

25.03.2025.
02
Ct.No.654.
as

WPA 24005 of 2024

Sanjay Roy
Vs.
The State of West Bengal & Ors.

Mr. K. C. Das,
Sk. Sahjahan.

...for the Petitioner.

Mr. Santanu Maitra, Ld. Sr. Govt. Adv.,
Ms. Kakali Pal.

...for the State.

1. The defensibility of the order dated September 9, 2024, issued by the District Inspector of Schools, declining to accept the petitioner's prayer for a higher scale of pay, has been called into question in this writ petition. Additionally, the petitioner prays for a direction upon the respondents to grant a higher scale of pay due to his acquisition of a higher qualification in Physics, a subject relevant to his teaching.
2. The petitioner began pursuing an M.Sc. in Physics in 2007. While pursuing the course, the West Bengal Regional School Service Commission, South Eastern Region, initiated a selection process to fill various posts of assistant teachers in the region.
3. The petitioner offered his candidature for the post of assistant teacher in Physics, participated in the selection process, and emerged as a successful candidate. Consequently, his name was recommended for the post of assistant teacher in

Physics at Bipin Behari Bidyapith (High School). Pursuant to that recommendation, the petitioner joined the school on September 26, 2008.

4. On April 20, 2009, he made a prayer to the Secretary of the Managing Committee of the school to grant permission to appear in the final examination of M.Sc. Part-II in Physics. By adopting a resolution, the Managing Committee of the School granted permission. The petitioner subsequently appeared in the examination and obtained a Master's Degree in Physics from the University of Calcutta in 2009. The last date of his final examination was June 15, 2009.

5. Subsequently, the petitioner made an application through the Headmistress to the competent authority, requesting a higher scale of pay. He also requested that his representation be forwarded to the District Inspector of Schools (SE), North 24-Parganas, for consideration, on June 27, 2012. However, despite receiving his representation, no action was taken. Consequently, by another communication dated November 14, 2014, the Deputy Director of School Education wrote a letter to the District Inspector of Schools, urging a decision on the petitioner's application.

6. On September 9, 2024, the District Inspector of Schools passed a reasoned order rejecting the petitioner's prayer for a higher scale of pay, on the grounds that the petitioner had not obtained prior permission from the District Inspector of Schools before pursuing the M.Sc. degree in Physics. Aggrieved by this order, the petitioner has preferred the present writ petition.

7. Mr. Das, representing the petitioner, submits that the issue concerning the requirement of prior permission for a candidate who entered service while pursuing an M.Sc. course is no longer *res integra*. He refers to the decision reported in **2024 Supreme (OnLine) (Cal) 3278 (Utpal Kanti Karan & Ors. Vs. State of West Bengal & Ors.)**, where the Hon'ble Special Bench, in addressing the reference, observed that if a teacher has partially completed higher studies before entering service, they would fall under the purview of G.O. No. 1595-SE(S) dated December 26, 2005. In such cases, the requirement to obtain permission from the District Inspector of Schools would not apply.

8. Referring to an unreported decision of a Hon'ble Division Bench of this Court delivered in an intra court appeal, **MAT 1825 of 2022 with CAN 1 of 2024 (Mijanaur Rahaman Vs. The State of West Bengal & Ors.)**, he submits that the Hon'ble Division Bench also accepted such view and held that if a teacher partially completed higher study before entering service, he/she is not required to obtain permission from the District Inspector of Schools concerned to complete the studies and obtain Post graduate degree. He also places his reliance on a judgment, reported in **2022 1 Cal. L. J. 17 (Md. Adeel UZ Zaman Vs. State of West Bengal & Ors.)** and an unreported decisions of Hon'ble Division Bench rendered in **FMA 1299 of 2021 (The State of West Bengal & Ors. Vs. Animesh Choudhury & Ors.)**. He also cites an unreported judgment passed by a Co-ordinate Bench of this Court in **WPA 8171 of 2022 (Sandhya**

Sardar Vs. The State of West Bengal & Ors.) in support of his contention.

9. In response, Mr. Mitra, learned Advocate representing the State, drawing my attention to Section 14(3) of the West Bengal Schools (Control and Expenditure) Act, 2005, and a circular vide No. 593-SC(B) dated November 2007, argued that a teacher is required to seek prior permission from the concerned District Inspector of Schools if he or she wishes to claim an additional increment or a higher scale of pay for obtaining a higher qualification through the Managing Committee of the school. Referring to paragraph 272(a), he further contended that the Hon'ble Special Bench had held that the enhancement of pay due to the acquisition of a higher qualification during a service career depends on the relevant rules in force at the time of acquiring the qualification and cannot be claimed as a matter of right in the absence of such rules.

10. Referring to the explanation provided by the Special Bench in paragraph 272(a), Mr. Mitra submits that if a teacher joins the school with a postgraduate degree and later enhances his or her qualification during the service career, such a claim must be decided based on the relevant rules. He further argues that if a teacher joins a school with a postgraduate degree after the issuance of the Government Circular dated February 12, 1999, the teacher would not be entitled to the postgraduate scale.

11. Heard the learned Advocates representing the respective parties and perused the materials placed before me.

12. If the admitted facts are succinctly summarized, it would be evident that the petitioner was pursuing an M.Sc. degree in Physics before entering service, and completed the M.Sc. course after obtaining prior permission from the Managing Committee, which also granted him study leave. It is also an admitted fact that the petitioner was appointed with the Honours/PG scale, not with a Postgraduate degree. However, it is acknowledged that he completed the M.Sc. degree and entered service after the promulgation of the West Bengal Schools (Control and Expenditure) Act, 2005. Section 14(3) of the Act is relevant for the resolution of the issue raised in this writ petition. Provision of Section 14(3) of the Act is reproduced hereinbelow:

“(3) Every teacher of a school shall, if appointed in the Honours Graduate or Post graduate 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.”

13. A plain reading of the aforesaid provision indicates that if a teacher is appointed in the Honours graduate or Postgraduate teacher category, he will be entitled to receive the Postgraduate scale upon acquiring a Postgraduate degree, in the manner specified in the relevant order.

14. It may not be out of place to mention that the issue regarding taking prior permission from the District Inspector of Schools for a candidate who entered into service while pursuing post graduate course is no longer *res integra*. In the in paragraph 272(g) of the judgment delivered in case of **Utpal Kanti Karan & Ors.** (*supra*), the Hon’ble Special

Bench and, while answering the reference, ruled that if a teacher has partially completed higher studies before entering service, he would come under the purview of G.O. No. 1595-SE(S) dated December 26, 2005, and the question of obtaining permission from the concerned District Inspector of Schools would not arise.

15. Subsequently, following the decision of the Hon'ble Special Bench, two different Hon'ble Division Benches in case of ***The State of West Bengal & Ors. Vs. Animesh Choudhury & Ors.*** (Supra) and ***Mijanaur Rahaman Vs. The State of West Bengal & Ors.*** (Supra), directed the authority concerned to grant higher scale of pay in the like situation.

16. It is needless to observe that the decisions of the Hon'ble Special Bench and the Hon'ble Division Bench are binding upon this Court. The circular vide. G.O. no. 593-SE (S) referred to by Mr. Mitra was considered by the Hon'ble Special Bench, which concluded that the same has no statutory force. Therefore, I am of the view that the judgments delivered by the Hon'ble Special Bench, as well as the order passed by the Hon'ble Division Bench, are squarely applicable to the case at hand.

17. In view of the above, I find merit in the contention of the petitioner, and accordingly, the writ petition is allowed. The order dated September 9, 2024, issued by the District Inspector of Schools, rejecting the petitioner's prayer for a higher scale of pay, is hereby set aside. The District Inspector of Schools is directed to grant the higher scale of pay to the

petitioner, effective from the last date of his final examination for the postgraduate degree, i.e., the M.Sc. in Physics, Part-II, within eight weeks from the date of receipt of a copy of this order.

18. With this observation and order, this writ petition is disposed of. However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)