

30.11.2023  
Item No. 04  
Crt.No.22  
b.r.

**WPA 3179 of 2010**

***Sitaram Hembram***  
***-vs-***  
***The State of West Bengal & Ors.***

**Mr. Ekramul Bari**  
**Ms. Tanuja Basak**  
**.... For the petitioner.**

**Mr. Anirban Datta**  
**... for the State-respondents.**

This is a hearing matter upon affidavits.

Mr. Ekramul Bari, learned advocate along with Ms. Tanuja Basak, learned advocate, appear for the petitioner.

Mr. Anirban Datta, learned State Counsel, appears for the State-respondents.

The petitioner was appointed as an **Assistant Teacher** for the subject **Political Science as an Honours Graduate** with **B.Ed. Degree** by virtue of an approval of appointment dated **January 1, 1998** issued by the **respondent no.3, annexure P-1 at page-19** to the writ petition. The petitioner then enhanced his qualification by acquiring **Master Degree (M.A. in Political Science)** in the relevant subject in the **year 2001**, after obtaining permission from the Managing Committee of the relevant school

as would be evident from the letter of the petitioner dated **November 27, 2008** addressed to the **respondent no.3, annexure-P -2 at page 22** to the writ petition. The necessary leave was granted to the petitioner by the Managing Committee of the school as would be evident from **annexure p-2 at page-22** to the writ petition. The petitioner then submitted a representation before the Secretary of the Managing committee of the relevant school on or about **March 2, 2009** for sanctioning the **higher pay scale, annexure -3 at page-23** to the writ petition.

The claim of the petitioner was not decided by the respondent no.3 and/or the appropriate authority as on the date of filing of the writ petition. Challenging such inaction, the petitioner filed the instant writ petition.

The respondent no.3 following the direction of this Court filed its report in the form of affidavit affirmed on **October 18, 2023**. On a close perusal of the statements made therein, it appears that the respondent no.3 has virtually declined the prayer of the petitioner for higher pay scale, as would be evident from **Sub-paragraphs- IV, V and VI to paragraph-5** of the said **affidavit report**, principally on the ground that the petitioner did not obtain prior permission from the respondent no.3 or the higher competent

authority for enhancing his higher qualification. The respondent no.3 also mentioned several Government orders in this regard and the non-compliance whereof lead to the rejection of the claim of the petitioner.

Mr. Ekramul Bari, learned counsel appearing for the petitioner submits that the law is now well settled by the Hon'ble Division Bench of this Court in its judgement and order dated **January 31, 2014, In the matter of: Rabi Kanta Barman -vs- District Inspector of Schools (S.E.) & Ors.** rendered in **WP 14760(W) of 2004.** The Hon'ble Division Bench was of the view that since the relevant **ROPA Rule** did not contemplate such prior permission, the plea taken by the State authority on the ground of prior permission was not tenable in law. Accordingly, Mr. Bari prayed for grant of higher pay scale to the petitioner by allowing the writ petition.

The other plea taken by the respondent no.3, while rejecting the claim of the petitioner as to the applicability of **The West Bengal Schools (Control of Expenditure) Act, 2005.** From the facts of this writ petition, it is clear that the claim made by the petitioner immediately after acquiring higher qualification which was much prior to the said Control of Expenditure Act, 2005 came into force. In support of his contention, Mr. Bari has relied upon a judgement

of the Hon'ble Division Bench of this Court ***In the matter of: Akhtar Hossain Chowdhury -Versus- State of West Bengal*** reported at ***2012 SCC Online Cal 11603: (2013) 2 CHN 632.***

Mr. Bari then submits that, since the law is well settled sending the matter back before the respondent no.3 is no more required to be done. In support, he has relied upon a decision of the Hon'ble Division Bench of this Court, ***In the matter of : Nabadwip Chandra Das & Ors. -versus- The West Bengal Board of Secondary Education & Ors.*** reported at ***1997 SCC Online Cal 318: (1998) 1 Cal LJ 141.***

Mr. Anirban Datta, learned State Counsel appearing for the State authorities has reiterated the stand taken by the respondent no.3 in its affidavit report, which has already been referred to above. He submits that the reasons are explicit as mentioned in the report and hence the claim of the petitioner was rightly rejected.

Considering the submissions made on behalf of the parties and considering the materials on record, this Court is convinced that the petitioner was appointed as an **Assistant Teacher** for the subject **Political Science** with **Honours Graduate and B.Ed. Degree**. Upon obtaining prior permission from the Managing Committee of the school, he enhanced his

qualification and acquired Master Degree in the relevant subject in the **year 2001**. The Control of Expenditure Act, 2005 admittedly was promulgated and came into effect much subsequent thereto. Therefore, the plea of Control of Expenditure Act taken by the respondent no.3 while rejecting the claim of the petitioner was totally devoid of any merit and not tenable in law.

**In the matter of: Rabi Kanta Barman(supra),**  
the Hon'ble Division Bench had observed as under:-

*“ Let us now consider the present problem in the light of the above quoted Rule of Ropa 1998.*

*We have already indicated above that the petitioner was appointed as an Assistant Teacher in the said school prior to coming into operation of the School Service Commission Act, 1997. As such, the last part of the proviso contained in Rule 12(3) wherein the subject relating to the teachers appointed through the School Service Commission is dealt with, has no application in the present case. So we will have to opt the said portion of the said Rule out of our reconsideration presently.*

*Ropa 1998 was notified on 12<sup>th</sup> February, 1999 and the effect of the said Ropa was given retrospectively from 1<sup>st</sup> January, 1996 as per recommendation given by the Pay Commission. Thus, when the new revised scale of pay of the teachers and non-*

*teaching staff was introduced by framing revision of Pay and Allowances Rule 1998, the Government was aware about its earlier Government Order issued on 24<sup>th</sup> June, 1997. When despite having knowledge of the earlier Government Order dated 24<sup>th</sup> June, 1997, the Government, while framing revision of Pay and Allowances Rule 1998 did not specifically mention in the said Rule that such financial benefit cannot be given to those Assistant Teachers who acquired higher qualification in the relevant subject without obtaining prior permission from the concerned District Inspector of Schools (SE), grant of higher scale of pay to such Assistant Teachers after they have acquired higher qualification in the relevant subject, in our view cannot be denied provided however, they satisfy the condition mentioned therein. In fact, the condition for grant of higher scale of pay to such Assistant Teacher is qualified in the said Rule which provides that such higher scale of pay can be granted to those teachers only when such higher qualified teacher in the relevant subject or group is justified as per approved staff pattern of that school.*

*Thus, in our considered view, if the said condition as provided in the said proviso of Rule 12(3) of the Ropa 1998 is satisfied then the petitioner's prayer for grant of higher scale of pay for his enhanced educational qualification cannot be denied notwithstanding he acquired such degree*

*without obtaining prior permission from the concerned District Inspector of Schools (SE) in terms of the Government Order dated 24<sup>th</sup> June, 1997. Provided however degree which he acquired is recognised as per the Government Order No. 549-SE(S) dated 24<sup>th</sup> June, 1997. Thus, we endorse the conclusion which was drawn by the other Division Bench of this Hon'ble Court in the case of Samir Kumar Saha –vs- State of West Bengal & Ors.(Supra) by holding that the petitioner herein is entitled to get higher scale of pay for his enhanced qualification subject to satisfaction of the conditions as mentioned above.*

*The writ petition is thus, disposed of with a direction upon the concerned District Inspector of Schools (SE) to consider the petitioner's claim for grant of higher scale of pay for his enhanced educational qualification from the date of enhancement of his educational qualification in the relevant subject, afresh in the light of the observations made hereinabove after hearing the petitioner and the school authority viz. the erstwhile employer of the petitioner, and decide the petitioner's claim by passing a reasoned order in support of his conclusion positively within a period of eight weeks from the date of communication of this order.*

*The writ petition is, thus disposed of.”*

***In the matter of : Akhtar Hossain Chowdhury***  
***(supra)***, the Hon'ble Division Bench has observed as  
 under:

*“ 17. As a matter of fact, at the time of joining the school qualification of the appellant was Honours Graduate in Mathematics and B.Ed. Subsequently the said appellant acquired post-graduate degree. Therefore, in terms of section 14(3) of The West Bengal Act, XIV of 2005 appellant herein is entitled to draw pay of post-graduate teacher. Furthermore, Para 3 of the Office Order dated 27<sup>th</sup> November, 2007 has not been specifically violated in the present case since the appellant also sought for prior permission from the concerned District Inspector of Schools for undergoing post graduate studies through the managing committee of the school and such permission was never denied by the said District Inspector of Schools.*

*18 Considering the aforesaid facts, we are of the opinion that the District Inspector of Schools should not have rejected the claim of the appellant/petitioner for higher scale of pay even after acquiring higher qualification i.e. M.Sc in Mathematics.*

*19. Accordingly, we set aside and quash the decision of the District Inspector of Schools, as communicated to the appellant/petitioner, under office memorandum dated 15<sup>th</sup> March, 2011.*

20. *For the identical reasons, we also set aside the impugned order under appeal passed by learned Single Judge.*
21. *We direct the District Inspector of Schools (SE), Paschim Medinipur to allow the benefit of higher scale of (Post-graduate scale) to the appellant/petitioner herein in view of acquiring higher qualification i.e. M.Sc in Mathematics without any further delay but positively within a period of four weeks from the date of communication of this order.*
22. *Needless to mention that the appellant/petitioner will be entitled to receive the aforesaid benefit of higher scale of pay from the day following the date on which the last Post-Graduate Examination was completed which is deemed to be the date on which the appellant/petitioner acquired the Post-Graduate Degree in Mathematics in view of Government Order being No.253-Edn. Dated 17<sup>th</sup> September, 1984.*
23. *With the aforesaid directions, we allow both the application as well as the appeal upon treating the said appeal as on day's list."*

***In the matter of: Nabadwip Chandra Das & Ors.(supra)***, the Hon'ble Division Bench had observed as under:-

*" 8. The view taken by the learned Trial Judge had chosen not to send the*

*matter back to the said authority and the view of the learned Judge is fully supported by the decision of the Supreme Court in the case of (2) K.O. Shepart v. Union of India reported in (1987) 4 SCC 431: AIR 1988 SC 686, whereupon the Supreme Court had observed:-*

*“ It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose”*

*9. Sending the matter back to the Board, we have the same fate as it is clear that the Board and the education department has taken a decision that they will not recognise the said institution or grant affiliation. Sending the matter back to the authority will be fruitless and a mere formality without producing any result whatsoever as those authorities cannot bring an impartial judgement to bear on the matter and the Supreme Court has rightly and correctly pointed out that once a decision has been taken and the matter is send back to the authority, in that event there is a tendency to uphold the old decision may be on new grounds and/or pleas or pretext.*

*10. This observation of the Supreme Court in our view has to be borne in mind in a case where the person concerned is holding an administrative post or is a bureaucrat, in that event such an*

*authority cannot consider the matter impartially and/or true Justice to the case as he would repeat the something over and again on some grounds or considerations. The said authority is not judicial or quasi judicial authority and cannot consider the matter fairly and properly as is normally done by the Courts and/or by the Tribunals.”*

After considering the relevant provisions of law and the law laid down by the Hon'ble Division Benches, as discussed above, this court is also of the considered view that, since the relevant provisions of the ROPA 1998 stood satisfied and it is not the case of the respondents that, the petitioner had not satisfied such conditions, the claim of the petitioner for grant of higher scale of pay for his enhancement of qualification in the relevant subject could not and should not have been denied, notwithstanding whether he had acquired the Masters Degree without obtaining prior permission from the Jurisdictional District Inspector of Schools in terms of the Government Order dated June 24, 1997. Inasmuch as, the higher qualification which the petitioner had acquired was duly recognized as per the relevant Government Order issued by the appropriate authority. Therefore, the decision of the respondent no.3 and/or the State

authority for not to grant higher pay scale to the petitioner was not tenable in law.

In view of the law having already been settled on the subject as discussed above, this Court is of the considered view that there is no further requirement to send back the issue for consideration by the respondent no.3. The writ petition is pending since 2010. Both the law and equity demand an immediate allowing of claim of the petitioner.

In view of the above, the **respondent no.3** is upon verification of all the records and papers pertaining to the petitioner, shall grant higher pay scale commensurating with his Master Degree **strictly in accordance with law** and communicate the petitioner immediately thereafter. The respondent no.3 and/or any other appropriate authority shall pay the petitioner arrears since the day the petitioner is eligible to receive such enhanced benefit in accordance with law till the date of actual tendering of amount to the petitioner and then shall continue to grant the higher pay scale regularly.

In the event of any requirement, the respondent no.3 may call upon the relevant school authority and the petitioner for assistance.

The entire exercise shall be carried out and completed by the **respondent no.3** including making

of payment to the petitioner in so far as the arrear is concerned as directed above positively within a period of **six weeks** from the date of communication of this order.

With the above observations and directions, this writ petition **WPA No. 3179 of 2010 stands allowed**, without any order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**(Aniruddha Roy, J.)**