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**(2013) 01 CAL CK 0008**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 28055 (W) of 2012**

Provas Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 30-01-2013

**Acts Referred:**

**Citation :** (2013) 1 CALLT 649

**Hon'ble Judges :** Debasish Kar Gupta, J

**Bench :** Single Bench

**Advocate :** Ekramul Bari and Mr. Syed Monsur Ali, for the Appellant;

**Final Decision :** Allowed

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## Judgement

Debasish Kar Gupta, J.—In spite of service of copies of this writ application upon the respondents, none appears on behalf of them, when the matter is called on. This writ application is filed by the petitioner assailing an order passed by the respondent No. 3 under his Memo No. 2508/1 dated August 29, 2012. By virtue of the impugned order, the respondent No. 3 rejected the prayer of the petitioner for granting the benefit of postgraduate scale of pay in her favour in connection with her services as an Assistant Teacher in Science Group of Kenjakura Molebona High School (H.S.), District--Bankura.

2. The appointment of the petitioner to the post of Assistant Teacher in Science Group in the aforesaid school was approved by the respondent No. 3 with effect from December 07, 2002 under his Memo No. 540/S dated February 21, 2003. The petitioner subsequently submitted an application before the Managing Committee of the aforesaid school for obtaining prior permission to pursue the study in M.Sc. (Chemistry) Part-II Examination. After adopting a resolution dated February 8, 2004 the Managing Committee of the school under reference forwarded the prayer of the petitioner to the respondent No. 3. But the respondent No. 3 sat tight over the matter.

3. After obtaining M.Sc. degree in Chemistry, the petitioner approached the

respondent authority for extending the benefit of postgraduate scale of pay in his favour. The above prayer was turned down by the respondent No. 3.

4. Having heard the learned Counsel appearing for the respective parties as also after considering the facts and circumstances of this case, I find that the claim of the petitioner was rejected by the respondent No. 3 taking recourse to the Government Order No. 548-SE(B) dated June 24, 2007 in view of obtaining no prior permission from the respondent No. 3.

5. Sub-section (3) of section 14 of The West Bengal School (Control of Expenditure) Act prescribes the procedure for extending the benefit of higher scale of pay to an Assistant Teacher of a Government Aided School if appointed in the honours graduate or postgraduate category and the same is quoted below:

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 Postgraduate degree, in the manner as may be specified by order.

By virtue of the Government Order No. 593-SE(B) dated November 27, 2007, the Government imposed a condition, amongst others, for obtaining prior permission from the concerned District Inspector of Schools, Secondary Education, for pursuing higher study by an Assistant Teacher of a Government Aided School.

6. It is not in dispute that the petitioner approached the respondent No. 3 through the Managing Committee of the school under reference for obtaining her prior permission to pursue the study in M.Sc. Admittedly the respondent No. 3 sat tight over the matter.

7. This issue has been settled by a Division Bench of this Court by a judgment dated October 16, 2012 delivered in the matter of Asim Kumar Adgiri v. State of West Bengal & Ors. (In Re: MAT 1459 of 2012) and the relevant portions of the above decision are set out below:--

It is true that a circular cannot override the specific provisions of the Act. In the present case, the appellant/petitioner was admittedly appointed in the school as Honours Graduate with B.Ed. degree. 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 same 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 27th 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.

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.

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

For the identical reasons, we also set aside the impugned order under appeal passed by learned Single Judge.

In view of the aforesaid settled-principles of law, the reason assigned by the respondent No. 3 for rejecting the claim of the petitioner cannot be sustained in law and the same is quashed and set aside.

8. The respondent No. 3 is directed to extend the benefit of postgraduate scale of pay in favour of the petitioner for obtaining the higher qualification, i.e. M.Sc. in Chemistry within a period of six week from the date of communication of this order.

9. It is further made clear that the 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 petitioner acquired the postgraduate degree in Chemistry in view of the Government Order No. 253-Edn. dated September 17, 1984.

10. This writ application is, thus, disposed of. There will be however, no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for subject to compliance with all necessary formalities.