

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 19689 of 2017

Ratna Banerjee (Pal Chowdhury)

vs.

State of West Bengal & Ors.

For the Petitioner

: Mr. Biswaroop Biswas,
Mr. Kamal Mishra,
Mr. Pratap Sanfuji,
Mr. Subhodeep Maitra.

For the State

: Ms. Jhuma Chakraborty,
Ms. Munmun Tewary.

Heard on

: 22.05.2024

Judgment on

: 22.05.2024

Rai Chattopadhyay, J.

1. The writ petitioner is the retired Assistant Teacher of Bagbazar Multipurpose Girls' School. She has retired from service on January 31, 2012 after rendering service for thirty-three (33) years in the school.
2. She is aggrieved that at the fag end of her career and before retirement, she has been arbitrarily and illegally compelled to refund the alleged overdrawn amount of salary as demanded by the respondent authority, on the ground of her being erroneously awarded the "A-Category" scale of pay since after her appointment.

3. The writ petitioner is also aggrieved as regards the alleged erroneous Pension Payment Order which records the last pay of the writ petitioner to be an amount of Rs.2,87,60/-. The writ petitioner has stated that at the time of her appointment and on the basis of qualification i.e., M.A., B.Ed., she has been allowed by the respondent authorities, the A-category scale of pay. Since, thereafter, during the entire service period of herself, she has been enjoying the A-category scale of pay without any disruption.
4. The writ petitioner is particularly aggrieved with the memo dated July 14, 2011 observing that the writ petitioner having not been appointed in the higher secondary section, would not be entitled to the A-category scale of pay and that she should refund the excess amount drawn by her on account of salary in terms of A-category scale of pay before retirement.
5. The authorities, by dint of the said memo had decided that @ Rs.2,87,60/- shall be disbursed to her from September, 2011 onwards.
6. Hence, this writ petition.
7. Mr. Biswas, learned counsel is appearing for the writ petitioner. Mr. Biswas has submitted that at the time of appointment, the writ petitioner was adequately qualified for A-category scale of pay that is. M.A., B.Ed.
8. Mr. Biswas, has further relied upon the ROPA Rules 1981 to submit that according to the same the trained teachers having Master Degree would have been eligible to the revised scale of pay. On the basis of the same, he has further submitted that all the existing

secondary school teachers were eligible for higher scale of pay on the basis of qualification without any restriction.

- 9.** Mr. Biswas, has further indicated on the basis of the documents annexed with the writ petition that according to her qualification the writ petitioner has been always granted the duty to impart education as regards the specialized subject that is, political science. He says that, for all practical purposes, his client has been imparting teaching in higher secondary section only because of the reason that the subject taught by her was meant for those students only.
- 10.** Thus, he says that though appointed in normal section for the reason there being no segregation as per applicable rules, between normal and higher secondary sections, the writ petitioner was actually imparting training in the higher secondary section of the school. He has explained the reason therefore that at the very relevant point of time, the rule did not differentiate the teachers on the basis of his or her place of posting in either normal or higher section.
- 11.** As a result, irrespective of the educational qualification the teacher would be considered to be posted in the normal section only and the pay would have been decided on account of the educational qualification of the concerned person.
- 12.** Applying this principle to his client, Mr. Biswas says that the respondent authorities have appropriately rendered pay to the writ petitioner and there would be no error as to the same in the eye of law.

- 13.** Mr. Biswas, would be alleging regarding illegality, *mala fide*, and arbitrariness of the action of the respondent authorities by claiming refund of the so called overdrawn amount of Rs.4,01,740/- and withdrawal of the same from the writ petitioner.
- 14.** He would submit that neither the petitioner had any part played in fixation of her own scale of pay at the time of her induction nor during the long service period of the writ petitioner, there has been any dispute as regards the same. Therefore, subjecting the writ petitioner to such unreasonable and unlawful withdrawal of money would be amenable to an order of the Court, setting that aside.
- 15.** Mr. Biswas would rely on the following judgments in support of this contention.
- (i). The State of West Bengal & Ors. Vs. Sauvik Ghosh & Ors.** reported in **2008 (1) CLJ (Cal)**.
- (ii). Arup Kumar Sinha vs. State of West Bengal & Ors.** decided on **December 5, 2023**.
- 16.** Ms. Chakraborty, learned counsel being assisted by Ms. Munmun Tewary, has appeared through Video Conference on behalf of the State. She has supported the action of the respondent and the grounds thereof. On the basis of the written instructions received from the District Inspector of Schools (S.E.), Kolkata/respondent no. 4, she has submitted that petitioner's appointment as against normal section would be *de hors* the governing rules to allow the writ petitioner the higher scale of pay. She would specifically rely on the following portion of the said written instructions, which may be extracted as hereinbelow:-

“Service has been approved in normal vacancy. No separate post sanctioning memo. under the HS course has been furnished. Higher scale for M.A. in Political Science cannot be admitted in normal section. Steps be initiated for determination of excess drawal of salary and refund of the same prior to resubmission of the file. Pay be disbursed @Rs. 28760/- from Sep.2011 onwards, the excess drawal be calculated upto August 2011”.

- 17.** Let the written instructions be kept with the record.
- 18.** Ms. Chakraborty, learned counsel further submitted that since admittedly the petitioner was appointed in the normal section the higher scale of M.A., B.Ed qualification could not have been allowed to her.
- 19.** Accordingly, the concerned respondent has withdrawn the amount of Rs.4,01,740/- as was drawn in excess than what was the writ petitioner legible to be paid as salary. Regarding this action of the respondent authorities as above, according to Ms. Chakraborty, this Court would have no cogent ground to find any fault or interfere into the same. She submits that the writ petition may be dismissed.
- 20.** Admittedly, the petitioner was appointed as an Assistant Teacher in the school as named above, temporarily with effect from August 4, 1978 and has been subsequently made permanent with effect from August 9, 1979.
- 21.** At the time of her appointment, the writ petitioner was qualified with the degrees in M.A. and B.Ed. She was appointed in terms of the regulations governing such appointment at the relevant point of time.

- 22.** It appears that the governing regulations at the relevant point of time would provide for appointment in normal section only, there being no distinction promulgated therein on the ground of places of posting, that is, normal section and the higher secondary section, in a school. As a matter of fact, at the relevant point of time, there would be no bifurcation of the sections in a school like normal and higher secondary. The same was introduced by dint of the ROPA rules 1998 and not before.
- 23.** Therefore, since after her appointment the writ petitioner has been granted A-category scale of pay, commensurate to her educational qualification and rightly so. So far as the governing regulations on the relevant point of time the respondent authorities have done no wrong by relying on the same and allowing the writ petitioner A-category scale of pay in accordance with her educational qualification, in terms of the said regulations.
- 24.** The Court does not find any force in the submissions on behalf of the State respondent particularly that as instructed by the respondent District Inspector of Schools (S.E.), Kolkata and quoted above. It is seen from the records and also an admitted fact that the writ petitioner has been employed in the said school for a prolonged period, for more than thirty years. During the entire period there has not been any dispute as regards the scale of pay enjoyed by the writ petitioner. In such view of the fact, the claim of the respondent authorities at the fag end of her career regarding erroneous application of A-category scale of pay appears to be hopelessly belated and not maintainable.
- 25.** The Courts including the Apex Court time and again have deprecated the practice of subjecting a teacher at the fag end of his

or her career, disallowing him from the grant of pay as has been allowed to him during his entire service period. The case of **State of Punjab & Ors. vs. Rafiq Masih** reported in **(2015) 9 SCC 334** may be mentioned in support of this contention, the relevant portion whereof is quoted hereinbelow:-

“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.”

26. In the judgments as referred to on behalf of the writ petitioner as mentioned above, the same principle has been enunciated and the same squarely applies to the case of the present writ petitioner also.

27. On the discussion as above, this Court finds that the writ petition should succeed. The alleged demand and withdrawal of the so called over drawn amount of Rs.4,01,740/- from the writ petitioner, would not be in conformity of law, thus arbitrary and not maintainable.

28. Hence, the writ petition being WPA 19689 of 2017 is **allowed and disposed of** along with the pending applications, if any, with the following directions.

- (i) The respondent Authority/respondent no. 2 shall immediately refund to the writ petitioner, the withdrawn amount to the tune of Rs.4,01,740/-.
- (ii) The concerned respondent authority shall issue a revised Pension Payment Order in supersession of that already issued to the writ petitioner, indicating the actual last drawn salary of the writ petitioner therein, as her last pay, instead of Rs.2,87,60/- as has been mentioned.
- (iii) The concerned respondent no. 2 shall immediately effect refixation of pension of the writ petitioner in accordance with the last pay drawn by the writ petitioner.

- (iv) Arrear if any, according to the rate of pension, so refixed, shall be paid to the writ petitioner, within a period of four weeks from the date of this judgment.
- (v) The entire exercise as above shall be concluded by the concerned respondent authority within a period of ten days from the date of service of copy of this judgment, excepting payment of arrears, if any, which would be paid in term of para 28(IV) of this judgment.

29. Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)