

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Lapita Banerji

W.P.A No. 11509 of 2022

**Asiatic Society's Employees' Union & Anr.
Vs.
Union of India & Ors.**

For the Petitioners : Mr. Kallol Basu, Adv.
Mr. Suman Banerjee, Adv.

For the U.O.I. : Mr. D.N. Roy, Adv.
Mr. Sourav Halder, Adv.

Hearing concluded on : 15.03.2023.

Judgment on : 29.03.2023.

Lapita Banerji, J.:- The petitioner no. 1 is an employees' union of the Asiatic Society which is an autonomous body funded by the Central Government. The petitioner no.2 is the Secretary of the employees' union. The Asiatic Society is a Central Autonomous Body (CAB). The petitioners have been receiving Non-Productivity Linked (NPL) **Bonus** equivalent to 30 days emoluments since the petitioners were not covered by any productivity linked **bonus**.

2. Most of the members of the petitioner no. 1 are Group-C and two of them are Non-Gazetted Group-B employees. The petitioners received NPL **bonus** till 2019. Such **bonus** was discontinued from 2020-2021.

3. Several representations were made including the ones on April 5, 2022, April 13, 2022 for disbursement of **bonus** since 2021. By the Impugned communication dated May 27, 2022 the under Secretary to the Government of India directed the General Secretary, Asiatic Society/the respondent no.4 to take immediate steps for recovering the amount of **bonus**, for the years 2015-2016, 2016-2017 and 2017-2018, since an irregular payment was made. Furthermore, by the said notification it was intimated that the **bonus** paid for the years 2018-2019 and 2019-2020 were also to be recovered. The said Impugned Order is under challenge in the present writ petition.

4. The petitioners have also prayed for continuance of NPL **bonus** from 2020-2021 onwards.

5. Mr. Basu, learned Counsel appearing on behalf of the petitioners submits that by an Office Order no.61 dated July 21, 1999 all the service rules and recruitment rules for Ministerial and Security posts of the Asiatic Society were approved by the Ministry of Human Resource Development, Government of India apart from the pension rules for which sanction was to be accorded separately.

6. The Asiatic Society Employees' Service Rules came into force with effect from December 1, 1998. He referred to rules 21, 23 and 25 of the said rules.

The said rules are set out herein under:-

21 FIXATION OF INITIAL PAY, DRAWAL OF INCREMENTS, LEAVE SALARY, CROSSING OF EFFICIENCY BAR ETC.

Government rules regarding fixation of initial pay. Drawal of increments and salary and allowances during leave of various kinds or suspension shall apply mutatis mutandis to the employees of the Society save as specifically provide in these rules.

23. SPECIAL PAY, PERSONAL PAY, HONOURARIUM AND FEE

The council of the Society may sanction to an employee, in special circumstances, such special pay, personal pay, honorarium or fee and on such condition as it may deem fit in conformity with Government rules and orders in force.

*25. The employees of the Society will be eligible to draw all **allowances** as are admissible to the Central Government employees from time to time.*

7. He submitted that the employees of the Society were eligible to draw all **allowances** as are admissible to the Central Government employees from time to time. The expenditure on account of NPL **bonus** was to be incurred by the respective heads of the departments to which the pay and allowances of the employees were being funded from. Therefore, the **bonus** was in the nature of **allowances**. Since according to the Service Rules all **allowances** payable to the Central Government Employees' from time to time were also admissible to the employees of the Asiatic Society they were entitled to be paid the same.

8. Mr. Roy, learned Counsel appearing on behalf of the respondents submits that the Ministry of Finance (MoF), Department of Expenditure (DoE) issued Office Memorandum (OMs) for disbursement of Non-Productivity Linked **bonus** to the Central Government Employees' annually. Orders for grant of such **bonus** to the CAB, funded by the Central Government are issued separately every year. Such OM was issued till 2014-2015 thereafter such OMs were issued for payment of NPL **bonus** to only the Central Government Employees. Such OMs were not specifically issued for granting **bonus** to CABs. When audit for the years of 2015-2016, 2016-2017 and 2017-2018 was conducted the Asiatic Society confirmed in November 2020 that a sum of Rs. 38.50 lakhs have been paid to the employees on account of NPL **bonus**. It was further confirmed that no recovery was made from the employees against such payment.

9. From the written instructions handed over on behalf of the Asiatic Society it appears that the **bonus** to the employees was paid in accordance with the obligation arising out of standard practices. The employers/Asiatic Society/respondent nos. 2, 3 and 4 were of the opinion that many **allowances** were granted to the employees of the Central Government by way of orders or guidelines without any extension for the same to the employees of CABs and such **allowances** and facilities should be continued for the employees of the society since the Central Government expressly started payment of such **bonus** to the society's employees. The society was of the view that **bonus** was in the nature of an **allowance** that is payable to the employees of the society which

was a CAB since the said **bonus** was payable for the employees of the Central Government.

10. Admittedly, till 2014-2015 the payment of **bonus** was granted to the employees of CABs and the same was not specifically withdrawn by the Central Government. Therefore, the employer/society was of the view that the same should be continued for the employees of the society.

11. Mr. Roy submitted that as there were no separate office memorandums (OMs) regarding disbursement of **bonus** since 2015-2016 onwards the said amount of **bonus** was directed to be recovered from 2015 onwards after the 2018 Audit by the Central Government.

12. Considering the rival submissions of the parties and the materials placed on records, this Court finds that-

A) The benefits of Non-Productivity Linked **bonus** were given to the employees for the year 2014-2015 upon issuance of office memorandum by the Central Government.

B) There were no office memorandums for grant of NPL **bonus** on and from 2015.

C) The **bonus** was paid from 2015-2016 till 2019-2020 on the basis of the understanding of the Asiatic Society that the employees' of the CABs would be paid the same pay/allowances/benefits that were payable to the Central Government employees. Payment of NPL **Bonus** was not on the basis of any

fraud or misrepresentation made by the petitioners to their employer/society or the Central Government.

D) By an Office Order no. 61 dated July 21, 1999 the Ministry of Human Resource Development, Government of India *accepted/approved* and *ratified* all the Service Rules of the Asiatic Society Employees' apart from the Pension Rules, the sanction for which was to be granted separately.

E) From Rule 20 of Chapter V of the Service Rules relating to **pay** it appears that the scale of **pay** for the posts under the society will be in accordance with the first schedule as amended from time to time. The said first schedule stipulated the scale of **pay** in accordance with the recommendations of the 5th Pay Commission.

F) Rule 25 in Chapter VI relating to **Allowances** clearly stipulated that the employees of the society will be eligible to draw all **Allowances** as admissible to the Central Government Employees' from time to time.

G) Therefore, the Asiatic Society was not wrong in disbursing the NPL **bonus** to the employees, once the same was granted in 2014 by the Central Government.

H) From a communication by the Director, Ministry of Culture dated July 20, 2017 it appears that various financial irregularities in respect of the benefits given under the recommendations of the 6th Pay Commission, Modified Assured Career Progressor (MACP) scheme non-

rectification of grade pay, additional increment, pay fixation without approval of the Ministry and extension of service beyond the age of 62 were alleged to have been committed by the society. However, there was no allegation of irregularity with regard to payment of Non-Productivity Linked **bonus** to the employees. The said document is annexed at page 49 of the affidavit affirmed on November 17, 2021 in WPA 8104 of 2021. The said Affidavit was relied on behalf of the Union of India and retained with the records.

I) From a document annexed at page 52 of the said affidavit it appears that the Ministry of Finance on the extending revised pay structure for Central Government employees on the basis of the recommendation of 6th Pay Commission clarified on September 2008 that the revised **pay** structure may be extended to the autonomous bodies whose service conditions were exactly similar to those employed in the Central Government department. It was specifically directed that it had to be ensured that the final package of the **benefits** were not more beneficial to the employees of the autonomous bodies in corresponding categories of the Central Government employees. Thus it was directed that while implementing the revised **pay** structure the autonomous bodies were restrained from giving more **benefits** to their employees than what was admissible to their counter parts in Central Government.

J)The Asiatic Society has paid NPL **bonus** to the petitioners based on the report no. 23 of 2013/guidelines of the Ministry of Culture. Report no. 23 of

2013 of the Union of India (civil) was a report by the Comptroller and Auditor General of India on autonomous bodies.

K) The Supreme Court in **Mumbai Kamgar Sabha, Bombay V. Abdulbhai Faizullabhai and others** reported in (1976) 3 SCC 832 has defined '**bonus**' as follows:-

24. In one sense, a bonus may be a mere gift or gratuity as a gesture of goodwill or it may be something which an employee is entitled to on the happening of a condition precedent and is enforceable when the condition is fulfilled. Any extra consideration given for what is received, or something given in addition to what is ordinarily received by, or strictly due to the recipient is a bonus (Black's Legal Dictionary).

L) There was no specific bar from giving the NPL **bonus** to the employees of the autonomous bodies especially when the same was sanctioned in 2014 by the Central Government itself. On the facts of this case, NPL **Bonus** was like an **allowance** issued to the employees from time to time but was not dependent on happening of a condition precedent. Therefore, without a *condition being fulfilled* the '**Bonus**' was payable like an **allowance**.

M) In the view of this court, after considering the office order no. 61 dated July 21, 1999 issued by the General Secretary, Asiatic Society based on the communication of the under Secretary to the Government of India, Ministry of Human Resource Development, Government of India dated May 25, 1999 and report no. 23 of 2013 issued by the Comptroller and Auditor General of the autonomous bodies it is apparent that the autonomous bodies were only

restrained from giving more **benefits** than were admissible to the Central Government Employees.

N) Also, in 2017 there was no allegation that the employees of the Asiatic Society were not eligible to receive NPL **Bonus** and the society by granting them the same committed financial irregularity.

O) Therefore, relying on the Judgment of **State of Punjab v. Rafiq Masih** reported in (2014) 8 SCC 883, this Court holds that no recovery can be made till 2022 since the benefits have been paid for a period of more than 5 years. Furthermore, all the members of petitioner no. 1 excepting two are group C employees and recovering of NPL **bonus** will cause immense hardship to the petitioners.

13. In the circumstances hereinabove the Impugned Memorandum dated May 27, 2022 is set aside and or quashed.

14. This Court has already held that payment of NPL **Bonus** is akin to payment of **Allowances** to the employees. The employees of the society/petitioners were eligible to get such **allowances** as were admissible to the Central Government Employees from *time to time*. The NPL **bonus** was also paid from time to time. Therefore, no artificial distinction can be made between the payment of NPL **Bonus** from time to time and payment of **allowances** from time to time under Chapter VI of the Service Rules.

15. In view of the report of 2013, this Court holds that the employees of the society are eligible for payment of NPL **Bonus** from 2020 onwards. Relying on the 2013 report, this Court directs the arrears of the NPL **Bonus** for the period 2020-2021, 2021-2022 be released by 8 weeks from date.

16. Furthermore, the NPL **bonus** is to be paid for the year 2022-2023 onwards in the event the same is paid to the Central Government employees in similar posts and on such terms as the Central Government employees are paid. The NPL **Bonus** cannot be arbitrarily withdrawn till such time a reasoned order is passed by the Central Government on the issue of eligibility/ineligibility of the employees of the Asiatic Society from receiving such **bonus**.

17. With the directions the aforesaid **WPA 11509 of 2022** is **disposed of**.

18. All parties to act on the downloaded server copy of this order from the website.

19. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)

Later:-

Mr. Roy, learned Counsel appearing on behalf of the respondents prays for stay of operation of the Order.

Such prayer is considered and refused.

(Lapita Banerji, J.)