IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.13858 of 2017

DR. SANJOY GUHA ROY AND ANOTHER

-VERSUS-

STATE OF WEST BENGAL AND OTHERS

For the petitioners	: Mr. Ranajit Chatterjee, Adv., Mr. Aniruddha Mitra, Adv.
For the State	: Mr. Amal Kumar Sen, Adv., Mr. Lal Mohan Basu, Adv.
For respondent nos.3 & 4	: Ms. Lina Majumdar, Adv., Mr. Arijit Dey, Adv.
Hearing concluded on	: 05.07.2022
Judgment on	: 16.09.2022

Kausik Chanda, J.:-

The original writ petitioner, who died during the pendency of this application, (hereinafter referred to as "the petitioner") was appointed as a lecturer in Plant Pathology (Research) at Bidhan Chandra Krishi Viswavidyalaya on March 30, 1989. He was promoted to the post of Reader with effect from September 30, 1998, and retired as a Reader of the said department on December 31, 2000. At the time of retirement, the scale of pay of the petitioner as Reader was Rs.12,000- Rs.18,300/- and the last pay drawn by him was Rs.14,100/-. Accordingly, the initial basic pension of the petitioner was fixed at Rs.7,050/-.

2. The revised scheme for teachers/non-teaching staff of State aided agricultural Universities was notified by the Department of Agriculture, Government of West Bengal on February 4, 2011, and the same was made effective from January 1, 2006. As a Pre-2006 pensioner, the petitioner exercised his option to be governed by the said scheme. In the said Government order dated February 4, 2011, two different pay bands for Readers were provided. One was Rs.15,600-Rs.39,100/- with Grade Pay of Rs.8000/- and another of Rs.37,000-Rs.67,000/- with Grade Pay of Rs.9000/-. In terms of the said scheme, his revised basic pension was fixed at Rs.15,933/-.

3. The petitioner has made a case that because of the said notification, the basic pension of some other Readers of the University had been fixed at Rs.23,200/-. The petitioner has pleaded that while the petitioner was in

service, there was uniform Pay Band-Grade Pay for Readers irrespective of their length of service as Readers, but by way of introduction of the Government Order dated February 4, 2011, he has been unreasonably discriminated with a Reader who had more than three years of service prior to retirement.

4. On the other hand, the State contends that the original writ petitioner exercised his option as a Pre-2006 Pensioner in terms of the notification dated February 4, 2011. The said Government order dated February 4, 2011, is based to achieve a lawful object and made two classes of Pre-2006 retired Readers of the University, one who had completed three years of service as a Reader as on January 1, 2006, in the pre-revised scale of Rs.12,000 - Rs.18,300/- and other, who have completed three years of service as a Reader. It is the case of the State that there cannot be any question of comparison of the petitioner with some other Readers since they rendered services for more than three years in the post of Reader before their superannuation. Accordingly, the petitioner's grievance of alleged discrimination in the revised pension under the relevant scheme cannot be accepted.

5. Mr. Ranajit Chatterjee, learned advocate appearing on behalf of the petitioner, argues that since the petitioner enjoyed a uniform pre-revised pay scale of Rs.12,000-Rs.18,300/- irrespective of the length of service at the time of retirement prior to January 1, 2006, he could not be

discriminated in granting pensionary benefits based on the length of service.

6. By the relevant Government order the Readers have been given two different pay scales of Rs.15,600-Rs.39,100/- with Grade Pay of Rs.8,000/- and Rs.30,400-Rs.67,000/- with Grade Pay of Rs.9,000/- depending on whether they have served as Readers for at least three years.

7. Mr. Chatterjee has relied upon a decision reported at **(2022) 7 SCC 323 (*Indian Ex-Servicemen Movement v. Union of India*)** to argue that the pay scale and grade pay applicable to the Readers at the time of retirement were same and, therefore, the pension payable to them cannot be different by introducing a criterion which was not there before their retirement.

8. Mr. Chatterjee has further relied upon the judgment reported at **(2000) 7 SCC 662 (*Union of India v. Dr. Vijayapurapu Subbayamma*)** to argue that the pensioners, who are similarly situated, cannot be discriminated with. Further reliance has been placed upon a judgment reported at **(2008) 9 SCC 125 (*Union of India v. SPS Vains (Retd.)*** to suggest that benefit of pension ought to be made available to all pensioners of the same class equally. Mr. Chatterjee submitted that there is no doubt that all Readers formed the same class irrespective of their length of service prior to January 1, 2006. He submitted that the legal heirs of the petitioner who have been substituted in the writ petition in place of the original writ

petitioner should be given the family pension at par with that enjoyed by the other Pre-2006 retirees by quashing the Government order dated February 4, 2011.

9. Appearing for the State, Mr. Amal Kumar Sen, learned advocate, submits that pay revision by the Government based on the recommendation of an expert body prescribing different pay scales for the different sets of employees based on experience is a valid one and not in violation of Article 14 of the Constitution of India. He further submits that such discrimination is based on an intelligible differentia and the Court should not interfere with the same being an exercise undertaken by an expert body. He has also placed reliance upon the judgment reported at **(2022) 7 SCC 323 (*Indian Ex-Servicemen Movement v. Union of India*)** in support of his submissions.

10. I am of the opinion that the petitioner cannot claim parity with the other Pre-2006 retirees who had served for at least three years in the post of a Reader.

11. It has been held in the judgment reported at **(2006) 11 SCC 709 (*Col. B.J. Akkara (Retd.) v. Government of* India)** as follows:

> "**20.** The principles relating to pension relevant to the issue are well settled. They are:
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> (*a*) In regard to pensioners forming a class, computation of pension cannot be by different formula thereby applying an unequal treatment solely on the ground that some retired earlier and some retired later. If the retiree is eligible for

pension at the time of his retirement and the relevant pension scheme is subsequently amended, he would become eligible to get enhanced pension as per the new formula of computation of pension from the date when the amendment takes effect. In such a situation, the additional benefit under the amendment, made available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.

(*b*) But all retirees retiring with a particular rank do not form a single class for all purposes. Where the reckonable emoluments as on the date of retirement (for the purpose of computation of pension) are different in respect of two groups of pensioners, who retired with the same rank, the group getting lesser pension cannot contend that their pension should be identical with or equal to the pension received by the group whose reckonable emolument was higher. In other words, pensioners who retire with the same rank need not be given identical pension, where their average reckonable emoluments at the time of their retirement were different, in view of the difference in pay, or in view of different pay scales being in force.

(*c*) When two sets of employees of the same rank retire at different points of time, it is not discrimination if:

(*i*) when one set retired, there was no pension scheme and when the other set retired, a pension scheme was in force;

(*ii*) when one set retired, a voluntary retirement scheme was in force and when the other set retired, such a scheme was not in force; or

(*iii*) when one set retired, a PF scheme was applicable and when the other set retired, a pension scheme was in force.

One set cannot claim the benefit extended to the other set on the ground that they are similarly

> situated. Though they retired with the same rank, they are not of the "same class" or "homogeneous group". The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogeneous class of pensioners into two groups and subjecting them to different treatment."

12. In the present case, alleged discrimination is not unfounded; it was based on the length of service of the Readers. The Government is entitled to vary or alter the pay scale attached to a particular post at any stage of the employment on the basis of qualification, length of service, etc. In the present case, the Government has decided to treat the Readers with at least three years of experience in the said post differently. In other words, by the impugned notification Government created two classes of Readers based on their length of service. This has resulted in the corresponding variation in the pension of retired Readers on the basis of their length of service.

13. It is not the case of the petitioner that he has been discriminated with the retired Readers similarly circumstanced with him i.e. the Readers, who have rendered less than three years of service in the said post. It is the wisdom of the Government to prescribe different pay scales for differently situated employees and granting a pay scale is undoubtedly an expert body function. The petitioner cannot ask for parity in pension with the Readers with whom he is not similarly circumstanced on the ground that at the time of his retirement, he was given the same pension as them.

14. Since by the impugned notification no discrimination has been made among the pensioners forming the same class, the judgments relied upon by Mr. Chatterjee cannot lend any support to the petitioner's case.

15. In that view of the matter, the Government order dated February 4, 2011, cannot be held to be violative of Article 14 of the Constitution of India. No interference is called for.

16. Accordingly, W.P.A. No.13858 of 2017 is dismissed.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)