

WPA 25167 of 2017

Sukhen Kumar Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Md. Manuwar Ali.

... for the petitioner

Mr. Milan Kumar Maity.

...for the State

1. The petitioner has filed the instant writ petition challenging an order of the District Inspector of Schools, Secondary Education, Murshidabad (hereinafter referred to "D.I.") dated May 16, 2017, by dint of which the D.I. has rejected the petitioner's prayer for grant of post graduate scale of pay.
2. Mr. Md. Manuwar Ali, learned counsel is appearing for the petitioner. He has submitted that the petitioner after having entered into service on April 11, 1997 has been granted permission by the School Managing Committee vide resolution dated April 26, 2013 to pursue the Masters degree course through correspondence. The Secretary of the School by dint of his letter dated September 19, 2013 has forwarded its recommendation and prayer to the D.I. for grant of permission to the petitioner to pursue Masters degree course.
3. Thus, upon due permission of the School Authority, the petitioner had entered into Masters degree course and completed the same and was ultimately issued the certificate dated July 7, 2015.

4. Thereafter, by dint of his letter dated March 30, 2016, the petitioner has prayed for grant of pay scale commensurate to the post graduate candidates, to him, pursuant to his Masters degree in English, the subject relevant to his teaching.
5. Pursuant to the Court's order dated November 7, 2016 passed in W.P. No. 19559 (W) of 2016, the respondent D.I. has considered the petitioner's prayer for grant of higher pay scale and rejected the same, by dint of the impugned order as stated above.
6. The grounds of rejection are, *inter alia*, as follows:-
 - (i). Firstly, that the petitioner has not complied with the provisions of Para 3 of the notification No. 593-SE(B) dated November 27, 2007, by dint of which he was required to seek prior permission of the D.I. before enrolment.
 - (ii). Secondly, that the institution of Vinayak Missions University, wherefrom the petitioner was completed the course, is a state University and any degree granted by the same to any student at off campus station beyond territorial jurisdiction of the said State cannot be acceptable as a valid one, in terms of the judgment of the Hon'ble Supreme Court, in case of ***Prof Yash Pal vs. State of Chhattisgarh (2005)***.
7. Therefore, for the reasons as above, the petitioner's prayer for grant of higher pay scale has been turned down.
8. Mr. Milan Kumar Maity, learned counsel is representing the State.

9. Having heard the learned counsels for the parties and having perused the records, it is found that decision of the D.I., so far as he has held that the West Bengal Schools (Control of Expenditure) Act, 2005 shall be applicable in case of the present petitioner, is a proper one. The petitioner having been qualified with the Masters degree in the year 2015, would be duly covered under the provisions of the Act of 2005.
10. The substantive right of the petitioner for being granted with the higher pay scale would therefor, arise, in terms of Section 14 (3) of the said act, which stipulates as follows:-

“14. Scale of pay etc. of teacher;

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(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.”

11. The petitioner being an Honours Graduate and having improved his qualification at a subsequent dated shall be entitled under the said provisions of law for grant of higher pay scale.
12. So far as the notification No. 593-SE(B) dated November 27, 2007 as stated above, the Hon’ble Larger Bench of this Court has held in the judgment of ***Utpal Kanti Karan vs. State of West Bengal & Ors.*** reported in ***2024 SCC OnLine Cal 1274*** that the same would not have any statutory force but rather could be

an administrative direction to regulate the process of grant of higher pay scale to a teacher.

- 13.** In such view of the fact and in existence of the substantive statutory right of the petitioner as provided under Section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005, the Court finds that the mandatory compliance by the petitioner with the provisions of notification No. 593-SE(B) dated November 27, 2007 may not be an unavoidable condition, for which the respondent authority can deny the petitioner of the higher pay scale.
- 14.** Furthermore, even if it is taken that the provision under notification No. 593-SE(B) dated November 27, 2007 would be applicable in case of the writ petitioner, the Court finds that the writ petitioner cannot be held to have not obtained the permission of the D.I.
- 15.** It is, for the reason, that the petitioner being at the receiving end shall have to only apply for the said permission through the proper channel.
- 16.** To that extent, there is no infringement of duty by the petitioner as he has duly applied before the School Managing Committee and permitted by the same and also his prayer as above for permission has been duly forwarded by the School Managing Committee with its recommendation to the D.I. vide letter dated September 19, 2023.
- 17.** Rest has never been in the hands of the petitioner, for which he can be held liable that any permission of the D.I. has not been obtained by him.

18. The other ground as relied on by the D.I. to reject the petitioner's prayer for invalidity of his degree also does not inspire confidence in the mind of the Court, in so far as the petitioner has duly completed the course through correspondence, from the said University. So far as the degree obtained through correspondence course, there would not be any embargo for the same to be accepted as a valid degree, the University is an UGC approved one, offering courses in regular as well as correspondence mode.
19. Therefore, there is no question of the petitioner to be an off-campus student, the validity of whose degree is declared as null and void by the Supreme Court in the judgment referred to by the D.I. as mentioned above.
20. On the discussion as above, the Court finds that the impugned order dated May 16, 2017 of the D.I. is based on unreasonable and illegal grounds, which are not maintainable in the eye of law.
21. Therefore, the impugned order dated May 16, 2017 appears to be not maintainable and liable to be set aside.
22. For the reasons as above, this writ petition is allowed by directing the respondent District Inspector of Schools, Secondary Education, Murshidabad/3rd respondent to immediately grant the petitioner the pay scale commensurate to the post graduate category, with effect from the following day of last date of his Part II examinations.

- 23.** Let the refixation of the petitioner be immediately done within a period of three weeks from the date of communication of copy of this order.
- 24.** Let the said 3rd respondent disburse the arrear amount of salary to the petitioner within a period of two months from the date of communication of copy of this order.
- 25.** Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.
- 26.** With the above observations and directions, the writ petition being No WPA 25167 of 2017 is disposed of, along with the pending applications, if any.
- 27.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)