

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

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

W.P.A. No. – 27518 of 2022

IN THE MATTER OF

Nabarun Debnath & Anr.

Vs.

The State of West Bengal & Ors.

**For the Petitioners : Mr. Debabrata Acharyya, Adv.,
Sk. Samsul Aferin, Adv.,
Mr. Sital Samanta Adv.,**

For the State respondent : Ms. Tuli Sinha, Adv.

**For the respondent Nos.
5,6 &7 : Dr. Chapales Bandyopadhyay, Adv.
Ms. Atmaja Bandyopadhyay, Adv.,
Ms. Gargy Basu, Adv.,
Ms. Anandamoyee Dutta Adv.**

Reserved on : 17.05.2024

Judgment on : 14.06.2024

Subhendu Samanta, J.

1. Present petitioners are permanent staff of Netaji Subhas Open University (hereinafter referred as NSOU). Both of them were appointed by the process of direct recruitment at the post of Personal Assistant duly advertised through memorandum dated 29.03.2018. (For petitioner no. 1) and dated 05.12.2018 (for petitioner No. 2)

2. Petitioner No. 1 and 2 has joined the post of Personal Assistant at NSOU. This is the case of the petitioners that the

advertisement regarding the appointment of Personal Assistant mentioned the scale of pay as Rs. 9,000/--- 38,3,00/- with grade pay of Rs 4,600/-. After their appointment the Registrar of NSOU issued fixation orders in respect of the petitioners. However the Finance Officer of NSOU on 17.07.2020 issued a note sheet whereby grade pay for the post of Personal Assistant is revised from Rs. 4,600/- to Rs. 4,400/. Thereafter on 22.07.2020 on the strength of the note, the Registrar, NSOU along with the opinion of the Vice Chancellor of NSOU, revised of grade pay for the post of Personal Assistant of NSOU and initiated steps for recovery of excess drawn from the present petitioners. However on the same day a corrigendum of appointment letters of the present petitioners were issued by the Registrar NSOU.

3. This is the fact of the petitioners that, the petitioners had placed representation to the Registrar of NSOU regarding such revision of grade pay. Thereafter the Registrar of NSOU issued letter to the Special Secretary to the Government of West Bengal regarding the clarification of scale of pay for the post of Personal Assistant. The Registrar of NSOU also made correspondence with the Assistant Secretary Government of West Bengal, Department of Higher Education, University Branch regarding the determination of scale of pay for the post of Personal Assistant of the university.

4. It is the further case of the petitioners that the Vice Chancellor of NSOU also issued a letter to Special Commissioner Government of West Bengal determined of Higher Education, University Branch with regard to the pay scale for the post of Personal Assistant appointment by direct recruitment basis of other university be treated as equal to the direct recruitee in the post of Personal Assistant of NSOU. Thereafter on 27.07.2022 the Assistant Secretary Government of West Bengal Department of Higher Education University Branch, issued memorandum regarding the final determination of scale of pay for the post of Personal assistant of NSOU.

5. Being aggrieved by the said memorandum dated 27.07.2022 the writ petition has been preferred seeking specific direction upon the respondent to set aside the memorandum dated 27.07.2022 and for ancillary/corresponding relieves.

6. Learned Advocate for the petitioner submits that the respondent authorities in an arbitrary way revised the grade pay of the petitioners for the post of Personal Assistant from Rs. 4,600/- to Rs. 4,400/-. He further submits that the petitioners are the direct recruitee of NSOU through the specific memorandum of NSOU after having accord from the Finance Department Government of West Bengal. The specific scale of pay with the grade pay for the appointment to the Post of Personal Assistant has been mentioned in the said notification/memorandum. The decision of deduction of grade

pay is absolutely arbitrary. He further submits that educational qualification, evaluation of duties, responsibilities of post of Personal Assistant at NSOU and Personal Assistant of other Universities are equal and equivalent. Therefore the petitioners are entitled to receive the same benefit including the grade pay for the post of Personal assistant like the other Universities.

7. Learned Advocate for the petitioner further clarified that there is no provision in the NSOU for appointment and to provide for promotion from the post of Junior Stenographer to Senior Stenographer to the post of P.A.; therefore, the GO as referred, is not at all applicable in the present case. The Learned Advocate for the petitioner further argued that the University Authority in a arbitrary manner deducted a lump some amount from the salary of the petitioners on the score of over payment of grade pay. The University Authority deducted the alleged excess amount of grade pay from the monthly salary of the petitioners at a time, without giving any prior intimation to the petitioners and also without giving any opportunity of hearing to the petitioner which is absolutely violating principle of natural justice.

8. Learned Advocate for the petitioners further argued that the act/ actions of the respondent Authorities are of an illegal and colourful exercise of power so the impugned memo dated 27.7.2022 is liable to be set aside. In support of his

contention the Learned Advocate for the petitioner has cited some decisions reported in

i) Surinder Singh and Anr. Vs. The Engineer in Chief, CPWD and Others, AIR 1986 SC 584

ii) Bhagwan Dass and Ors. Vs. State of Haryana and Ors. (1987) 4 Supreme Court Cases 634

9. The University Authorities being respondent No. 5,6 and 7 used affidavit- in- opposition against the writ petition. It is the case of the respondent No. 5,6 and 7 that the instant writ petition is not maintainable in its present form and prayer the affidavit portion at the end of the writ petition was sworn by the petitioner No. 2 himself the affidavit does not disclose that the writ petition was filed on behalf of petitioner No. 1, thus the writ petitioner is liable to be dismissed in limine. It is the further case of the respondent No. 4 to 6 that NSOU was established by West Bengal Act (XIX) of 1997 after bifurcation of Netaji Subhas Institute for Asian Studies (NIAS). The employers were absorbed from NIAS to NSOU, subsequently entitled to the benefit under the Career of Advancement Scheme (CAS) and as a remit GP of such employee revised to Rs. 4,600/- as a Second Promotional Post however, without any alternation in the scale of pay which remained the same. It is the further case of the respondent No. 4 to 6 that Stenographers of NIAS absorbed in NSOU re- designated as Personal Assistant on the basis of options given and placed in

the basic PB of Rs 9,000/-- 28,300/-with GP of Rs 4,400/-. Subsequently, such employees under CAS benefit upgraded to GP of Rs 4,600/- as second promotional post on 14.03.2009 vide memo dated 15.06.2009. It is the positive fact of the respondent 4 to 6 that at the time of appointment the petitioners were given BP of Rs. 4,600/- .

10. The respondent No. 5 to 7 also admitted that advertisement for the recruitment for the post of personal assistant also mentioned GP as Rs. 4,600/- They further stated that before confirmation such mistake in- advertently made so detected on the basis note of the Finance Officers and the error was rectified accordingly. It is the further case of the respondent No. 5 to 7 that subsequently after rectification of administrative error occurred due to inadvertence, the petitioners were informed accordingly, and excess amount paid to the petitioner were recovered from their salary. The entire matter was placed before the Government through the Registrar as well as Vice Chancellors of University. The Department Higher Education, University Branch vide notification dated 27.07.2022 has clarified the position that admissibility of GP of Rs. 4,600/- is only for second promotional post the basic post would be with GP of Rs 4,400/-. It is the agreement of the university that the administrative error occurred due to the inadvertence is always

subject to rectification upon detection and the same major of rectification of errors were made in respect of the petitioners.

11. The Government Authority did not use any affidavit, however, by the direction of this court the Government of West Bengal submitted a report. The report contained that at the time of formation of NSOU.....

1. That at the time of formation of Netaji Subhas University, 6 post of Stenographer were created in the pay scale of Rs. 1500-3320 vide order no 693-Edn(U) dated 01.12.1998.

2. In terms of order no 3925-F(P) dated 10.05.2012 the Stenographer cadre of all State aided Universities were brought in the following uniform structure:-

Sl. No.	Name of the post	Pre-revised Scale	Mode of recruitment	Ratio
1	Personal Secretary	Pay Band of Rs 9000-28300 with GP-4800	3rd Promotion	1
2	Personal Assistant	Pay Band of Rs 9000-28300 with GP-4600	2nd promotion	2
3	Senior Stenographer	Pay Band of Rs 9000-28300 with GP-4400	1st promotion	6.5
4	Junior Stenographer	Pay Band of Rs 7200-25400 with GP-4100	Direct Recruitment	6.5

3. That there is no scope for direct recruitment is the post of Personal Assistant in any State aided University.

4. That at the time of Appointment petitioners were given Grade pay of Rs 4600 which is not in order because the entry level Grade Pay should have been Rs. 4100/-

12. Learned Advocate for the State submitted that the filling up the post by the University Authority to the Post of Personal Assistant through the direct recruitment in grade Pay of Rs. 4,600/- is not in order. It is the further case of the state that the concern University Authorities filled up three vacancies through direct recruitment initially in pay band of Rs. 9,000/- 28,300/- with grade pay of Rs. 4,600/- and later modified the pay scale of Rs. 9,000/- to 28,300/- with grade pay of Rs. 4,400/- which may be accepted as *Fait Accompli* with a direction to follow the notification in future. It is the positive case of the state that the petitioners are not entitled to the grade pay of Rs. 4,600/-

13. Learned Advocate for the petitioner in reply to the report of the state submitted an affidavit-in-reply containing inter alia that

With reference to the statement made in Paragraphs No. 3 (VIII) to 3 (XII) of the said Opposition, I deny and dispute the entire allegations made therein. I put the Respondents to strict proof thereof. I say that in serial no. 6 of the Notification being dated 27.06.2022 issued by the Assistant Secretary to the Government of West Bengal, Department of Higher Education, University Branch should be an issue for future Recruitment. The action of the Respondent University Authority to modify the Scale of Pay of Rs. 9,000/- to Rs. 28,300/- with accompli" in respect of Direct Recruitment in the Post of Personal Assistant in terms of the Advertisement being Notification No. Reg/222, dated 29.03.2018 and Reg/1241, dated

05.12.2018. 1 and the Petitioner No. 1 of the instant Writ Application have been appointed directly to the Post of Personal Assistant in Netaji Subhas Open University and also I and the Petitioner No. 1 of the instant Writ Application both are performing duties in the Post of Personal Assistant. Therefore, the Scale of Pay should be fixed in Serial No. 4 (c) as in the said Notification, dated 27.06.2022 issued by the Assistant Secretary to the Branch. The decision of the Respondent University Authority to reduce the Notification, dated 27.06.2022 issued by the Assistant Secretary to the Branch. I and the Petitioner No. 1 of the instant Writ Application have not been appointed in the Post of Senior Stenographer to the Respondent University. both Advertisements, it was cleared that Respondent University Authority sought Service from Personal Assistant due to eligibility, educational qualification, experience and other desirable and essential qualifications not matched with the Post of Senior Stenographer. In all other State Aided Universities, incumbents in the Post of Personal Assistants are getting Rs. 4,600/- as Grade Pay

14. The respondent authority of the state also submitted that the instant writ is not maintainable as two petitioners were appointed through different memorandum of advertisement and they have separate cause of action. Both the petitioner cannot jointly file a single writ petition.

15. During the arguments the University Authorities (Respondent 5,6,7) as well as the petitioners filed separate written notes of arguments.

16. Heard the Learned Advocates. Perused the written notes of argument also perused the impugned memorandum of Government of West Bengal dated 27.07.2022 the memorandum is set out as follows:

1. At the time of formation of Netaji Subhas Open University (NSOU) by bifurcating NIAS, along with other posts, 06 posts of Stenographer were created in the then

Pay Scale of Rs. 1500-3320/- vide Order No. 692-Edn(U) dated 01/12/1998 and 03 incumbents of NIAS were absorbed in NSOU in that Pay Scale.

2. After revision of Pay Scale vide Order No. 10570-F(P) dated 25/11/2009, such Pay Scale was revised to PB of Rs. 9000-28300/- with GP Rs. 4400/- and those 03 incumbents were drawing either Grade Pay Rs. 4400/- or Rs. 4600/- by way of CAS benefit

3. In terms of order No. 3925-F(P) dated 10/05/2012, the Stenographer Cadre of all the State aided Universities was brought in structural form with (i) Pay Band of Rs. 7200-25400/- with GP of Rs. 4100/- (base level post in the nomenclature of Jr. Stenographer), (ii) Pay Band of Rs. 9000-28300 with GP of Rs. 4400/- (1st promotion post in the nomenclature of Sr. Stenographer), (iii) Pay Band of Rs. 9000- 28300/- with GP of Rs. 4600 (2nd promotion post in the nomenclature of Personal Assistant) and (iv) Pay Band of Rs. 9000-28300/- with GP of Rs. 4800/- (3rd promotion post in the nomenclature of Personal Secretary) in the ratio 6.5:6.5:2:1.

4. Accordingly, in terms of order No. 3925-F(P) dated 10/05/2012; 06 posts of Stenographers of NSOU should have been restructured/ re-designated with Pay Scale as follows:

(a) Junior Stenographer (Basic Post) 02 posts in PB of Rs: 7200-25400/- with GP of Rs. 4100/-

(b) Senior Stenographer (1st promotional Post): 02 posts in PB of Rs. 9000-28300- with GP of Rs. 4400/-.

(c) Personal Assistant (2 promotional Post): 01 posts in PB of Rs. 9000-28300- with GP of Rs. 4600/-

(d) Personal Secretary (3rd promotional Post): 01 posts in PB of Rs. 9000-28300/- with GP of Rs. 4800/-

5. So any vacancy that may occur due to retirement of the existing incumbents or otherwise should be in basic post. As such, the filling up of the post by the University authority through direct recruitment in GP of Rs. 4600/- or Rs. 4400-is not in order.

6. It is seen that the University authority filled up 03 vacancies by direct recruitment initially in PB of Rs. 9000-28300/- with GP Rs 4600/- and later modified the Pay Scale to PB of Rs. 9000 28300- with GP Rs 4400/-, which may be accepted as fait accompli, with direction to follow Para-4 above in future.

17. It is the fact of this case that at the time of joining at the post of Personal Assistant the present petitioners are joined with the pay band of Rs. 9,000/-to 28,300 with GP of Rs 4,600. In the case of direct recruitee, the basic posts under the PB (3) starts with the grade pay of Rs 4,400/-; grade pay of Rs 4,600 is available only for the promotional posts; thus the memorandum of advertisement issued by the University Authority on the basis of which are present petitioner were appointed is apparently erroneous.

18. Let me consider whether the error on part of the University Authorities committed at the time of recruitment of the present petitioners can give rise a specific right which can be enforced. The notification of the State of West Bengal makes it clear that the error can be considered as *Fait accompli*. Error which was admittedly caused due to inadvertence by some clerical staff can not entitle any person to exercise any right over the error. An error cannot be said to be the basis of any right of a Government employee who is otherwise not entitled to get the benefit if the error had not been done.

19. The cited decisions by Learned Advocate for the petitioners are on the principle of “equal pay for equal work” and the facts of the cited cases are not similar to the present case so they are distinguishable.

20. Considering the same I find no justification to entertain the present petitioners to set aside the impugned memorandum dated 27.07.2022. (On the strength of Notification dated 27.06.2022).

21. The instant writ petition is disposed of with the above observations.

22. Connected applications if pending are also disposed of.

23. 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.)