

WPA 16592 of 2025

Abhijit Behara
Vs.
The State of West Bengal & Ors.

Mr. Biswarup Biswas

Mr. Pradip Kumar Ghosh

... for the petitioner

Mr. Gourav Das

Mr. Subhajit Chowdhury

Ms. Sanchayita De

...for the State

- 1.** The writ petitioner has challenged an order of the District Inspector of Schools (Secondary Education), Nadia [herein after referred to as “the DI”] dated July 7, 2025, in the instant writ petition. By virtue of the said order the DI as refused the petitioner’s claim for higher scale of pay pursuant to his higher qualification.
- 2.** As per records, the petitioner has qualified in Master Degree in the subject Sanskrit in the month of December 2017. The last date of his MA part II examination was January 7, 2018 and the result was published on July 16, 2018.
- 3.** On September 10, 2008, the West Bengal Regional School Service Commission (South Eastern Region) recommended the petitioner’s name for appointment in the post of an assistant teacher in the school namely S. M. Nasir Smriti High School. Subsequently the school authority has issued an appointment letter to him dated September 23, 2008. The petitioner has ultimately joined in service in the said school with effect from September 26, 2008. His service has been duly

approved from the date of his joining vide the memo dated December 2, 2008.

- 4.** The petitioner, for the 2nd time having been qualified was recommended for appointment in Honours/Post Graduate category, by virtue of the recommendation letter dated September 2, 2009. Pursuant thereto he was appointed as an assistant teacher in Honours/Post Graduate category, by virtue of the appointment letter dated September 15, 2009 and he joined in the service as an Honours/Post Graduate category assistant teacher with effect from October 6, 2009. His appointment as above was duly approved in due time.
- 5.** During the course of his service the petitioner has applied before the managing committee of the school for grant of permission for him to pursue higher qualification in Master Degree. The school authority, pursuant to a resolution of the managing committee dated September 4, 2015 is granted such permission and also sanctioned his study leave. Therefore, the petitioner undertook the higher course, through correspondence/distance mode and completed the same in the relevant subject of his teaching that is Sanskrit.
- 6.** Thereafter, the writ petitioner has applied to the Secretary of the said school to the respondent/DI, for grant of postgraduate scale of pay, pursuant to his higher qualification. Necessary documents along with recommendation of the school managing committee for such grant in favour of the writ petitioner [vide resolution dated November 12, 2018] was duly forwarded by the school to the respondent/DI on December 13, 2018.

7. The first writ petition filed by the present petitioner was WPA No. 4821 of 2025, due to alleged inaction of the said respondent in considering the petitioner's prayer for grant of postgraduate scale of pay. The same was disposed of by this Court vide an order dated March 12, 2025 directing the respondent authority to decide the representation of the petitioner within a stipulated time with the recent decision and after affording opportunity of hearing to the petitioner. The resultant order is that dated July 7, 2025, which is impugned in the instant writ petition.
8. In the said impugned order the respondent/DI has refused the petitioner's prayer for grant of higher pay scale pursuant to his higher qualification and has mentioned the reasons therefor, as quoted below:

"In this instant case the petitioner joined his service as an Asst. Teacher of Bara Andulia High School, P.O. Bara Andulia, Dt. Nadia on 06-10-2009 under Normal Section having qualification B.A.(Hons in Sanskrit) in Language Group and thereafter took admission in M. A. Course (Sanskrit) at Rabindra Bharati University in distance mode on 24.11.2015 after joining his service and could not produce any paper document regarding prior permission for enhancement of educational qualification issued by the District Inspector of Schools (SE), Nadia as per the aforementioned existing rules. Moreover, as per para 2 of G.O. No.593-SE(B)/ES/O/B/1M-98/2007 Date:27.11.2007 the teacher could not produce any papers regarding sanctioning of study leave by the WBBSE. The ROPA-2009 also remains silent for allowing such benefit. As such the claim of the petitioner for Higher Scale of Pay for improving higher qualification cannot be acceded to. Hence it is regretted."

- 9.** Hence this writ petition is filed challenging the said order of the respondent/DI and seeking appropriate relief.
- 10.** Parties are represented to day when the matter is called on. An affidavit – in – opposition is filed in Court today by the respondent/State. Let that be taken on record. Affidavit – in – reply as to the same has also been filed by the writ petitioner and is taken on record.
- 11.** The affidavit of the respondent/State is a more elaborate reproduction of the order of the DI as impugned in this writ petition. The State's defence is as per notification No.548-SE(S) dated June 24, 1997 and Clause-25 of the West Bengal Board of Secondary Education (Conduct and Discipline of Teachers and Non-teaching Staff) Regulations 2004. The State on the basis thereof has submitted that in absence of the petitioner having sought for or obtained prior permission from the respondent/DI, to pursue the higher degree course, he would not be entitled for any postgraduate scale of pay pursuant to his higher qualification. On this ground the respondent/State being represented by Mr. Gourav Das learned advocate, has raised strong objection as to the prayer of the writ petitioner in instant case.
- 12.** The writ petitioner has been represented by Mr. Biswarup Biswas, learned advocate. He says that the law is well settled with regard to the issue in dispute in this writ petition. He says further that in the impugned order dated July 7, 2025, the respondent/DI has failed to consider the law as settled in this regard and hence has come to an erroneous finding. According to him the finding of the said respondent in the impugned order being de hors the settled law, his order as above is illegal and unsustainable.

- 13.** Mr. Biswas, learned advocate relies on an order of the Division Bench of this Court in W.P.No.14760 (w) of 2004 dated January 31, 2014, in which the Court has dealt with the notification No. 548-SE(S) dated June 24, 1997, in the following words:

“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 recognised 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)?”

- 14.** Hence, it is now settled that notification No. 548-SE(S) dated June 24 does not deal with the subject of grant of financial benefit to an assistant teacher, for acquiring enhanced degree in relevant subject through distance course.

- 15.** Regarding applicability of the provisions under the notification No. 593-SE(B) dated November 27, 2007, in case of the present petitioner, a judgment of the Larger Bench of this Court in *Utpal Kanti Karan vs State of West Bengal & Others [2024 SCC Online Cal 1274]* has been relied on. Similarly a judgment of this Court in *Himadri Shekhar Das versus The State*

of West Bengal [WPA No. 10986 of 2019; order dated November 11, 2024] in which the ratio of the case of *Utpal Kanti Karan (supra)* has been relied on, is also referred to. In *Himadri Shekhar Das (supra)* the Court has held;

“19. It is pertinent to note that the Hon’ble Larger Bench of this Court in the case of Utpal Kanti Karan vs. State of West Bengal & Ors. reported in 2024 SCC OnLine Cal 1274 has held with regard to notification No. 593 that, the same does not carry any statutory force. Therefore, the regulatory norms as prescribed in notification No. 593, if taken not to have been complied with in Page 8 of 9 the process, the substantive right of the person, emanating from the provisions of the statute, can hardly be declined to him for the said reason, excepting any other reason, which the statute would itself had provided if any, as disqualification.”

- 16.** The petitioner joined in the service as an Honours/Post Graduate category assistant teacher with effect from October 6, 2009. Thereafter he has applied for permission to enrol himself for the higher degree course through correspondence course, before the school authority and was granted the same, by the said authority. Necessary documents were forwarded to the DI for his permission, however, to no effect whatsoever. The petitioner got enrolled for the Master Degree course and completed and qualified in the same. The last date of his MA part II examination was January 7, 2018.
- 17.** So far as objection of the respondent as to the prayer of the petitioner for grant of higher pay scale on the basis of the notification No. 548-SE(S) dated June 24, 1997 is concerned, the law as settled has already been discussed earlier and need not be reiterated. Suffice is to say that the said notification has no applicability

when the issue in dispute is with regard to eligibility of the post graduate scale of pay pursuant to enhancement in qualification.

- 18.** For the rest the Court finds the ratio in *Utpal Kanti Karan's case (supra)* to be squarely applicable in this writ petition, wherein the Larger Bench of this Court has held as quoted bellow:

"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."

- 19.** Therefore, in view of the law settled as discussed above, it appears that the impugned order of the respondent/D.I. dated July 07, 2025 is de hors the settled law and, therefore, is illegal and not sustainable. This writ petition is therefore to be allowed.

- 20.** The writ petition No. WPA 16592 of 2025 is allowed with the following direction:-

i) Impugned order dated July 07, 2025 of the District Inspector of Schools, Secondary Education, Nadia is hereby set aside.

ii) Let the D.I. immediately allow the petitioner higher scale of pay commensurate to the post-graduate category of teachers and refixation of his pay scale to that effect, from the date subsequent to the date of his last examination in M.A. Part-II.

iii) The exercise as above should be concluded within a period of 4 weeks from the date of communication of this order.

iv) Arrear salary as applicable to the writ petitioner pursuant to the revised pay fixation in terms of the Court's order as above, shall be released to him within a period of three (03) months from the date of communication of this order.

- 21.** Writ petition is disposed of along with applications pending, if any.
- 22.** Urgent certified copy of this order, if applied, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)