

**(2013) 07 CAL CK 0043**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 14396 (W) of 2007**

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| Sri Astopada Rit                    | Vs | APPELLANT  |
| The State of West Bengal and Others |    | RESPONDENT |

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**Date of Decision :** 29-07-2013

**Acts Referred:**

**Citation :** (2013) 4 CALLT 138

**Hon'ble Judges :** Ashoke Kumar Dasadhikari, J

**Bench :** Single Bench

**Advocate :** Ekramul Bari, Mr. Biswaroop Biswas, Mr. Kamal Misra and Mr. Tamal Taru Panda, for the Appellant; Tapan Kumar Mukherjee, Bikash Kumar Mukherjee and Mr. Nilotpal Chatterjee for the State and Ms. Nilima Das for the School Authority, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ashoke Kumar Dasadhikari, J.—The subject-matter of challenge in this writ petition is the order impugned dated 7th July, 2006 passed by the District Inspector of Schools (SE), Howrah refusing higher scale of pay in favour of the writ petitioner although he has Improved his qualification i.e. M.Sc. in Mathematics. Mr. Bari, learned Counsel appearing for the writ petitioner submits that the grounds indicated for such rejection are all illegal and unjustifiable. He submits that the writ petitioner, who has improved his qualification, is entitled to get higher scale of pay specially when, the grounds taken by the concerned District Inspector of Schools are of no substance in law.

2. Mr. Bari submits that first point taken for such refusal is obtaining prior permission from the concerned District Inspector of Schools, which the writ petitioner did not take.

3. Mr. Bari submits in view of the judgment delivered by this Hon''ble Court such prior permission is not at all required to be taken. However the writ petitioner obtained Master Degree through a communication course. Therefore, no such

permission is required. He submits that the second ground for refusal is staff pattern of the school not permitting such higher scale of pay in favour of the writ petitioner. Mr. Bari submits that this is also covered by different judgments delivered by this Court.

4. According to Mr. Bari, staff pattern is not at all a consideration for such refusal. According to him, the Circular referred by the concerned District Inspector of Schools is not applicable in the instant case specially when such Circular is applicable in case of school service commission appointed teachers.

5. Mr. Bari submits that so far the third point is concerned, it is a mere mistake, which was rectified later on. However, that discrepancy in respect of date of final result should not be a ground for refusing higher scale of pay.

6. So far ground No. 4 is concerned, Mr. Bari submits that the Act of 2005 came into operation in December, 2005 which is much later than the date of acquiring higher qualification by the petitioner, since the writ petitioner improved his qualification in the year 2003. According to Mr. Bari, the said provisions are not retrospective in operation and that is why the Act has no manner of application in the instant case.

7. Mr. Bari submits the order impugned is erroneous and contrary to provisions of law and the same is liable to be set aside and the concerned District Inspector of Schools should be directed to release higher scale of pay in favour of the writ petitioner.

8. Mr. Bari cited few judgments in support of his contentions. The first Judgment cited by him is reported in Subhasis Naskar Vs. The State of West Bengal and Others, Mr. Bari submits that in this decision this Hon"ble Court was pleased to hold that the ground of non-receiving prior permission from the concerned District Inspector of Schools for Improving higher qualification cannot be a ground for rejection of prayer for higher scale of pay. In this judgment the learned Single Judge followed another decision of a coordinate Bench rendered in case of Pampa Das v. State of West Bengal (W.P. 2167(W) of 2011) decided on 6th September. 2011. In "Pampa Das" case it was held that the Act of 2005 has come into force on 26th December, 2005 and the claim of the writ petitioner was much before the said Act. According to the learned Single Judge, the Act of 2005 cannot have any application in the case of the petitioner in that case.

9. According to Mr. Bari, the same view should be followed by this Court.

10. The other judgment cited by Mr. Bari is reported to Partha Chatterjee Vs. State of West Bengal and Others, ). Mr. Bari submits that the Circular of 13th July, 1999 is applicable to the teachers appointed through West Bengal School Service Commission. However, in the present case the writ petitioner is not appointed through West Bengal School Service Commission.

11. Mr. Bari also submits that the learned Single Judge was pleased to hold that denial of post-graduate scale on the ground that the School Service Commission

in its recommendation recorded educational qualification of the petitioner cannot stand in the way of granting higher scale of pay. According to the said judgment even otherwise a teacher appointed with a post-graduate degree in relevant subject cannot be denied the post-graduate scale of pay on the sole ground of School Service Commission not having mentioned the post-graduate degree in the recommendation or on the ground the appointment of post-graduate teacher not being justified by staff pattern of the school. According to Mr. Bari, otherwise it would be a discriminatory one. In some cases the teachers with higher qualification or improved qualification will get higher scale of pay and in some cases it would not be given on some pleas or other, is totally discriminatory, arbitrary and/or not justifiable. He submits that a person who has improved his qualification, for which the school and the students are benefited, should get higher scale of pay.

12. Mr. Bari also referred an unreported decision of one learned Single Judge of this Hon"ble Court delivered in case of (Raghunath Mondal v. State of West Bengal & Ors.) W.P. 21909 (W) of 2012 dated 3rd April, 2013. In that judgment the learned Single Judge considered ROPA. 1998 as well as the relevant departmental Circular being No. 670-SE(S)/1M-14/98 dated September 4, 1998 and it was held that the Circular was in operation in a different field which prescribed the staff strength in a particular group of teaching which, however, has no nexus with the scale of pay of the assistant teachers in that school. According to him, the said unreported Judgment is very relevant and applicable.

13. In view of the aforementioned judgments the grounds recorded by the District Inspector of Schools, are without any substance and therefore, the impugned rejection order should be set aside and higher scale of pay should be given to the petitioner.

14. Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader is appearing on behalf of the State submits that so far ground Nos. 3 and 4, i.e. about discrepancy and applicability of the said Act of 2005 are concerned, he is not supporting the findings of the District Inspector of Schools since according to him, those are not relevant in the instant case.

15. Mr. Mukherjee fairly submits that the date of final result was subsequently correctly reported and the Act of 2005 is a later Act, which has got no application. However, he restricted his argument on ground No. 1 i.e. prior permission for obtaining Master Degree in Mathematics which the writ petitioner did not receive from the concerned District Inspector of Schools and ground No. 2, applicability of staff pattern which do not permit higher scale of pay in favour of the writ petitioner.

16. Mr. Mukherjee submits that in view of the Circular issued by the Government prior permission is necessary and must. According to him, unless prior permission is obtained there is no question of giving higher scale of pay. So far the second point i.e. Circular No. 155-SE(B) dated 13th July, 1999 is concerned,

that is very relevant and according to the Circular, more than 50% staff in the subject should not get higher scale of pay. He submits that the aforementioned Circular is not under challenge. Therefore, the said Circular is binding and the writ petitioner is not entitled to get higher scale of pay.

17. Learned Counsel appearing for the school submits that higher scale of pay cannot be granted as per staff pattern of the school. According to her, more than 50% teachers cannot get higher scale of pay having improved their qualification.

18. Mr. Bart, in reply submits that the grounds taken for refusal i.e. obtaining prior permission and staff pattern are of no substance in view of the decisions cited by him and in fact, Mr. Mukherjee failed, to give answer to the same. Therefore, those two grounds are not valid grounds. According to Mr. Bari, the writ petition should be allowed.

19. Heard the learned Counsel appearing for the parties and considered the materials available on record as well as the circulars relied on by Mr. Mukherjee and also the Judgements cited by Mr. Bari. So far ground Nos. 3 and 4 are concerned. Mr. Mukherjee very fairly submitted that those two grounds do not apply in this case. Therefore, nothing to be discussed and decided on the same. However, those two grounds are not valid grounds for refusal of the benefit. So far ground No. 1, i.e. obtaining prior permission, is concerned, I find that the decision cited by Mr. Bari in the case of Subhasis Naskar (*supra*) is covering the field. The learned Single Judge following the previous judgement decided that for non-receipt of prior permission from the concerned District Inspector of Schools for improving post-graduate qualification, the District Inspector of Schools cannot reject the prayer for higher scale of pay.

20. In this regard, the relevant paragraph deciding the issue is quoted hereinbelow:-

7. It is strenuously contended by the State-respondent that the circular which was relied upon by the District Inspector of School (S.E.) has not been quashed and set aside by this Court. But considering such submission, it would be relevant to take notice of the coordinate Bench decision rendered in the case of Pamapa Das (*supra*) wherein it has been held that higher scale of pay cannot be denied on the ground that no prior permission was obtained for acquiring higher qualification from the concerned District Inspector of School (S.E.). Thus, the aforesaid circular relied upon by the State-respondents runs counter to the law enunciated by the Coordinate Bench which has a binding effect upon this Court. Even if the particular circular is not quashed and set aside but the judgment rendered by the Court makes it inapplicable, then the circular loses its efficacy and applicability. The other ground taken by the concerned authority regarding the applicability of the West Bengal School (Control of Expenditure) Act, 2005 is concerned, it appears that the same came into operation on 26th December, 2005 whereas the claim was made by the petitioner prior to coming in force of the said Act and it has also been held in the case of Pampa Das (*supra*) that such

Act cannot be applied to a claim filed prior to coming in force of the said Act. Thus, on both the grounds the decision rendered by the District Inspector of School (S.E.) is not sustainable.

21. In view of the aforementioned decision ground No. 1 is of no substance and the same cannot be a valid ground for rejection of petitioner's claim.

22. So far applicability of staff pattern, as submitted by Mr. Mukherjee referring Government Order No. 155-SE(B)/10M-102/98 Pt. 1 dated 13th July, 1999, is concerned, it appears that Circular is applicable to the teachers selected by the West Bengal School Service Commission. However, that Circular is not applicable in the instant case when the writ petitioner is not appointed through West Bengal School Service Commission. Further it is also not acceptable that when some teachers, who have improved their qualification, are getting higher scale of pay whereas some other teachers, who are similarly situated and improved their qualification, which is being utilised by the school for the benefit of the students and the school, could be denied such benefit by taking such plea. This Circular, although not applicable in the Instant case, is clearly discriminatory. However, the judgment delivered by the learned Single Judge of this Court in case of Raghunath Mondal (supra) is very relevant in this regard. The relevant portion of the judgment is quoted hereinbelow:-

The provisions of the clause 2 of the departmental circular No. 670-SE(S)/1M-14/98 dated September 4, 1998 (hereinafter referred to as "ROPA, 1998") are also quoted below:-

2. For High School/High Madrasah/Higher Secondary (Normal Section):-

- (a) Language group - For posts (Two pass degree & two Hons./Master degree)
- (b) Science & Mathematics - Three posts (one pass degree & two Hons./Master degree)
- (c) Social Science - Two posts (one pass degree & one Hons./Master degree)
- (d) Work Education, Physical and Social Service - Two posts. They must be having qualifications as mentioned in the procedure 14-SE(S) dt. 8.1.98.
- (e) Headmaster/Headmistress - One. He/She must be having qualifications as mentioned in the procedure 14-SE(S) dt. 8.1.98.

23. After perusing the aforesaid provisions of the said ROPA, 1998, I find that the same entitles the petitioner who was appointed with higher qualification to enjoy the benefit of the post-graduate scale of pay with effect from January, 1996 or the date of improving the qualification, whichever was earlier. With regard to the provisions of Clause 2 of departmental circulars No. 670-SE(S)/1M-14/98 dated September 4, 1998, I find that the same was in operation in a different field which prescribed the staff strength in a particular group of teaching having no nexus with the scale of pay of the assistant teachers of that school. After further scrutiny of the above departmental circular I find that the two groups of assistant

teachers namely, for Pass Degree and Honours/Master degree were prescribed in the departmental circular. The petitioners belonged to the group of Honours/Master degree. Therefore, the claim for granting postgraduate scale of pay in accordance with provisions of said ROPA, 1998 cannot be rejected taking recourse to the departmental circular under reference.

24. That apart it is the settled principle of law that when a departmental circular is competed with statutory rules, the rule should prevail. Reference may be made to the decision of C.L. Verma Vs. State of M.P. and another, of the aforesaid judgment is quoted below:-

6. The question which arose for consideration in the writ petition before the High Court at the instance of the appellant was whether in the face of the mandate in Rule 29 the administrative order could operate. It is not the stand of the State Government that the order dated May 15, 1981, is one under the proviso to Rule 29. In fact, the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employees. An administrative instruction cannot compete with statutory rule and if there be contrary provisions in the rule the administrative Instructions must give way and the rule shall prevail. We are, therefore, of the view that the appellant, in terms of Rule 29, ceased to be a Government employee on his attaining the age of 58 years, two days prior to the order of dismissal. In view of the fact that he had already superannuated, government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The ratio of the decision in R.T. Rangachari v. Secretary of State for India in Council supports the position.

25. Therefore, in view of the discussion and observation made hereinabove I find that the decision making process of the respondent No. 3 in passing the impugned order cannot be sustained in law and the same is quashed and set aside. The respondent No. 3 is directed to extend the benefit of post-graduate scale of pay to the petitioner in accordance with provisions of Sub-rule (3) of Rule 12 of the said ROPA, 1998 within a period of two months from the date of communication of this.

26. The writ application is, thus, disposed of.

There would be no order as to costs.

27. In my view, the alleged plea of staff pattern is of no substance in the eye of law nor it could be applied in case of the writ petitioner. I find that the Circular No. 670-SE(S)/1M-14/98 is operating in a different field which described staff pattern in a particular group of teaching which, however, has no nexus with granting of higher scale of pay in case of improved qualification.

28. In my view, those two grounds are not justifiable grounds for refusal of benefit in favour of the writ petitioner. Accordingly, the impugned decision of the concerned District Inspector of Schools is contrary to law and therefore, the impugned decision dated 7th July, 2006 is set aside and I direct the concerned

District Inspector of Schools to release higher scale of pay in favour of the writ petitioner with effect from 20th March, 2007 since when the writ petition was filed. The concerned District Inspector of Schools is directed to release arrear benefits within six weeks from the date of communication of this order. The concerned District Inspector of Schools is further directed to prepare pay fixation on the basis of the petitioner's higher qualification.

The writ petition is, thus, disposed of. There would be no order as to costs.