

(2014) 01 CAL CK 0098

Calcutta High Court

Case No: Writ Petition No. 14760 (W) of 2004

Rabi Kanta Barman

APPELLANT

Vs

District Inspector of Schools (SE)

RESPONDENT

Date of Decision: Jan. 31, 2014**Citation:** (2014) 4 WBLR 285**Hon'ble Judges:** Jyotirmay Bhattacharya, J; Ishan Chandra Das, J**Bench:** Division Bench**Advocate:** Sougata Bhattacharyya and Debopama Mukhopadhyay, Advocate for the Appellant; Jahar Lal De and Shyamal Kr. Dey, Advocate for the Respondent

Judgement

1. An issue as to whether higher scale of pay can be granted to an Assistant Teacher on account of enhancement of his educational qualification through correspondence course without taking prior permission from the concerned District Inspector of Schools (SE) is raised in the present writ petition. An identical issue was raised earlier before the Learned Single Judge of this Court in the matter of Sri Sanjoy Kr. Ghosh v. State (In re: W.P. 2707 (W) of 2003) wherein it was held that higher scale of pay can be granted to the Assistant Teacher of School who has acquired higher educational qualification in the relevant subject, notwithstanding prior permission was not granted in his favour either for enrolling him as a student in higher studies or for enabling him to appear in examination conducted through correspondence course by the UGC-affiliated universities.

2. The view which was so taken by the Learned Single Judge of this Court in the said case could not be agreed upon by the other Learned Single Bench of this Court while dealing with the present writ petition for various reasons mentioned in His Lordship's order dated 24th November, 2011.

3. By referring to the Government Order No. 548-SE(S) dated 24th June, 1997 and the other Government Order No. 549-SE(S) dated 24th June, 1997, His Lordship observed that when the aforesaid Government Orders imposed a condition for

obtaining prior permission from the concerned D.I. of Schools (S.E.) for enrolment of the petitioner in M.A. course and for enabling him to appear in the M.A. Part-I & Final examination and further since admittedly he acquired the higher qualification without obtaining prior permission from the concerned District Inspector of Schools (SE), he cannot be granted higher scale of pay so long as the said Government Order is in existence, as this Court sitting in the writ jurisdiction, cannot consider the claim of the petitioner by disregarding the said Government Orders. However, instead of taking the ultimate conclusion in this regard, His Lordship, for maintaining judicial decorum, sought for a reference to a Larger Bench for resolving the said issue. Accordingly, this writ petition is placed before us for consideration.

4. Let us now consider the present issue in the facts of the instant case.

5. Here is the case where admittedly the petitioner was appointed as an Assistant Teacher in Social Science Group in the year 1994 prior to the coming into operation of the School Service Commission Act. At the time of his appointment, he had Honours Degree at the graduation level in History. Subsequently, in December 1998, he sought for permission from the school authority for allowing him to complete his Master Degree course in the relevant subject. Such permission was granted by the school authority. The petitioner completed his Master Degree course with such permission granted by the school authority. He appeared in the M.A. Part-I and final examination after obtaining study leave from the West Bengal Board of Secondary Education and ultimately, he acquired Master Degree in December 2000. The last date of the said examination in which he appeared, was 14th December, 2000.

6. Admittedly, the concerned District Inspector of Schools (SE) was not approached either by the petitioner or by the Managing Committee of the said school for grant of prior permission either for allowing the petitioner to enroll in the Master Degree course or for allowing him to appear in the examinations.

7. Problem started when after acquiring such Master Degree in the relevant subject, the school authority, on being approached by the petitioner, recommended for grant of higher scale of pay to him for his enhanced educational qualification, before the concerned District Inspector of Schools (SE). The concerned District Inspector of Schools (SE) refused to grant higher scale of pay to the petitioner for his enhanced educational qualification as he did not enhance his educational qualification after obtaining prior permission from the concerned District Inspector of Schools (SE) in terms of the Government Order No. 548-SE(S) dated 24th June, 1997.

8. The said decision of the concerned District Inspector of Schools (SE) is under challenge in this writ petition at the instance of the said aggrieved Assistant Teacher.

9. Let us now consider as to how far the concerned District Inspector of Schools (SE) was justified in rejecting the petitioner's claim in the facts of the instant case.

10. An identical dispute was raised before another Division Bench of this Hon"ble Court in MAT 633 of 2012 (Samir Kumar Saha v. State of West Bengal & Ors.) wherein Their Lordships held that the Government Order dated 24th June, 1997 which was issued on the subject of recognition of correspondence courses conducted by the different universities of India did not deal with the subject relating to grant of any benefit for improving academic qualification through correspondence course. According to Their Lordships, the teachers' claim for higher scale of pay for his enhanced educational qualification cannot be decided on the basis of the said government order.

11. Considering the fact that the teacher concerned completed the higher studies through correspondence course without affecting his duties in the school and he having improved his qualification in the relevant subject helped the students of the school with his enriched knowledge on the subject, the said Division Bench held that higher scale of pay for his enhanced educational qualification cannot be denied to him.

12. Accordingly, the Director of School Education, West Bengal was directed to take immediate appropriate steps for granting the benefit of higher scale of pay to the said Assistant Teacher for acquiring the post graduate degree in relevant subject through correspondence course and disburse necessary amount to the said Assistant Teacher without further delay.

13. Mr. De, Learned Advocate appearing for the State-respondents submits that though the issue which was involved in the said case before the said Division Bench of this Hon"ble Court, was identical with the issue presently before us but the said issue, in fact was not decided by the said Division Bench either by holding that prior permission of the District Inspector of Schools (SE) is necessary for grant of higher scale of pay for the enhanced educational qualification of such Assistant Teacher or by holding that such prior permission of the D.I. of Schools (SE) is not necessary for grant of higher scale of pay to the Assistant Teacher for his enhanced educational qualification in the relevant subject.

14. We find some substance in such contention of Mr. De as we find from the said judgment that though the said issue was involved therein but the said issue was not resolved in clear term by holding that notwithstanding prior permission was not granted by the concerned District Inspector of Schools (SE), higher scale of pay can be granted to the Assistant Teacher who enhanced his educational qualification through correspondence course in the relevant subject without affecting the academic interest of the students in this school, but if the entire judgment is considered in its true spirit, then we have no hesitation to hold that the said issue was decided against the State respondents. However, for defusing any confusion in this regard, we feel it necessary to resolve the said dispute with reference to the said Government Order as well as the subsequent Rule and/or Circular issued on the relevant subject in the context of the submission of Mr. De who contended that

when law requires a particular thing to be done in a certain manner, it must be done in that manner or not at all as was held by the Hon"ble Supreme Court in the case of [Narbada Prasad Vs. Chhaganlal and Others](#), .

15. It is no doubt true that the Government Order of 1997 deal with the subject regarding recognition of the degree acquired through correspondence and/or distance course conducted by some of the recognized Universities in West Bengal and those government orders do not deal with the subject of grant of financial benefit to Assistant teachers for acquiring enhanced degree in relevant subject through correspondence course and/or distance course conducted by different Universities in India but at the same time, a question may arise that if degree which is acquired either through correspondence course or through distance mode of education through any University is not recognised by the Government, then can financial relief be claimed by such an Assistant teacher for his enhanced educational qualification which he acquired without taking prior permission of the D.I. of Schools (SE)?

16. Grant of financial benefit to the teacher who has improved educational qualification in the relevant subject, is dealt with in Rule 12(3) of Ropa 1998. For proper appreciation of the problem raised in the present case. We feel it necessary to set out the said Rule hereunder:--

"Rule 12(3):--All teachers including Physical Education Teachers and Librarians of Secondary Schools who have improved/will improve their qualifications who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications, with effect from the 1st January, 1996 or the date of improving qualifications, whichever is latter, provided that such higher qualified teachers in the relevant subjects or group is justified as per approved staff pattern of other school, if said teacher is appointed through West Bengal School Service Commission, his/her pay will be fixed in the scale of pay as per his/her qualification mentioned by the West Bengal School Service Commission."

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

18. 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.

19. Ropa 1998 was notified on 12th February, 1999 and the effect of the said Ropa was given retrospectively from 1st 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 24th June, 1997. When despite having knowledge of the earlier Government Order dated 24th 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. 20. 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 24th June, 1997. Provided however degree which he acquired is recognised as per the Government Order No. 549-SE(S) dated 24th June, 1997.

21. 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 v. 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.

22. 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.

23. The writ petition is, thus disposed of. Urgent Photostat certified copy of this order, if applied for, be supplied to the learned Advocate for the petitioner immediately.