

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 22900 of 2012

**Bimal Chandra Barman
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Anjan Bhattacharyya
: Mr. Jakir Hossain
: Mr. Shahan Shah

For the State : Mr. Mrinal Kanti Ghosh

Judgment on : **28.10.2025**

Rai Chattopadhyay, J. :-

1. The only issue involved in this writ petition is whether the writ petitioner, who is a 'Graduate' teacher and has improved qualification after obtaining permission of the District Inspector of Schools, is entitled for higher scale of pay or should he not be allowed the same in view of the category of post he has been appointed to and the staff pattern of the school. An order of the Commissioner of School Education, West Bengal dated September 17, 2012 is under challenge in the instant writ

petition. By dint of the same the petitioner's prayer for grant of post graduate scale of pay has been rejected.

2. The writ petitioner has joined in service as a 'Graduate' category teacher and similar scale of pay, with effect from June 27, 1996. His prayer for permission to be enrolled for higher degree has been duly forwarded by the school authority to the respondent/District Inspector of School (Secondary Education), Dakshik Dinajpur, [in short "DI"] and granted by the DI, vide order dated January 7, 2004. The writ petitioner thereafter enrolls himself for the M.Sc Degree course and qualified in the same, his last date of Part-II examination being April 28, 2008.

3. After that the writ petitioner has prayed for grant of post graduate scale of pay, which was rejected vide the letter dated October 15/November 17, 1999 stating that no teacher of 'Graduate' category may be allowed the post graduate scale of pay. Hence, being aggrieved the petitioner filed his first writ petition W.P.No. 16975(w) of 2010. The Court in the same has directed the Commissioner of School Education, West Bengal to consider the prayer of the petitioner, after setting aside the order dated October 15/November 17, 1999. As a result, the

impugned order dated September 17, 2012, has been passed by the respondent/ Commissioner of School Education, West Bengal.

4. In the said impugned order the following has been held *inter alia* that:

a. The petitioner has been appointed under ‘Graduate’ category and improved his qualification after promulgation of the West Bengal Schools (Control of Expenditure) Act, 2005; hence his claim cannot be allowed in view of the Government Order No. 593-SE dated November 27, 2007 [In short “No.593”] and the provisions under sections 14, 16 and 20 of the said Act of 2005;

b. Government Orders No. 772-Edn(S) dated July 8, 1974 [in short “No.772”] and No. 670-SE(S) dated September 4, 1998 [in short “No.670”], which were to be mandatorily followed in case of grant of permission for higher study, have not been so followed, rendering such grant of permission itself not good in the eye of law, as the same was violative of the staff pattern of the school; such permission granted unauthorizedly and in violation of the notifications does not entitle the petitioner to claim post

graduate scale of pay after completion of his higher course in pursuance of the permission so granted;

- c. The benefit of ROPA 1999 [clause-12(3) thereof] should be allowed to the teachers commensurate with the staff pattern thereof, in accordance with the notifications No.772 and 670 respectively;
- d. Provisions under the Government Order No. 1595-SE(S) dated December 26, 2005 [in short “No.1595”] and Section 14(3) of the Act of 2005 are applicable only to the teachers who have been appointed by the West Bengal School Service Commission and the petitioner’s case is not to be governed there under;
- e. The prescribed rules have been violated; the petitioner has improved qualification for personal satisfaction;
- f. The petitioner is not entitled to higher pay scale in terms of provisions under Sections 14, 20 of the Act of 2005.

5. This Court in ***W.P.No. 6608 (w) of 2022 dated June 9, 2008*** ***[Subrata Kumar Ghosh vs State of West Bengal & Others]*** has held that the government orders pertaining to the staff pattern have nothing to do with the salary and the allowances of the teachers. Rather the same is dependent on the qualification of the teacher and modifiable with change in the

same. The following portion thereof be extracted as the same may be relevant for the purpose of this case:

"Where all Assistant Teachers constitute a single class, and as per the Government Orders pertaining to salary and allowances, there scales are to be fixed on the basis of qualifications in the relevant teaching subject, payment of different scales to two teachers with the same qualifications, teaching the same subjects in the same classes, in the same or in different aided non-government schools or Madrasahs, on the basis of the requisite qualification for the teaching post, as per the approved staff pattern, which is in no way related to the duties and responsibilities pertaining to the teaching posts, would amount to denial of equal pay for equal work and offend Article 14 of the Constitution of India."

6. In such view of the fact when it has been held that all teachers are pertaining to the same category, so far as their entitlement to the higher scale upon obtaining higher qualification is concerned, irrespective of the category of post they have been appointed in and with regard to which staff pattern of the school, which is for administrative convenience only, shall bear no effect and consequences at all, the first ground on which the petitioner's prayer has been turned down, appears to be not sustainable.
7. Relevant provision of ROPA 1990 is also pertinent here, which is as follows:

“12 (3) All teachers, including Physical Education Teachers and Librarians of Secondary Schools who have improve their, qualifications who were appointed with higher qualification in the subjects or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualification, with effect from the 1st January, 1996 or the date of improving qualifications whichever is later.”

8. Subsequent enhancement of qualification and entitlement to the commensurate pay scale as a consequence of the same has been provided thereunder. Similarly, provisions of the Act of 2005 is also worth noticing, which is as follows:

“14. (1) Every teacher of a school shall, if appointed in the post of Undergraduate 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.

(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) 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.”

9. As a matter of fact, interpretation of the statutory provisions as above, as made in the said impugned order dated September

17, 2012, would amount to rendering those as inoperative and infructuous, whereas those actually entitles the incumbent for the enhanced scale of pay on his obtaining higher qualification. According to the statutory provisions also, as mentioned above, such right of a teacher is not limited in view of the staff pattern of the school either.

10. For the reasons as discussed above, this Court finds the said impugned order as an irrational one, not to in conformity with the law and thus illegal too. Therefore, the same is not sustainable and is liable to be set aside. For the reasons as above, this writ petition should succeed.

11. Hence, the writ petition No. WPA 22900 of 2012 is allowed, with the directions as follows:

- a.* The impugned order passed by the Commissioner of School Education, West Bengal dated September 17, 2012, is set aside;
- b.* The writ petitioner is entitled to the Post Graduate scale of pay, with effect from the day following the last date of his Part-II examination, in M.Sc;

c. The respondent No.4/DI is directed for fixation of pay of the writ petitioner by allowing him the Post Graduate pay scale, with effect from the appropriate date as mentioned above. Similarly, fixation of pension be modified accordingly, as the case may be and fresh Pension Payment Order be issued. Such exercise should be done positively within a period of 4 weeks from the date of communication of copy of this judgment;

d. Arrear amount of salary and pension (as the case may be), should be paid within a period of 2 months from the date of communication of copy of this judgment.

12. Writ petition No. WPA 22900 of 2012 is allowed and disposed of.

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

(Rai Chattopadhyay, J.)