

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

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

WPA 19883 of 2022

**Debal Kishore Chakraborty
Vs.
State of West Bengal & Ors.**

For the Petitioner : Mr. Tanmay Chowdhury,
: Mr. Sarwar Jahan,
: Ms. Ritoprita Ghosh.

For the State Respondent : Mr. Pinaki Dhole,
: Ms. Tapati Samanta.

Heard on : 14/05/2024

Judgment on : 14/05/2024

Rai Chattopadhyay, J.

1. Impugned in the writ petition, is a letter issued by the Sub-Inspector of School, Uttarpara Circle (Primary)/respondent no. 7, dated August 18, 2022, to the writ petitioner stating *inter alia* therein that the petitioner would not be eligible for 'A' category scale of pay, with effect from January 15, 1997, as per G.O No. 352-SE (pry), dated May 31, 1996. Therefore, his basic pay has been reduced and he has been asked to refund the overdrawn amount.
2. Writ petitioner's case is that neither the scale of pay, as was allowed to him at the time of his induction in the service, has been erroneous nor any amount of money has been overdrawn by him during his entire career, as alleged. Thus, he challenges the decision of the said respondent, informed vide the impugned letter dated August 18, 2022.

3. The relevant facts necessary for proper disposal of this case are as follows:-
4. The petitioner was appointed vide letter dated January 7, 1997 as an Assistant Primary Teacher and joined in service, on January 15, 1997. At the time of his induction in service, he was qualified with B.A. and B. Ed. Degrees and since inception he has been allowed the 'A' category scale of pay.
5. During the entire service life, the petitioner has been transferred thrice, that is, in the years 2000, 2003 and 2007. He has ultimately retired with effect from February 28, 2023, on attaining the age of superannuation.
6. At the fag end of his career, the impugned letter was issued to him on August 18, 2022, which if allowed to stand would effect diminishing the scale of pay of the writ petitioner to the lower category with effect from January 15, 1997, and thus the salary so far drawn by him would be considered to be in excess and he would be duty bound to refund such excess amount of the money.
7. The questions involved in this writ petition which fall for determination of this Court are, (i) Whether the scale of pay allowed to the writ petitioner since inception of his career would be liable to be reduced citing the provisions of Government Order dated May 31, 1996, as above;

(ii) That, whether the petitioner would be eligible to the 'A' category scale of pay from the date of his appointment or not in terms of the said Government Order;

(iii) Whether the writ petitioner would be considered to have overdrawn wages on the basis of a scale of pay which was not to be allowed to him;

(And) (iv) whether the writ petitioner would be liable to refund any overdrawn amount as alleged.

8. Mr. Chowdhury has appeared on behalf of the writ petitioner. He has submitted categorically that according to the qualification of the writ petitioner, he has been allowed 'A' category scale of pay since the date of his appointment. He further states that throughout entire service career of the writ petitioner there has not been any dispute with regard to such scale of pay enjoyed by the writ petitioner. He submits further that in that view of the facts, the decision of the authorities vide the impugned letter dated August 18, 2022, is so belated that if it is allowed to stand, shall violate the petitioner's vital fundamental and constitutional rights of life.
9. Mr. Chowdhury says that a proper interpretation of the Government Order dated May 31, 1996, would not render to bring the writ petitioner's case in its cover. It is an erroneous application of the notification in case of his client, he says. He says that showing the provision of the notification dated May 31, 1996, to curtail the existing benefits of service to the writ petitioner, is only arbitrary and perverse. Such an arbitrary and perverse ground to adversely affect whatever benefit the writ petitioner has been enjoying so far, would vitiate the purported action of the respondent authority as indicated in the impugned letter dated August 18, 2022.
10. Mr. Chowdhury has further relied on the text in the notification No. G.O No. 352-SE (pry), dated May 31, 1996. On the basis of Clause 4 of the same, he says that the cases of primary teachers who have obtained B. Ed. Degree before July 1, 1996, has been directed therein, to be decided in terms of memo dated February 7, 1967, of the DPI, West Bengal. He says that the writ petitioner has been duly considered in terms of the

said memo and thus also in conformity with the stipulations made in the notification dated May 31, 1996. Therefore, the respondent authorities have acted beyond jurisdiction and also arbitrarily while declining his entitlement under the aforestated memo as well as what has been extended to him till date.

11. He insists that the writ petition may be allowed.
12. Mr. Dhole is representing the respondent authorities. Mr. Dhole has focused his argument mainly on the provisions of the notification dated May 31, 1996, as mentioned above. He indicates that according to the proper interpretation of Clause 4 of the said notification, the writ petitioner cannot be considered to be eligible for 'A' category scale of pay from the date of his appointment. He further indicates that according to the said notification the writ petitioner, who has joined in service in the year 1997, should be considered to be governed under Clause 3 of the said notification, which is as follows:-

“3. The undersigned is accordingly directed by order of the Governor to say that for the purpose of sanction of pay scale to a Primary School teacher as Trained Matriculate/School Final/Madhyamik Passed or equivalent. The Primary Teachers Training Certificate only from a recognised Primary Teachers Training Institute of this State shall be accepted w.e.f. 1.7.96.”

13. Therefore, according to Mr. Dhole there has been an error, committed on the part of the respondent authorities in allowing the writ petitioner 'A' category scale of pay from the date of his appointment. He says that the same is required to be fixed. He says further that for this purpose the letter dated August 18, 2022, has been issued to him and as there has been overdrawn amount during all these years by the writ petitioner the same has been requested to be refunded.

14. According to Mr. Dhole there would not be any cogent ground in this case for the same to be entertained by the Court. Hence, it is submitted that writ petition may be dismissed.
15. The writ petitioner had obtained B. Ed. Degree on April 16, 1993. He was appointed in the year 1997, that is, on January 15, 1997.
16. The concerned memo is G.O No. 352-SE (pry), dated May 31, 1996, which speaks about the entitlement of the primary school teachers to the 'A' category scale of pay, pursuant to their B. Ed. Degrees. The provisions are at Clause 3 and 4 thereof, which may be quoted herein below:-

“3. The undersigned is accordingly directed by order of the Governor to say that for the purpose of sanction of pay scale to a Primary School teacher as Trained Matriculate/School Final/Madhyamik Passed or equivalent. The Primary Teachers Training Certificate only from a recognised Primary Teachers Training Institute of this State shall be accepted w.e.f. 1.7.96.

4. The undersigned is further directed to say that the cases already decided on the basis of the memo No. 306-Sc/P dated 7.2.67 of D.P.I., West Bengal need not be reopened. Also the cases of the Primary School teachers who have obtained BT/B.Ed/PGBT degree/diploma before 1.7.96 may be decided in terms of the said memo dated 7.2.67 of the DPI, West Bengal.”

17. It is seen that Clause 3 has provided that a Primary Teachers Training Certificate from the State based recognised Primary Teachers Training Institution has been made acceptable, with effect from July 1, 1996.
18. To deal with the cases pertaining to the years previous to July 1, 1996, Clause 4 of the same, shall come to aid. It has been stipulated that the cases already been decided finally in terms of memo of the D.P.I, West Bengal dated February 7, 1967, are not to be reopened. The portion thereof particularly relevant in this case is the second line of Clause 4, that is, Primary school teachers who have obtained B. Ed. Before July 1, 1996, would be governed in terms of the same memo of D.P.I, West Bengal, that is, dated February 7, 1967.

- 19.** Admittedly, the writ petitioner obtained B. Ed. degree, in the year 1993. Thereafter he got employment in the year 1997.
- 19A.** According to Mr. Dhole's arguments, since the petitioner has been appointed in 1997, i.e, after the cut off date mentioned in the said G.O No. No. 352-SE (pry) dated May 31, 1996, which is 01.07.1996, his case could not have been considered as per the government order dated February 7, 1967. This is however, an over simplified way to look at and assess the facts of this case. How can the respondents overlook value of the degree of the petitioner, citing some grounds, which are somewhat technical in nature. That is not the purport of the Notification dated May 31, 1996.
- 20.** If the argument on behalf of the respondent authorities is to be accepted, it would result to non-acceptance of the degree of the petitioner and not recognising his training qualification. Mr. Dhole, suggests that in terms of the said Notification dated May 31, 1996, for primary teachers, training certificates/degree is acceptable only after July 1, 1996. Since the petitioner who has been appointed in 1997, has obtained the B. Ed. Degree prior to July 1, 1996, the same would not be recognisable for granting him the corresponding enhanced scale of pay.
- 21.** The submission is however not acceptable as that would create an anomalous situation, illogically differentiating between two groups of people who are otherwise similarly placed. That would be in derogation of the scheme of the principles of equality as enshrined in the Constitution of India.
- 22.** As the cases of primary teachers having obtained training certificates on and from July 1, 1996 has been dealt with in Clause 3 of the notification as above, those prior to the said date has been dealt with adequately in Clause 4 of the said notification. So far as the case of the writ petitioner

is concerned, the same would be covered by the stipulation made in clause 4 of the notification, that a primary teacher, who obtained a B. Ed. Degree, before July 1, 1996, would be covered and governed under the memo of the D.P.I, West Bengal, dated February 7, 1967. A proper interpretation of Clause 4 of the said notification would be that, a person, irrespective of the date when he has been inducted as a teacher, would be granted value of his qualification, even the degree has been obtained before July 1, 1996.

- 23.** It is not the scheme of the said above notification to decline recognition of a special qualification of a person like a B. Ed. Degree. Therefore, in the considered opinion of the Court, the issue relevant in the said notification dated May 31, 1996, has been the date of obtaining the degree and not the date of appointment of the petitioner. The person may be appointed after July 1, 1996, like the present writ petition, and having qualified B.Ed. Course and obtained a degree prior to the said cut off date. The motto is not to overlook such special qualification of a person, even if he is appointed after the cut off date of July 1, 1996. The motto is only otherwise, that is, to give due recognition of the training qualification of the person in terms of the previous memo dated February 7, 1967 and grant him the higher scale of pay on the basis of the same.
- 24.** Thus, the Court finds that the action of the respondent authority in allowing writ petitioners 'A' Category scale of pay, since the date of his induction in service, is only in due compliance with the Government Orders as discussed above. There would not be any scope to find that any error has ever occurred in allowing the scale of pay to the writ petitioner as was granted to him on the basis of his qualification, right from the date of his appointment. Therefore the finding of the respondent authority and directions thereof as contended in the impugned letter dated August 18, 2022, appears to be not proper but

wrongful, rather dehors the settled rules in this regard and thus illegal. The submission made on behalf of the writ petitioner that pay fixation of the writ petitioner has been made in terms of the existing guideline, inspires confidence of the Court.

25. A verdict of the Hon'ble Supreme Court may be mentioned here, that is, reported in **(2015) 9 SCC 334 (State of Punjab & Ors. vs. Rafiq Masih)**. The Court decided there the parameters of recovery (of an excess amount paid to an employee), which if overstepped, would breach the obligations of the State and render its action as arbitrary and violation of Article 14 of the Constitution. The relevant portion is extracted herein below:-

***“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.”

- 25A.** The ratio thereof squarely applies in petitioner's case. The petitioner, understandably could play no role in fixation of his pay scale. There has not been any upheaval, with regard to the same, during his entire service period. At the very fag end of his career he has been directed to refund the entire sum of money which is allegedly said to be an overdrawn salary. Firstly, we could see that the same cannot be called to be an overdrawn amount, as alleged. Also, that the purported demand of the respondent authority, is hopelessly belated, which could see the light of the day, only few days before cessation of petitioner's service life. It is much more than a mere hardship to the petitioner. A prospective retiree, would be taken completely out of guard, that too, absolutely without any prior notice. This renders the action of the respondents to be gross arbitrary. Respondent's inaction for a prolonged period of time in this regard, would make it perverse too.
- 26.** On the discussion as above the writ petition should succeed. The issues framed, as above, stand accordingly answered.
- 27.** The writ petition no. WPA 19883 of 2022 is allowed and disposed of with the following direction:-
- (i)** Demand issued by the respondent no. 7 vide letter dated August 18, 2022, is set aside;
 - (ii)** Since the writ petitioner has already been superannuated, let fixation of his pension be immediately made in terms of the last pay drawn by the writ petitioner;
 - (iii)** Pension payment order and/or revised pension payment order shall immediately be issued within a period of 10 days from the date of communication of this order;

- (iv) In case of issuance of revised pension payment order, the respondent authority shall disburse the arrear amount of pension, according to the revised scale of pension and pension payment order, with effect from the date of superannuation of the writ petitioner, till the date of actual payment thereof, but not later than 30 days from the date of service of copy of this order.

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

(Rai Chattopadhyay, J.)