

**WPA 15313 of 2021**

**Smt. Manimala Ghosh (Das)**  
**Vs.**  
**State of West Bengal & Ors.**

**Mr. Ranajit Chatterjee,**  
**Mr. Aniruddha Mitra.**  
**... for the petitioner**

**Mr. Pinaki Dhole,**  
**Ms. Tapati Samanta.**  
**... for the State**

1. The writ petitioner is the retired employee of a collage namely, Charu Chandra College, which is an aided, non-government institution. She is aggrieved due to non-receipt of salary in absence of proper pay fixation commensurate to the higher post, she claims, she has been appointed to at one point of time and also alleged inaction by not granting her the pension at an appropriate scale, commensurate to the scale of pay of such higher post. Hence, she has filed this writ petition to seek relief that she may be allowed the pay fixation, salary and pension commensurate to the higher post to which she had been appointed pursuant to the result of her, in a duly set up recruitment procedure.
2. Mr. Chatterjee appears for the petitioner. He says that the petitioner has been a victim of intentional laches, motivated and *malafide* inaction by the respondent College Authority to be deprived of her legitimate entitlements of service benefits including the pension. He has indicated to the facts that by taking part in a recruitment procedure initiated duly and in accordance with law and being successfully emerged as the first candidate in the panel, the petitioner was appointed as the Head Clerk of the said college, with effect from July 23, 2018. However, since thereafter there was no pay fixation done for her by the respondent No.2/ Directorate of Public Instruction, Higher Education Department, at the scale of pay allowable to the post of a Head Clerk. He says that ultimately on June 30, 2020, the petitioner had retired without any benefit of the post of Head Clerk being granted to her, including the pension. Mr. Chatterjee has addressed that to be the denial of fundamental and constitutional rights of his client.

He has deliberated further that the legality and propriety of appointment of the petitioner in the post of Head Clerk, is undeniable and cannot be challenged. He says that no conscionable reason could have been shown by the respondents, to deny grant of service and pensionary benefit to the writ petitioner. Therefore, such inaction on their part is arbitrary and not maintainable. Salary being the part and parcel of livelihood is a constitutionally protected right of the petitioner. So is the pension. Argument on behalf of the petitioner is further curated by saying that no law has ever provided withholding of the service benefit including pension. That, for the said reason, withholding salary and pension of the petitioner without any just, proper and reasonable cause would suffer from gross illegality and would be liable to be quashed and redressed forthwith. No law has ever provided withholding of the service benefit including pension, excepting as a measure of punishment to be imposed upon proven guilt of the concerned person. Public functionaries are obliged to be people oriented.

3. Mr. Chatterjee would further rely on the *Calcutta University First Statute, 1979*, to say that *Statute 97 (2) (a)* thereof has provided that the Governing Body of a college shall be responsible for appointment including that of staff, for effective operation of the college. Hence, that, it is the duty of the same to extend the service benefit to the petitioner as applicable, including the pension. By referring to an order of this Court in WPA No. 4923 of 2020 dated December 05, 2022, he has stated further about the unworthiness of the reasons shown by the college authority to deny the petitioner her legitimate due as above, that since the principal's office had been under lock and key by dint of an order of this Court, papers could not have been collected to be forwarded to the appropriate authority for either fixation of pay or fixation of pension. It is shown from the said order that the Court has already directed the keys to be handed over to the teacher-in-charge for use as per requirement.
4. Mr. Chatterjee would submit that the writ petition may be allowed to redress the illegality having been committed to the petitioner, as above, by granting her appropriate relief.
5. Mr. Chatterjee appears for the respondent No.2/Directorate of Public Instruction, Higher Education Department. He has reiterated what the

said respondent has stated in its affidavit in opposition, that any action in this regard by the said respondent would be subject to the steps taken by the college authorities and pursuant to the relevant documents sent by it to the respondent No.2, in this regard. He states further that no such proposal for fixation of pay or grant of pension in accordance with the higher pay scale, has ever been sent by the college authority, to the respondent No.2, with respect to the writ petitioner. Contrarily the college authority has submitted pension papers of the writ petitioner showing her status as a clerk. It is submitted that her pension has been released accordingly. It has also been submitted that the said respondent would be duty bound for prompt and appropriate action, no sooner an appropriate proposal is received from the college to allow pay fixation, arrear salary and pension to the petitioner at a rate other than that applicable for the post of a clerk.

6. The respondent No. 3 and 4/Governing Body of the college is also contested in this case by filing affidavit-in-opposition. Their contention is principally twofold. The college has challenged the legality and veracity of the process of recruitment by dint of which the petitioner claims to have been duly qualified and appointed in the post of Head Clerk. It has been stated that after formation of the present Governing Body, the same has never been appraised about the selection process and its outcome. The present Governing Body has denied any knowledge of the selection process of the post of Head Clerk. It is also challenged the legality of the appointment letter issued to the petitioner on the ground that the same has been issued by the principal of college who is not an authorised person to issue such appointment letter. It has been stated further that for the purpose of appointment of staff or appointment in general, the Governing Body of the college would only be the appropriate authority under the statutory provision. Also that it is not known to the present authorities if directions vide memo dated December 9, 2016, is adhered to in case of appointment of the petitioner as regards formation of selection committee, publication of the advertisement or preparation of the panel etc.
7. Regarding principal's room and office, the said respondents have averred that the same is inaccessible till date. Therefore, even if any document would be lying therein, the same cannot be retrieved by the respondents No. 3 and 4. These respondents

have relied on the documents supplied by the petitioner to propose to the pension sanctioning authority, for grant of pension to her akin to the scale of pay of a 'clerk' and not the 'Head Clerk', as claimed by the petitioner. These respondents have sought for dismissal of the writ petition.

**8.** Chronology of events as appearing from the pleadings may be engrafted in a chart as bellow:

|        | <b>Date</b> | <b>Event</b>                                                                                                                                                                                                                                                  |
|--------|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (i)    | 29.11.1986  | Petitioner's appointment in the post of 'clerk-cum-typist'.                                                                                                                                                                                                   |
| (ii)   | 07.06.1997  | Petitioner's confirmation in the said post, by the Governing Body, with effect from 01.12.1986, that is date of her joining in service.                                                                                                                       |
| (iii)  | 15.03.2016  | Order of Hon'ble Justice Debangshu Basak, in WPA No.4280 of 2016, pursuant to which the collage undertook the recruitment process, for the post of 'Head Clerk'.                                                                                              |
| (iv)   | 26.08.2016  | Memo of the Department of Higher Education permitting the collage to initiate the process of recruitment for the said post.                                                                                                                                   |
| (v)    | 15.11.2016  | The Governing Body of the collage was dissolved by the Government of West Bengal an Administrator was appointed.                                                                                                                                              |
| (vi)   | 09.12.2016  | Memo by the Deputy Secretary, Higher Education Department, in terms of Court's order dated 15.03.2016 and it's earlier Memo dated 26.08.2016, regarding procedural modalities for undertaking direct recruitment to the post of 'Head Clerk', in the collage. |
| (vii)  | 28.06.2017  | Order of Deputy Secretary, Higher Education Department, allowing the petitioner to participate in the selection process.                                                                                                                                      |
| (viii) | 14.07.2017  | Resolution of the meeting between the Administrator and the Principal of collage, to nominate the 'selection committee', for the purpose of the said recruitment process.                                                                                     |
| (ix)   | 01.08.2017  | Interview was held.                                                                                                                                                                                                                                           |
| (x)    | 12.09.2017  | Formation of the present Governing Body.                                                                                                                                                                                                                      |

|        | Date                          | Event                                                                                                                                                                                                                                                                                                      |
|--------|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (xi)   | 17.05.2018<br>&<br>22.06.2018 | Letters by the Directorate of Public Instruction, informing the collage, not to have any objection to the approval of appointment of the petitioner in the post of 'Head Clerk', pursuant to the recommendation of the selection committee and in compliance with the order of the Court dated 15.03.2016. |
| (xii)  | 23.06.2018                    | Appointment letter issued to the petitioner, by the principal of the collage and the petitioner joined on the same date as the 'Head Clerk'.                                                                                                                                                               |
| (xiii) | 27.07.2018                    | Office room of the principal was locked subsequent to his suspension.                                                                                                                                                                                                                                      |
| (xiv)  | 30.06.2020                    | The writ petitioner retires from service.                                                                                                                                                                                                                                                                  |
| (xv)   | 05.12.2022                    | Order in WPA No. 4923 of 2020 directing the keys to be handed over to the teacher-in-charge of the collage, in order to enable her to utilise that, as required.                                                                                                                                           |

**9.** Therefore, the question relates to if the petitioner would be eligible for grant of salary and other emoluments (arrear), in terms of the pay scale commensurate to the post of a 'Head Clerk' and pension, after her retirement as per last drawn salary at a pay scale of the said post. Since constitution of the 'selection committee', and the legality and propriety of the selection process so initiated, is challenged by questioning the process of publication of advertisement as well as preparation of the panel, it is also to be seen if there is any sufficient material in this case, to really pose a doubt to the selection process and the petitioner's appointment in the said post.

**10.** The college was directed to undertake the process of recruitment for the post of 'Head Clerk' vide Court's order dated March 15, 2016, in the WPA 4280 (w) of 2016. The department of Higher Education, Government of West Bengal, therefore, permitted the college to initiate such a process for recruitment of 'Head Clerk' vide its letter dated August 26, 2016. The college authority finds scope to challenge initiation and execution of the process of recruitment due to the fact that after grant of permission by the Higher Education Department to the college, to initiate the process of recruitment, the Governing

Body of the college was dissolved on November 15, 2016, and an administrator appointed therein.

- 11.** However, the Court notices that such a change in the administrative level in the said college has not affected the recruitment process which has earlier been permitted to be proceeded with. The Higher Education Department, in connection with its earlier memo dated August 26, 2016, has further issued regarding procedural modalities for undertaking direct recruitment to the post of 'Head Clerk', that is, vide memo dated December 9, 2016.
- 12.** Petitioner's candidature can also not be challenged at this stage particularly when consent to her by the Higher Education Department to participate in the selection process vide order dated June 28, 2017, is not disputed in this case and as a matter of fact has become sacrosanct being not challenged afterward.
- 13.** Since at the relevant point of time there was no Governing Body and the functioning of the college was restored to the Administrator appointed in absence of the Governing Body, the said Administrator and the Principal of the college, in a meeting dated July 14, 2017, nominated the 'selection committee' for the purpose of recruitment process. In this regard Statute 94 (4) of the First Statutes, 1979 of the Calcutta University, may be referred to. The same provides that after expiry of the statutory term of the Governing Body the same shall cease to function. In the meanwhile, till the time a new Governing Body is formed, as per the Statute, the life of the erstwhile Governing Body shall be extended either, or an Administrator shall be appointed, both for the specific stipulated period of time. The said statute has specified that the Administrator shall have all the powers and functions of the Governing Body until new Governing Body is constituted or takes over charge.
- 14.** In view of such provision in the First Statute 1979, as mentioned above, there would not be any doubt regarding the absolute power of the Administrator, akin to that of the Governing Body of the college, during the intermittent period after expiry of life of one Governing Body.
- 15.** In the present case, after dissolution of the Governing Body on November, 15, 2016 and before the following was selected, that is, on September 12, 2017, the Administrator took over charge and exercised power of the Governing Body in the matter

of administration of the college. Therefore, the Administrator to exercise his power to nominate the 'selection committee' or call for interview of the candidates, would not be amenable to challenge on the ground of its being irregular, improper or illegal. The next Governing Body is yet to be either selected or take over the charge of the administration. Therefore, in consideration of provision in the Statute, as above, the Court finds no illegality or irregularity in the functioning of the Administrator of the college, to nominate the 'selection committee' for recruitment, on July 14, 2017.

16. Thereafter, it was the turn of the 'selection committee' to proceed, which has held interview on August 1, 2017.
17. Formation of new Governing Body of the college was not delayed anymore and the present Governing Body was formed on September 12, 2017, which started functioning immediately thereafter. Therefore, the letters of the Directorate of Public Instruction dated May 17, 2018 and June 22, 2018 were received by the college during functioning of the present Governing Body. Vide the said letters as mentioned above, the Directorate of Public Instruction has informed the college about its having no objection to the approval of the appointment of the petitioner in the post of 'Head Clerk'. That was after disposal of writ petition being WP 20103 (w) of 2017. Accordingly an appointment letter was issued to the petitioner by the principal of the college on June 23, 2018, which *inter alia* has stated as follows:-

***“As per solemn order of Hon’ble High Court on 13/06/2018 regarding disposal of W.P No. 20103 (w) dated 2017. In accordance with the referred Memo of the Education Directorate and the relevant office orders issued in this context (ED-716/2018 DATED 30.05.2018 AND ed-745/2018 dated 22.06.2018) and subject to final approval of the Governing Body, you are appointed to the post of Head Clerk of Charuchandra College, 22 Lake Road, Kolkata 700029. You will be placed in the pay band of Rs. 7100-37,000/- plus G.P. Rs. 3600/-. Your service conditions, service security and service benefits will be abide by the relevant rules, regulations, guidelines of the University of Calcutta and Education Directorate. Your appointment will be treated to be cancelled if you fail to join on or before 22 July, 2013.”***

18. It appears that petitioner's joining was a mandatory condition pursuant to such appointment of her in the post of 'Head Clerk'. Thus, the petitioner joined as the 'Head Clerk' on the self-same date, that is, June 23, 2018.
19. The contention of the college authorities that the Governing Body and not the principal would be the appointing authority and the appointment letter issued by the principal to the writ petitioner as mentioned above would not be termed as a legal appointment, has however not espoused confidence in the mind of this Court. That is due to the fact that such an appointment letter dated June 23, 2013, was issued subject to the final approval by the Governing Body and with a mandatory condition directing her to join in the post. Evidently, such final approval by the Governing Body has never been accorded to the writ petitioner but that would not be sufficient to understand that the petitioner was never appointed to the said post or she had not joined in the said post and not discharged responsibilities thereof. On the contrary, as discussed above, it appears that the petitioner was appointed to the post of 'Head Clerk' pursuant to and in compliance with the order of the Court. The order of the concerned department caused a duly established process of recruitment to be in place and also pursuant to the order of Directorate of Public Instruction expressing no objection regarding approval of appointment of the petitioner in the post of 'Head Clerk', she was given the appointment letter and joined in the said post. The Court considers that on behalf of the college authorities no sufficient material could have been placed to invoke disbelief as regards the said facts leading to petitioner's appointment to the post of 'Head Clerk' and her joining therein.
20. The respondent college authority has stated regarding inaccessibility of the previous records of the office of the Principal. However, in view of the order of this Court dated December 5, 2022, the said contention does not appear to be worthy of reliance as the Court vide the same has directed for utilisation of the principal's room by the present college authority as per their requirement.
21. Fact remains that there would not be till date any "final approval of the Governing Body" as to the appointment of the petitioner in the post of 'Head Clerk', as was stipulated in her appointment letter dated June 23, 2018. However, in view of the

documents produced by the petitioner in this case and the facts and circumstances which have emerged before the Court during hearing of the case, the Court finds it proper to direct grant of *post facto* approval of appointment of the petitioner in the post of 'Head Clerk' by the present Governing Body of the school. Hence, the Court directs accordingly.

- 22.** The petitioner has already been superannuated with effect from June 30, 2020. As a consequence of the discussion as made above and the finding to which this Court has arrived at, as laid down above, the respondent authorities are directed to fixation of pay of the petitioner from the date of her appointment in the post of 'Head Clerk', (i.e, June 23, 2018) at a pay scale commensurate to that of the post of 'Head Clerk', along with other applicable service benefits including increments etc.
- 23.** The arrear amount of salary upon such fixation of scale of pay afresh for the petitioner, attuned to the pay scale of the 'Head Clerk', shall be remitted/released to the writ petitioner within a period of fortnight, from the date of service of copy of this order.
- 24.** The respondent authority is further directed for modification/correction of pension (vide pension payment order) in terms with such modified scale of pay and enhanced last drawn salary of the petitioner.
- 25.** The pension amount commensurate to such newly assessed rate shall immediately be released to the writ petitioner. The arrear amount of pension since from the date of her superannuation, shall be paid by the respondent authority within a period of fortnight from the date of communication of this order.
- 26.** Thus, the present writ petition being W.P. No. 15313 of 2021 is allowed.
- 27.** Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

**(Rai Chattopadhyay, J.)**