

WPA 18602 of 2018

**Ratna Saha
versus
The State of West Bengal & Ors.**

*Mr. Biswarup Biswas, Adv.
Mr. D. N. Mukherjee, Adv.*

...For the Petitioner

*Mr. Supriyo Chattopadhyay, A.G.P.
Ms. Iti Dutta, Adv.*

...For the State

1. The affidavit-in-reply as filed on behalf of the petitioner is taken on record.

2. This Court has heard learned advocate for the writ petitioner and learned advocate for the respondent-State at length.

3. The instant matter is now taken up for passing appropriate order.

4. By filing the instant writ petition the writ petitioner has prayed for issuance of writ of mandamus against the respondent authorities, more specifically, against the respondent No.3 commanding him for granting Post-Graduate scale of pay to the writ petitioner.

5. For effective adjudication of the instant *lis* the facts leading to filing of the instant writ petition is required to be dealt with in a nutshell and those are as under:-

- i. In the year 1996 the writ petitioner completed her B.P.Ed. in Physical Education from Kalyani University.
- ii. In the year 1999 the writ petitioner also completed M.P.Ed. degree in Physical Education from the self-same university.
- iii. The writ petitioner participated in the Regional Level Selection Test of the year 1999 wherein she was selected as an Assistant Teacher in Physical Education.
- iv. On 28.3.2001 the name of the writ petitioner was recommended by the Secretary of the West Bengal Regional School Service Commission (Southern Region) for appointment as an Assistant Teacher in Physical Education in the school of the respondent No.5.
- v. On 23.12.2017 the writ petitioner made a prayer with the Secretary, Managing Committee of the respondent No.5, school, for upgradation of her scale of pay on account of her higher qualification (M.P.Ed.)

- vi. The Managing Committee of the school of respondent No.5 on 27.1.2018 took a favourable resolution in favour of the writ petitioner and decided to forward the prayer of the writ petitioner to the respondent No.3, authority.
- vii. On 6.8.2018 the prayer for grant of higher scale of pay of the writ petitioner was forwarded to the respondent No.3 by the Secretary and Headmistress of the respondent No.5, school.
- viii. Despite receipt of such letter no decision has been taken by the respondent No.3 and thus the writ petitioner approached this Court by filing the instant writ petition.

6. Mr. Biswas, learned advocate accompanied by Mr. Mukherjee, learned advocate appearing on behalf of the writ petitioner at the very outset submits before this Court that on acquiring higher qualification by the writ petitioner, that is, M.P.Ed. there cannot be any impediment on the part of the respondent No.3 to grant higher scale of pay to the writ petitioner as prayed for. It is argued by Mr. Biswas that the issue involved in the instant writ petition is similar to the facts and circumstances as

involved in ***W.P.A. 9132 of 2016 (Tapas Majhi vs. State of West Bengal & Ors.)*** which has been disposed of by this Court by passing a judgment dated 26th June, 2024, whereby and whereunder this Court while allowing the said writ petition directed the concerned District Inspector of Schools to grant higher scale of pay to the writ petitioner of the ***W.P.A. 9132 of 2016***. It is submitted by Mr. Biswas that since the present writ petitioner is similarly circumstanced with the writ petitioner in ***W.P.A. 9132 of 2016***, an appropriate favourable order may be passed as prayed for in the instant writ petition.

7. In his next fold of submission Mr. Biswas places his reliance upon a judgment dated 30th September, 2016, as passed by a coordinate Bench of this Court in ***W.P. 3248(W) of 2011 (Tapas Kumar Biswas vs. State of West Bengal and Ors.)***. It is submitted by Mr. Biswas that in the said decision of ***Tapas Kumar Biswas (supra)*** it has been held by the coordinate Bench that Physical Education teachers with Masters degree in Physical Education from a recognised university would be entitled to get higher scale of pay notwithstanding the fact that Post-Graduate degree in Physical Education was not necessary for appointment of Assistant Teacher of Physical Education.

8. *Per contra* Ms. Dutta, learned advocate duly led by Supriyo Chattopadhyay, learned Additional Government Pleader, appearing for the respondent-State at the very outset draws attention of the Court to the affidavit-in-opposition as affirmed on 9th August, 2019. It is submitted by Ms. Dutta that from page No.3 of affidavit-in-opposition it would reveal that at the time of appointment the writ petitioner disclosed her qualification as B.A.,B.Ed. in Physical Education. It is further submitted by Ms. Dutta that from the writ petition it would reveal that the writ petitioner completed her Post-Graduate degree in the year 1999 and in spite of the same she has suppressed her actual educational qualification for the best reason known to her. It is submitted by Ms. Dutta that the Government Order No.155-SE(b)/10M-102/98-Pt-1 dated 13th July, 1999, is a clear bar for grant of higher scale of pay to the writ petitioner, as prayed for.

9. In course of her submission Ms. Dutta places her reliance upon following reported decisions:-

a) State of West Bengal & Ors. vs. Md. Sohidullah & Ors. reported in (2008) 2 CHN 234.

b) Tarak Chandra Roy vs. State of West Bengal & Ors. reported in (2008) 2 CHN 973.

10. It is submitted by Ms. Dutta that in both the aforementioned reported decisions, namely, ***Md. Sohidullah (supra)*** and ***Tarak Chandra Roy (supra)*** two separate Division Benches have categorically held that the writ petitioner who has consciously participated in the selection test in Pass category without disclosing their higher qualification are not entitled to higher scale of pay on account of their Post-Graduate qualification.

11. In course of his reply Mr. Biswas draws attention of the Court to paragraph No.5 of the affidavit-of-reply as filed by the writ petitioner today. It is contended by Mr. Biswas that it is the specific case of the writ petitioner that in the selection process of 1999 there was no occasion on the part of the writ petitioner to suppress her actual educational qualification. It is further contended that since there was no column in the application Form of the relevant selection test, the writ petitioner did not get any scope to disclose her M.P.Ed. qualification. It is submitted by Mr. Biswas that the writ petitioner cannot be saddled with an allegation that she had consciously suppressed her actual educational qualification. It is further submitted by Mr. Biswas that a Larger Bench of this Court in the reported decision of ***Utpal Kanti Karan & Ors. vs. State of West Bengal & Ors.*** reported in ***2024(0) Supreme (Cal) 38 : (2024) SCC***

Online 1274, had occasion to consider the aforementioned judgments, prevailing on the issue of acquiring higher qualification in the subject of Physical Education. It is submitted that while passing the judgment of **Utpal Kanti Karan (supra)**, the Larger Bench of this Court had also considered the case of **Baishali Banerjee vs. State of West Bengal & Ors.** reported in **(2008) 2 W.B.L.R. 720**. It is further submitted by Mr. Biswas that the said Full Bench in the reported decision of **Utpal Kanti Karan (supra)** also noticed a salient feature in respect of Physical Education teacher, that is, in the category Physical Education teacher, there is no separate category of Pass and Honours since no Honours course in Physical Education is taught by any of the universities in the State unlike other subjects.

12. It is submitted further that the Larger Bench in the said reported decision of **Utpal Kanti Karan (supra)** also noticed that subsequent acquisition of Post-Graduate qualification in Physical Education subject cannot be equated with any other subject as has been held in the reported decision in **Baisali Banerjee (supra)**. Mr. Biswas thus contends in view of such there cannot be any predicament in granting relief to the writ petitioner.

13. This Court has meticulously perused the entire materials as placed before this Court. This

Court has given its conscious considerations over the submissions of the learned advocates for the contending parties.

14. As discussed hereinabove, Ms. Dutta appearing on behalf of the respondent-State in course of her submission strongly contended that on account of failure on the part of the writ petitioner to disclose her higher qualification at the time of her selection, she is not entitled to the higher scale of pay.

15. As rightly pointed out by Mr. Biswas that in the reported decision of **Utpal Kanti Karan (supra)** the Larger Bench of this Court has considered the case of **Md. Sohidullah (supra)** and the Larger Bench came to a finding that a case of an Assistant Teacher in Physical Education cannot be equated with the case/cases of an Assistant Teacher of other subjects. Admittedly, the case of **Md. Sohidullah (supra)** is not identical with the facts and circumstances of the instant case since the said Md. Sohidullah has been appointed as an Assistant Teacher in the subject of Zoology and thus the said decision is distinguishable from the facts and circumstances of the instant case.

16. So fact as the case of the **Tarak Chandra Roy (supra)** is concerned, it appears that his prayer for higher scale of pay was not considered considering the relevant provision of West Bengal Schools (Control

of Expenditure) Act of 2005 which is also distinguishable from the facts and circumstances of the instant case.

17. In order to arrive at a logical conclusion of the instant writ petition this Court intends to have a look to the relevant paragraphs of the reported decision of **Baisali Banerjee (supra)** and the same is reproduced hereunder in verbatim:-

“8. The case in hand is, however, having a salient feature. The appellant is a Physical Education teacher. There is no honours course taught by any of the Universities in the State. Hence there could be no such category in the School Service Commission in the concerned subject. We also do not find any such distinction being made in Physical Education by the School Service Commission. Hence all candidates who are having appropriate qualification in Physical Education are considered in one category i.e. pass category. If that be the position their subsequent acquisition of post graduate qualification cannot be equated with any other subject.

9. In the instant case the appellant undertook post graduate study. She appeared in the post graduate examination. Before the result could be published she was selected and appointed in the post. In the case of Bhaskar Chakraborty (supra) the

identical situation happened. Hence in our view, the appellant was entitled to the benefit of the higher pay scale.

10. Let us now examine the said Act of 2005 to find out whether there is any hindrance in the way of extending higher pay scale to the appellant. Appellant was appointed in 2001. She acquired post graduate qualification in 2001. Hence she was to be considered contemporarily. Her case was unnecessary kept pending. Her prayer could not be considered to her disadvantage under the provisions of the said Act of 2005 in this regard. Learned Counsel appearing for the appellant has successfully drawn our attention to Section 16 wherein it is provided that notwithstanding anything contained in the said Act, the terms and conditions of service of a teacher shall not be varied to his or her disadvantage in the view of the commencement of the said Act.

11. In Circular dated June 03, 2002 the State considered the cases of the candidates who were undergoing post graduate studies or had appeared at the post graduate examination but result was yet to be published. Those candidates, if selected, in honours category were extended post graduate scale after acquiring post graduate qualification. Since in Physical Education there is no such distinction between pass category and honours

category the benefit of the circular dated June 03, 2002 should be extended to the Physical Education teachers being similarly circumstanced with Bhaskar Chakraborty (supra) and the present appellant.”

18. It appears to this Court that the reported decision of **Baisali Banerjee (supra)** was also considered by the Full Bench and the proposition of law as enunciated therein remained untouched by the said Full Bench. At this juncture, I also propose to look at the relevant paragraphs of the reported decision of **Partha Chatterjee vs. State of West Bengal and Ors.** reported in **2004(2) CLJ 493** and those equated herein below in verbatim:-

“24. Fixation of different scales of pay for teachers of the same or different aided schools, with the same qualifications, who perform the same duties and functions and are hence, equally circumstanced violates principles of equal work for equal pay and offends Article 14 of the Constitution of India, more so in the absence of specific rules prescribing the requisite educational qualifications for teachers of different classes.

25. In this context, it may be relevant to record, as pointed out by learned Counsel appearing on behalf of the petitioner, the prescribed minimum requisite qualification for the post of

assistant teacher of Physical Education is a Bachelor of Physical Education.

26. Accordingly, the Government Order dated 22nd November, 1993 was issued clarifying that Physical Education teachers with Masters degree in Physical Education from recognized Universities would be entitled to get higher scale of pay notwithstanding the fact that post graduate degree in Physical Education was no necessary for appointment as Assistant Teacher of Physical Education.”

19. As discussed in the foregoing paragraphs that a point was taken by Ms. Dutta in course of her argument that the writ petitioner did not disclose her Post-Graduate qualification in her application while participating in the recruitment examination which has, however, been denied and disputed on behalf of the writ petitioner stating, *inter alia*, that in the relevant application form there was no column for disclosing M.P.Ed. qualification On perusal of the Full Bench reported decision in **Utpal Kanti Karan (supra)** it appears to this Court that the Larger Bench of this Court also took note of such situation in paragraph No.257 in the following manner:-

“There is no honours course taught by any of the Universities in the State. Hence there could be no such category in the School Service Commission in the concerned subject. We also do not find

any such distinction being made in Physical Education by the School Service Commission. Hence all candidates who are having appropriate qualification in Physical Education are considered in one category i.e. pass category. If that be the position their subsequent acquisition of post graduate qualification cannot be equated with any other subject.”

20. In view of the discussion made hereinabove, this Court thus finds that the Larger Bench in the reported decision of **Utpal Kanti Karan (supra)** has clearly distinguished the subject of Physical Education with the other subjects in case of appointment of Assistant Teacher by the Commission.

21. It further appears to this Court that in the reported decision of **Partha Chatterjee (supra)** the entitlement of Physical Education teachers with Masters degree in Physical Education from a recognised university to get higher scale of pay is found to be valid.

22. In view of the consistent judicial pronouncement as discussed hereinabove, this Court thus finds sufficient merit in the writ petition. Accordingly the instant writ petition succeeds.

23. WPA 18602 of 2018 is hereby allowed.

24. Consequently, the respondent No.3, that is the District Inspector of Schools (S.E.), North 24

Parganas, Barrackpure, is hereby directed to grant Post-Graduate scale of pay to the writ petitioner with effect from the date of her appointment and to issue revised pay scale from the two months of the communication of the order so as to enable the writ petitioner to draw her salary on such revised scale. The arrears of pay of the writ petitioner is also to be calculated by the respondent No.3 positively by six months from the date of communication of this order and such arrears of pay, without any interest, shall have to be disbursed in favour of the writ petitioner in four equal instalments. However, the payments of arrears are to be cleared positively by the last day of December, 2025.

25. All parties, including the respondent No.3 are directed to act on the server copies of this order duly downloaded from the official website of this Court.

26. Learned advocate for the State is directed to communicate the server copy of this order to the respondent No.3 for his immediate compliance.

27. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all necessary formalities.

Partha Sarathi Sen, J.