

31.3.2026
ct.25, sl. 7
sk

W.P.A. 10083 of 2022
Sabita Das @ Sabita Bera Das
vs
The State of West Bengal & Ors.

Mr.Ekramul Bari
Sk. Imtiaj Uddin
...for the petitioner

Mr. Swapan Kr. Datta, Ld. G..P.
Mr. Dipankar Das Gupta
...for the State

1. Having been aggrieved with the rejection order by the respondent/Additional District Inspector of Schools Education (S.E.), Contai Sub-Division dated 28.12.2021 as to the prayer of the petitioner for grant of higher scale of pay, pursuant to her M.Sc degree in Chemistry, the present case has been filed, by the petitioner.
2. The petitioner has submitted that on 08.09.2008, she entered into service and her service was approved treating her as the B.Sc. Honours graduate category teacher. Thereafter, she had prayed for permission to be enrolled in the M.Sc. course and such permission was accorded to her, by the Managing Committee of the School.
3. The petitioner completed her M.Sc. Part-II examination in Chemistry on 04.10.2010. Thereafter she had prayed for being granted with the higher scale of pay, pursuant to her M.Sc. qualification as stated

above. However, she has failed in her such endeavour, pursuant to the order as impugned in the present case, as her prayer was declined thereby.

4. Mr. Bari, learned advocate appearing for the petitioner contended, inter alia, that the sole ground of rejection of prayer of the petitioner by the Additional District Inspector of Schools Education (S.E.), Contai Sub-Division, is the alleged non-compliance of the formalities and conditions under G.O.No. 593-SE(S) dated 27.11.2007. He would refer to the Full Bench judgment of this Court in case of ***Utpal Kanti Karan- vs-State of West Bengal & Ors.*** reported in **2024 SCC OnLine Cal 1274**, and submit that the Hon'ble Full Bench, after thorough discussion, has been pleased to set aside the said G.O.No. 593-SE(S) dated 27.11.2007.

5. In such view of the facts, Mr. Bari would submit that the impugned order as stated above would not be in conformity with the law as settled and is thus illegal and not to be maintainable. He seeks an appropriate order in this case.

6. So far as the factual aspects of the case is concerned, the submissions made on behalf of the petitioner is duly corroborated from the statements of the petitioner in the writ petition. The petitioner was appointed on 08.09.2008 and her service was

approved vide the order dated 20.01.2009 with effect from the date of her appointment. She was approved as a B.Sc Honours category teacher. At the time of appointment, she already completed her M.Sc Part-I course and after appointment, she obtained permission of the school managing committee for appearing in the M.Sc Part-II examination of Chemistry.

7. Having been appointed in the year 2008, the writ petitioner has been covered under the provision of 2005 Act.

8. The Government Order No. 1595-SE(S) dated December 26, 2005 may be noted which has provided in exercise of power under Section 14(3) of the West Bengal Schools(Control of Expenditure), Act 2005, the teacher of a school who has been appointed through the West Bengal School Service Commission in the Honours (or Post Graduate) category and has improved qualification after joining the post and with the prior permission of the authority, shall be eligible for grant of post graduate scale of pay, after obtaining postgraduate degree, in the subject relevant to the appointment, with effect from the day next following the last day of such examinations.

9. In the impugned order the respondent/ Additional District Inspector of Schools Education (S.E.), Contai

Sub-Division has relied on the Government Notification No. 1595-SE(S) dated 26.12.2005 and 593-SE(S) dated 27.11.2007, which requires the incumbent to take the prior permission of the District Inspector of Schools, before enrolment for higher degree course.

10. The judgment of the Hon'ble Larger Bench of this Court as referred to above, is also worth to be taken note of, in this regard.

In the same, the Court has held as follows:-

“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”.

11. An argument advanced on behalf of the petitioner regarding non-applicability of G.O.No. 593-SE(S) dated 27.11.2007 in view of the decision of the Hon'ble Larger Bench, may not be acceptable on the ground

that the impugned order is of a date prior to the date of the Larger Bench's judgment. Hence, at that point of time, the law was not settled, in the way as it is after the judgment of Hon'ble Full Bench.

12. Thus, in case of the petitioner, she might have been required to take prior permission as provided in G.O. 593-SE(S), to subsequently seek for higher pay scale for obtaining higher degree. It is a matter of record that the petitioner has obtained the higher degree in the subject relevant to her teaching. It is also on record that, she made prayer before the school managing committee for grant of permission, before appearing in the M.Sc Part-II course. Fact remains that there is no material to find if the school authority had at all forwarded her application, to the office of the District Inspector of Schools or not. Therefore, the application not having been received in the office of the said authority, its consideration as to the same or any permission being granted as to the same, is unexpectable. The question is if the petitioner can be forced to suffer the adverse effect of not sending her application by the school authority to the office of the D.I., even after having duly and timely submitted her application seeking prior permission. This question has already been answered by this Court earlier and is being reiterated in this case, that in such an event, the

petitioner cannot be forced to suffer the unfavourable consequences of the inaction of the school, to which she had no role to play. The petitioner being otherwise eligible for grant of higher pay scale, pursuant to her higher qualification, cannot be refused such benefit for the reason, which should not actually be attributable to him/her. The petitioner would be in dark as to what steps have been taken by the school, regarding her prayer or even if taken at all. The same would be beyond her control and knowledge. Thus her prayer as above must be considered as bonafide and in terms of and for enforcement of her statutory rights, which if not allowed to her, would amount to violation of her legitimate and legal rights by the respondent authorities and untenable in the eye of law.

13. Hence, in case of the writ petitioner, the restraining provision under G.O. No. 593-SE(S), would not be applicable. For the reasons as discussed above, the impugned order dated 28.12.2021, does not appear to be in conformity with the law. Hence, not maintainable in the eye of law, being illegal.

14. The writ petition No. WPA 10083 of 2022 is allowed. The impugned order dated 28.12. 2021, is set aside.

15. The writ petitioner shall be granted appropriate higher pay scale pursuant to her M.Sc. qualification,

in accordance with law. The respondent No. 3 shall take immediate steps for re-fixation of her pay scale, from the appropriate date in accordance with law. The petitioner shall be released with the arrears, if any.

16. The entire exercise as above, shall be concluded by the respondent No. 3/ District Inspector of Schools (S.E.) Purba Medinipur, within a period of three weeks from the date of communication of copy of this order.

17. Writ petition is disposed of.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)