

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

**Present:
The Hon'ble Justice Rai Chattopadhyay**

**WPA 15273 of 2010
with
CAN 1 of 2018 (Old No: CAN 2127 of 2018)**

**Ranjita Mondal & Ors.
Vs.
The State of West Bengal & Ors.**

For the Petitioners	: Mr. Sarwar Jahan, : Mr. Dilip Kr. Sadhu, : Mr. Lalratan Mandal.
For the State respondent	: Mr. Biswajit De.

**Heard On : 03/07/2024
Judgment on : 07/08/2024**

Rai Chattopadhyay, J.

- (1)** The substituted writ petitioners are the legal heirs of the original writ petitioner (since deceased), who have been substituted in this case, in place of the said original writ petitioner, with effect from July 5, 2018.
- (2)** The present case was filed by the original writ petitioner to challenge the order of the Director of School Education/respondent no. 3 dated June 3, 2009. The order speaks as follows:-

“Sub: Post graduate scale of pay in favour of Sri Baidyanath Mondal, Asstt. teacher of Bergram Palli Sevaniketan High School.

Ref: His memo no. 2722/G dated 30.12.08

With reference to the subject noted above the undersigned has to inform him that Sri Baidyanath Mondal Asstt. teacher of the School has been drawing Post Graduate Scale of pay without obtaining any approval from the end of the D.I/S (SE). Therefore the proposal for sanction of higher scale of pay on post facto basis can not be considered in terms of Sec. 4 read with Sec. 17 of the W.B. Schools (Control of expenditure) Act 2005.

Subsequent action should taken accordingly.”

- (3) The letter as above was sent to the District Inspector of Schools (Secondary Education), Birbhum, by the Director of School Education, West Bengal.
- (4) Let the background facts be narrated in a nutshell. The original writ petitioner was appointed as an Assistant Teacher in the respondent school with effect from June 7, 1979. Subsequently his service was approved by the school authorities. The original writ petitioner obtained a higher degree of Masters of Arts (M.A) in the year 1987. He has stated that for the same he obtained prior permission of the respondent school authority. The school authority recommended for grant of higher pay scale to him pursuant to his improved qualification and to be commensurate to the same, to the District Inspector of Schools/respondent no. 4. The respondent no. 4 replied vide letter dated December 9, 1987, which speaks as follows:-

“Sub: Benefit of M.A. scale of pay to Sri Baidyanath Mondal, Asstt. teacher of his school.

In connection with the subject mentioned above, the undersigned has to request him to follow the G.O. No. 372-Edn, dated, 31.7.81 read with the Memo. No. 59-GA, dated, 16.1.82 of the D.S.E. West Bengal.”

- (5) As a result the original petitioner was granted the Post Graduate scale of pay which he enjoyed throughout his service period till the time of his retirement, that is, on January 31, 2009.
- (6) At the fag end of his career the school authority had some exchange of letters with the concerned respondent authorities regarding grant of retirement benefits to the original writ petitioner and the school was directed to comply with all formalities and make necessary corrections in original petitioner's service book, for the purpose of forwarding it to the office of the said respondents, for release of original petitioner's pension and other retirement benefits.
- (7) The school received the impugned letter dated June 3, 2009, from the Director of School Education/respondent no. 3 which has been quoted above. Thus, the Post Graduate scale of pay which was earlier allowed to the petitioner, was denied to be given effect to, by the respondent No. 3.
- (8) Subsequently, twice the petitioner has written to the respondent no. 3 being aggrieved by the said purported action in not allowing him of the Post Graduate scale of pay, but in vain. Hence, this writ petition.
- (9) Mr. Jahan appears for the writ petitioner/s. He states that the Post Graduate scale of pay has been granted to the writ petitioner in terms of the order of the District Inspector of

Schools (Secondary Education), Birbhum, dated December 9, 1987. Accordingly, subsequently the authorities cannot revert back from its own order, to deprive the petitioner the benefit which has already been extended to him. Mr. Jahan has further stated that as directed, the petitioner has been advanced with the enhanced pay scale in Post Graduate category of scale, pursuant to the provisions of memo No. 372 Edn(B) dated July 31, 1981 and 59-GA dated January 16, 1982, of the Director of School Education. Therefore, there can be no cogent reason to doubt the legality and propriety of application of the provisions thereunder in case of the original petitioner. He has further indicated that the impugned order dated June 3, 2009, is a non speaking one in so far as the same is silent about any reasons as to why the Post Graduate scale of pay earlier granted to the original petitioner pursuant to the order of District Inspector of Schools (Secondary Education), Birbhum, dated December 9, 1987, would not be allowable to him. Mr. Jahan has indicated further that, as per the law now settled well, the benefit which has been extended to the original writ petitioner, even if, erroneously but without any part playing as to the same by the petitioner, would not have been withdrawn by the concerned respondent authority, particularly at the time of his retirement. In this regard Mr. Jahan has referred to the celebrated case of ***State of Punjab & Ors. vs. Rafiq Masih*** reported in ***(2015) 4 SCC 334***. In this regard Mr. Jahan has also pointed out that an amount of Rs. 67,800/- has been shown to have been overdrawn by the original writ petitioner on account of salary withdrawn by him, in terms of post graduate pay scale, which is unlawful and to be set aside, he says.

- (10) The original writ petitioner seeks relief that the impugned order dated June 3, 2009, be set aside, negating the respondents withholding the amount of Rs. 67,800/- on the ground of its being overdrawn by the original writ petitioner.
- (11) The respondents are represented. The contention on behalf of the respondent *inter alia* is that the original petitioner cannot be allowed any relief beyond what he has pleaded for. It is submitted that the original petitioner in the said writ petition has not pleaded for refund of any amount. Hence, at this stage the petitioner's prayer as ventilated during argument, cannot be entertained by the Court. In this regard on behalf of the respondent judgment of the Hon'ble Supreme Court reported in **(2007) 2 SCC 138 (U.P. Gram Panchayat Adhikari Sangh & Ors. vs. Daya Ram Saroj & Ors.)** has been referred to. The Hon'ble Court in the same has been pleased to hold that the ground (of legitimate expectation in the said case) not taken in the pleading in the original petition, cannot be induced later on, at the fag end of the proceedings.
- (12) Furthermore, it has been indicated that the petitioner's plea as above, is bereft of any supporting fact that he has improved his qualification, pursuant to permission and sanction granted by the concerned DI/s, at the relevant point of time. Therefore, provisions of the Act of 2005, Sections 4 and 17 thereof more particularly, shall act as statutory deterrent for grant of higher pay scale to the original writ petitioner (now deceased).
- (13) Admittedly, the original writ petitioner has improved his qualification to Masters Degree in the year 1987. By dint of his letter dated December 9, 1987, the District Inspector of Schools (Secondary Education), Birbhum, directed the school authority

to follow G.O 372 Edn (B) dated July 31, 1981 (hereinafter referred to as G.O. 372), read with memo no. 59-G.A dated January 16, 1982 (hereinafter referred to as G.O. 59), in the matter of allowing benefit of Post Graduate scale of pay to the original petitioner (since deceased).

- (14) GO 372-Edn (B) dated July 31, 1981, has provided the corresponding revised scale of pay to the existing pay scale of all category of persons in a school including an Assistant Teacher. On behalf of the petitioner it has also been pointed out that the said memo has provided for all existing secondary school teachers who have improved their qualifications relevant to their teaching subjects to get the higher scale on qualification without any restriction [per NB (2) (a)]. The same has also provided that all existing secondary school teachers who have improved their qualifications not relevant to their teaching subjects will be allowed higher scale on qualification basis after five years teaching counting from the date when higher qualification was obtained.
- (15) GO 59-G.A dated January 16, 1982, is on the subject matter of *“revision of pay scales and fixation of pay of approved teaching and non teaching employees of government aided secondary institutions”*. The same has clarified that, *“existing approved teacher with higher qualification will get higher scale of pay if their qualifications are relevant to teaching subjects within the prescribed syllabus – subjects taught in Junior High and Junior High Madrasha”*.
- (16) Therefore, in accordance with the direction by the DI, vide letter dated December 9, 1987 and following the provisions made out

in GO 372 and 59, the school authority allowed the original writ petitioner to draw the Post Graduate scale of pay. Since the date of improving his qualification in the year 1987, the original writ petitioner (since deceased) has been enjoying the Post Graduate scale of pay till the time of his retirement, that is, January 31, 2009.

- (17) The impugned letter was issued by the respondent no. 3 on June 3, 2009, after superannuation of the original writ petitioner. In the same the sole ground has been made out by the respondent No. 3 against the petitioner (since deceased) that he has been drawing post graduate scale of pay without obtaining any approval from the end of the DIS (Secondary Education). The decision of the said authority in the impugned letter against the original petitioner has been that for reason as above the proposal for sanction of higher scale of pay on *post facto* basis cannot be considered in terms of Section 4 read with Section 17 of the West Bengal Schools (control and expenditure) Act, 2005.
- (18) The said order of the respondent No. 3 dated June 3, 2009, appears to be a cryptic, unreasoned, improper, and illegal one, not maintainable in the eyes of the law. The reasons thereof are discussed below.
- (19) Firstly, the respondent No. 3 has made gross error in finding a ground that the petitioner (since deceased) has been drawing Post Graduate scale of pay without obtaining any approval from the District Inspector of Schools. There has been no denial and adverse material as to the fact that the school authority has forwarded its recommendation to the concerned District

Inspector of Schools for grant of approval of service of the writ petitioner (since deceased). A copy of peon book has been annexed with the writ petition to show that the recommendation of the school to grant the petitioner Post Graduate scale of pay was submitted to the District Inspector of Schools (Secondary Education), Birbhum, on February 13, 1987. As to this document there has been no objection and admittedly the District Inspector of Schools has issued to the school authority its letter dated December 9, 1987, directing to act in the matter of granting higher scale of pay to the deceased writ petitioner, in terms of the specific government orders, as mentioned above. The school authority has done only in accordance with the said direction in granting higher scale of pay to the original writ petitioner and not otherwise. In such view of the matter with the finding of the respondent No. 3 in the impugned letter that the petitioner (since deceased) did not obtain any approval from the District Inspector of Schools, does not appear to be a sound decision based on proper and cogent material. Instead the same suffers from gross error. On the contrary the Court finds that recommendation of the writ petitioner and the prayer for granting him the Post Graduate scale of pay was duly forwarded to the DI and there is no sufficient material to doubt such statement and the documents as relied on by the petitioner in this regard.

- (20)** Secondly, there may not be any question of sanctioning higher scale of pay on *post facto* basis to the petitioner (now deceased). The original petitioner has been granted sanction to draw Post Graduate scale of pay in terms of the similar order by the District Inspector of Schools as discussed above and has been enjoying the same along with increment at an appropriate rate,

till the time he has retired from service. During the entire period, there has not been any dispute raised in this regard, by the concerned respondent.

- (21) In such view of the matter the finding of respondent No. 3 regarding application of the provisions under the Act of 2005 is only misconceived. Furthermore, the Act of 2005 not having any retrospective effect cannot be made applicable in case of the original writ petitioner who has been granted the higher scale of pay and rightly so, back in the year 1987 and has been enjoying the same since then, without any question being raised in that regard. In this regard the Court can safely rely on the decision of the Hon'ble Larger Bench of the Court reported in **2024 SCC OnLine Cal 1274 (Utpal Kanti Karan vs. State of West Bengal & Ors.)**, that the Act of 2005 shall not have any retrospective effect.
- (22) Mr. Jahan has rightly pointed out to the judgement of **Rafiq Masih (Supra)**. Pursuant to the ratio decided therein, the respondent authority would be debarred from realising any amount from the retirement benefit of a person as accrued. The Court has held therein in the following manner:-

“7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such

recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, “for doing complete justice in any cause” would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”

- (23) Indeed recovery of amount by way of withholding the part of retirement corpus, on the ground of *post facto* approval not to be granted to the petitioner regarding grant of higher scale of pay pursuant to his higher qualification is iniquitous for the petitioner, on the backdrop of the uncontroverted fact that he has already been allowed to draw the higher scale of pay, by the concerned respondent authority, which he has enjoyed throughout his carrier, till the time of retirement.
- (24) On the premises as above the impugned order dated June 3, 2009, would be liable to be set aside being improper and not in accordance with law. On the discussion as above the impugned action of the respondent to deduct the alleged overdrawal amount of Rs. 67,800/-, from the retiral benefit of the writ petitioner would be illegal and unsustainable in the eye of law.
- (25) Hence, the writ petition no. WPA 15273 of 2010 is allowed and disposed of with the following directions:-
- (i) the impugned order dated June 3, 2009, is set aside;
 - (ii) the purported action of the respondent deducting the amount of Rs. 67,800/-, from the retiral benefits of the petitioner (since decease), on the alleged ground of overdrawal by the petitioner, is set aside;
 - (iii) the original petitioner shall be entitled to the post graduate scale of pay with effect from the date of improving his qualification to the Master's Degree;

- (iv) the original petitioner shall be entitled to the retirement benefit as well as pension in terms of the said enhanced scale of pay;
 - (v) the respondents are directed to immediately release an amount of Rs. 67,800/- to the present substituted petitioners/legal heirs of the original writ petitioner, along with interest at the rate of present day saving account interest in a nationalised bank, with effect from the date of retirement of the writ petitioner (since deceased), till the date of actual payment.
- (26)** Writ petition no. WPA 15273 of 2010 is disposed of along with CAN 1 of 2018 (Old No: CAN 2127 of 2018).
- (27)** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Rai Chattopadhyay, J.)