

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

WPA 15459 OF 2018

**Narayan Chakraborty & Ors.
vs.
The State of West Bengal & Ors.**

For the Petitioners : Mr. Raghunath Chakraborty,
Mr. Mahaboob Ahmed
.....advocates

For the State : Mr. Swapan Kumar Datta,AGP,
Mr. Tapas Kumar Dey
.....advocates

For Raiganj Municipality : Mr. Sirsanya Bandhopadhyay,
Mr. Arka Kumar Nagadvocates

Heard on : 05.09.2022

Judgment on : 25.11.2022

Hiranmay Bhattacharyya, J.:-

1. This writ petition is at the instance of retired employees of Raiganj Municipality (for short “the Municipality) praying for their fixation of their pay in the revised pay scale of Rs. 4000-

8850 with effect from 01.01.2006 and thereafter to grant revised pay scale in the revised pay band scale of Rs. 7100-37600 with grade pay of Rs. 3600 (PB-3) and to grant consequential benefits on the basis thereof.

2. The writ petitioners claim that they were all permanent employees of Raiganj Municipality (for short “the municipality”) and they retired from service without getting any promotion. It is the further case of the writ petitioners that as per ROPA 1996 they were placed in the revised pay scale of 3600-100-4200-125-5700-150-7050 i.e., scale no. 7 as per Notification no. 60 dated 08.03.1999 which was corresponding to pre-existing scale of 1140-2160. The petitioners claim that vide memorandum no. 59/MA/O/C-9/2P-13/99 dated 08.02.2006 employees of the urban local bodies were extended the benefits of the Career Advancement Scheme (for short “CAS”) similar to the Career Advancement Scheme, 1999 of the State Government employees. The writ petitioners claim that in terms of the said scheme the writ petitioners are entitled to be placed in the next higher scale of 4000-8850 i.e., scale no. 8 of the Memorandum dated 08.03.1999.
3. The grievance of the petitioner is that they were placed in the scale of pay of Rs. 3800-7775 i.e., scale no. 8 of Part B of schedule 1 of ROPA 1998 though there is no existence of such scale of pay as per the memo dated 08.03.1999.

4. Mr. Chakraborty learned advocate appearing for the writ petitioner contended that the petitioner was initially placed in the pay scale of Rs. 1140-2160 and the same got revised to 3600-7050 with the coming into force of the memorandum dated 08.03.1999. He further submitted that the petitioner was placed in scale no. 7 of the said Memorandum and as per the provisions of the CAS introduced by memorandum dated 08.02.2006 the petitioner is entitled to the next higher scale i.e., scale no. 8 with the pay scale of 4000-8850. He further submitted that there is no existence of pay scale of 3800-7775 in the pay scale of the municipal employees as per memorandum dated 08.03.1999 and, he submitted that the municipality acted legally and arbitrary by fixing the pay scale of the petitioners at 3800-7775. He further contended that with the coming into force of the memorandum dated 27.02.2009 the petitioners shall be entitled to the pay band scale of 7100-37600 with grade pay of Rs. 3600 in PB-3. Mr. Chakraborty further relies upon the decision of a co-ordinate bench of this Court in WP 11615 (W) of 2009 decided on 21.01.2014 in *Bijoy Nandi and others* wherein the co-ordinate bench directed the authorities of the Siliguri Municipal Corporation to grant the higher scale of pay of Rs. 4000-8850 with effect from 01.01.2006 and the corresponding revised pay band scale of Rs. 7100-37600 with grade pay of Rs. 3600 (PB-3) under ROPA 2009.

5. Mr. Chakraborty further relies upon a decision of the Division Bench of this Court in the case of *Krishnanagar Municipality vs. Bikash Kumar Dutta* reported at (2017)1 CHN Cal 676.
6. Mr. Bandopadhyay, learned advocate appearing for the Municipality seriously disputed the contentions raised by Mr. Chakraborty. He draws the attention of the Court to the clarification dated 23.08.2006 wherein it has been specifically provided that in case of allowing CAS to municipal employee working under scale of pay of Rs. 3600-7050, the next higher scale shall be Rs. 3800-7775. He, thus, submitted that the municipality was justified in granting the pay scale of Rs. 3800-7775 to the petitioners.
7. Mr. Dutta the learned Additional Government Pleader contended that since the petitioners were placed in the scale of pay of Rs. 3600-7050, they will be entitled to be placed in the next higher scale of Rs. 3800-7775 i.e., scale no. 8 of Part B of Schedule 1 of ROPA 1998 in terms of the notification dated 08.02.2006 as clarified by memorandum dated 23.08.2006.
8. Heard the learned advocates for the parties and perused the materials placed.
9. The short question that falls for consideration in this writ petition is whether the petitioners being municipal employees can be placed in the next higher scale as per ROPA 1998 for availing the benefit of CAS.

10. The petitioners being the municipal employees were governed by the memorandum dated 08.03.1999 and it is not in dispute that in terms of the said memorandum the petitioners enjoyed the pay scale of Rs. 3600-7050 which is scale no. 7 of part-B schedule 1 of the said memorandum. By virtue of the memorandum dated 08.02.2006 the employees of the urban local bodies were entitled to get the benefit of CAS similar to the Career Advancement Scheme, 1990 of the State Government employees. It was provided in the said memorandum that employees borne in the revised pay scale as shown in the serial nos. 1-12 in column 4 of part D of schedule 1 of the revised scales of pay for post circulated vide resolution dated 08.03.1999 will be allowed advancement to the next higher scales of pay as per Schedule Part B under WBS (ROPA) Rules 1998 on completion of ten years continuous and satisfactory service in the same pay scale and to the scale of pay next above the first higher scale of pay as per Schedule Part B under WBS (ROPA) Rules 1998 after ten years service in the first higher scale of pay provided that in the intervening period they had not been promoted/ appointed to any higher scale of pay.
11. Admittedly the petitioners had not been promoted/ appointed to any higher scale of pay. Therefore, the entitlement of the petitioners to get the benefit of CAS in terms of notification dated 08.02.2006 is not in dispute. However, since the

petitioners were drawing salary in the scale of pay of 3600-7050 i.e., scale no. 7 of the resolution dated 08.03.1999, the petitioners claim that they shall be entitled to the next higher scale of 4000-8850 i.e., scale no. 8 of the said resolution.

12. On the other hand, the contention of the respondents is that the issue as to whether the petitioners will be entitled to the scale of 4000-8850 i.e., scale no. 8 of the resolution dated 08.03.1999 or 3800-7775 i.e., scale no. 8 of part B of schedule 1 of ROPA 1998 has been clarified by the memo dated 23.08.2006.
13. The learned advocate for the petitioner would contend that since there is no existence of the scale of pay of Rs. 3800-7775 in the notification dated 08.03.1999, the petitioners could not be placed in the said pay scale.
14. The right of the writ petitioners to claim the benefits of CAS flows from the Notification dated 08.02.2006. It would be pertinent to take note at this stage that number of pay scales as per the resolution dated 08.03.1999 is 12 whereas as per ROPA, 1998 Part B of Schedule 1 it is 24. Though some of the pay scales of Resolution dated 08.03.1999 matches with the pay scales of ROPA, 1998 yet there is no existence of some of the pay scales of ROPA, 1998 in the resolution dated 08.03.1999. It appears from the Notification dated 23.08.2006, that the same was issued to clarify such issues.

15. The writ petitioners have claimed the benefit in terms of the Notification dated 08.02.2006. While doing so, the writ petitioners cannot be allowed to accept the part of the Resolution which is favourable to them and challenge the other part only on the ground that there is no existence of such scale of pay in the Resolution dated 08.03.1999.
16. The right of the writ petitioners to claim the benefits of CAS flows from the notification dated 08.02.2006. A subsequent notification dated 23.08.2006 was issued clarifying certain issues. Since the notifications dated 08.02.2006 and 23.08.2006 are not under challenge in this writ petition, this Court is of the considered view that the petitioners will be entitled to the benefits of CAS strictly in terms of the notification dated 08.02.2006 read with 23.08.2006.
17. Admittedly the writ petitioners were working under scale of pay of Rs. 3600-7050 in terms of the notification dated 08.03.1999 i.e., scale no. 7. The Notification dated 08.02.2006 provides that an employee who have not been promoted or appointed to any higher scale of pay will be allowed advancement to the next higher scale of pay as per Part B of Schedule 1 of ROPA 1998 in terms of the Career Advancement Scheme, 1990. As per ROPA 1998 the scale no. 8 is Rs. 3800-7775 which is the next higher scale than the scale at which the petitioners were working. The notification dated 23.08.2006 also clarified that for allowing CAS to the

municipal employee working under scale of pay of Rs. 3600-7050, the next higher scale shall be Rs. 3800-7775. Therefore, this Court is of the considered view that the petitioners are entitled to the pay scale of Rs. 3800-7775, which is the next higher scale as per ROPA 1998 under CAS. This Court therefore, holds that the petitioners are not entitled to the scale of pay of Rs. 4000-8850 with effect from 01.01.2006 and the corresponding revised pay scale in the revised pay band scale of Rs. 7100-37600 with grade pay of Rs. 3600 (PB-3)

18. It does not appear from the decision of the co-ordinate bench in the case of *Bijoy Nandi* (supra) that the issue raised in this writ petition was decided therein. It appears from the said decision that the petitioners therein were granted the higher scale of pay on the basis of the concession made by the learned advocate appearing for the municipal corporation that the benefits that had been granted to the petitioners named in the memoranda dated 24.06.2011, 01.09.2011 and 26.12.2013 may be extended to the writ petitioners in the case of *Bijoy Nandi* (supra).
19. It is well settled that a decision is a precedent on its own facts and what is of essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. For such reason the decision in the case of *Bijoy Nandi* (supra) is of no assistance for deciding the issue involved in this writ petition.

20. The decision of the Division Bench of this Court in the case of *Bikash Kumar Dutta* (supra) is not applicable to the facts of this case as the said decision was on the interpretation of the term “own fund” under Section 67 of the West Bengal Municipal Act.
21. For the reasons as aforesaid this Court holds that the writ petition is devoid of any merit and the same is liable to be dismissed and is accordingly dismissed without, however, any order as to costs.
22. There shall be however, no order as to costs.
23. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)