

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Sarkar

W.P.A. No. 23951(W) of 2009

Sri Swaraj Kumar Dutta

Versus

State of West Bengal & Ors.

For the petitioner

: Mr. Gobinda Chowdhury,
Ms. Ananya Neogi.

For the Respondent Nos.2 & 3

: Mr. Jaydip Kar,
Mr. I. Roy,
Mr. D. Chowdhury,
Mr. S. Bhattacharya,
Mr. P. Choudhury

Hearing concluded on: 10/12/2020

Judgment on: 22/01/2021

Shampa Sarkar, J. :

The petitioner is a former employee of the West Bengal Livestock Development Corporation Ltd. (hereinafter referred to as the said Corporation). The petitioner has prayed for refixation of his pay in the scale of Rs.2200-4000 from the date of promotion as an Accounts Officer, implementation of the corresponding revised scale of Rs.8000-13500, under Revision of Pay and Allowances (ROPA) Rules 1998 and Rs.9000-40500 under ROPA 2009, accordingly. The petitioner prayed for refixation of his retirement benefit according to the above scale and payment of arrears. The petitioner further prayed for interest of Rs.1,20,389/- being interest on salaries for the period 1997-98 to 2005-06.

2. The claims of the petitioner is based on the recommendations and decision of the Board of Directors of the said Corporation to upgrade/promote the petitioner to the post of Accounts Officer of the said Corporation. According to the petitioner, the Board of Directors in its 87th meeting dated August 21, 1997, reviewed the performance of the petitioner as an Assistant Accounts Officer and recommended that he may be allowed to work in the vacant post of Accounts Officer in the scale of Rs.2200-4000 as per ROPA 1990. The Board of Directors in its 96th meeting held on March 2, 2001 decided to extend the benefit of promotion to the petitioner as an Accounts Officer as per G.O. No.7550 (F) dated September 4, 2000 (hereinafter referred as to the said memorandum). By an order dated August 14, 2001, the Managing Director of the said Corporation recommended the petitioner for promotion/upgradation to the post of Accounts Officer in the scale of Rs.2200-4000/-, with initial fixation of pay at Rs.2680/- with effect from October 1, 1994. According to the petitioner, by virtue of the said order, the petitioner was promoted to the post of Accounts Officer in the said Corporation and started discharging his duties and responsibilities as such. That the employees of the Corporation were allowed the benefit of the recommendation of the 4th Pay Commission notionally with effect from January 1, 1996 and the actual benefit was given from September 1, 2005.

3. The Board of Directors discussed the proposal for fixation of the scale of pay of Accounts Officer in its meeting held on December 16, 2005 and it was proposed that the petitioner should continue with the scale of Rs.2200-4000 with effect from 1994 and subsequently the same should be revised in the

applicable corresponding scale of Rs.8000-13500 and further that the pay would be fixed on the revised scale notionally and actual payment would be with effect from September 1, 2005. The Managing Director was directed by the Board to send the proposal to the state government for examination and issuance of necessary orders, so that the post of Accounts Officer in the revised scale of pay of Rs.8000-13,500, could be included amongst the posts sanctioned for the Corporation. Accordingly, by a letter dated December 11, 2006, the Managing Director of the Corporation requested the Principal Secretary, Animal Resources Development Department to consider implementation of the revised scale of pay of Rs.8000-13,500 in case of the petitioner, being the corresponding revised scale of Rs.2200-4000 which was allowed by the Corporation to the petitioner since October 1, 1994. By the said letter, the Managing Director of the Corporation requested the government to grant approval to the pay scale of Rs.8000-13500 in terms of the recommendation of the 4th Pay Commission for the post of Accounts Officer in favour of the petitioner. It was clarified that the financial liability would be borne by the Corporation. The petitioner also made a representation to the state government for sanction of the revised scale of Rs.8000 to 13,5000/-.

4. The case of the petitioner was again recommended for approval by the Managing Director, vide letter dated December 17, 2007. As the petitioner was due to retire on May 31, 2008, it was resolved in the 111th Board Meeting of the said Corporation that the petitioner be allowed the revised scale of pay as an Assistant Accounts Officer (his erst while designation) until the approval for the post of Accounts Officer and corresponding revised scale was finalised by

the government. The Board approved the proposal of the Managing Director and directed him to finalise the matter. By an order dated January 10, 2008, the Joint Secretary to the Government of West Bengal, Animal Resources Development Department, Corporation Branch intimated the Managing Director of the Corporation that the proposal for granting the revised scale of Rs.8000-13500 to the petitioner as an Accounts Officer was under activate consideration but pending disposal of the same, the petitioner may be allowed to come under the revised scale of Rs.4,800-10,925 corresponding to the post of Assistant Accounts Officer. The Managing Director of the Corporation requested the Joint Secretary to the Government of West Bengal, Animal Resources Development Department for favourable disposal of the case of the petitioner by re-fixation of pay of his pay at Rs.8000-13,500 as per the 4th Pay Commission's recommendation. It was documented that as the Corporation allowed the promotion to the petitioner by applying its collective wisdom and also in view of the fact that the Corporation had been getting his services as an Accounts Officer since October 1, 1994, he deserved a favourable and sympathetic consideration.

5. At the time of retirement, the pay of the petitioner was revised in the scale of Rs.4,800-10,925 and all incremental and other benefits admissible to the post of Assistant Accounts Officer including the recommendation of the 4th pay Commission was granted to the petitioner. Aggrieved by the inaction of the state government in refixing the pay of the petitioner in the revised scale of Rs.8000-13,500 as an Accounts Officer with consequential benefits and revisions under the subsequent ROPA, this writ petition has been filed.

6. The respondent No.1 contested that the said proceedings. Mr. Jaharlal Dey, learned Advocate for the state respondent submitted that the petitioner did not have any right to the post of Accounts Officer as the said post did not exist. That the post of Accounts Officer was never sanctioned by the government and the Corporation being wholly owned by the government, creation of post or appointment thereto could not be done without the sanction and approval of the government. The question of regularization did not arise as the petitioner was not appointed against a sanctioned post through a proper recruitment procedure. He further submitted that the petitioner was also not entitled to any interest on the arrear salary for the delay in fixation of his pay as the petitioner himself was responsible for the delay in not having exercised his option to come under the revised scale of pay attached to the post of Assistant Accounts Officer. He submitted that the petitioner was appointed in the said Corporation on purely temporary basis with effect from November 13, 1990 in the scale of pay of Rs.500-750. The said scale was peculiar to the said Corporation and did not have any relation to any scale of pay either under the state government or any other department. The post of Assistant Accounts Officer was created by the said Corporation and the same was approved subsequently by the government. That the decision of upgrading/promoting the petitioner to the post of an Accounts Officer by the said Corporation, was illegal as the same was done without any sanction or approval of the State government. It was further submitted that there were no business activity of the said Corporation since 1984-85 till 2004 and the employees were paid their salary from the government's grant-in-aid. That the said Corporation had to

face several litigations and proceedings before the Registrar of the companies due to the failure of the petitioner to file returns on time. That the decision to promote the petitioner was taken on March 2, 2001 and the said memorandum would not cover the case of the petitioner which had come into force on September 4, 2000. Although, the Finance Department on the request of the said Corporation had allowed the benefit of the 4th Pay Commission under ROPA Rules, 1998, to the employees of the Corporation by an order dated October 4, 2005, but the government did not at any time give its approval for the creation of the post of Accounts Officer.

7. Mr. Dey urged that, subsequently the pay of the petitioner was revised in the scale of Assistant Accounts Officer, benefit of the carrier advancement scheme was also given to him and he had accepted the arrear salary as Assistant Accounts Officer. The creation of the post of Accounts Officer and promotion of the petitioner to the same, were neither sanctioned nor approved by the government. The service of the petitioner was not regularized as an Accounts Officer as the post did not exist and the petitioner was rightfully given the benefit of the revised scale of pay against the substantive post of Assistant Accounts Officer, to which he had been appointed.

8. The respondent Nos.2 and 3, namely, the Corporation and its Managing Director contested the proceeding. Mr. Jaydip Kar submitted that the petitioner joined the said Corporation with effect from November 13, 1980, in terms of the appointment letter dated October 14, 1980. The said appointment was made on the strength of the decision of the Board of

Directors in its 30th meeting held on August 29, 1980, on the authority vested upon it under Article 25(5) of the Articles of Association of the Corporation. The post of Assistant Accounts Officer was included under ROPA Rules, 1990, and the corresponding scale of Rs.1500-3410 was provided. The contention of the petitioner that at the time of joining and up to 1990, the scale offered to him was lower than those enjoyed by other employees of Corporations and state government was a misrepresentation of facts. The said post and the corresponding scale was unique to the said corporation and had not been approved by the government and had also not been included in the Pay Commission's Report for the corresponding period. Such approval came later. It was submitted that although the Board created the post of Accounts Officer, the minimum qualification for the post and the method of recruitment was to be decided later. This was not done and no scale of pay was ever approved by the Board of the Corporation. Such creation of post and fixation of pay were always subject to the approval of the government. The said post was never included in the Pay Commission's recommendation under ROPA 1981, ROPA 1990, ROPA 1998 and ROPA 2009. That between 1984-85 to 2004, there was hardly any activity of the Corporation. The said memorandum dated September 4, 2000, on the basis of which earlier promotions/upgradation made by the Corporation were regularized by the government, was not applicable in case of the petitioner. The recommendation to promote the petitioner to the post of Accounts officer was made at the 96th meeting of the Board of the Corporation held on March 2, 2001. The petitioner misled the Board and got the Board to recommend his name and promote him as an Accounts Officer, although there

was no such post. That the petitioner failed to perform his duties and submit accounts from 1993 till the date of his retirement. Failure to file returns, resulted in the initiation of cases against the principal officers of the corporation in 1999. 11 cases were filed against the said Corporation before the Registrar of Companies. The Company Secretary and the Managing Director of the Corporation were hauled up and made to explain such serious non-compliance and gross negligence. That the recommendation of the Board and the decision of the Board to promote the petitioner to a non-existing post was illegal and could not create a right in favour of the petitioner. The Board could create a post as per the Memorandum and Articles of Association of the Corporation but such creation of post was always subject to permission, sanction and approval of the state government. In the absence of the sanction and approval of the state government, the petitioner could not be allowed all benefits in the corresponding revised scale of pay for the post of Assistant Account Officer under ROPA 1998 and ROPA 2009. Even the order dated October 4, 2005, of the Government of West Bengal, Animal Resources Development Department, did not include the post of Accounts Officer with the corresponding pay scale. On the contrary, in the said report the pay scale of Rs.2200-4000 was the corresponding scale attached to the post of the Assistant Engineer (Civil) and the petitioner was allowed to enjoy the salary in the said scale ear marked for Assistant Engineer (Civil) without any legal basis.

9. Heard the parties. The main thrust of the argument of Mr. Chowdhury, learned advocate appearing on behalf of the petitioner is that the Corporation having taken the services of the petitioner for more than 14 years

as Accounts Officer, were bound to fix his salary in the scale of Rs.2200-4000 with effect from the date of his promotion and pay him the benefit of the corresponding scale of Rs.8000-13500, in terms of the 4th Pay Commission's recommendation and the revised scale under ROPA 2009. The retirement benefit of the petitioner should also be calculated in the said scale. Arrear salaries should also be paid. Reliance has been placed in the matter of **The Nayagarh Co-operative Central Bank Ltd & Anr. Vs. Narayan Rath & Anr.** reported in **AIR 1977 SC 112**. His next contention was that the Corporation having promoted the petitioner to the post of Accounts Officer, had represented to him that such promotion/upgradation would be approved by the government on the basis of the recommendation of the Board of Directors and the petitioner on such representation had altered his position. As such, the Corporation was estopped from withdrawing such representation. The promise made by the Corporation and its Board of Directors was binding on the respondents and the petitioner was entitled to the benefit of such promise and representation. Reference was made to the decision of **Amrit banaspati Co. Ltd.& Anr. Vs. State of Punjab & Anr.** reported in **(1992) 2 SCC 411**. The petitioner also relied on a decision of the Apex Court in the matter of **People's Union for Democratic Rights & Ors. vs. Union of India & Ors.** reported in **AIR 1982 SC 1473**, in support of his contention that the law must serve the poor and not only the fortunate. Reliance was further placed on the Memorandum and Articles of Association of the said Corporation to emphasize that under Article 25(5), the Board of Directors of the Corporation was the sole authority to appoint its employees and fix their duties, salaries and

remuneration. He submitted that once the Corporation had decided to appoint the petitioner in the post of Accounts Officer, utilised his services, and requested the government to favourably dispose of the case of the petitioner by considering his eligibility and capability, the government had no other option but to regularise the services of the petitioner as an Accounts Officer and fix his salary in the revised scale.

10. Mr. Kar relied on the decision of **State of Karnataka vs. Umadevi (3)** reported in **(2006) 4 SCC 1**, in support of his contention that the petitioner could not be regularised as the post of Accounts Officer did not exist and the said post never sanctioned by the state government. He submitted that the Corporation being wholly owned by the state government, sanction from the state government and approval of the appointment of petitioner to the post was mandatory. Admittedly, the petitioner was not appointed by following a regular procedure. The petitioner could not have been upgraded/promoted to the said post on the basis of the said memorandum dated September 4, 2000. By the said memorandum the approval was given to the promotions/upgradations already granted but the petitioner was upgraded on a date subsequent to the memorandum. The said memorandum was not applicable and the reliance placed on the same by the petitioner and also the Board while promoting the petitioner was not in accordance with law. For convenience the relevant portion of the said memorandum is quoted below:-

“(c) The cases of Corporation/Undertaking who have introduced new pay scales of certain posts by way of fresh creation/up-gradation without prior approval of the Government are also hereby regularized subject to the condition that such employees of those Corporations/Undertakings will not be eligible to draw the benefit of Career Advancement Scheme.”

11. I find that the service of the petitioner was taken by the Corporation as a private arrangement and the petitioner was allowed to function as an Accounts Officer. The post was not sanctioned. No rules had been specified. In the list of posts available in the corporation, the post of Accounts Officer had never been included. No vacancy was notified and no selection process was initiated as it should be in cases of public employment. Appointment should be made in terms of existing rules and the appointment and/or promotion of the petitioner did not have any legal sanction or basis. It was also not declared whether the post of Accounts Officer was a promotional post or to be filled up by direct recruitment.

12. Records reveal that the petitioner was appointed on a temporary basis to the post of Assistant Accounts Officer with effect from November 13, 1980. The said post was created in the scale of Rs.500-750 by the Board in its 30th meeting held on August 29, 1980. Consequent to the said decision the petitioner was appointed. Under ROPA 1981 the post of Assistant Accounts Officer was not included. The said post was approved under ROPA 1990. The revised scale of pay for the post of Assistant Accounts Officer at Rs.1500-3410, with effect from January 1, 1986, was notified by a memorandum dated December 1, 1992, by the Joint Secretary to the Government of West Bengal, Animal Resources Development Department. By the said order recommendation of the 3rd Pay Commission was implemented in respect of employees of the said Corporation. Records also reveal that the Board created one post of Accounts Officer in its 34th meeting held on September 14, 1981, but it had been clearly mentioned that the details of selection of each category

of staff was to be finalized with the approval of the Chairman and then steps would be taken for recruitment. It was also provided in the said resolution that the recruitment should be conducted according to the procedure laid down by the Government of West Bengal. Thereafter, no sanction of the government was taken and no recruitment process was notified for the said post. On the contrary, the Corporation, on its own, upgraded the petitioner to the post of Accounts Officer and fixed his pay in the scale of Rs.2200-4000 pending approval of the Government of West Bengal. Several letters were sent by the Managing Director of the said Corporation and also by the Joint Secretary, Government of West Bengal, Animal Resources Development Department, who was a member of the Board of Directors, recommending the approval and regularisation of the petitioner as an Accounts Officer of the said Corporation along with consequent revision of his scale of pay to Rs.8000-13500 in view of the capability, qualification and continued services of the petitioner in the said post. The government did not take any action on the proposal of the said Corporation and the Corporation had no other alternative but to fix the pay of the petitioner in the pay scale of Rs.4800-10925, that is, the scale attached to the petitioners substantive post of Assistant Accounts Officer. The petitioner accepted the said pay fixation and received all payments. Although, the petitioner had referred to Article 25 (2) of the Articles of Association in support of his contention that the Board of Directors of the said Corporation was the sole authority to appoint employees and fix the pay, the salary and duties, etc, such contention cannot be accepted. Article 26 of the said Memorandum and Articles of Association provides that the Board

shall refer its decision for concurrence of the state government. The entire action and the communication of Board of Directors with the state government in this regard would categorically show that the decision of the Board to promote the petitioner was entirely dependent on the sanction and approval of the state government.

13. In the decision of **State of Madhya Pradesh and Ors. Vs. Shardul Singh** reported in **1970 (1) SCC 108**, the Hon'ble Apex Court clarified the meaning of the expression "conditions of service" to be an expression of wide import. The Apex Court held that the expression meant all those conditions which regulate the holding of a post by a person from the time of his appointment till his retirement and even beyond it, in the matters of pension etc. In this case, when Article 26 of the Memorandum and Articles of Association provides that the decision of the state government was reserved in matters relating to the 'conditions of service' of an employee, the decision of the Board of Directors to promote the petitioner and consequently grant him a higher scale was a condition of service which required the approval of the state government.

14. All through the said Corporation sought for approval of the government for regularisation of the petitioner which clearly shows that the Corporation could not have unilaterally promoted the petitioner to the post of Accounts Officer. The Corporation is fully owned by the government. There is nothing on record to show that the approval of the government was not necessary. Moreover, the appointment and/or promotion of the petitioner to a post which did not exist in the Corporation was illegal. Only one person, that

is, the petitioner was discharging his duty as an Assistant Accounts Officer and the same person was upgraded as Accounts Officer without any other person being appointed to the post of Assistant Accounts Officer. When there was illegality in the appointment, it did not create any right in favour of the petitioner. The doctrine of legitimate expectation does not apply. The fact that the Corporation kept pursuing and writing to the government to approve the post and regularise the petitioner, establishes the fact that the Corporation required the sanction of the government for creating the post and appointing the petitioner to such post. Approval was also necessary in order to prescribe/attach a particular scale of pay to the said post. The fact that no scale was provided against the post of Accounts Officer is also clear from the order dated October 4, 2005, by which ROPA 1998 was implemented in case of employees of the Corporation. The scale of Rs.2200-4000 which was revised to Rs.8000-13500, was the scale prescribed for the post of Assistant Engineer (Civil). The Corporation created the post of Accounts Officer promoted the petitioner to the same and allowed him to draw the salary corresponding to the post of Assistant Engineer (Civil). Such action of the Corporation was contrary to law. There being no legal sanction to such upgradation/promotion of the petitioner, the petitioner does not have any right either to the post of Accounts Officer or to the corresponding revised scale of Rs.8000-13500 under ROPA 1998 and consequent revised scale of pay Rs.9000-40,500 under ROPA 2009.

15. The contention of the respondent that creation of a post was a must before the same was filled up has been reiterated by the courts of law time and again. Reference is made to the decision of the Apex Court in the matter of

Indian drugs & Pharmaceuticals Ltd. vs. workmen, Indian Drugs & Pharmaceuticals Ltd. reported in **(2007) 1 SCC 408**. It was held that a post must be created and/or sanctioned before being filled up. An employee not appointed against a sanctioned post was not entitled to any scale of pay. In this case, the petitioner has not been able to point out any rule or procedure on the basis of which his promotion to the post of Accounts Officer and payment of salary attached to such post could be granted. It is well settled that unless there exists some rule, no direction can be issued by the court for approving the petitioner in the post of Accounts Officer and to pay him a salary allegedly attached to such post. It will not be appropriate for the court to encroach into the functions of another organ of a state. Such was also the observations of the Hon'ble Apex Court in the above decision.

16. In the decision of **State of M.P & Ors. Vs. Yogesh Chandra Dubey & Ors.** reported in **(2006) 8 SCC 67**, it has been held that even if services of an officer was used only to meet an exigency and not against a sanctioned post with the vacancies having been notified, regularization of an appointment to such a post under such circumstances was not permissible. In this case, the post was not sanctioned by the government, and no vacancy was notified. In case of public employment, if these procedures are not followed, the appointment was totally bad as the same would mean a back door appointment, which would not have any legal sanction. Paragraphs 9 and 11 of the aforesaid judgment are quoted below:-

“9. It is neither in doubt nor in dispute that the respondents were not appointed in terms of the statutory rules. Their services were taken by the officers only to meet the exigencies of situation. No

post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularisation is not a mode of appointment. If any recruitment is made by way of regularisation, the same would mean a back door appointment, which does not have any legal sanction.

10.

11. *A person, who had been appointed by a State upon following the Recruitment Rules, enjoys a status. A post must be created and/or sanctioned before filling it up. The question recently came up for consideration in M.P. Housing Board v. Manoj Shrivastava [(2006) 2 SCC 702 : 2006 SCC (L&S) 422] wherein it was held [Ed.: As per the observations in Mahendra L. Jain case, (2005) 1 SCC 639 at p. 652, para 33.] : (SCC p. 708, para 14)*

“33. For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-à-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules.”

It was further opined: (SCC p. 710, para 19)

“19. The appointment made by a person who has no authority therefor would be void. A fortiori an appointment made in violation of the mandatory provisions of the statute or constitutional obligation shall also be void. If no appointment could be made in terms of the statute, such appointment being not within the purview of the provisions of the Act, would be void; he cannot be brought within the cadre of permanent employees. The definitions of ‘permanent employee’ and ‘temporary employee’ as contained in the Rules must, thus, be construed having regard to the object and purport sought to be achieved by the Act.”

17. In the decision of **Ashok Kumar Sonkar vs. Union of India & ors.** reported in **(2007) 4 SCC 54**, it has been held that an appointment made in violation of the provisions of Article 14 and 16 of the Constitution and also contrary to the statutory rules, was illegal and it would be improper for the courts to import equity jurisdiction and regularise the person appointed to the particular post. In this case too, there was no post of Accounts Officer. The

petitioner was working as an Assistant Accounts Officer. The Board of Directors decided to upgrade the petitioner to the post of Accounts Officer, which did not have the sanction or approval of the government. Post decisional sanction or approval was being sought from the government which the government ultimately ruled out. Thus, the promotion or upgradation of the petitioner to the above mentioned post was illegal and equity jurisdiction of this court cannot be invoked seeking regularisation of service to the said post along with corresponding higher pay scale. A similar view was taken by the Hon'ble Apex Court in the matter of **Satya Prakash and Ors. vs. State of Bihar & Ors.** reported in **(2010) 4 SCC 179**.

18. Records also further reveal that the government by an order dated February 9, 2010, regretted the prayer for regularisation of the services of the petitioner and payment of the consequent revised scales and salaries.

19. The decisions cited by the petitioner were given under a different set of facts. The decision in the case of **Nayagarh Co-operative Bank (supra)** does not apply to the the petitioner, inasmuch as, the appointment was acquiesced to and the said appointment had been accepted to be valid for all practical purposes, unlike the case in hand in which the petitioner's appointment was always subject to the approval/sanction of the state government which the petitioner was also aware of. The decision in **Amrit banaspati (supra)** clarified that the principle of promissory estoppel would not apply in cases where there was lack of authority on the part of the person making the representative on the behalf of the government. In this case, the government did not make any representation to the petitioner allowing him to be promoted/upgraded to the

post of Accounts Officer and in granting the higher scale number. The government had never considered the recommendation of the Corporation favourably. The Corporation on its own had taken the decision with regard to promotion/upgradation of the petitioner without legal authority. Thus the refusal of the government to regularise the petitioner is not hit by the principle of promissory estoppel. In this case, the state government has not meted out injustice to the petitioner, inasmuch as, the state government had never represented to the petitioner that the petitioner would be regularized as an Accounts Officer in the said Corporation. Moreover, even the Corporation had clarified in its resolutions that all decisions relating to the promotion/upgradation of the petitioner to the post of Accounts Officer was subject to the final approval, sanction and order of the state government. Even after implementation of the ROPA 1998, the petitioner's scale of pay was not revised to the corresponding scale of Rs. 8000-13500 and he was allowed to receive salary in the scale of Rs.2200-4000. By that time the scale of Assistant Accounts Officer had also been revised to a scale higher than Rs.2200-4000/-.

20. The decisions cited by the petitioner on the proposition of law that the court could mould the relief prayed for are not applicable in the facts and circumstances of this case. The petitioner is not entitled to the relief of regularisation to the post of Accounts Officer. The fixation of his scale of pay at Rs.2200-4000/- from the date of promotion to the post of Accounts Officer and thereafter at the corresponding revised scale of pay under ROPA 1998 and ROPA 2009 are also denied.

21. Interest for the delay in payment of the salary of the petitioner in the corresponding revised scale for Assistant Accounts Officer should be granted by the corporation, inasmuch as, the corporation was responsible for the delay by waiting for the approval of the government with regard to the regularization of the petitioner. The corporation had acted without any authority and for such action the petitioner suffered loss as he continued to draw a lower pay although, he was entitled to the revised scale of pay as an Assistant Accounts Officer, under the relevant ROPA rules after each revision. Interest for such delay in revision of pay scale and disbursement of arrear of salary in the revised scale attached to the post of Assistant of Account Officer totalling to Rs.61,920/- as per the chart annexed to the writ petition as a part of Annexure P-11, under the heading “interest to be paid”, should be paid by the Corporation from its own funds as the Corporation was always willing to pay the petitioner higher scale from its own fund. It was always the decision of the Board of Directors that the Corporation would bear all expenses towards salary etc. of the petitioner from its own fund and the state government would not be saddle with any financial burden. No deduction will also be permitted under such circumstance mentioned herein above.

22. Writ petition is disposed of accordingly.

Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)