

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

FMA 738 OF 2019
Ajay Kumar Dey & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.
With
COT 122 of 2018

The Kolkata Municipal Corporation & Ors.
Vs.
Ajoy Kumar Dey & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellants in : Mr. Amitava Mukherjee, Adv.
FMA/738/19 Ms. Arpita Saha, Adv.
Ms. Ankita Ghosh, Adv.

For the KMC Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kumar Debnath, Adv.

CAV On : 21.11.2022

Judgment On : 09.02.2023

1. The background of the present appeal, in a nutshell, may be narrated as hereunder.

Contention of the Appellants

2. The ten writ petitioners/appellants who joined the services of the Kolkata Municipal Corporation in different years for the post of Teacher received training at the teachers training centre run by the Kolkata Municipal Corporation at 34/A, Nirmal Chandra Street, Kolkata and after completion of 5 years service from the date of appointment, they were allowed to have the benefit of a revised scale of pay by virtue of a circular bearing No. 12 of 1985 – 86 dated 09.07.1985 issued by the Controller of Finance and Accounts of Kolkata Municipal Corporation. After revision, their existing scale of pay of Rs. 300/- -Rs. 685 was re-fixed at Rs. 360/- - Rs. 815/- and payment was received by the petitioners on the basis of such higher scale of pay. The pay of the petitioners were again revised in the year 1990 and also in 1999 on the basis of recommendation of Pay Commission appointed by the Government of West Bengal. On each occasion, fresh higher scale of pay was fixed for the petitioners having reference to their existing scale of pay. Suddenly the petitioners came to learn in the month of October, 2003 that a move was initiated to reduce their scale of pay on the basis of misconceived interpretation purportedly put upon the said circular no. 12 of 1985-86 dated 09.07.1985 by the respondent nos. 1, 2 and 3, and to recover the excess amount which was paid to them allegedly by mistake

on the part of the municipal authority who came up with the new interpretation to the effect that the eligibility to be granted for the revised scale of pay should accrue 5 years after completion of the training, and not five years after the date of joining in service by the teachers as was hitherto done. The petitioners individually sent protest letters to the authorities but no reply was received therefrom. The petitioners immediately filed a writ petition in the Hon'ble Court being W. P. No. 11(W) of 2004. By a judgment and order dated 7th January, 2004, the said purported office order dated 25.10.2003 was quashed and the competent authority of Kolkata Municipal Corporation was held to be entitled to pass appropriate orders in future in accordance with law after giving an adequate opportunity of hearing to the affected parties including the petitioners. Pursuant to the aforesaid order, the respondent authorities issued a communication to the similar effect to all the petitioners asking them to appear before the concerned officer and to submit a written reply as to why their scale should not be re-fixed and the alleged excess amount drawn by them with effect from 28th June, 1985 should not be deducted in instalments from their salary bill. Pursuant to such communication the petitioners individually addressed a written reply to the concerned officer being the Deputy Manager (Education) setting out their individual grievances and asking for rescinding the intended order for deduction of bill, but in vain. A purported order bearing No. 30 dated 06.09.2006 was passed by the Chief Manager (Education and SS) directing the recovery of the alleged excess payment from the teachers of Kolkata

Municipal Corporation. Being aggrieved by and dissatisfied with such action on the part of the respondent authorities for enforcing a cut in their pay scale the petitioners of the said writ petition once again preferred a Writ Petition No. 16719 of 2006 before this Hon'ble Court and the Hon'ble Court passed an interim order dated 04.12.2006 restraining the respondents from giving effect to the impugned order until further order.

3. There were also renewed attempts to curtail the pay of the municipal teachers including the petitioners under the guise of fixation of pay and accordingly, the office order no. 6 of 2008-2009 dated 28th April, 2008 was circulated only to a handful persons and some of the teachers managed to get a copy of the said office order and they filed the writ petition being W.P. No. 890 of 2008 and two other teachers also filed a writ petition W.P. No. 16423(W) of 2008 (Satyendra Nath Dutta & Smt. Mita Sen. Vs. Kolkata Municipal Corporation). The Writ Petition No. 890 of 2008 stood dismissed for default. The other writ petition being W.P. No. 16423(W) of 2008 came up for hearing before a learned Judge on 02.05.2016 and the learned Judge was pleased to allow the said writ petition by holding that the experience gathered prior to training should be taken into consideration as on the date when they were given appointment there was no requirement for a teacher to undergo a training. The learned Judge was of the opinion that the impugned office order dated 28.04.2008 should be modified to the extent that the existing teachers prior to introduction of the circular dated 09.07.1985 will

be entitled to have his/her past experience taken into consideration for the purpose of calculation of experience of 5 years in terms of such circular. The authorities were directed to revisit the pay package of the petitioners of the said writ petition by treating them as trained teachers with 5 years experience in terms of the circular dated 09.07.1985 and to issue the Pension Payment orders in respect of the petitioners accordingly. The Kolkata Municipal Corporation challenged the said judgement and order dated 02.05.2016 before The Hon'ble Division Bench but the Hon'ble Division Bench dismissed the said appeal and affirmed the judgement of the Learned Single Judge passed on 02.05.2016 in writ petition no. 16423(W) of 2008.

4. The present appellants were also trained teachers with 5 years experience as per circular dated 09.07.1985, and pursuant to the said circular the appellants were also given incremental benefits which they were enjoying till 2008. The petitioners/appellants all retired from their services and their pensions were accordingly fixed on the basis of office order dated 28.04.2008 and the petitioners are receiving pension at a much lower scale than what they are entitled to in terms of the judgement of the Hon'ble High Court passed on 02.05.2016 in Writ Petition No. 16423(W) of 2008. Accordingly by filing the Writ Petition No. 12704(W) of 2017 the appellants prayed for issuance of writ of mandamus commanding the respondent authorities to re-fix the pay scale of the petitioner/appellants and also the

pensionary benefits by taking into consideration of their five years experience prior to training and giving effect of the circular dated 09.07.1985 as directed by the Hon'ble High Court in order dated 02.05.2016 in writ petition no.16423 (W) of 2008.

Contention of the K.M.C.

5. The Kolkata Municipal Corporation by filing affidavit-in-opposition contended before the writ court that the petitioners are not entitled to the reliefs as prayed for in view of the fact that Ajoy Kumar Dey & Ors. had all accepted the benefits of new circular without taking any exception thereto at any point of time. It appears from the records as well as the averments of the petitioners that they had full knowledge of all the matters including the orders and circulars issued by the authorities and also the orders and/or directions as passed in different court proceedings. The petitioners never thought of challenging any action or decision of the authorities. On the contrary the ultimate office order dated 28.04.2008 was acted upon in respect of each of the petitioners and the benefits and/or pensions provided to the petitioners following the said office order had also been accepted by the petitioners without questioning the legality and/or validity of the actions/decisions of the authorities concerned.

6. Since the two petitioners in challenging the said office order had approached the Hon'ble Court and obtained certain reliefs in modification of

the said office order dated 28.04.2008 towards revision of the pension orders, the petitioners have now filed the instant writ petition for obtaining the benefit of the order dated 02.05.2016. According to the Kolkata Municipal Corporation, the writ petitioners/appellants had been sitting on the fence and watching the legal proceedings initiated at the instance of few employees and at the same time received the benefits arising out of said office order dated 28.04.2008. The petitioners by their acts and/or actions have made themselves disentitled to claim the relief as prayed for. The petitioners did not get appointments on a particular date and consequently their respective dates of retirement are different. Furthermore, the petitioners completed their training course on diverse dates respectively. Therefore, all the petitioners cannot join hands together to present one writ petition. The petitioners should have filed writ petitions separately. According to Kolkata Municipal Corporation, the prayer of the writ petitioners should not be entertained by the court as they were fence sitter ex-employees.

Further contention of the Appellants

7. The appellants/writ petitioners by filing affidavit-in-reply, inter alia, contended that since the other teachers had challenged the wrongful action of Kolkata Municipal Corporation, they were waiting for the decision of the Hon'ble Court. As the Hon'ble Court had modified the circular issued by the Kolkata Municipal Corporation dated 28.04.2008 and directed the

respondents to revisit the pay package by treating the petitioners of the said writ petition as trained teachers with five years experience in terms of the circular dated 09.07.2008, the respondent can, therefore, no longer implement the office order dated 28.04.2008 and the said order is not in existence anymore. The petitioners denied that they had been sitting on the fence and watching the legal proceeding at the instance of a few employees. The cause of action in the present writ petition was the office order issued by the Kolkata Municipal Corporation on 28.04.2008 which was subsequently modified by the Hon'ble High Court by relevant order dated 02.05.2016 and as such the petitioners can jointly claim the benefit which they are entitled to as per direction of the Hon'ble Court. With the modification of the officer order dated 28.04.2008 by the Hon'ble High Court on 02.05.2016 in Writ Petition No. 16423(W) of 2008, new cause of action has arisen and there is no inordinate delay on the part of the writ petitioners to file the present writ petition.

Decision of the Learned Single Judge

8. After hearing the Learned Counsel for the parties, the Learned Single Judge in Writ Petition No., 12704(W) of 2017 was pleased to consider two issues which are as follows:-

- i) Are the petitioners similarly situated and circumstanced as the writ petitioners in the case of Sri Satyendranath Dutta and Anr.?

- ii) Are the petitioners entitled to the benefit of the decision in the case of Sri Satyendranath Dutta and Anr.?

After discussing several case laws, the Learned Single Judge has decided the first issue in favour of the writ petitioners holding that:-

“There are ten petitioners in this writ petition. The petitioners were teachers of schools run by Kolkata Municipal Corporation. They were appointed on varying dates between 1980 and 1987 (not disputed by the present appellants). They retired on varying dates between 2006 and 2015. The conditions of employment of all the petitioners are governed by Circular bearing No. 12 of 85-86 dated July 19, 1985 and office order dated April 28, 2008. The service conditions of the writ petitioners of Shri Satyendranath Dutta & Anr. (supra) were also governed by the same circular and the office order. The same service conditions as that of the writ petitioners of Shri Satyendranath Dutta & Anr. (supra) apply to the present petitioners. The petitioners herein seek the same benefits. The petitioners, therefore, should be considered as similarly situated and circumstanced as that of the writ petitioners of Shri Satyendranath Dutta & Anr.”

9. So far as the second issue is concerned, the Learned Single Judge held that the judgment and order in connection with Sri Satyendranath Dutta & Anr. was not a judgment in rem. Moreover, the writ petitioners of the case of Sri Satyendranath Dutta & Anr. did not file the writ petition in a representative capacity or character. They did not canvass the grievances as representatives of any organisation. They did not seek leave to advertise the writ petition or to make it a proceeding in rem. It was also held that none of the present writ petitioners/appellants ever complained about the circular or

the office order or its applicability. They accepted the stand of Kolkata Municipal Corporation with regard thereto without any protest. The petitioners had waived their rights. They are guilty of laches and acquiescence. Therefore, no relief can be granted to the writ petitioners and as such the Learned Single Judge held the second issue against the writ petitioners/appellants.

Hence this appeal

10. Being aggrieved and dissatisfied with the said judgment the present appellants/writ petitioners have filed the instant appeal on the grounds:-

- i) that the judgment impugned is not based on sound principles of law as has been laid down by the Hon'ble Supreme Court, and the Learned Single Judge has passed the order/judgment impugned on wrong appreciation of law.
- ii) that the Learned Single Judge did not appreciate that when a circular or office order is set aside or modified the same becomes a judgment in rem, as held by Hon'ble Supreme Court in the case of K.C. Sharma and Others Vs. Union of India and others reported in 1997 (6)SCC 721;
- iii) that the Learned Single Judge failed to appreciate the ratio of the judgment reported in the case of State of Karnataka and others Vs. C. Lalitha reported in 2006 (2) SC

727 whereby the Hon'ble Supreme Court clearly held that when a benefit related to service is extended by the Court to one person who has approached the Court that would not mean that persons similarly situated should be treated differently and hence the petitioners / appellants in the instant case should have also got the same benefit as has been extended to Satyendranath Dutta and another who had approached the Hon'ble High Court with an earlier writ petition being W.P. No. 16423 (W) of 2008;

iv) that the Learned Single Judge did not appreciate the case law reported in 2015 (1) Sc 347 (State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.) wherein Hon'ble Supreme Court clearly laid down that exception may not apply in those cases where judgment pronounced by the Court is judgment in rem with intention to give benefit to all similarly situated persons whether they approached the Court or not;

v) that the Learned Single Judge did not appreciate that the office order dated 28th April, 2008 was modified by the Learned Single Judge by interpreting the circular dated 9th July, 1985 and directed the Respondent Corporation to treat the petitioners of the said writ petition as trained teachers with 5 years experience and pensionary benefits to be paid accordingly by revisiting the pay package and hence the said

office order dated 28th April, 2008 is no longer in existence which sought to deprive the trained teachers from their pre-training experience and all the trained teachers who are similarly circumstanced are also entitled to the benefit as directed by the Hon'ble High Court in W.P. No. 16423 (W) of 2008 and accordingly the said Judgment dated 02.05.2016 in WP No. 16423 (W) of 2008 is a judgment in rem;

vi) that the Learned Single Judge failed to appreciate that when a policy matter is interpreted or decided by a court of law as the said judgment becomes judgment in rem as laid down by the Hon'ble Supreme Court in 1997 (6) SCC 721 and as such according to the appellants the judgement impugned is liable to be set aside and/or quashed.

Cross-Objection of KMC

11. The Kolkata Municipal Corporation has also filed a cross-objection in the instant appeal on the ground that it is aggrieved by and dissatisfied with the judgment and order dated 10.08.2018 passed in Writ Petition No. 12704(W) of 2017. According to the said Corporation, the Hon'ble Judge ought to have held that the writ petitioners are not similarly situated and circumstanced as that of the Sri Satyendranath Dutta and Another. The Learned Judge, according to the Corporation, failed to appreciate the pleadings in the affidavit-in-opposition of the Kolkata Municipal Corporation

and its officers and also the oral submissions in support of the point that the writ petitioners are not identically placed or similarly situated as that of the writ petitioners of WP No. 16423(W) of 2008. Learned counsel of the respondent Corporation has further submitted that the Hon'ble Judge should have considered that writ petitioners of WP No. 16423(W) of 2008 filed the writ petition with reference to the office order No. 6 of 2008-09 dated 28.04.2008 at the stage when they were not in service and their cases were governed by clause C(i) of the approved proposal of the Mayor-in-Council, whereas the writ petitioners of the instant case then being in service came within the purview of clause C(iii) of the resolution as contained in the said office order no. 6 of 2008-09. It is also urged that the Hon'ble Judge ought to have considered the Municipal Commissioner's Circular No. 42 of 2008-09 dated 20.09.2008 which was issued for removal of anomaly with regard to fixation of pay and the said circular no. 42 of 2008-09 was not the issue and matter of consideration in the said writ petition being WP No. 16423(W) of 2008. The Hon'ble Judge should have considered that in the said case being No. 16423(W) of 2008 only one clause as applicable in respect of the teachers who had already retired and availed pension was considered but not the other clause and/or decision relating to the teachers already in service. The Hon'ble Judge did not consider the fact that the case of retired employees and the case of the existing employees cannot be said to be identical and similar with reference to the said office order dated 28.04.2008 and the Municipal Commissioner's Circular dated

20.09.2008. The Hon'ble Judge should have considered that the writ petitioners deliberately made wrong and incorrect statements on oath in the writ petition to show that the writ petitioners identically placed and similarly circumstanced to all the writ petitioners of the writ petition being WP No. 16423(W) of 2008 and as such the Hon'ble Judge should not have decided the first issue in favour of the writ petitioners.

Decision with reasons

12. From the impugned judgment it transpires that the Learned Single Judge has been pleased to hold that though the ten writ petitioners in Writ Petition No. 12704(W) of 2017 are similarly situated and circumstanced as that of the writ petitioners in the case of Sri Satyendranath Dutta and Smt. Mita Sen [WP No. 16423(W) of 2008], they are not entitled to the benefit like Sri Satyendranath Dutta and Smt. Mita Sen since they did not challenge the wrongful action of the Kolkata Municipal Corporation at the very inception and they accepted the relevant notification without protest and accordingly their prayer for having similar benefit as received by Sri Satyendranath Dutta and Another have been turned down by the Learned Single Judge. In coming to the said conclusion the Learned Judge has considered that though the ten writ petitioners in Writ Petition No. 12704(W) of 2017 are similarly situated and circumstanced as the writ petitioners of the case of Sri Satyendranath Dutta and Another, the prayer of the petitioners cannot be allowed since the judgment passed in the case of Sri Satyendranath

Dutta and Another was not a judgment in rem nor the said case was filed by the writ petitioners in a representative capacity or character. The Learned Single Judge has also observed that *“none of the ten writ petitioners herein were before the court prior to Sri Satyendranath Dutta and Another (supra). This is the categorical statement made by the Kolkata Municipal Corporation in paragraph 9 of its affidavit-in-opposition and not denied by the petitioners. In fact prior to their retirement and even after their retirement, till they filed the present writ petition, none of the petitioners ever complained about the circular or the office order or its applicability. They accepted the stand of Kolkata Municipal Corporation without any protest. The petitioners had waived their rights and they are guilty of laches and acquiescence”*.

13. The said judgment has been challenged by both the parties on different grounds in this appeal. According to Kolkata Municipal Corporation the said writ petitioners are not similarly circumstanced as those of Sri Satyendranath Dutta and Another, whereas the impugned judgment was challenged by the ten writ petitioners on the grounds that there was no delay or laches from the part of these ten writ petitioners since the relevant circular being office order no. 6 dated 28.04.2008 was modified by the Learned Single Judge in the year 2016, and as such the said office order has no existence in the eye of law and therefore it gives a fresh cause of action for the present writ petitioners, and immediately after passing of the impugned order in the year 2016 the ten writ petitioners filed the relevant

petition in the year 2017 and as such it cannot be said that there is an inordinate delay on the part of the present writ petitioners in bringing legal action against the concerned authorities.

14. Each case has its own texture and as such each case has to be judged on its own merits. This is a settled principle of law. If we consider the relevant judgments cited by both the parties we shall find that the factual aspects of the present case are different. In other words this case has a unique character and does not correspond to the factual scenario of the cases cited by either of the parties.

15. In (2003) 2 SCC 111, cited by the Kolkata Municipal Corporation, the Hon'ble Supreme Court has been pleased to lay down that a decision is an authority for what is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

16. In (2002) 3 SCC 496, cited by learned Counsel of the Kolkata Municipal Corporation, the Hon'ble Supreme Court has been pleased to observe specifically in para 19 that "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they

appear. Judgements of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgement. They interpret words of statutes, their words are not to be interpreted as statutes.”

17. In AIR 2007 Supreme Court 1365 the factual aspects were that the respondents who joined the service after a certain cut-off date were not parties to the relevant disputes and as such it was held that they could not claim parity of pay.

18. In (2014) 1 CAL LT 111 (HC) the facts of the case show that it related to appointment in the posts filled up through a competitive examination. In (2009) 3 SCC 227 it was held that a candidate who had subjected himself to a faulty selection process, could not question it later on. The facts narrated in the case law reported in (2000) 6 SCC 562 were that a dismissed employee of LIC filed a writ petition challenging the order of termination of his service after six years of such dismissal. In (2006) 11 SCC 464, the concerned employees of Uttar Pradesh Jal Nigam who retired on attaining 58 years of age as per relevant Rules, claimed parity of retirement age of 60 years equivalent to the retirement age of the State Government employees. A series of writ petitions was filed by the other employees who retired long ago, after the filing of the said writ petition by the concerned employees.

19. So far as the present case is concerned the factual matrix is quite different from the facts of the case laws cited above. The ten writ petitioners/appellants, admittedly, were teachers of schools run by Kolkata Municipal Corporation. They were appointed on varying dates between 1980 and 1987. They retired on varying dates between 2006 and 2015. The record shows that at the relevant time of their appointment they were governed by a circular bearing no. 12 of 1985-86 dated July 9, 1985 issued by Kolkata Municipal Corporation, Education Department. It is also revealed from the record that after completion of five years service from the date of their appointment, they were allowed to have the benefit of a revised scale of pay by virtue of the aforesaid circular. The record further shows that the pay of the petitioners with the requisite training were revised after completion of five years service from the date of appointment. Their pay was again revised in the year 1990 and also in the year 1999 on the basis of recommendation of Pay Commission appointed by the Government of West Bengal. It is alleged that on each occasion, fresh higher scale of pay was fixed for the said teachers but suddenly in the month of October, 2003 a new interpretation was given to the contents of the circular bearing no. 12 of 1985-86 dated 9.7.1985 by the respondent Kolkata Municipal Corporation to the effect that the eligibility to be granted for revised scale of pay should accrue five years after completion of the training and not five years after the date of joining service by the teachers as was hitherto done. Subsequently, an office order

no. 6 of 2008-09 dated 28.04.2008 was brought into effect adopting the said new interpretation given to the contents of circular no. 12 of 1985-86 dated 09.07.1985. The said office order no. 6 of 2008-09 dated 28.04.2008 was challenged by some of the employees and the present appellants/petitioners did not participate in the said writ petitions. They moved the Hon'ble High Court only when two of the writ petitioners were able to get favourable order from this Court in Writ Petition No. 16423(W) of 2008 wherein the Court interpreted the contents of the circular no. 12 dated 09.07.1985 by holding that the existing teachers prior to introduction of the circular dated 09.07.1985 will be entitled to have his/her past experience taken into consideration for the purpose of calculation of experience of five years in terms of such circular. That means that as there was no condition of training, the teachers who were recruited prior to circular no. 12 dated 09.07.1985 will be entitled to revised scale of pay after completion of five years service from their respective dates of appointment and not five years from completion of training as laid down in office order no. 6 dated 28.04.2008.

20. In the Writ Application, the ten writ petitioners have categorically stated that they are similarly circumstanced as Satyendranath Dutta & Anr. and therefore they should be allowed to have the same benefit as the said Satyendranath Dutta & Anr. are receiving from the concerned office. They, time and again hammered on the issue that they are similarly placed with

the writ petitioners of writ petition no. 16423(W) of 2008. However, the writ petitioners did not state the dates of their respective appointment in the relevant post nor respective dates of their retirement. In the impugned judgment the Learned Single Judge has recorded that the said petitioners were appointed on varying dates between 1980 and 1987 and they retired on varying dates between 2006 and 2015 whereas the said Satyendra Nath Dutta and Smt. Mita Sen were appointed on 30.01.1980 and they retired on 30.04.2007 and 31.07.2007 respectively. As the ten petitioners did not submit their respective dates of appointment, it was very much difficult for this court to ascertain from the materials on the record on which date each of the petitioners was appointed. In other words, had they been appointed prior to 09.07.1985 then the said writ petitioners would be squarely governed by the decision of the writ petition no. 16423(W) of 2008 since in the judgment of the said writ petition no. 16423(W) of 2008 it has been specifically held by the Learned Single Judge that the existing teachers prior to the introduction of the circular dated 09.07.1985 will be entitled to have his/her past experience taken into consideration for the purpose of calculation of experience of five years in terms of such circular, as there was no condition of training to the teachers who were recruited prior to the circular no. 12 dated 09.07.1985. Therefore, the teachers who were recruited after 09.07.1985 are not entitled to the benefits as per the said judgment. At this stage, the contention of the learned Counsel of the KMC is found to be acceptable since he has categorically stated that the ten writ petitioners are

not identically placed and similarly situated as that of the writ petitioners of WP No. 16423(W) of 2008. Therefore, as all the ten writ petitioners did not get appointments prior to 09.07.1985 and their respective dates of retirement are different they cannot join hands together to present one writ petition. The judgment passed in WP No. 16423(W) of 2008 shows that the benefit has been extended to those teachers who were appointed prior to 09.07.1985 and the judgment has also directed for modification of the impugned circular no. 6 dated 28.04.2008 for the purpose of extending benefit to those teachers who were appointed prior to 09.07.1985, particularly, when there was no requirement for training to the concerned teachers. As the ten petitioners are unable to show that who amongst them were appointed prior to 09.07.1985, it is almost impossible to pass any appropriate order stating that all the ten writ petitioners are similarly and identically placed with that of Satyendranath Dutta and Smt. Mita Sen.

21. The impugned judgment passed in WP No. 12704(W) of 2017 was also challenged by the ten writ petitioners on the ground that they are not guilty of delay or acquiescence since after the order of modification was passed in the year 2016 they filed the writ petition no. 12704(W) of 2017 for the purpose of achieving/getting similar benefits as were extended to the said Satyendranath Dutta and Another. The Learned Single Judge was not convinced since, according to him, the ten writ petitioners did not take any steps to challenge the relevant circulars or office orders passed by the

concerned office and they accepted the fruits of the said circulars without any protest. The writ petitioners have tried to challenge the said observation of the Single Judge by contending that as the modification order was passed in relation to an office order, the persons who are affected by the said modification are entitled to get the benefit since the judgment passed in Writ Petition No. 16423(W) of 2008 is a judgment in rem.

22. It is true that the writ petitioners did not participate in any of the writ petition prior to the pronouncement of judgment in writ petition no. 16423(W) of 2008. But one averment in writ petition is very much relevant wherein the ten writ petitioners have categorically stated in paragraph 6 of their writ petition being no. 12704 (W) of 2017 to the effect that –

“Your petitioners state that your petitioners also individually addressed letters to the Joint Commissioner with copies to the Mayor and other functionaries of the Kolkata Municipal Corporation recording their protest against the wrongful move of the Respondent No. 1.”

23. But, unfortunately, no copy of such letter was produced either before the Learned Single Judge or before us, for the purpose of showing the bonafides of the ten writ petitioners in this regard.

24. It is also pertinent to mention that in the writ petition the ten writ petitioners have averred in paragraphs 9 to 10 as follows:-

“Pursuant to the aforesaid order the respondent authorities issued a communication to the similar effect to all the petitioners asking them to appear before the

concerned officer and to submit a written reply as to why their scale of pay should not be refixed and the alleged excess amount drawn by them with effect from 28th June 1985 should not be deducted by instalment from their salary bill.

Pursuant to such communication the petitioners individually addressed a written reply to the concerned officer being the Deputy Manager (Education), setting out their individual grievances and asking for rescinding the intended order for deduction of pay.”

25. Unfortunately though the petitioners have claimed that they individually addressed a written replies to the concerned officer not a single paper was produced either before the Learned Single Judge or before us to show the factum of protest as alleged. Therefore, in my considered opinion, the conclusion arrived at by the Learned Single Judge in this regard cannot be faulted to since there is nothing on record to show that the ten petitioners had actually protested before the concerned authority when attempts were made to reduce their scale of pay by virtue of office order no. 6 dated 28.04.2008. The record, therefore, shows that the said ten petitioners did not take any steps when the office order no. 6 dated 28.04.2008 was promulgated.

26. In fine, after considering the entire materials on record it appears to me that the office order no. 6 dated 28.04.2008 was modified only in respect of teachers who were appointed prior to 09.07.1985 when there was no provision for imparting training to the teachers. As the petitioners were

unable to show that each of them was appointed prior to 09.07.1985 their prayer cannot be allowed in this forum, particularly when some of them were appointed after 09.07.1985.

27. It is true that the learned Counsel of the appellants has submitted that the plea of delay or acquiescence against the ten writ petitioners will not stand as the relevant judgment passed in Writ Petition No. 16423(W) of 2008 is a judgment in rem. According to him, the said judgment is actually a judgment in rem since it has modified the office order dated 28.04.2008 and as such the benefit extended to Satyendranath Dutta and Mita Sen by virtue of the judgment in Writ Petition No. 16423(W) of 2008 would also be applicable in respect of the said ten petitioners.

28. In this regard, he relied upon the decision reported in (2015) 1 Supreme Court Cases 347 (State of Uttar Pradesh and Anr. Vs. Arvind Kumar Srivastava and Others) wherein the Hon'ble Supreme Court has been pleased to observe that the normal rule is that merely because other similarly situated person did not approach the court earlier, they are not to be treated differently. However this principle is subject to well recognized exceptions in the form of laches and delay as well as acquiescence but such rule may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons whether they approached the court or not.

29. In (2006) 2 Supreme Court Cases 747 (State of Karnataka and Ors. Vs. C. Lalitha) it has been held by the Hon'ble Supreme Court that service jurisprudence evolved by this court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that the persons similarly situated should be treated differently. By referring to the case law reported in AIR 2006 Supreme Court 543, the learned Counsel for the appellants has tried to impress upon this court that a judgment in rem is defined in English law as an adjudication pronounced by the status, some particular subject matter by Tribunal having competent authority for that purpose.

30. There is no doubt that similarly situated persons should receive identical benefit with all other persons benefitted by an action of the State. But in this case it has already been shown that the impugned judgment passed in Writ Petition No. 16423(W) of 2008 has modified the relevant office order no. 6 dated 28.04.2008 in respect of those teachers who were appointed prior to issuance of circular no. 12 dated 09.07.1985. In this case the writ petitioners have failed to show that each of them or who out of ten writ petitioners got appointment prior to 09.07.1985. In fact, the said judgment in Writ Petition No. 16423(W) of 2008 has modified the office order dated 28.04.2008 to a limited extent as already discussed above. The said judgment is applicable in respect of those petitioners, out of the ten writ

petitioners, who were appointed prior to the issuance of circular no, 12 dated 09.07.1985 when there was no condition of requisite training for the teachers. As the ten writ petitioners were appointed on varying dates from 1980 to 1987 (mentioned in the impugned judgment and was not challenged by the present appellants) and as they jointly filed the writ petition being No. 12704(W) of 2017 the benefit of the judgment cannot be conveniently extended to those writ petitioners of the Writ Petition No. 12704(W) of 2017 who were appointed prior to 09.07.1985. The teachers who were appointed after 09.07.1985 are, as per the judgment in Writ Petition No. 16423(W) of 2008, not entitled to the benefit like that of Satyendranath Dutta and Mita Sen.

31. Therefore, considering all the aspects, this court is not in a position to allow the present appeal and accordingly, the same is dismissed but without any order as to costs. The cross objection filed by the KMC is allowed in part without costs.

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

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)