

Court No. 2
(1490)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

10.04.2025
(JPD 43)

WPA 694 of 2025

(S. Banerjee)

Md. Asadul Sk.
Vs.
State of West Bengal & Ors.

Mr. Sakti Pada Jana
Ms. Madhushri Dutta
Mr. Bikash Singha

... for the petitioner

Mr. Hirak Barman
Mr. Pretom Das

... for the respondents

Let the affidavit of service filed in court today
be kept with the record.

The petitioner is working as an Assistant
Teacher in Science and Mathematics Group of
Mayantali Junior High School since July 25, 2011.
At the time of appointment the petitioner was an
Honours Graduate in Mathematics. While the
petitioner was in service he enrolled himself for
pursuing M.Sc. degree course in July, 2015 session.
The Managing Committee of the school, by its
resolution no. 8 dated July 28, 2015, allowed the
petitioner to take admission in M.Sc. degree course.
The last date of completion of the examination was

September 3, 2017 and the results were published on January 18, 2018.

It is not in dispute that prior permission from the District Inspector of Schools was not taken for the purpose of pursuing the M.Sc. degree course.

Pursuant to an order dated January 7, 2025 passed in WPA 257 of 2021, the District Inspector of Schools (SE), Jalpaiguri passed an order dated March 26, 2025. By the said order the prayer of the petitioner for higher scale of pay was rejected by applying Clause 3 of GO NO. 593-SE(B) dated November 27, 2007.

Mr. Jana, learned advocate appearing for the petitioner, submits that the Hon'ble Larger Bench in a batch of writ petitions, the lead case being WPA 9921 of 2007 (*Utpal Kanti Karan –Vs.- State of West Bengal & Ors.*) held that the Government Order dated November 27, 2007 cannot have any statutory force. He submits that the issue as to whether higher scale of pay can be awarded in case a teacher has been appointed after coming into force of the Control and Expenditure Act, 2005, was considered by the Larger Bench and it has been held that such claim cannot be denied merely on the ground of failure to obtain prior permission.

Heard the learned advocate for the State on such submission.

The Government order dated December 26, 2005 specified the date from which the Honours or Post Graduate teacher can claim higher scale of pay. According to the said G.O. if a 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 examination (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 examination.

The Hon'ble Larger Bench observed that the G.O. dated 26th December, 2005 was issued in exercise of power under Section 14(3) of the 2005 Act and it was held that in case of any conflict between the G.O. dated 26th December, 2005 and G.O. dated 27th November, 2007, the order of 26th December, 2005 shall prevail.

The Hon'ble Larger Bench in the case of *Utpal Kanti Karan (supra)* took note of the admission of the Secretary, School Education Department that GO No. 593-SE(B) dated November 27, 2007 has not

been published in the “Kolkata Gezette Extraordinary)” and accordingly held that the same cannot have any statutory force.

In view of the said observation of the Hon’ble Special Bench, this Court holds that the order passed by the District Inspector of Schools on March 26, 2025 by placing reliance upon the Government Order no. 593-SE(B) dated November 27, 2007, calls for interference.

The Hon’ble Special Bench in paragraph no. 181 of the said decision observed that a teacher appointed after the promulgation of the West Bengal School Service Commission Act, 1997, would be entitled to higher scale of pay provided he has acquired such qualification in the relevant subject and the staff pattern permits appointment of a teacher with higher qualification. In paragraph 182 of the said decision it has been held that the requirement of a prior permission before the introduction of the Control and Expenditure Act, 2005, would not be rigidly interpreted, particularly when the Managing Committee has granted permission to the teacher concerned for acquiring higher qualification in the relevant subject without affecting his duties as a teacher in the institution. It was further held that the District Inspector of

Schools shall not deny the benefit of the higher scale of pay merely on the ground of failure to obtain prior permission if the District Inspector of Schools is satisfied that it is within the staff pattern and the school shall be benefited by the reason of the teacher acquiring higher qualification. It was further held that they are required to be guided by the Order Nno. 735-(SE(S)/SP-32/2002 as revised by the Circular No. 134-SE(S) dated November 3, 2004.

Thus, the Hon'ble Special Bench laid down a proposition that the District Inspector of Schools shall not deny the benefit of higher scale of pay merely on the ground of failure to obtain prior permission.

In the case on hand it is not in dispute that the Managing Committee has granted permission to the teacher concerned for acquiring higher qualification in the relevant subject.

The scope of enquiry for the purpose of granting higher scale of pay to the teacher who has acquired the post-graduate degree while in service, is that whether the same is within the staff pattern of the school and also as to whether the school shall be benefited for the reason of the teacher acquiring

higher qualification. The decision on such issue also has to be guided by the Order No. 735-SE(S)/SP-32/2002 as revised by the Circular No. 134-SE(S) dated 3rd November, 2004 as held by the Hon'ble Larger Bench.

The D.I. in his order dated 26.03.2025 observed that the case of the petitioner does not fall under the purview of the observations made by the Hon'ble Larger Bench without assigning any reasons in support of such observation.

This Court finds that the District Inspector of Schools (SE), Jalpaiguri took note of the decision of the Larger Bench but failed to appreciate the observations of the Larger Bench, more particularly, in paragraph nos. 181 and 182 thereof.

For the reasons as aforesaid, this Court is inclined to interfere with the order impugned. Accordingly, the order of the District Inspector of Schools (SE) dated March 26, 2025 is set aside.

The District Inspector of Schools (SE), Jalpaiguri is directed to consider the matter afresh in the light of the observations made by the Hon'ble Larger Bench in paragraph nos. 181 and 182 of the said decision as well as this Court.

The District Inspector of Schools (SE), Jalpaiguri is directed to fix a date of hearing and give a reasonable opportunity of hearing to the petitioner or his authorized representative and dispose of the matter afresh by passing a reasoned order in accordance with law in the light of the observation made by the Hon'ble Special Bench as well as this Court.

In the event the District Inspector of Schools decides in favour of the petitioner, all consequential steps pursuant thereto shall be taken by the District Inspector of Schools expeditiously.

With the above observations and directions WPA 694 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)