

WPA 21969 of 2017

**National Institute for the Orthopaedically
Handicapped Faculties Welfare Association (NFWA)
Vs.
Union of India & Ors.**

**Mr. Shuvro Prakash Lahiri
Ms. Fauzia Ahmed**

..for the petitioner

Mr. M.M. Verma

...for the Union of India

In this writ petition National Institute for the Orthopaedically Handicapped Faculties Welfare Association (for short “NFWA”) has approached this Court for implementation of academic grade pay as per 6th Central Pay Commission recommendation in favour of members of teaching faculty of said National Institute for the Orthopaedically Handicapped at present renamed as National Institute for Locomotor Disabilities (hereinafter referred to as the “said Institute”).

Mr. S.P. Lahiri, learned advocate appears on behalf of the petitioner association and has argued the case upon drawing attention of this Court to the relevant facts, *inter alia*, praying for a direction to implement academic grade pay in terms of 6th Central Pay Commission recommendation which would consolidate pay of the members of teaching faculty.

Respondent authorities are represented by the learned advocate and they have filed their affidavit-in-opposition to this writ petition.

This Court while considering the submissions of the respective parties has raised a question having seen the relevant part of writ petition that how the Association of teaching faculty of the said Institute by itself can maintain the writ petition wherein prayer has been made for implementation of the recommendation of 6th Central Pay Commission for releasing academic grade pay in favour of the individual members of such Association.

In order to answer such query of this Court, Mr. Lahiri has made submission and the first part of submission is that the petitioner Association is a registered Association under the Society Registration Act and has been constituted for the welfare of members of the Association in all respects including the matters relating to sanction of service benefits in favour of such members of the Association. In addition thereto, it has also been submitted that the Vice President who is representing the Association in the writ petition, is duly authorized by such Association to approach this Court with the present writ petition. Therefore, there is no impediment, according to the petitioner, in filing the present writ petition by such Association being the sole writ petitioner through its Vice President.

In support of such submission made on behalf of the petitioner, reliance has been placed on the following Judgments:-

- i) AIR 1983 Cal 448 (West Bengal Head Masters' Association and Ors. Vs. Union of India (UOI) and Ors.)

- ii) (1993) ILR 2 Cal 429 (Health Service Association Vs. State of West Bengal)
- iii) 2012 (1) CHN 493 (The High Court Employees' Welfare Association & Ors. Vs. The State of West Bengal & Ors.)
- iv) (1995) 1 CLJ 351 (The Association of Teachers in Anglo Indian School Vs. The Association of Aids of Anglo Indian School in India and Ors.)
- v) (2009) 16 SCC 1 (Steel Authority of India Ltd. Vs. SUTNI Sangam and Ors.)
- vi) 2017 (2) CLJ (Cal) 492 (CSTS Retires' and Pensioners' Association and Anr. Vs. The State of West Bengal and Ors.)

This Court on being relied upon such judgments on behalf of the petitioner has considered the ratio decided therein and has found in Association of Teachers in Anglo Indian School (supra) reported in **(1995) 1 CLJ page 351 paragraph 41**, wherein it has been succinctly decided by the Division Bench of this Court that it is not a case where the general principle that the writ petitioner must be a person would apply, inasmuch as, as is well known, such a principle has been relaxed in recent cases in terms whereof, *inter alia*, where public interest is affected by State action, an organisation which is interested or a member thereof is allowed to apply. Paragraph 41 of such judgment is reproduced below:-

“41. *The submission of Mr. Roy that the writ petitioner association being not citizen of India, is not entitled to maintain this writ application cannot be accepted. A writ application, as is well known, is maintainable at the instance of an association. It is not a case where the general principle that the writ petitioner must be a person, would apply, inasmuch as, as is well known, such a principle has been relaxed in recent cases in terms whereof, inter alia, where public interest is affected by State action, an organisation which is interested or a member thereof is allowed to apply. Reference in this connection may be made to the decisions reported in AIR 1981 SC 344, AIR 1981 SC 298, (25) AIR 1983 SC 130.”*

In the Judgment of the Apex Court reported in **2009 (16) SCC page 1, i.e., Steel Authority of India Limited (supra)**, it has been specifically enunciated in paragraph 50 while deciding the issue whether the Association can espouse the cause of the members while approaching the Court, paragraph 50 of the said judgment is also reproduced below:

“50. *We will, however, proceed on the assumption that most of the awardees were poor and illiterate and they were not aware of their rights. It is one thing to say that an association, like the first respondent, takes up its cause but it would be another thing to say that only due to the said reason the mandatory provisions of the statutes would not be necessary to be complied with.”*

On reading of paragraph 50 of Steel Authority of India (supra) and considering the facts of the case involved therein, it appears that it has been decided by the Apex Court where the interest of poor and illiterate is involved definitely the Association has got the locus to approach the Court espousing the cause of its members and ultimately decided that in such a situation the writ petition at the instance of the Association is maintainable.

Subsequently, a Co-ordinate Bench of this Court delivered judgment in **CSTS Retires' and Pensioners' Association (supra) reported in 2017 (2) CLJ (Cal)** page 492 wherein in paragraph 21 it has been observed by the Co-ordinate Bench upon placing reliance on Steel Authority of India Limited (supra) that an association formed by a group of persons in promoting and protecting a common interest or legal right can maintain a writ application on behalf of its members. In fact, the whole object of forming an association in the vast majority of cases is for individual members of the association with the common cause to get united and operate as a group to promote such cause since they may find it difficult to do so in their individual capacity because of financial constraints or other reasons. On perusal of the facts of this case which has been narrated in paragraph 1 onwards of the said judgment it appears that the petitioner association in that case was formed by ex-employees of Calcutta State Transport Corporation who

retired between 1999 to 2008. At the material point of time these retired employees got the benefit under the Contributory Provident Fund Scheme, but much thereafter, they prayed for sanction of benefits under the pension scheme by switching over without depositing the employers share of provident fund or gratuity after the ceiling unit but by adjustment against the arrear pension. The Co-ordinate Bench decided the issue ultimately against the petitioner association and dismissed the writ petition, but, during the process of adjudication decided that since the pensioners of Calcutta State Transport Corporation who retired long back by forming an association approached this Court; it was found by the Co-ordinate Bench to be appropriate to permit such association to maintain the writ petition and not to thwart the claim of the petitioner association on technical ground of maintainability of the writ petition at the instance of such association since individual members being the retired persons could not approach this Court due to financial constraints or other reasons. Therefore, the Co-ordinate Bench thought it fit upon placing reliance on the judgment of the Apex Court in Steel Authority of India Limited (supra) to permit such association to espouse the cause of the individual retired members of such association.

It is a well-settled principle that judgment is an authority on what Court decides and not what can be

deducted therefrom. In the present case, there are seven (7) faculty members of the petitioner association who are the teaching staff of the said Institute and they were appointed as teaching members in the said institute on different dates and on different posts. Being the teaching staff of a reputed Higher Educational Medical Institute they neither can be termed as poor and illiterate persons nor pensioners who retired long back. They are aware of their rights, which have accrued in the form of academic grade pay in terms of 6th Central Pay Commission recommendation. The members of this Association being the members of the teaching faculty of the said institute are also going to retire on different dates. Therefore, they have their individual set of facts relating to their service rights which can be decided by this Court if the writ petition would have been filed by them individually or jointly and not through association. It is the case where by no stretch of imagination, it can be perceived that an element of public interest is involved.

Therefore, in view of the decision of the Hon'ble Division Bench in the case of **Association of Teachers' in Anglo Indian School (supra)** and the observation made therein in paragraph 41, this Court comes to the conclusion that in the present case, the petitioner association cannot maintain the writ petition espousing the cause of its members who are praying for academic grade

pay in terms of 6th Central Pay Commission recommendation.

Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

However, this order shall not preclude the members of petitioner Association to approach this Court with the selfsame cause of action.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Saugata Bhattacharyya, J.)