of the State, does not however, inspire confidence in the mind of the Court, insofar as undeniably the petitioner has been allowed to enjoy Honours graduate pay scale since from his induction in service, till date and rightly so in view of the fact that the petitioner has been appointed as a Honours graduate category teacher.

9. The West Bengal Schools (Control of Expenditure) Act, 2005 has been amended vide the Amendment Act, 2017, which came into force from the date of its publication in the official gazette, that is, April 17, 2017. Section 14(2) of the Act of 2005 has been amended thereby, in the following manner:

Unamended provision:

“14. (1) ** ** ** **

(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.

(3) ** ** ** **

Amended provision:

“14. (1) ** ** ** **

(2) Every teacher appointed for classes VI to VIII and classes IX and X, shall be entitled to draw pay meant for Graduate teacher 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.

(3) ** ** **~

10. Therefore, since after coming into force of the Amendment Act of 2017, as above, a teacher appointed for Classes VI to VIII and IX and X, would be entitled to draw graduate scale of pay. Admittedly, the petitioner is a teacher of Junior High School appointed against the regular vacant post. Junior High School is a school for students who are older than elementary school

students but younger than the high school students. It typically includes grades 6,7 and 8.

11. Admittedly also the petitioner has been recommended, appointed and approved in service, as a honours/post graduate category teacher. Being a honours/post graduate category teacher, he has been appointed in Junior High School, for the reason that at the relevant point of time, the respondent/school service commission has not been conducting separate examinations for different categories of school. It is also worth notice that since after appointment and till date, the petitioner has been granted with the pay scale, meant for a honours/post graduate category teacher, though he has been imparting education to the students of classes VI to VIII in the said Junior High School.

12. It is also worth noting that in its letter dated February 9, 2021, the DI has mentioned about the petitioner having duly completed all necessary formalities by the petitioner, to obtain Post Graduate Degree and his being eligible for grant of higher pay scale as per the existing rules. The only ground for which the DI has sought instruction from the Commissioner of School Education, Government of West Bengal, is that if the petitioner, having been posted in

the Junior High School, may be granted with the post-graduate scale of pay as has been prayed for by him, whereas the rules provide that from upper primary to secondary section, the teachers would be entitled only to graduate category pay scale.

13. The Court notices that not even the said rule as above, or anything other, has prohibited the respondent to allow the writ petitioner to be granted with the honours' graduate scale of pay. Had it been that due to the reason of being posted in a Junior High School, he would have only been entitled to graduate scale of pay, the respondent would not, in that case have allowed him even the pay, at honours graduate category scale of pay. Be that as it may, it can also be noticed that the petitioner has been recommended, appointed and approved as a honours' graduate incumbent though posted in a Junior High School.

14. An amendment has come into effect to the West Bengal School Service Commission Act, 1997, vide the West Bengal School Service Commission (Second Amendment) Act, 2010, which has provided the power to the State Government for making rules to carry out the purposes of the said Act. The same includes its power to make rules to provide the manner and

scope of selection of persons for appointment to the posts of teachers. Pursuant to the same, various notifications have been published by the School Education Department, Government of West Bengal, to promulgate rules for regulating the manner of selection of persons for appointment as teachers in 'upper primary', 'secondary' or 'higher secondary' levels, like No.485-SE(S)/IS-26/2010(Part-I) dated June 3, 2015, No.1105- SE/S/IS-26/2010 (Pt.-III) dated September 20, 2016 and No.1106-SE/S/IS-26/2010 (Pt.-III) dated September 20, 2016.

15. Thus, it can be said that before coming into force of the relevant rules in the years 2015 or 2016, as mentioned above the entrance examination or the selection test for all categories of teachers was same and common to all the incumbents. Thus, the petitioner being an honours' graduate person, took part in the selection tests and was declared qualified and appointed. Since there has not been any segregation in the process of recruitment, as regards, the aspiring teacher in a Junior High School or any other schools, the recommendation by the School Service Commission was also made as per the option exercised by the candidates and without

following any particular category of schools for appointment of any particular category of candidates. This has been done in due course, and as per the process existent on the particular date. The petitioner's appointment in a Junior High School, though as a honours' graduate category teacher and grant of commensurate pay scale to him, itself signifies that the provisions under the Amendment Act of 2017, has not been made applicable, in case of the writ petitioner. And it is rightly so, as the said Amendment Act 2017, would not have any retrospective effect, to take the case of the present petitioner, into its purview, in so far as the petitioner has been appointed prior to coming into force of the said Amendment Act, 2017.

16. Hence the court is of considered opinion that the writ petitioner having duly and in compliance with the prevalent rules completed his higher degree course should be eligible for grant of higher scale of pay meant for post graduate teachers, irrespective of the fact that he has been appointed in a Junior High School.

17. In such view of the fact, the present writ petition should succeed.

18. Hence WPA 20130 of 2021 is allowed. The same is disposed of with the following directions:-

i. The District Inspector of Schools (Secondary Education), Murshidabad is directed to immediately allow the post graduate scale of pay to the writ petitioner commensurate to his enhanced qualification, with effect from the date in accordance with law;

ii. Let the pay fixation of the writ petitioner be immediately made and arrear amount of salary if any, be released to him;

iii. The entire exercise as above may be concluded by the respondent no.3/ District Inspector of Schools (Secondary Education), Murshidabad within a period of four weeks from the date of communication of copy of this order.

19. Since no affidavits have been called for the allegations made in the writ petition are deemed to have been denied by the respondents.

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

(Rai Chattopadhyay, J.)