

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 25055 of 2025

Sabyasachi Chakraborty

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Saktipada Jana
: Mr. Subhajyoti Das
: Ms. Sudipta Pramanik

For the State : Mr. Mukti Chandra Ghosh
: Ms. Sormi Guha Thakurta

Heard on : **02.04.2026**

Judgment on : **21.04.2026**

Rai Chattopadhyay, J. :-

- 1.** An order dated **July 24, 2025**, of the District Inspector of Schools (Secondary Education) South 24 Parganas/respondent No.3 [herein after referred to as "the DI"], is assailed by the writ petitioner in the instant writ petitioner. Pursuant to an order of this Court dated June 10, 2025, the DI has been considering the petitioner's prayer for grant of higher scale of pay and passed the said impugned order, thereby rejecting the prayer of the writ petitioner.
- 2.** The writ petitioner is an approved teacher in the subject English and in the Honours Graduate category. She has been inducted into the service on and from **June 26, 2001**. She has prayed for the first time on **June 23, 2007**, before the Secretary of the school, for permission to undergo higher degree course. On May 15, 2009, she has reiterated such prayer

of her. The managing committee of the school has granted her permission vide resolution dated **May 16, 2009**. The Headmaster has sent recommendation of the school managing committee to the respondent DI in its letter dated **September 4, 2009**. The petitioner has stated that in spite of the school authority having complied with all the formalities, the respondent/DI has never replied to such prayer of the writ petitioner.

3. The writ petitioner was ultimately admitted in Master Degree course in Netaji Subhash Open University on **September 28, 2010**. He has finally completed his course in the year 2016, his last date of examination being **August 28, 2016**. His results were published on December 7, 2016.
4. Later, on **December 19, 2016**, the petitioner has made prayer to the President of the school managing committee for grant of post graduate scale of pay, pursuant to his achieving post graduate qualification. That was forwarded by the school authority to the respondent/DI vide letter dated March 27, 2017 and August 7, 2017. In response, though the DI conducted hearing in presence of the petitioner and the Headmaster of the school, but initially he did not pass any order. Subsequently, pursuant to the order dated June 10, 2025, of this Court, the DI has passed an order dated **July 24, 2025**, which is impugned in the instant writ petition.

Grounds on which the petitioner has prayed for grant of higher pay scale:

5. The petitioner says that according to the Rules, he is qualified for such grant of higher pay scale with effect from the following day of last date of his M.A.Part. II examination, that is August 29, 2016. That he made his prayer for permission for higher study firstly on June 23, 2007, before the Secretary of the school and thereafter on several occasions to

the school and the DI as well. He says that the school authority, being the competent authority, has granted such permission [on May 16, 2009] and also the study leave. He has stated that in spite of the school authority having sent its recommendation and necessary documents to the DI, no permission has been received from that office.

6. Be that as it may, it is the claim of the writ petitioner that he having completed the post graduate degree course in the subject of his teaching, with the prior permission of the competent school authority, is entitled to be granted the post graduate scale of pay.
7. The petitioner relies on section-14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005 (unamended), to say that in accordance with the same, he having been appointed in honours graduate teacher category, is entitled to draw pay of post-graduate scale, upon acquiring post graduate degree. The petitioner says that amendment brought in to the provision of section-14 of the said Act of 2005, vide the Amendment Act of 2016, is not applicable in his case, as the relevant date of his being entitled to the post graduate scale of pay, is previous to coming into force of the said Amendment Act of 2016 [which came into force with effect from **September 14, 2016**. He says that 2016 amendment of the statute, has no manner of retrospective applicability.
8. Therefore, according to the writ petitioner, in exercise of the provision of the statute which was in existence on the date of his acquiring qualification and being eligible, for grant of higher pay scale, he would be entitled for such benefit. Hence, he seeks necessary order in this regard.

Reasons for which the respondent has declined to allow the petitioner's prayer for grant of post graduate scale of pay:

9. The DI in the said impugned order has held firstly that there exists no policy of the School Education Department, West Bengal by virtue of which post graduate scale of pay may be accorded to any existing teacher working under honours graduate category. He further holds that by virtue of the amended statutory provision vide the Amendment Act of 2016, the facility of a teacher for getting post graduate pay scale upon acquiring post graduate degree with permission of the competent authority under section-14 of the Act – has been revoked/withheld/amended. The DI in his said order has stated further that post amended provision of the Act restricts a teacher of honours graduate category, to be allowed with the post graduate pay scale merely by enhancing his qualification and obtaining post graduate degree even in the relevant subject.
10. The respondent's argument was in the line that Amendment Act of 2016 shall have retrospective operation; that even if it is not so considered to be, the writ petitioner's case should be governed under the West Bengal Schools (Control of Expenditure)(Amendment) Ordinance, 2016, which was in force on the date of the petitioner having obtained the higher qualification.
11. The following portion of the judgment of Supreme Court, in the case of ***Sree Sankaracharya University of Sanskrit & Others versus Dr. Manu & Others [Civil Appeal No. 3752 of 2023 @ SLP (c) No. 22633 of 2017*** dated **16th May, 2023** has been strongly relied on by the respondent/State:

"8.2 In order to effectively deal with the aspect as to retrospective operation of the Government Order dated 29th March, 2001 it may be useful to refer to the following extract from the treatise, Principles of Statutory Interpretation, 11th Edition (2008) by Justice

G.P. Singh on the sweep of a clarificatory/declaratory/explanatory provision:

"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any Statute. Such acts are usually held to be retrospective.

[...] An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law.

Discussion and decision:

- 12.** The moot issue arises for determination in the instant writ petition is therefore, whether the amendment of the Act of 2005 vide the Amendment Act, 2016, which came into force with effect from **September 14, 2016**, should be applicable in case of the writ petitioner or not, while dealing with the question of his entitlement, if any, to the post graduate scale of pay due to enhancement of his qualification. If not, to what provision the petitioner should be governed with, while determining as above. Also, that whether he would be entitled to the post graduate pay scale as prayed for by setting aside the impugned order or not.

- 13.** The respondent has all along proceeded on the basis that in case of the writ petitioner the amended provision of the said Act, vide the Amendment Act 2016, would be applicable. Also, that if not the provisions of the Amendment Act 2016, the provisions under the provisions under the Amendment Ordinance 2016 would apply to him. That in either case, the petitioner would not be entitled to what he has prayed for.
- 14.** Undisputedly, in case of entitlement of the writ petitioner as prayed for, if at all, relevant date would be the following date of last day of his M.A. Part-II examination, which is August 29, 2016. The Ordinance relied on by the respondent was promulgated vide gazette notification dated **September 14, 2016**, which is a day subsequent thereto. Besides that, it is interestingly noted that Clause-1(2) of the said Ordinance has provided that *"It shall come into force on such date as the State Government may by notification in the Official Gazette, appoint"*. That no such date of coming into force of the Ordinance, has ever been pronounced by the Government. Clause-1(2) means commencement of the Ordinance is conditional, not automatic. Its effect is that the Ordinance is validly promulgated, but it remains inoperative (not enforceable) until the government issues the notification fixing the date. No rights, duties, liabilities, or penalties under the Ordinance can be enforced before the notified date. When commencement is left to executive notification, the law lies dormant until that step is taken. Therefore, the Ordinance relied on by the respondent has no operative effect at all.
- 15.** So far as the said Amendment Act 2016 is concerned its date of coming into force is with effect from **September 14, 2016**. According to the respondent the said Amendment Act 2016, shall have retrospective operation. It is incomprehensible as to why it is so or on what basis. Every law is prospective unless the legislature clearly indicates otherwise. An Act will have retrospective effect only when the law

intends it—either expressly or by necessary implication. Retrospectivity is the exception, not the rule. No such legislative intent, either expressed or implied, is conceivable from the said Amendment Act 2016, so that it can be considered to have a retrospective effect. Evidently the writ petitioner's cause of action has arisen much prior to the date of coming into force the said Amendment Act, 2016. Therefore, the Amendment Act 2016, shall have no manner of application in case of the present writ petitioner.

- 16.** The legislative intent underlying the 2016 Amendment to the West Bengal Schools (Control of Expenditure) Act, 2005 appears to be rooted in the broader policy objective of financial discipline and rationalization of public expenditure in the education sector. It reflects a shift from a qualification-based progression model to a more controlled, policy-driven framework where financial implications and administrative uniformity take precedence. However, while such objectives are legitimate from a governance standpoint, the absence of any express retrospective operation indicates that the legislature did not intend to unsettle rights that had already accrued under the pre-amended regime, thus maintaining a balance between fiscal control and fairness to employees.
- 17.** Question is, in that case which law is to be considered to see if the writ petitioner is actually entitled to the benefit of post graduate scale of pay, due to his enhanced qualification.
- 18.** This discussion may be started by referring to the verdict of the Larger Bench of this Court, in case of **Utpal Kanti Karan (Utpal Kanti Karan Vs. State of West Bengal & Ors.** reported at **2024 SCC OnLine Cal 1274**). The Court holds that enhancement of pay on acquisition of higher qualification during the service career, is dependent upon the relevant rules operating at the time of acquisition of higher qualification. From the above discussion it is crystal clear that at the time of acquisition of higher qualification by the petitioner while

he has been in service, the Act of 2005 (unamended) stands to be the governing statute for the writ petitioner. Let the relevant provision thereof be quoted as herein bellow:

“14(3) Every teacher of a school shall, if appointed in the Honours Graduate or Postgraduate teacher category, be entitled to draw pay of Post-graduate teacher category, upon acquiring Post-graduate degree, in the manner as may be specified by order.”

- 19.** Reliance placed by the State on the decision in ***Sree Sankaracharya University of Sanskrit (supra)*** is distinguishable on both facts and law. In that case, the Hon’ble Supreme Court was concerned with the applicability of revised statutory or regulatory provisions where the governing framework had already come into force and was held to regulate the conditions of service at the relevant time. In contrast, in the present case, the petitioner’s right to claim a higher scale of pay had already crystallized on August 29, 2016, i.e., prior to the coming into force of the Amendment Act, 2016, and at a time when the unamended statutory regime governed the field. Moreover, unlike the situation before the Supreme Court, the Ordinance relied upon by the State herein never became operational due to the absence of a notified date of commencement. Thus, the ratio of the said Supreme Court decision, which turned on the applicability of an already enforceable legal regime, cannot be mechanically extended to a case where the relevant amendment was neither retrospective nor operative at the time when the petitioner’s vested right accrued.

The writ petitioner is covered under section-14(3) of the Act of 2005 [unamended]:

- 20.** It is thus evident in this case that the petitioner while in service, obtained prior permission of the school managing committee to undergo higher degree course and completed and qualified in the same, last date of his M.A.Part-II examination being August 28, 2016. At that time the

petitioner was governed under the provisions of the Act of 2005 [unamended]. The unamended section-14(3) of the said Act entitles the writ petitioner to draw pay of post graduate teacher category, upon acquiring post graduate degree, which criterion the petitioner has duly fulfilled.

- 21.** The question whether entitlement to a higher pay scale upon acquiring additional qualification is automatic or contingent upon administrative approval lies at the intersection of statutory interpretation and service jurisprudence. In the present context, Section 14(3) of the unamended 2005 Act appears to confer a substantive right on a teacher to draw a higher scale of pay upon acquiring a postgraduate qualification in the relevant subject. Where the statutory language is couched in mandatory terms and does not explicitly condition the benefit upon further approval by an external authority such as the District Inspector (DI), the entitlement leans toward being automatic in nature—subject, of course, to fulfillment of prescribed conditions such as relevance of qualification and prior permission from the competent authority (here, the school managing committee). In such a framework, the role of the DI is arguably ministerial or supervisory rather than discretionary, limited to verification of compliance rather than adjudication on entitlement.
- 22.** The petitioner's entitlement has crystallized automatically upon acquisition of the qualification, primarily because the petitioner had already obtained prior permission from the competent school authority and fulfilled all procedural requirements. The absence of any adverse finding on eligibility or procedural lapse weakens the case for treating DI approval as a substantive hurdle. However, though entitlement of the petitioner arises by operation of statute upon fulfillment of conditions, but its enforcement is mediated through administrative confirmation. Thus, while the authority cannot arbitrarily deny the benefit, it is also not entirely redundant; its role is to ensure that the statutory

conditions are genuinely met, rather than to independently decide whether the benefit ought to be granted or not.

- 23.** A careful examination of the statutory scheme suggests that the extent of discretion vested in the District Inspector of Schools (DI) is limited, though not entirely absent. Under the unamended framework of the West Bengal Schools (Control of Expenditure) Act, 2005, particularly Section 14(3), the entitlement to a higher pay scale upon acquiring a postgraduate qualification is framed in a manner that appears largely mandatory once the prescribed conditions are fulfilled. These conditions typically include (i) acquisition of a higher qualification in the relevant subject, and (ii) prior permission from the competent authority—here, the school managing committee. Once these foundational requirements are satisfied, the statute does not expressly confer a broad, policy-based discretion upon the DI to deny the benefit. This indicates that the DI's role is primarily administrative and supervisory, aimed at verifying compliance rather than making an independent evaluative decision on entitlement. That said, the DI cannot be reduced to a mere rubber stamp. The scheme implicitly allows for a narrow band of discretion, particularly in scrutinizing whether the statutory preconditions have been genuinely met.
- 24.** The DI's discretion is minimal. Once the petitioner fulfilled all statutory conditions and acquired the qualification at a time when the unamended law was in force, the DI had no legal basis to deny the benefit. The rejection by the DI was premised not on any defect in compliance, but on an erroneous application of subsequent legal developments (the 2016 Amendment and Ordinance). However, the DI does not possess independent discretion to override statutory entitlements based on later policy shifts. Therefore, while the DI retains a limited supervisory discretion to verify eligibility and procedural regularity, the statute does not support a broader discretionary power of him to refuse benefits, that have already accrued under the governing law.

- 25.** In such circumstances this Court finds that the petitioner acquires the statutory vested right and is entitled to draw the post graduate scale of pay. In that view of the matter, an order of the respondent/DI disentitleling and rejecting him to be granted with such benefit, as impugned in this case, amounts to be not in accordance with the law and hence, not maintainable. Thus, this Court finds the impugned order of the DI dated **July 24, 2025**, is liable to be set aside.
- 26.** Therefore, the instant writ petition is allowed with the following directions:
- i) The impugned order of the respondent/DI dated **July 24, 2025**, is set aside;
 - ii) The respondent No.3/DI is directed to grant post graduate scale of pay to the writ petitioner, with effect from the following date of the last day of his M.A. Part-II examination, by way of an appropriate order and refixation of his pay scale, within a period of 4 weeks from the date of communication of this judgment;
 - iii) Arrear salary, in terms of the said revised pay scale shall be disbursed to the writ petitioner within a period of 3 months from the date of communication of this judgment.
- 27.** The writ petition No. 25055 of 2025 is allowed and disposed of, along with applications pending if any.
- 28.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)