

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 38095 of 2013

**Ashoka Sadhukhan
vs.
State of West Bengal & Ors.**

For the petitioner

: Mr. Shakti Pada Jana.

For the State

**: Mr. Pantu Deb Roy, Ld. A.G.P.,
: Mr. Subrata Guha Biswas.**

Heard on : 20/01/2025

Judgment on : 20/01/2025

Rai Chattopadhyay, J.

1. The petitioner has filed the present case to challenge the order dated November 27, 2012 passed by the Additional District Inspector of Schools, Secondary Education, Basirhat, North 24 Parganas.
2. The subject matter of the writ petition relates to grant of higher scale of pay to the petitioner. The petitioner has stated that she was recommended by the West Bengal Regional School Service Commission, South Eastern Region, Barasat, for being appointed as an Assistant Teacher in Dumdum Girls' High School (H.S.). By dint of its letter dated April 20, 2005 the petitioner was recommended to be appointed as a pass graduate teacher. The petitioner joined in the said school on April 29, 2005. Her approval was granted vide order dated September 7, 2005 as a pass graduate teacher in Science and Mathematics Group. Since thereafter during serving in the said school, the petitioner has decided to upgrade her qualification and similar prayer was submitted by her before Secretary of the School, vide letter dated August 31, 2006. The school

authority has granted permission to the petitioner in terms of her prayer, by dint of the resolution dated September 14, 2006.

3. The petitioner in the meantime appeared for the 9th Regional Level Selection Test, 2008, conducted by the School Service Commission and was recommended for being appointed in Bankra High School. This time, writ petitioner was recommended by the School Service Commission as a Chemistry Honours graduate candidate and appointed and approved (on January 14, 2010) as B.Sc. (Hons.) in Chemistry Assistant Teacher.
4. By dint of a letter dated April 19, 2010, address to the Secretary, Bankra High School that after joining in the said school on October 24, 2009, she has appeared for the final examination of M.Sc. Correspondence Course in Vidyasagar University on December 30, 2009. By dint of her said letter she has requested the school authority to release her salary meant for post graduate teachers. The petitioner's prayer as above was approved by the School Managing Committee. The recommendation of the School Managing Committee for grant of higher pay scale to the writ petitioner was forwarded duly to the office of District Inspector of Schools, Secondary Education, Basirhat, North 24 Parganas, vide letter dated June 25, 2010.
5. The resultant order is that impugned in the instant writ petition, which is, dated November 27, 2012. The said letter relates to the subject matter sanction of post graduate scale of pay in favour of Ashoka Sadhukhan, Assistant Teacher, B.Sc. (Hons.) in Chemistry. The Additional District Inspector of Schools, Secondary Education, Basirhat, North 24 Parganas has stated in the said letter that the petitioner who is a B.Sc. (Hons.) Assistant Teacher of the school would not be entitled to

get higher scale of pay, in terms of G.O. No. 1595-SE (S) dated December 26, 2005 and G.O. No. 593-SE (B) dated November 27, 2007.

6. Mr. Jana, learned Advocate appearing for the petitioner, categorically relied on the Full Bench Judgment of this Court in **Utpal Kanti Karan vs. State of West Bengal & Ors.**, reported in **2024 SCC Online Cal 1274**, to submit that the Court has dealt the similar issue in the case as above, in the following words:-

“In case of any conflict between the government order dated 26th December, 2005 and order dated 27th November, 2007 it is needless to mention that the order dated 26th December, 2005 shall prevail. In fact, the government order of 26th December, 2005 was issued in exercise of power under Section 14(3) of the 2005 Act. Although, it has been argued that for the purpose of making rules the assent of the Governor is not required and inadvertently it has been mentioned that “The Governor is pleased hereby to specify” in the earlier Government order all the applications pending prior to 27th November, 2007 are required to be decided on the basis of the Rules existing during the interregnum period and any benefit accrued cannot be taken away. Moreover, the Secretary School Education Department has admitted that the said G.O. No. 593-SE (B) dated 27th November, 2007 has not been published in the “Kolkata Gazette Extraordinary” and hence cannot have any statutory force”.

7. He would say further that the ratio of the decision of this Court in WPA 3781 of 2021(**Paramita Bhowmik Vs. State of West Bengal & Ors.**), would also be applicable in case of the present petitioner who is aggrieved that the ground taken by the respondent authority to reject her prayer for grant of higher scale of pay is regarding her not availing prior permission from the concerned respondent school, before entering into the Masters Degree Course, so that she could seek revision of her scale of pay. The petitioner says that the same would not be a valid ground, in accordance with law, to reject her prayer, as above.

8. Mr. Jana, learned advocate for the petitioner, has indicated that the last date of Part-II Examination of the petitioner was on October 30, 2009. Before that she has enrolled herself for the M.Sc. course, even before her entering into the service, on October 24, 2009. He would submit that hence there would not be any scope for the petitioner to seek prior permission from the said respondent authority, as envisaged, in the Government Notifications, as mentioned above. In such circumstances, the decision of the said authority by dint of the order impugned would not be maintainable in the eye of law.
9. He has referred to a decision of this Court dated September 25, 2024, in WPA 3781 of 2021 (***Paramita Bhowmik Vs. State of West Bengal & Ors.***), to submit that, there, in a similar situation, the Court has decided that prior permission of the concerned respondent authority would not be imperative for the petitioner to be granted with higher pay scale. Relying on the same in the present case, learned advocate would submit further that the ratio thereof would be applicable in this regard in the present case too.
10. Mr. Deb Roy is representing the State. He would submit that the petitioner who claims to have completed Master's Degree Course, M.Sc. from Vidyasagar University through Distance Education Mode has failed to seek and secure prior approval of the concerned respondent authority in terms of G.O. No. 548-SE (S) dated June 24, 1997 as well as G.O. No. 593-SE (B) dated November 27, 2007. He says that securing prior permission before being enrolled in the Master's Degree Course would have been imperative for the petitioner in order to claim higher scale of pay on the basis of the same, in terms of G.O. No. 1595-SE (S) dated December 26, 2005. In case of the petitioner none of the provisions of the orders as mentioned above have been duly complied with. He would further submit that the laboratory based science subject could not have

been pursued through correspondence course as claimed by the petitioner.

- 11.** Heard submissions, perused the record. It appears that the petitioner's initial appointment in the School namely, Dumdum Girls' High School (H.S) was pursuant to recommendation made by the School Service Commission on April 20, 2005. She was appointed as graduate candidate. Before the school authority she applied for grant of permission for being enrolled to pursue Master's Degree Course through correspondence course. Such permission was granted to her by the said school authority. Recommendation of the school authority has also been forwarded to the office of District Inspector of Schools, Secondary Education, Basirhat, North 24 Parganas for grant of permission to the writ petitioner as prayed for. Admittedly, however the office of the said respondent has never informed either grant or rejection of permission to the petitioner, as prayed for. Be that as it may, the petitioner enrolled herself for pursuing the M.Sc. and ultimately completed the final examinations on October 30, 2009. She was qualified upon publication of the results thereof on December 24, 2009.
- 12.** In the meantime, however the petitioner was again recommended for appointment by the School Service Commission, on August 24, 2009 as an Honours graduate candidate in Chemistry subject. Therefore, she joined in the new school on October 24, 2009. However, after joining in the new school on October 24, 2009, the petitioner appeared for M.Sc. Examinations, Part-II, the last day of examination being on October 30, 2009. After being qualified the petitioner had applied for grant of higher pay scale but it was declined on the ground that she did not obtain prior permission before enrolling into the M.Sc. course.

13. On careful scrutiny of the background facts of the present case, it appears that the writ petitioner after being inducted for service initially, has duly applied before the school authorities, that is, Dumdum Girls' High School (H.S.), for grant of permission to be enrolled in the Master's Degree Course through correspondence course. Her prayer was approved by the School Managing Committee on September 14, 2006. The petitioner has got herself enrolled for the course only after that and pursuant to such permission. In spite of the recommendation of the School Managing Committee as above being forwarded to the respondent District Inspector of Schools, Secondary Education, Basirhat, North 24 Parganas, no permission or any order rejecting such permission has ever been communicated to the writ petitioner. In the meantime the writ petitioner has again qualified in the examinations and was appointed in Bankra High School as a Science Graduate Assistant Teacher. Her pursuing the M.Sc. Course by correspondence never stopped. On October 30, 2009 was her last day of examination in the M.Sc. Course.

14. Under such circumstances there would not be any question for the writ petitioner to obtain prior permission from the District Inspector of Schools, Secondary Education, Basirhat, North 24 Parganas, she having already been duly complied with her part of responsibility in the process of obtaining prior permission. The Court considers the petitioner having applied beforehand before the school authority and the school authority having granted her permission, she would have no further role to play in the entire process of obtaining prior permission from the respondent District Inspector of Schools. So far as the G.O No. 1595-SE (S) dated December 26, 2005 and G.O No. 593-SE (B) dated November 27, 2007, are concerned those have specified about prior permission to be obtained by the petitioner from the District Inspector of Schools, Secondary Education, through School Managing Committee. Therefore having

applied before the School Managing Committee duly and within time, the writ petitioner should not be attributed with the responsibility any further, as to why formal permission of DI has not reached to her desk. Having discharged her part of responsibility, the petitioner cannot be considered to be governed any further, within the purview of the government notifications, as relied on by the State respondent.

15. The aspect has been categorically dealt with and decided by the Hon'ble Larger Bench of this Court in the judgment of ***Utpal Kanti Karan (supra)***, which has been discussed above. The Court has further held in the said judgment that in view of provisions under Section 14 (3) of the 2005 Act, the petitioner would be entitled to the substantive right for grant of higher scale of pay in terms of the higher qualification obtained by him or her. The Court has held that by operation of the government orders particularly G.O. No. 593-SE (B) dated November 27, 2007, which is an executive order in nature, the petitioner's substantive right as per the statutory order can not be turned down.

16. In the G.O No. 1595-SE (S) dated December 26, 2005, it has been provided as under:

“NOW, THEREFORE in exercise of power conferred by sub-section (3) of Section 14 of the West Bengal Schools (Control of Expenditure) Act, 2005 (West Ben. XIV of 2005), and in supersession of all previous orders on the subject, the Governor is pleased hereby to specify, with immediate effect, that a teacher of a school who has been appointed through the West Bengal School Service Commission in the Honours or Post-graduate teacher category and-

a. *****

b. *****

c. such teacher has, after joining the post improved his qualification with prior permission of the authority competent to grant such permission, shall, on being successful in the results of the examinations (theoretical and practical) for the Post-graduate degree in the subject relevant to the appointment,

be entitled to draw pay of Post-graduate teacher category from the day next following the last day of such examinations.”

17. The ratio of the decision of ***Utpal Kanti Karan’s case (supra)*** would be applicable in case of the present petitioner too. So far as the prior permission is concerned, the Court has discussed petitioner’s due compliance therewith as herein above. Therefore considering the same and in terms of Section 14 (3) of 2005 Act and the relevant provision of G.O No. 1595-SE (S) dated December 26, 2005, the Court finds that the writ petitioner would be entitled for grant of higher pay scale with effect from the day following of the last date of her M.Sc. examination.

18. On the finding as above the Court is constrained to further find that the impugned order dated November 27, 2012 would be liable to be set aside being de hors the law. Hence, the present writ petition is disposed of with the following directions:-

(i) the impugned order dated November 27, 2012, passed by District Inspector of Schools, is set aside;

(ii) the respondent No. 3 is directed to immediately allow the post graduate scale of pay to the writ petitioner with effect from the day following date of her last date of M.Sc. examination as mentioned above and re-fixation of pay scale of the petitioner should be immediately made;

(iii) the petitioner shall be paid forthwith the current and arrear amount of salary as per re-fixation of the pay scale.

(iv) the entire exercise as above should be concluded by the respondent No. 3 within a period of four weeks from the date of communication of copy of this judgment.

- 19.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)

Tudu/p.a