

WPA 3610 of 2015

Sri Balaram Malik

Vs.

The State of West Bengal & Ors.

Sk. Sahjahan Ali.

... for the petitioner

1. Sk. Sahjahan Ali, learned counsel is appearing for the petitioner whereas no one is appearing for the State respondent, in spite of service of notice. Hence, the matter is taken up for final adjudication in absence of the State respondent.
2. The issue involved in the present writ petition has been duly discussed and decided by the Hon'ble Larger Bench of this Court in the judgment of **Utpal Kanti Karan vs. State of West Bengal & Ors.** reported in **2024 SCC OnLine Cal 1274**. Let the relevant portion thereof as quoted below:-

"272. On the basis of the aforesaid discussion we answer the reference in the manner following:-

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(g) If a teacher has partially completed higher study before entering service he/she would come under purview of G.O No. 1595-SE(S) dated 26th December, 2005 and the question of taking permission from DIS-SE concerned would not arise.

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3. Fact remains that the petitioner, after having been inducted in the service on December 16, 1994 in Honours Graduate category, has enrolled himself for Masters Degree qualification, pursuant to the

permission granted by the School Managing Committee.

4. After completion of the course and obtaining a degree, he has prayed before the said authority for grant of higher pay scale to him meant for post graduate teachers.
5. The School Managing Committee having granted higher pay scale to the writ petitioner, has forwarded its recommendation before the Competent Authority, that is, the District Inspector of Schools, Secondary Education, Purba Medinipur for further necessary action in this regard.
6. Ultimately, by dint of an order of this Court dated September 5, 2014, the respondent authority as above has taken up the petitioner's prayer for grant of higher pay scale and decided thereupon vide an order dated December 18, 2014, which is impugned in the instant writ petition.
7. The petitioner has challenged the decision of the District Inspector of Schools, Secondary Education, Purba Medinipur to reject his prayer for grant of higher pay scale, for the reasons, firstly, that as per the rules governing service of the writ petitioner at the relevant point of time, the petitioner would be entitled for grant of higher pay scale commensurate to his higher qualification.
8. Sk. Sahjahan Ali, learned counsel for the petitioner has further submitted that pursuant to the judgment of the Hon'ble Larger Bench of this Court in **Utpal Kanti Karan's case (supra)**, the prayer of the

petitioner for grant of higher pay scale cannot be turned down by the District Inspector of Schools, pursuant to the notification being G.O. No. 593-SE(B) dated November 27, 2007.

9. Therefore, he has submitted that the entire rationale of the impugned order as passed by the District Inspector of Schools, has been based on no valid or cogent ground, which can be sustained in the eye of law.
10. Hence, therefore, he seeks that the impugned order be set aside and adequate relief be granted to the writ petitioner in the present case.
11. Record reveals that the petitioner has participated in the M.A. course for the year 2009-2010 and his last date of final examination was on April 29, 2010.
12. Therefore, in case of the present writ petition, the relevant provision of the West Bengal Schools (Control of Expenditure) Act, 2005 would be important to understand whether the petitioner really possessed any substantive right for grant of higher pay scale upon obtaining higher qualification or not.
13. Let the relevant portion is quoted as hereinbelow:-

“14. Scale of pay etc. of teacher;

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(3). Every teacher of a school shall, if appointed in the Honours Graduate or Post-graduate 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.”

14. Needless is to mention that the law in this regard has been now well-settled by dint of the Hon'ble Larger Bench's judgment as quoted above. So far as the statutory force of G.O. No. 593-SE(B) dated November 27, 2007, if any, the Hon'ble Larger Bench has held in the judgment as referred to above that the said government notification shall not have any statutory force.

15. Under such circumstances and in the factual background of the present case, it appears that pursuant to the law laid down by the Hon'ble Larger Bench in the decision as mentioned above as well as pursuant to the substantive statutory provision as enshrined in the Act of 2005 as quoted above, the petitioner shall have right for being granted with the higher pay scale meant for post graduate category teachers, pursuant to his qualifying with the higher degree.

16. Accordingly, the present writ petition should succeed.

17. Hence, it is ordered that the writ petition being WPA No. 3610 of 2015 is allowed with the following directions:-

(i). impugned order of the Additional District Inspector of Schools, Secondary Education, Contai-Sub Division, Purba Medinipur dated December 18, 2013⁴ is set aside;

(ii). The petitioner shall be eligible for grant of higher pay scale pursuant to his M.A. qualification and with

effect from the subsequent date of the last date of his final examination as mentioned above;

(iii). Let the respondent no. 4 immediately issue re-fixation of salary of the writ petitioner with effect from the date as above, within a period of three weeks from the date of communication of copy of this order;

(iv). Arrear amount of salary payable to the writ petitioner shall be disbursed by the said respondent within a period of three months from the date of communication of copy of this order.

18. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.

19. With the above observations and directions, the writ petition being No WPA 3610 of 2015 is disposed of, along with the pending applications, if any.

20. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)