

24.2.2026

Ct. 652, sl.1

Sayan

WPA 403 of 2009

Dhiraj Nath Sarkar-vs-The State of West Bengal & Ors.

Mr. Rezaul Hossain

Mr. Anirban Saha

Mr. Pervez Hossain

....for the petitioner.

Mr. Milan Kr. Maity

.....for the State

Mr. Bharat Ch. Simai

...for the School Authorities.

- (1)** The writ petitioner is the approved teacher in the physical education subject in Bachelor Degree category who has been appointed in the respondent (5th) school vide recommendation of the West Bengal Regional School Service Commission dated March 8, 2001, for the same subject and in the same category. Later on, he has been transferred to the other respondent (8th) school. The petitioner's initial date of joining was March 30, 2001.
- (2)** The petitioner has completed his Bachelor Degree in physical education in the year 1988-'89 and Master Degree in physical education in the academic year 1990-'92, that is before the date of joining in the service. Therefore, the petitioner has been advanced with the post graduate scale of pay vide the order of the District Inspector of Schools (Secondary Education) Burdwan dated January 18, 2007.
- (3)** On October 21, 2008, the 2nd respondent, the Director of School Education, Government of West Bengal has issued an order withholding payment of post graduate pay scale to the writ petitioner,

which he has challenged in the instant writ petition. He says that according to his post graduate qualification he is eligible to be granted with the post graduate scale of pay. He indicates that the same has once been allowed to him by the respondent authority. Accordingly abrupt withholding of the same vide the impugned order is illegal and amounts to arbitrary exercise of power by the said respondent authority.

- (4)** Therefore, in this writ petition the petitioner has prayed for setting aside the said impugned order of the 2nd respondent dated October 21, 2008 and necessary direction to grant him pay in accordance with the post graduate scale of pay with effect from the date of withholding of the same, refixation of his salary and disbursement of the arrear salary in accordance with the pay scale so revised.
- (5)** The writ petitioner, the school authority as well as the State respondent are represented.
- (6)** On a meticulous scrutiny of the impugned order dated October 21, 2008, passed by the 2nd respondent, the Director of School Education, Government of West Bengal, it appears that the said authority has founded the same on the reasons that (i) the writ petitioner has been appointed in a post marked for the graduate candidates, eligible for graduate scale of pay. (ii) Therefore, in terms of section 14(2) of the West Bengal Schools (Control of Expenditure) Act, 2005 he would not be entitled to any other pay scale. (iii) Similarly, in terms of paragraph (7) of the

notification No. 593-SE(B) dated November 27, 2007 [in short “No.593”], which require mandatory prior permission of the District Inspector of Schools to undergo course at post graduate level to be granted with the commensurate pay scale, the writ petitioner is not eligible for grant of higher pay scale, due to non fulfilment of the said pre-condition.

- (7) The Court finds neither the Act of 2005, nor the notification No. 593 to be applicable in case of the writ petitioner, for the reason that the petitioner has acquired his higher qualification much prior to coming into force of the said statute or notification. May it be reiterated here that the petitioner was qualified with Master Degree in the relevant subject prior to his induction in service on and from March 30, 2001. Section 14(2) of the West Bengal Schools (Control of Expenditure) Act, 2005, has provided for as follows:

“14(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.”

- (8) That provision however is applicable only prospectively and the said statute is never to be applied retrospectively. Accordingly, provision of the said statute and the notification published there under as stated above, cannot be made applicable in case of the present writ petitioner. The Act lacks retrospective operation, rendering its

provisions inapplicable to pre-enactment qualifications. Accrued legal rights to higher pay scales based on qualifications obtained before 2005 cannot be considered as extinguished by subsequent statutory conditions. The judgment of this Court in ***Milan Kumar Dey vs State of West Bengal & Ors [2009 vol.1 CHN 569]*** may be mentioned in which by relying on a Division Bench judgment of this Court in ***State of West Bengal & Ors. vs. Sauvik Ghosh & Ors [(2008) Supreme (Cal) 381]*** the Court has quashed refusal to approve higher pay, directing grant of the same, where qualifications predated the Act of 2005.

- (9) So far as teachers of physical education subject are concerned, in this State only graduate category posts are available, to be filled up with the teachers with Graduate Degree and they shall be paid the pay scale of graduate category. Therefore, persons with higher qualification in the subject has to be accommodated in the category of post of lesser qualification with lesser pay. In some cases, the Court has settled the law that physical education subject teachers should be allowed post graduate pay scale if the higher qualification predates appointment and no category distinction exists, treating pay as person-specific under ROPA Rules. The following judgments are relevant in this regard: (i) ***Partha Chatterjee versus State of West Bengal [2004 2 CalLJ 493]*** and (ii) ***Utpal Kanti Karan versus State of West Bengal [2024 Supreme (Cal) 38]***.

(10) In the instant case also, the higher qualification of the petitioner predates his appointment. His appointment in the subject has to be against graduate category of post and commensurate pay scale, since there is no post existing, meant for post graduate category teachers in the subject concerned and there is no category distinction. In such circumstances and following the ration in the judgments in ***Partha Chatterjee (supra)*** and ***Utpal Kanti Karan (supra)***, this Court finds in this case that the writ petitioner is entitled to the benefit of higher pay scale, which though was approved for him once, has been curtailed and withheld by the respondent authority, vide the said impugned order dated October 21, 2008.

(11) Also, that the said impugned order dated October 21, 2008, is liable to be set aside since is founded on reasons not sustainable and legal and also being not in conformity with the settled principles of law.

(12) For all the reasons as discussed above, the instant writ petition is allowed with the following directions:

- i.** The impugned order of the 2nd respondent, the Director of School Education, Government of West Bengal, dated October 21, 2008, is set aside;
- ii.** The writ petitioner is entitled for the post graduate scale of pay, as before, with effect from the date of withholding

of the said by the respondent authorities;

- iii.** The respondent/District Inspector of the Schools (Secondary Education), Nadia is directed to immediately issue appropriate order approving the petitioner post graduate scale of pay from the said stipulated date;
- iv.** Let refixation of pay scale of the petitioner be made effected immediately by the said respondent;
- v.** This exercise in Nos. (iii) and (iv) above shall positively be concluded by the said respondent within a period of 4 weeks from the date of communication of copy of this order;
- vi.** Arrear amount of pay should be disbursed to the writ petitioner within a period of 12 weeks from the date of communication of copy of this order.

(13) The writ petition No. WPA 403 of 2009 is allowed and disposed of along with the application/s if any pending.

(14) Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)