

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble PARTHA SARATHI SEN

WPA 23854(W) of 2017

Rekha Banerjee & Ors.

-Vs-

The Chairman, Coal India Ltd. & Ors.

For the Petitioners: Mr. Arup Kumar Lahiri, Adv.,
Mr. Subrata Bhattacharyya, Adv.

For the respondent nos. 3, 4 & 6: Mr. Soumya Majumder, Adv.,
Mr. Victor Chatterjee, Adv.,
Mr. Ranjit Talukder, Adv.,

Hearing concluded on: 07.02.2024.

Judgment on: 16.02.2024.

PARTHA SARATHI SEN, J. :-

1. In this writ petition as filed under Article 226 of the Constitution of India the writ petitioners being the legal heirs and successors-in-interest of one Mahadeb Banerjee, since deceased while disputing the correctness and legality of the office order dated 14.03.2006 vide reference no.ECL/FINANCE/CA/2015-16/ has prayed for issuance of Writ of Mandamus directing the respondents to revoke and/or cancel and/or withdraw the said order dated March 14, 2016 with further direction for calculating the legitimate dues of the said Mahadeb Banerjee, since deceased.

2. In support of the instant writ petition Mr. Lahiri, learned advocate for the petitioners at the very outset draws attention of this Court to the

order dated 14.03.2016 as passed by the respondent no.3 regarding retiral benefits and other dues including arrear salary of the deceased, Mahadeb Banerjee. It is contended that though such order dated 14.03.2016 has been passed in compliance to the order of a Co-ordinate Bench as passed in WP no.11903 (W) of 2009 the said order is absolutely arbitrary in view of the fact that in the said order dated 14.03.2016 the predecessor-in-interest of the present writ petitioners has been described as Assistant Teacher with a sole intention to deprive him to get pay scale of a Head Master. Drawing attention to page nos.88 and 95A it is argued by Mr. Lahiri that from the aforesaid two documents which has been issued by Moira Colliery Junior High School, which is a school owned and controlled by respondent no.6/Organization it would reveal that the said Mahadeb Banerjee, since deceased was working as Head Master of the said school.

3. In course of his argument Mr. Lahiri further contended that since during the life time of Mahadeb Banerjee, he was illegally terminated, the said Mahadeb Banerjee, since deceased filed a Title Suit against the respondent nos. 5 and 6 praying for a declaration that he is a direct employee under the defendant/ respondent no.6 and have to get his name restored in the master roll of the defendant/respondent no.6 and is entitled to get salary, etc. It is argued that the said suit was decreed by the learned trial court declaring that the said Mahadeb Banerjee, since deceased is a direct employee of the defendant/ company with a further declaration that he is entitled to recovery of all benefits carrying with the

service as provided to the other employees of the defendants'/respondents' company.

4. According to Mr. Lahiri the said suit was carried to appeal however, both in the First Appellate Court as well as in the Second Appellate Court the judgement and decree as passed by the learned trial court was upheld. In course of his submission Mr. Lahiri also draws attention of this Court to the judgment as passed by a Co-ordinate Bench in SA no.709 of 1993. It is contended that the said Co-ordinate Bench while disposing the said Second Appeal has been pleased to hold the following:-

“It is not in dispute the teachers of the school are not at all workmen as defined in the Industrial Disputes Act, 1947. But as per above protection, the teachers were absorbed as employees of the Government Company i.e. Eastern Coalfields Ltd. with effect from 01.05.1973 under Section 14(2).”

5. Drawing attention to the memo under challenge dated 14.03.2016 it is contended that the respondent no.6 while passing the said office order has failed to visualize that the deceased, Mahadeb Banerjee being the teacher of the said school ought to have been considered as an employee of the aforementioned school and therefore fixation of the pay of deceased ought to have been fixed at par with the Clerical Grade I with effect from May, 1973.

6. It is further argued by Mr. Lahiri that while passing the aforementioned order under challenge the authority has equally failed to visualize that in the case of the predecessor-in-interest of the present writ petitioners the terms of National Coal Wage Agreement ('NCWA' in short)

ought to have been applied. In course of his submission Mr. Lahiri places his reliance upon the following reported decisions:-

- i. ***Asha Sharma Vs. Chandigarh Administration and Ors.* reported in (2011) SCC 86;**
- ii. ***Shajan T. Oommen vs. Lieutenant Governor & Ors.* reported in 2009 (4) CHN 710;**
- iii. ***The State of Assam and Anr. vs. Raghava Rajgopalachari* reported in 1972 SLR SC 915;**
- iv. ***Kanachur Islamic Education Trust vs. Union of India and Anr.* reported in 2017 (8) Supreme 684;**
- v. ***Bangalore Development Authority vs. Vijaya Leasing Ltd. and Ors.* reported in (2013) 14 SCC 737;**
and
- vi. ***Netram Sahu vs. The State of Chattisgarh and Anr.* reported in 2018 (3) Supreme 41.**

7. It is however contended by Mr. Lahiri that though in the instant writ petition the writ petitioners have prayed for a direction upon respondents to treat their predecessor-in-interest, Late Mahadeb Banerjee as a graduate teacher but for the present the writ petitioners are pressing for the benefit of fixation of pay of their predecessor-in-interest as an 'Assistant Teacher' which according to Mr. Lahiri must be at par with Clerical Grade I employees.

8. Per contra, Mr. Majumder, learned advocate for the respondents while drawing attention to the memo under challenge contended that in the earlier writ petition being WP 11903 (W) of 2009 a Co-ordinate Bench of this Hon'ble Court came to a finding that Mahadeb Banerjee, since deceased was an Assistant Teacher on and from 14.09.1973 and

challenging the said order, no appeal has been preferred by the present writ petitioners and thus the finding of the Co-ordinate Bench with regard to the designation of the deceased as an 'Assistant Teacher' has reached its finality and therefore the present writ petitioners cannot claim fixation of pay of their predecessor-in-interest at par with a Head Master/Head Teacher. Drawing attention to the photocopy of the certified copy of the judgement and decree as passed by the learned trial court in Title Suit no. III of 1978, the photocopy of the certified copy of the judgement as passed in Appeal no.32 of 1981 by the learned First Appellate Court and the judgment of the Co-ordinate Bench as passed in the SA no.709 of 1993, it is argued on behalf of the respondents that though in the said series of litigation it was constantly held that Mahadeb Banerjee, since deceased was an employee under respondent no.6 but nowhere it has been stated that the plaintiff of the said suit is to be treated as a clerk and his pay scale should be equivalent to Clerical Grade I of the respondent no.6/Organization as per terms of NCWA. It is thus submitted by Mr. Majumder that the finding of the respondent no.3 in the impugned memo is thus perfectly justified and thus requires no interference from this Court. Drawing attention to prayer 'B' of the writ petition it is further argued by Mr. Majumder that such prayer is hit by '*Doctrine of Election*' inasmuch as the writ petitioners had made an endeavour to execute the decree as passed in Suit No.III of 1978 through this Writ Court which is not permissible in the eye of law. In course of his submission Mr. Majumder places his reliance upon the following reported decisions:-

- i. ***Syed Yakoob vs. K.S Radhakrishnan and Ors.*** reported in **AIR 1964 SC 477**;
- ii. ***Miss A. Sundarambal vs. Government of Goa, Daman & Diu and Ors.*** reported in **AIR 1988 SC 1700**;
- iii. ***National Highway Authority of India vs. Sheetal Jaidev Vade and Ors.*** reported in **2022 SCC OnLine SC 1070**;
- iv. ***K.S Rashid and Son vs. The Income Tax Invedstigation Commission Etc*** reported in **AIR 1954 SC 207**; and
- v. ***Dr. Rai Shivendra Bahadur vs. Governing Body of the Nalanda College, Bihar Sharif and Ors.*** reported in **AIR 1962 SC 1210**.

9. This Court has minutely gone through the entire materials as placed before this Court. This Court has also given its anxious consideration over the submissions of the learned advocates for the contending parties. This Court has also perused the reported decisions as cited from the Bar.

10. Since in course of his argument Mr. Lahiri submits before this Court that for the present, the present petitioners are not pressing for the benefit as given to a graduate teacher in case of their predecessor-in-interest Mahadeb Banerjee, since deceased, this Court shall only consider as to whether the respondent no.3 is at all justified in holding that the said Mahadeb Banerjee, since deceased being an 'Assistant Teacher' of a school under respondent no.6 is not entitled to get the benefit of scale of pay equivalent to clerical grade I of the respondent no.6/Authority. It is

however pertinent to mention herein that in WP No.11903(W) of 2009 a Co-ordinate Bench of this Hon'ble Court while disposing the said writ petition came to a finding that the said Mahadeb Banerjee, since deceased was an Assistant Teacher of the school under respondent no.6 and therefore directed the authorities to pay the arrear salaries, superannuation and other benefits to the petitioners being the legal heirs of the said teacher. Since, the said finding of the Co-ordinate Bench with regard to the designation of the writ petitioner has not been carried in appeal, such finding has become final as rightly pointed out by Mr. Majumder, learned advocate and therefore there is no scope to reopen the same in order to maintain judicial propriety. On perusal of the certified copy of the judgment and decree as passed in Title Suit no.III of 1978 it appears that the predecessor-in-interest of the writ petitioners had prayed for a declaration that he is a direct employee under the defendants/ respondent nos. 2 and 6 herein along with some other ancillary reliefs and the said suit was decreed on contest. Before the Learned First Appellate Court the said judgement of the learned trial court was upheld and the matter was carried to this Court in Second Appeal.

11. As discussed above in course of his argument Mr. Lahiri, learned advocate for the writ petitioners contended that in the judgement of the said Second Appeal more specifically in internal page no.13 thereof the Co-ordinate Bench while disposing the said second appeal expressed the following view:-

“.....
When no such measure was taken for termination of the service up to the specified date that is on 01.08.1973, the plaintiffs/respondents were obviously treated as employees of the Government company after the specified date. Thereafter their names were struck off from the rolls of the company only to cut off the benefits which are given to the other employees of the colliery in the same category that is the clerical category of the establishment of the colliery. Such striking of the names of the plaintiffs/respondents from the rolls of the company does not amount to termination at all from service. In fact, the plaintiffs/respondents have been continuing their work in the said school. So as per Section 14(2) of the unamended Act of 1973 the plaintiffs/respondents became employees of the Government company.”

12. Placing reliance upon the said portion of the judgement Mr. Lahiri contended that when in the said Second Appeal a Co-ordinate Bench of this Hon'ble Court expressly held that Mahadeb Banerjee, since deceased was a clerical employee under the respondent no.6, the respondent no.3 ought not to have arbitrarily passed the said Order under Challenge dated 14.03.2016 holding that the said Mahadeb Banerjee's (since deceased) salary cannot be fixed in Clerical Grade I scale.

13. This Court is in respectful disagreement with the submission of Mr. Lahiri, learned advocate for the writ petitioners since the said portion of the judgement as passed SA 709 of 1993 is hit by *Doctrine of Per Incuriam* inasmuch as before the learned trial court the said Mahadeb Banerjee, since deceased being the plaintiff had never sought for any declaration that he is entitled to similar pay scale to a Clerical Grade I of the respondent no.6/Company. Even in the operative portion of the said

judgement as passed in SA 709 of 1993 the Co-ordinate Bench of this Hon'ble Court expressed the view that the present writ petitioners' predecessor-in-interest is entitled to get his salary as per norms of salary, wages and other service benefits as admissible to the employees of a Government Company. On close scrutiny of the order under challenge it further appears to this Court that the respondent no.3/ Authority all along considered the said Mahadeb Banerjee, since deceased as an employee of the respondent no.6 in the rank of Assistant Teacher and accordingly proceeded to pay arrears of salaries and retiral benefits in accordance with the scale of pay as available to an Assistant Teacher of the respondent no.6/ Authority.

14. In absence of any cogent materials that an Assistant Teacher of the respondent no.6/ Authority is entitled to get similar scale of pay of Clerical Grade I, this Court finds no merit in the instant writ petition. The reported decisions as cited from the side of the writ petitioners in considered view of this Court have been delivered in completely different contexts and those are thus distinguishable from the facts and circumstances as involved in the instant case.

15. As a result the instant writ petition fails and is dismissed on contest. However, there shall be no order as to costs.

16. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)