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RVW 130 of 2014  
with  
CAN 2 of 2014 (Old CAN 5107 of 2014)  
in  
FMA 1445 of 2014

The Secretary, Mahishadal Raj High School & Anr.  
Vs.  
Dr. Kanika Sahoo (Mondal) & Ors.

Mr. Kanai Lal Samanata  
... for the petitioners/respondent nos. 4 & 5

Mr. Rabindranath Mahato  
Mr. Aritra Shankar Ray  
... for the respondent no. 1/appellant

Heard learned Counsels appearing for the parties.

Learned Counsel appearing for the petitioner/  
respondent nos. 4 & 5 submits his client did not have  
notice of the appeal which was disposed of ex parte  
without giving opportunity of hearing to his clients.

In the light of the aforesaid submission, we have  
given an opportunity of hearing to the parties afresh.

Learned Counsel for the respondent no. 1/appellant  
submits in terms of the clarificatory memorandum no.  
2728-F dated 7<sup>th</sup> April, 2009 his client was entitled to  
draw the benefit of additional increment for non-  
functional movement either from the date of entitlement  
or on the next 1<sup>st</sup> July i.e. the date of accrual of annual  
increment. Inadvertently, she had prayed for release of

the increment from May, 2010. Subsequently, she realized her mistake and prayed the increment be granted to her on and from 1<sup>st</sup> July, 2010 i.e. the date of accrual of annual increment. She offered to refund the increment already granted to her for the months of May and June, 2010. Such prayer being disallowed by the learned Single Judge (as His Lordship then was), she filed the intra-court appeal. In view of her offer to refund the increments for the months of May and June, 2010 the appeal court by the order under review permitted the prayer of the appellant/writ petitioner.

Learned Counsel for the petitioners/respondent nos. 4 and 5 submits appellant/writ petitioner could not be permitted to alter her own stance. She had initially applied for the benefit to be granted on and from May, 2010. After the benefit was granted, she reversed her stance and sought the benefit from 1<sup>st</sup> July, 2010.

Relevant portion of the memorandum no. 2728-F dated 7<sup>th</sup> April, 2009 reads as follows :

“1. In the case of non-functional movement (18 years benefit) or non-functional increment (10/20 years benefit) an employee may opt for the same on the date of entitlement or on the next 1<sup>st</sup> July, the date of accrual of annual increment.

2. In case the employee opts for the benefit on the date of entitlement he/she will get one increment on that date, but he/she will not be entitled to next annual increment on the next 1<sup>st</sup> July unless he/she completes 6 months of service. In other words – if the date of entitlement falls during 1<sup>st</sup> July to 1<sup>st</sup> January, the employee after having the benefit of one additional increment, on the date of

entitlement, will get annual increment on the next 1<sup>st</sup> July, but if the date of entitlement falls during 2<sup>nd</sup> January to 30<sup>th</sup> June, the employee after having the benefit of one additional increment, will not be entitled to the annual increment on 1<sup>st</sup> July of the same year; he/she will, however, get the annual increment on the 1<sup>st</sup> July of the next year.”

A plain reading of the aforesaid memorandum shows an employee is entitled to opt for non-functional increment from the date of entitlement or on 1<sup>st</sup> July, i.e. the date of accrual of annual increment. In the event he/she avails of non-functional increment from the date of increment he/she will not be entitled to the next annual increment on the next 1<sup>st</sup> July, unless she completes 6 months of service.

Initially, appellant/writ petitioner had applied and obtained non-functional increment from May, 2010. Under such circumstances, she was not entitled to the annual increment accruing on 1<sup>st</sup> July, 2010. Realizing her mistake, she prayed the non-functional increment to be granted from 1<sup>st</sup> July, 2010 and offered to refund the increments released to her for the months of May and June, 2010. As the appellant/writ petitioner was entitled to seek the non-functional increment either from the date of entitlement or from next 1<sup>st</sup> July, we are of the view her prayer to forgo the increments for the months of May and June, 2010 and seek release of the non-functional increment from 1<sup>st</sup> July, 2010 cannot be said to be unlawful. Nothing is placed before us which

debars an employee from seeking reconsideration of her option for release of non-functional increment from next 1<sup>st</sup> July instead of date of entitlement. More so, when the employee is ready and willing to refund the increments released for the months of May and June, 2010. We are informed the appellant/writ petitioner has already refunded the increments for the aforesaid months. Under such circumstances, we find no reason to alter the order under review.

Review application is, accordingly, dismissed.

In view of dismissal of the review application, connected application being CAN 2 of 2014 (Old CAN 5107 of 2014) is also dismissed.

**(Ajay Kumar Gupta, J.)**

**(Joymalya Bagchi, J.)**