

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

W.P.A. No. – 15757 of 2022

IN THE MATTER OF

Ananta Kumar De & Ors.

Vs.

The Union of India & Ors.

For the Petitioners : **Mr. Saptansu Basu, Adv.,**
Mr. Mr. Ayan Banerjee, Adv.,
Ms. Debjani Sengupta Adv.,

For the respondent Nos.
4 to 6 : **Mr. L.K. Gupta, Adv.**
Mr. Dibyendu Narayan Roy, Adv.
Mr. Bhaskar Mukherjee, Adv.
Mr. D. Dutta Adv.

For the respondent Nos.
1-3 : **Mr. Avinash Kankani, Adv.**

Reserved on : **01.03.2024**

Judgment on : **11.03.2024**

Subhendu Samanta, J.

1. The present writ petitioners No. 1 to 7 are the retired employees of Indian Institute of Management, Calcutta (In short "IIM, Calcutta") and the petitioners No. 8 and 9 are the legal heirs of two deceased Senior Assistant Librarian of IIM Calcutta. The petitioners No. 1 to 7 were engaged in different posts of Librarians, Deputy Librarians, Senior Assistant Librarians in IIM Calcutta.

2. The petitioners are seeking implementation of Revision of Pay and Allowance which, according to them, in effect, amounts to enhancement of their salary and emoluments payable at the time when they served IIM, Calcutta.

3. It is the case of the petitioners that they are similarly circumstanced employees like the other IIM employees who have been given the benefits in terms of orders passed by this court as upheld by the Hon'ble Apex Court in the year, 2020.

4. For better appreciation of the matter in hand, it is necessary to elaborate the previous litigations.

5. There are some disputes and differences between the pay-scales of Teachers and Librarians in Central Government Education Institutions. Several representations were placed before the appropriate authority on earlier many occasions. The Fourth Central Government Pay Commission in his report submitted in June, 1986, noted that there are serious anomalies in the pay scales of Librarians as also in the other case, and recognised the necessity for constitution of a Committee to undertake all suitable proposals for considering the case of the Librarians.

6. Ultimately a National Expert Committee was set up under the Chairmanship of Dr. R.N. Dogra to make report in respect of revision of salary structures of Teachers and Librarians and after acceptance of the said report of Dogra

Committee the government of India decided to implement the said scheme of revision of pay scale of teachers and Librarians.

7. By a Government Order dated February 28, 1989 being No.- F.6-1/88-T/5 of Ministry of Human Resources and Development (Department of Education), Government of India, a revised scale of pay was introduced for the Teachers as well as for the Librarians and Physical Education Instructors in the Engineering Colleges and other Degree Level Technical Institutes including Management Institutes. By virtue of the said notification the revised scale of pay has recommended as been extended by the IIM, Calcutta to the members of the Teaching faculty, but the Library Staff have unjustly been deprived of such benefit of revised scale.

8. Being aggrieved by the arbitrary action of the respondents in withholding of such revised scale of pay, seven (7) Library Assistants and Library Staff moved a writ petition before this court vide C.O. No. 11247 (w) of 1990. Both IIM Calcutta and Union of India filed their Affidavit- in- opposition to the writ petition. After a contested hearing the writ petition was disposed of on 09th March 1994 by the Co-ordinate bench of this Court to hold inter alia as follows:

In my view, the claim made by the petitioners is wholly justified on the facts and in the circumstances of this case and accordingly the Library of the Institute should be given the status as a University Library. If the Faculty members of the Institute are entitled to revised UGC scales in terms of the Notification dated February 28, 1989 there is no

justification for not granting such benefit of the pay scale to the Library staff, being the petitioners.

For the reasons aforesaid this application is allowed. The Library staff of the Institute will be entitled to the benefits of the Notification dated February 28, 1989 which are applicable to the Library staff of the University as provided in the said Notification.

The Central Government is directed to provide funds for implementation of the Notification dated 28.02.1989 so far as the Library staff of the Indian Institute of Management is concerned. Let the funds be provided by the Government within three months from the date of communication of this Order"

9. An appeal was preferred by the Union of India against the said order dated 09th March 1994 it was registered as FMAT No. 2306 of 1994. After a contested hearing, the said appeal was disposed of by the Hon'ble Division Bench by remanding the matter back to the Central Government for a decision after application of mind taking into consideration for factual and technical aspects of the matter. The Central Government was loath to implement the order of Hon'ble Division Bench. Accordingly, the petitioners had to file one contempt application for deliberate and wilful violation of the order passed by the Division Bench. After receipt of the application of contempt the Central Government has issued

Memo dated 12th January 1999 regarding the up gradation of various posts. The said memorandum is far from the decision to be taken as per the decision of the Hon'ble Division Bench of this court. Since the decision does not bear any nexus with the revised pay scale introduced by the Union of India as per their notification dated 28th February 1989 with effect from 01.01.1986, the aforesaid seven (7) Library Staffs again filed a writ application challenging the said memo dated 12 January 1999 vide WP No. 4239 (w) of 2000. The Hon'ble Single Bench was taken up the matter and passed order on 17th September, 2023 and was pleased to set aside the impugned memo dated 12th January 1999 and directed the respondent authorities to confer the scales of pay given to the Library Staff of the Universities to the petitioners. The operative portion of the judgment is as follows:

From the above fact, I am of the clear view that no fruitful purpose will be served by that remanding the matter to the respondents authority for reconsidering the directions given by the Division Bench of this Court. The litigation is pending for last 11 years. It is apparent that the respondents did not find any special reason for not granting the scales given to the library stuff of university by assessing the duties of the library stuff of the petitioners and comparing the same with those of The library staff of the university and, as such, by taking into consideration an erroneous concept of status of the Institute contrary to the view of the Division Bench have prescribed the scale impugned in the instant writ application, Thus, there was no just reason for conferring the pay scale given to the library staff of IIM, Ahmedabad and that too prospectively. It may not out of place to mention here that the learned Single Judge granted scale of library staff of the universities to the petitioners retrospectively from

January 1, 1986 and the Division Bench did not upset the findings of the learned Trial Judge that they should be given new scale retrospectively but merely directed the respondents to assess the scale in accordance with the directions given. Since there is no special reason for not giving the scale of library staff of university to the petitioners, there is also no reason for not giving such scale retrospectively from 1st January, 1986, the date from which other similarly placed staff doing equal work have been given such benefit.

I, thus, set aside the orders impugned and direct the respondents authority to confer the scales of pay given to the library staff of the universities to the petitioners as the respondents have failed to assign any special reason for not granting such scales as per earlier direction of the Division Bench. Such scales of pay should be given within three months from date with effect from January 1, 1986 and all arrears should also be paid within aforesaid period of three months.

10. The order dated 17th September, 2003 was challenged in appeal at the instance of Union of India being FMA No. 583 of 2005. The appeal was dismissed by the Hon'ble Division Bench by an elaborate judgment dated 3rd June 2008. The operative portion of the judgment in FMA 583 of 2005 of the judgment is set out as follows:

We have considered the rival contentions of the parties. We have got the benefit of the judgment and order passed in the earlier proceedings both by the learned Single Judge as well as by the Division Bench. We find that the learned Single Judge in the earlier writ proceeding upheld all the contentions of the writ petitioners made therein including the one that the Institute enjoyed the status of a deemed university and they were entitled to identical benefits which their counterparts were enjoying in the university under the Central Government Notification. Such specific finding was not upset by the Division Bench, on the other hand the Division

Bench independently on appreciation of facts upheld those findings. The Division Bench quashed the order of the learned Single Judge only on the ground that it was not proper for the Court to direct particular pay scale to be given as it was within the domain of the Central Government.

In this backdrop there was no other option left open to the appellant but to grant the pay scale as applicable to the university library staff if they were so entitled after examining their claims on factual basis as directed by the Division Bench. The authority did not do so and mechanically revised the pay scale to make it at par with the Ahmedabad Institute. The learned Single Judge quashed the said reasoned order and directed grant of pay scale as according to His Lordship no fruitful purpose would be served by sending the matter back to the authority again.

We do not find any scope of interference on that score.

The appeal fails and is hereby dismissed.

11. The judgment of the Hon'ble Divison Bench was assailed by the Union of India before the Hon'ble Apex Court of India giving rise to civil appeal No. 8467 of 2012. The said Civil appeal was dismissed by the Hon'ble Apex Court. Vide order dated 9th December 2020. After the dismissal of civil appeal IIM, Calcutta has implemented the direction of this court duly upheld by the Hon'ble Supreme Court in respect of the writ petitioners therein with effect from 1st day of January, 1986.

12. It is the case of the present petitioners that although the Hon'ble High Court has directed conferment of pay scale applicable IITs and the Universities to the library staff of IIM Calcutta, the said benefit has not been extended to

the other employees like the preset writ petitioner although they are exactly similar circumstanced like the writ petitioners in WP No. 4239 (W) of 2000.

13. The present petitioners made several representation before the respondent for complete implementation of the direction of this court of implementation the pay scale of IITs and other universities so far as the library staff of IIM, Calcutta as a whole. In spite of several representations the respondent authorities have not responded to the demand of justice of the petitioners.

14. Thus, the instant writ petition was preferred.

15. Learned Advocate for the petitioner submits that the present writ petitioner are exactly similarly situated persons like the writ petitioners in WP No. 4239 (w) of 2000. He further argued that the benefit of revised scale as recommended in the order dated 28th February 1989 has been extended already by the respondent institute to the members of teaching Faculty and only to a handful of Library staff have been unjustly upon deprived by such benefit of revised scale of pay.

16. Mr. Saptansu Basu, Learned Senior Advocate appearing on behalf of the petitioner submits that the issue has already been settled by the Single Bench of this Court in writ petition No. WP 4239 (W) of 2000. He further argued the respondent institute being one premier institute of excellence like the Indian Institute of Technology (IIT), Librarians and

Library Staff are entitled to similar benefits awarded to IITs and equivalent Universities. The Hon'ble Division Bench had recorded various relevant aspects which laid to the inescapable conclusion that the library staff and librarian of Indian Institute of Management should be confers the benefit equivalent to their counter parts in IITs.

17. Mr. Basu further argued that by depriving the petitioners to the benefits of higher pay scale which has already been conferred upon the some Library staff of IIM, Calcutta who are exactly similarly situated with the present petitioners, respondents acted is complete violation of Article 14 of Constitution of India.

18. Mr. Gupta appearing on behalf of the respondent No. 4 to 6 submits that petitioners are not qualified under the UGC guidelines. Mr. Gupta further argued that the present writ petitioner cannot avail the benefit of the judgment initiated by the other staff of IIM, Calcutta since 1990. The judgment passed by this court in favour of the earlier petitioner is a "*judgment- in personam*" but the judgment is not a "*judgment-in-rem*". He further argued that the present petitioner cannot take benefit of the judgment which is completely binding and effective upon the petitioners therein. Mr. Gupta further argued that there is inordinate delay of 33 years in approaching the Court. All petitioners are the retired employees and two of them has expired already. Mr. Gupta further argued that the claim of

the petitioner is barred under the law of limitation and it cannot be entertained. He frankly submits that the present petitioner may have their rights but the remedy has already been lost due to efflux of time. In support of his contention he cited a decision of Hon'ble Apex Court in **Chennai Metropolitan Water supply Swerage Board and Ors Vs. TT Murali Babu (2014) 4 SCC 108**

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court Delay reflects inactivity and inaction on the part of a litigant- a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had

remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons- who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

19. Mr. Gupta Further submits that the Hon'ble Apex Court has discourage the approach of the persons who kept themselves mum for a long period and wait till a final conclusion and when a favourable situation arises to them, they jump into court for getting the said relief. Mr. Gupta further submits the present petitioner are the "*Fence-sitters*" who did not approach the court in time so they are claim cannot be entertained. In support of his contention Mr. Gupta cited a decision of Hon'ble Apex Court in **Bharat Sanchar Nigam Limited Vs. Ghanshyam Das and Ors. (2011) 4 SCC 374**

The principle laid down in K.I. Shephard that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

(a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees:

b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.

20. Mr. Gupta further referred of Hon'ble Apex Court in

Union of India and Ors. Vs. Tarsem Sing (2008) 8 SCC 648

4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan* explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

"31.... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the

doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury”.

21. Mr. Gupta on the principle of distinction between judgment delivered in “Rem” and Judgment delivered in “personam”, has cited a decision of Hon’ble Apex Court reported in **Chairman Managing Director UP Power Corporation Limited Vs. Ramgopal (2021) 13 SCC 225**

11. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and the writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *S.S. Balu v. State of Kerala*, this Court observed thus: (SCC p. 485, para 17)

"17. It is also well-settled principle of law that "delay defeats equity". It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches

irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

12. Similarly, in Vijay Kumar Kaul v. Union of India this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that: (SCC pp. 617-18, para 27)

"27.... It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

13. We may hasten to add that these principles may not, however, apply to judgments which are delivered in rem. The State and its instrumentalities are expected in such category of cases to themselves, extend the benefit of a judicial pronouncement to all similarly placed employees without forcing each person to individually knock the doors of courts. This distinction between operation of delay and laches to judgments delivered in rem and in personam, is lucidly captured in State of U.P. v. Arvind Kumar Srivastava, laying down that: (SCC pp. 363-64, para 22)

22. Mr. Gupta further argued that in case of dispute regarding issue of fixation of salary or for allowance the challenge is not bar by limitation, relief should be restricted to a period of three years prior to the date of original application

The State of Madhya Pradesh and ors Vs. Yogendra Srivastava

18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application.

23. Refuting the contention of Mr. Gupta, Mr. Bose submits that it is the settled principle of law that all persons similarly situated should be treated similarly. It is not necessary that all person of same category entitled of same relief shall approach the court individually. Mr. Basu further submits that the Hon'ble Apex Court has laid the principle in **state of Karnataka and ors Vs. C. Lalitha (2006) 2 SCC 747**

29. 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 persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I

post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.

24. Mr. Basu further argued that the principles of law laid down in a decision of a court is passed upon the peculiar facts and circumstances of this case. A decision is a precedents of its own effects, each and every case has its own different features, so unless and until the features are similar the principles cannot be adopted blindly. **Oriental Insurance Company Limited Vs. Rajkumar and Ors (2007) 12 SCC 768**

13. "19. 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 [and that too taken out of their context]. These observations must be read in the context in which they appear [to have been stated]. Judgments 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 judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given

language actually used by that most distinguished Judge,...'

20. In *Home Office v. Dorset Yacht Co. Ltd.* 10 Lord Reid said (at All ER p. 297g).

'... Lord Atkin's speech... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.'

Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)*¹¹ observed: (All ER p. 1274d)

'One must not, of course, construe even a reserved judgment of

even Russell, L.J. as if it were an Act of Parliament;' And, in *Herrington v. British Railways Board*¹² Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

22. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*¹³, AIR p. 688, para 19)

'19. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'

'Precedent should be followed only so far as it marks the path justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the

path to justice clear of obstructions which could impede it."

25. Heard the Learned Advocates. Perused the observation of this court in WP No. 4239 W of 2000 dated 17th September 2003. In the writ petition the Hon'ble Single Bench was pleased to set aside the impugned memorandum dated 12th January 1999. The said memorandum issued regarding the upgradation of post of Librarian, Deputy Librarian Senior Assistant in the Indian Institute of Management Calcutta. The Co-ordinate Bench of this court on 17th September 2003 has set aside the said memo. Ultimately the respondent authority was directed to confer the scale of pay given to the Library Staff of IITs and other Universities to the petitioners. The petitioners to the writ petition of WPA 4239 (W) of 2000 are the Library Staff of IIM Calcutta who fought for their revised scale of pay, ultimately became successful; the present writ petitioners are also the library staff of the same institute (IIM, Calcutta). There is no argument to the effect that the present petitioners are not the Library Staff of the IIM, Calcutta. Furthermore, it is also true that prior to the final decision of Hon'ble Supreme Court, the petitioners of WPA 4239 (W) 2000 and present petitioners were enjoying same pay scale and enhancements thereof. Conferring pay scale benefit to some library staff and denying others itself violative the guarantee of the Constitution of India under article 14.

26. Let me Consider whether the judgment of WPA 4239 (W) of 2000 is “judgment- in- rem or “Judgment in personam”. The “judgment in rem” a judgment which is enforceable against the whole worlds. The “Judgment- in- personam” is the judgment which particularly enforceable upon a particular person litigating upon the cause. The Hon’ble Supreme Court in **Chairman/ Managing Director, UP Power Corporation Limited and Ors** has held that “consideration” unexplained delay and inordinate laches, would always be relevant in writ actions, and writ court only to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence- Sitter cannot be allowed to barge into courts and cry for their convenience, and vigilance citizens ought not to be treated alike with mere opportunities. In the above cited case the respondent before the Hon’ble Apex Court had claimed for reinstatement of his service on the basis of an order of retention of another person. On that even the Hon’ble Apex Court has held that the judgment of retention of a person by High Court is not judgment- in- Rem. The facts and circumstances of the cited case is completely different. So it is distinguishable.

27. The right of the present petitioner accrued after the justification of Hon’ble Apex Court dismissing the SLP in the year 2020. The present petitioner are the similar circumstanced persons so the judgment conferring right of the

earlier petitioner in WP 4239 (W) of 2000 is judgment- in- rem in respect of declaring the rights to the benefits of higher pay scale to the present petitioner (Library Staff IIM, Calcutta). It has been proved rather admitted by the IIM that they have deprived the present petitioner for a long period regarding their benefits of higher pay scale and emoluments. Now they cannot argue on the fact that their claimed is barred by limitation. The Hon'ble Supreme Court in **BSNL Vs. Ghanshaym (Supra)** in paragraph 25.1 has specifically held that it is necessary for every person to approach the court for relieve and its duty of the authority to extend the benefit of concluded decision in all similar cases without driving every affected person to court to seek relief would only apply in following circumstances

“b) where the reluctant granted by the court is a declaratory relief which is intended to apply all employees in a particular category, irrespective of whether their parties to the litigation or not also not considering the observation of Hon'ble Supreme Court instead of Karnataka and Ors Vs. Lalitha (Supra).

It appears to me that the present petitioners are similarly circumstances person to the petitioner in WP No. 4239 W of 2000. The present petitioner cannot be said to be “Fence Sitter”.

28. Considering by the materials and considering the argument advanced by the Learned Counsels and also

considering the observation of Hon'ble Supreme Court as stated above, in my view the present petitioner are entitled to the same relief and benefits at par with the writ petitioners in WP No. 4239 W of 2000. The respondent authorities is hereby directed to confer higher scale of pay equivalent to the pay scale of library staff of IITs and other Universities to the present writ petitioners with the effect from the date of conferment of such benefits to the writ petitioners in WP No. 4239 (W) of 2000 and fixed pension and/or other retirement benefits according to such scale forthwith and take all necessary steps according to the law.

29. Under the above observation the instant writ petition is disposed of. Connected applications if pending are also disposed of.

30. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)