

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 3779 of 2014

Archita Mondal

Vs.

State of West Bengal & Ors.

For the Petitioners

: Mr. Ekramul Bari

: Mr. Monoranjan Mahato

: Mr. Sk. Imtiaz Uddin

For the State

: Mr. Pantu Deb Roy

: Mr. Subrata Guha Biswas

Heard on

: 24.03.2026

Judgment on

: 31.03.2026

Rai Chattopadhyay, J. :-

- (1)** The disputed question involved in this writ petition is whether the petitioner, who has been inducted in service as an assistant teacher in the 'pass' graduate category, is eligible for grant of post graduate scale of pay, pursuant to her obtaining Master Degree, during the course of employment. An order of the respondent No.3/District Inspector of Schools (Secondary Education) Kolkata [in short "the DI"], dated **3rd December, 2013**, is under challenge in this writ petition. By dint of the said order the DI has refused prayer of the writ petitioner for grant of the post graduate scale of pay.
- (2)** Relevant background facts may be stated in a nut shell. The petitioner appeared in selection test as a 'pass' graduate candidate and sat in different set of selection procedure, than that was applicable in case of the

‘honours’ graduate candidates. The reason therefor being that at the relevant point of time, the petitioner did not qualify as a ‘honours’ graduate. She was qualified as a ‘honours’ graduate, only on the date of receipt of letter of recommendation issued by the School Service Commission. She was granted appointment letter dated **3rd December, 1998**. She joined in service on **9th December, 1998** and her service was approved vide memo dated 23rd August 1999. In 2001 she applied for permission to get herself enrolled in Master Degree course, vide her application dated 20th August, 2001. The managing committee of the school allowed the same in meeting dated **17th October 2001**. The writ petitioner ultimately qualified and her final result was published on 18th December, 2001. In 2003, the writ petitioner has completed her B.Ed course. Subsequently, vide a letter dated 22nd May, 2008, the West Bengal Board of Secondary Education has approved study leave to the writ petitioner, for both of her Part-I and II examinations in M.A.

- (3)** Be that as it may, after obtaining Master Degree, the petitioner submitted her application dated **29th June, 2006**, to the DI through the managing committee of school, seeking grant of post graduate scale of pay to her, pursuant to the higher post graduate degree obtained by her. The school authority agreed to the prayer of the petitioner in resolution dated 8th February, 2012 and recommended for such grant to be made to the petitioner, in its letter to the Di dated 19th August, 2013.
- (4)** Since, nothing happened, the petitioner had to seek intervention of this Court in two consecutive writ petitions. Ultimately pursuant to the direction of the Court, the DI has considered the petitioner’s prayer and by dint of the impugned order dated **3rd December, 2013** refused the same. Hence this writ petition.
- (5)** Mr. Bari, learned counsel for the writ petitioner has placed strong reliance on the law settled by the ratio of the Hon’ble Larger Bench’s judgment of

this Court, in *Utpal Kanti Karan's case* [*Utpal Kanti Karan Vs. State of West Bengal & Ors.* reported at (2024 SCC OnLine Cal 1274)]. According to him, the ratio thereof would squarely be applicable in the present case too.

- (6) The Larger Bench of this Court in *Utpal Kanti Karan Vs. State of West Bengal & Ors.* (2024 SCC OnLine Cal 1274) has laid down principles governing the grant of higher pay scales to teachers, who improve their qualifications post-appointment with due permission. It has held that Government Orders No.735 (June 3, 2002) and No.1334 (November 3, 2004) has an effect of amending G.O. No.155-SE(B) dated July 13, 1999, to make such teachers eligible for higher pay scale, with entitlement determined by rules (e.g., ROPA-1998) operative at the time of acquiring the qualification. In conflicts between G.O. No.1595-SE(S) dated December 26, 2005, and G.O. No.593-SE(B) dated November 27, 2007, the 2005 order prevails, and the 2007 order lacks statutory force due to non-publication in the Kolkata Gazette. The judgment recognizes that "the subsequent Government Orders No.735-SE(S)/SP/132/2002 dated 3rd June, 2002 [hereinafter referred to as "No.735"] and No.1334-SE(S) dated November 3, 2004 [hereinafter referred to as "No.1334"]], has amended the said G.O. No.155-SE(B) dated July 13, 1999 to the effect to incorporate as eligible for grant of higher pay scale, the teachers, who have improved or will improve qualification after joining the post with due permission from the authority competent to grant such permission". The Court has held that this principle applies to cases like the writ petitioner therein, who pursued a Master Degree (via correspondence) with school permission, entitling them to postgraduate pay scales under rules at acquisition time, such as ROPA-1998.
- (7) Mr. Bari has further relied upon a Division Bench judgment of this Court in *State of West Bengal and Another versus Bakul Kumar Singh and Others* [in FMA 538 of 2020, vide judgment dated 23rd December,

2024], in support of his contention that the petitioner would be eligible for grant of post graduate scale of pay. The Division Bench therein has relied on the Larger Bench judgment and held that Control of Expenditure Act 2005, cannot have any retrospective operation nor will stand as a bar in extending the benefit of a higher scale of pay in the event the permission was granted by the managing committee and the staff pattern permits the teacher having such higher qualification in the relevant subject on the basis of the orders dated 3rd June, 2002 [No.735], as revised in Circular dated 3rd November, 2004 [No. 1334].

- (8) Hence, Mr. Bari says that the instant writ petition may be allowed with appropriate direction.
- (9) The respondent/State, represented by Mr. Pantu Deb Roy, learned advocate states that the petitioner has applied as a 'pass' graduate category candidate, at a time when 'pass' and 'honours' graduate category candidates were evaluated on the basis of different standards of difficulties in the selection test. Therefore, on being successful in the selection test, the writ petitioner was recommended as a 'pass' graduate category teacher and joined the post. According to the said respondent the petitioner at a later stage would therefore be estopped to claim the benefit of higher pay scale, on the basis of her enhanced qualification. The respondent has further stated that grant of post graduate pay scale to the writ petitioner would frustrate her fitment in the approved staff pattern of the school. Also that, grant of higher pay scale to the writ petitioner would be violative of the notification No. 155-SE(B)/10M-102/98 Pt.I dated 13th July, 1999, which has provided for grant of that commensurate pay scale, which matches with the category of recommendation. The said respondent has also relied on the West Bengal Schools (Control of Expenditure) Act, 2005, section-14(2) thereof in particular to say that the said provision of law negates any claim of the petitioner for grant of higher pay scale, as it provides for grant of only the pay scale as

commensurate to the category of recommendation. The Notification No. 593-SE(B) dated 27th November, 2007 has also been relied on to further emphasise the argument that prior permission of the District Inspector of Schools being a mandatory condition under the same for a teacher to claim higher scale of pay on the basis of his enhanced qualification, the petitioner's case is not fitted therein, in absence of any prior permission of the District Inspector of Schools.

- (10) Mr. Deb Roy, learned advocate refers to the judgments of *Tarak Chandra Roy versus State of West Bengal & Others* [2008(2) CHN 973] and *State of West Bengal & Others versus Md. Sohidullah & Others* [2008(2) CHN 234]. The respondent seeks dismissal of the writ petition therefor.
- (11) In the fairly lengthy impugned order dated 3rd December, 2013, the respondent DI has mentioned ROPA 1998 and the notification No.155-SE(B) dated 13th July, 1999 and said that pay scales are determined by the qualification required for the post at the time of appointment. That, the petitioner applied for 'pass' graduate category post and appointed accordingly. That, her post did not require a Master Degree. Hence, her enhancing qualification should no way vary her scale of pay for any better, as per law. DI has found about no violation of any Constitutional right or safe guard of the writ petitioner in refusing her prayer for grant of higher pay scale.
- (12) The core issue that falls for determination in this writ petition is whether the petitioner, who was appointed as an assistant teacher in the pass graduate category, becomes entitled to the post graduate scale of pay upon acquiring a higher qualification during service with due permission.
- (13) At the outset, this Court finds that the controversy is no longer res integra in view of the authoritative pronouncement of the Larger Bench of this Court in *Utpal Kanti Karan vs State of West Bengal and Others* [(2024) SCC Online Cal 2274]. The Larger Bench, upon an exhaustive

consideration of the relevant Government Orders and statutory framework, has categorically held that teachers who improve their qualifications after appointment, with due permission of the competent authority, are entitled to be considered for higher scale of pay.

(14) The Larger Bench, inter alia, observed:

“the subsequent Government Orders No.735-SE(S)/SP/132/2002 dated June 3, 2002 and No.1334-SE(S) dated November 3, 2004... has amended the said G.O. No.155 to the effect to incorporate as eligible for grant of higher pay scale, the teachers, who have improved or will improve qualification after joining the post with due permission from the authority competent to grant such permission”.

(15) The ratio laid down therein makes it abundantly clear that the eligibility for higher pay scale is not frozen at the stage of initial appointment, but is capable of being altered upon acquisition of higher qualification, subject to due permission and the applicable Rules at the time of such acquisition.

(16) In the present case, it is not in dispute that the petitioner had obtained permission from the school authority to pursue her Master Degree course. The records further reveal that such qualification was duly acquired during the course of her service. Therefore, the foundational requirement, as laid down in the Larger Bench judgment, stands satisfied.

(17) It is pertinent to mention the scheme of the Revision of Pay and Allowances Rules, 1998 (ROPA 1998), particularly in the context of teachers who improve their qualifications during service. ROPA 1998, though primarily a pay revision framework, also contemplates the situation where an employee enhances his or her academic qualification. The underlying principle embedded therein is that pay is not merely

attached to the post in a rigid sense, but is also relatable to the qualification held by the incumbent, provided such qualification is relevant to the post and is acquired in accordance with law. Under ROPA 1998, the benefit of a higher scale of pay is admissible where the higher qualification is relevant to the subject/post held by the teacher; such qualification is acquired with prior permission of the competent authority; and the applicable Government Orders governing aided schools permit such financial upgradation. The Rules, when read in conjunction with Government Orders prevailing at the relevant time, recognize that a teacher who improves qualification with due permission does not remain confined to the entry-level scale. Rather, the teacher becomes entitled to be fitted into the higher scale corresponding to such enhanced qualification.

- (18)** This Court also takes note of the fact that the Larger Bench has further clarified that the entitlement of such teachers would be governed by the Rules of Pay Revision applicable at the time of acquisition of the higher qualification, such as ROPA-1998. As per the said judgment entitlement to higher scale would be ***“determined by the rules operative at the time of acquiring the qualification, such as ROPA-1998”***, once the teacher improves qualification with due permission. Thus, ROPA 1998 operates as the governing pay structure, while the Government Orders (notably No. 735-SE(S)/SP-132/202 dated 3rd June 2002 and No. 1334-SE(S) dated 3rd November 2004 act as enabling instruments, bringing within its fold teachers who acquire higher qualifications during service.
- (19)** Thus, the reasoning adopted by the District Inspector of Schools, to the effect that the scale of pay is immutable based on the qualification at the time of appointment, runs contrary to the settled legal position.
- (20)** The issue is further fortified by the Division Bench judgment of this Court in ***Bakul Kumar Sing (supra)***, wherein the principles laid down by the Larger Bench were reiterated and applied. The Division Bench held:

“the Control of Expenditure Act, 2005 cannot have any retrospective operation nor can it stand as a bar in extending the benefit of higher scale of pay, in the event the teacher had obtained permission from the competent authority and the staff pattern permits such upgradation”.

- (21)** The Division Bench thus rejected the contention of the State that the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005 would operate as a bar to such claims. It was clearly held that the said Act does not have retrospective effect so as to take away vested or accrued rights arising from earlier Government Orders.
- (22)** Applying the aforesaid ratio to the facts of the present case, this Court finds that the objection raised by the respondents on the basis of the category of initial appointment, namely ‘pass’ graduate, cannot be sustained. The legal position, as clarified by the Larger Bench, does not support a rigid classification that permanently restricts a teacher to the scale attached to the entry-level qualification, once higher qualification is duly acquired with permission. In the present case the writ petitioner has applied for permission to the school authority, for grant of permission prior to entering into the Master Degree course. The school authority has accorded her permission, which is to be considered as prior permission granted by the competent authority. In such view of the fact restraining the petitioner to be granted with the appropriate benefit on the ground of want of prior permission is baseless.
- (23)** Similarly, reliance placed by the respondents on Notification No.593-SE(B) dated 27th November, 2007 is also misplaced, inasmuch as the Larger Bench has already held that such notification lacks statutory force in absence of publication in the Official Gazette and cannot override earlier binding government orders and Rules.

- (24) The plea of estoppel, as sought to be urged by the State, is equally untenable. There can be no estoppel against law, particularly when the governing legal framework, as interpreted by a Larger Bench, recognizes the right of a teacher to claim higher scale of pay upon improving qualification. It is a matter of record that the petitioner has qualified with the 'honours' degree, only on the date of recommendation of her name as an assistant teacher by the School Service Commission. Therefore, prior to the same she could not have disclosed her qualification other than a 'pass' graduate candidate. Once it is established that the petitioner did not suppress any material fact and that her candidature was assessed on the basis of the qualification actually held by her on the date of participation in the selection process, the doctrine of estoppel cannot be invoked to deny her a statutory or policy-based benefit which accrued subsequently. The petitioner cannot be penalized for circumstances beyond her control, nor can she be said to have made an informed election to forgo future benefits arising out of higher qualification which she had not yet acquired at the time of application.
- (25) Moreover, after joining service, the petitioner improved her qualification with due permission from the competent authority. In view of the law laid down in *Utpal Kanti Karan (supra)* and reiterated in *Bakul Kumar Sing and Others (supra)*, such acquisition of higher qualification during service, with permission, entitles a teacher to be considered for the higher scale of pay in terms of the applicable ROPA provisions and government orders. The subsequent acquisition of qualification, being lawful and with approval of the competent authority, gives rise to a right which cannot be defeated by invoking the doctrine of estoppel or by rigidly adhering to the entry-level classification. Thus, the contention of the State that the petitioner, having once accepted appointment as a 'pass' graduate teacher, is forever precluded from claiming any higher scale, is contrary to the settled legal position and cannot be sustained. The petitioner's case, therefore, has to be tested on the touchstone of the law governing grant of

higher scale upon improvement of qualification, and not on the basis of any supposed estoppel arising out of the circumstances prevailing at the time of her initial appointment.

- (26) In view of the aforesaid discussion, this Court is of the considered opinion that the impugned order passed by the District Inspector of Schools dated **8th December, 2013**, proceeds on an erroneous understanding of law and is in direct conflict with the binding precedents of this Court. The refusal to grant post graduate scale of pay to the petitioner, despite her having acquired the requisite qualification with due permission, cannot be sustained in law.
- (27) Accordingly, the reasoning adopted by the respondent authority in the impugned order dated **8th December, 2013**, stands vitiated and is liable to be set aside.
- (28) In view of the reasons recorded hereinabove, and in the light of the law laid down by the Larger Bench of this Court in **Utpal Kanti Karan (supra)** and followed by the Division Bench in **Bakul Kumar Sing and Others (supra)**, this writ petition succeeds.
- (29) Accordingly, the impugned order dated **8th December, 2013**, passed by the District Inspector of Schools (Secondary Education), Kolkata, is hereby set aside and quashed. The respondent/ District Inspector of Schools (Secondary Education), Kolkata shall immediately allow post graduate scale of pay to the petitioner, with effect from the day after last date of her Part-II examination in Master Degree, by issuance of appropriate order and re-fixation of her pay scale, within maximum a period of 3 weeks from the date of communication of this judgment.
- (30) Arrear salary should be disbursed to the petitioner, within a period of 8 weeks from the date of communication of this judgment.

- (31)** Writ petition No. WPA 3779 of 2014 is allowed and disposed of along with applications pending, if any.
- (32)** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)