

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:

THE HON'BLE JUSTICE DEBANGSU BASAK

and

THE HON'BLE JUSTICE MD. SHABBAR RASHIDI

APO No. 95 of 2024

WEST BENGAL TRANSPORT CORPORATION LIMITED & ORS.

Vs.

GOUTAM ROY CHOWDHURY & ORS.

For the appellant : Mr. Samrat Sen, Sr. Adv.

Mr. Niladri Bhattacharjee, Adv .

Ms. Deblina Chatteraj, Adv.

Ms. Priyanka Kundu, Adv.

Ms. Angana Dutta, Adv.

Mr. Pratik Acharjee, Adv.

For the State : Mr. Deepnath Roy Chowdhury, Adv.

For the respondent

No. 1: Mr. Debductta Basu, Adv.

Heard on : August 20, 2024

Judgment on : August 29, 2024

Md. Shabbar Rashidi, J.

1. The appeal is directed against the judgment and order dated May 9, 2024 passed in W.P.O. No. 226 of 2016. By the impugned judgment and order, the learned Single Judge allowed the Writ Petition directing appellants to afford Career Advancement Scheme benefits (CAS) to the writ petitioners in terms of Memo No. 6075-F dated June 21, 1990 with its modifications in accordance with Memo No. 3015-F dated March 13, 2001, within four weeks from the date of communication of the order.
2. It was contended on behalf of the appellants that the learned Single Judge erred in appreciating the true perspective of the memoranda in question and came to a wrong finding.
3. It was further submitted that learned Single Judge failed to appreciate that by memorandum being No. 2676 – WT. 7T – 18/2005 dated August 14, 2007, the state authorities were pleased to explicitly clarify that the benefits of the Career Advancement Scheme will be applicable upon the applicant No. 1 in terms of the memorandum No. 7552 (80) – F dated September 4, 2000.
4. It was further contended on behalf of the appellant that learned Single Judge was not justified in holding that the memorandum

dated June 21, 1990 was not applicable so far it was inconsistent with the memorandum dated March 13, 2001, though, the learned Single Judge observed that for implementation of the Carrier Advancement Scheme, benefits were based upon the memorandum dated June 21, 1990.

5. Learned advocate for the appellant further submitted that the memorandum No. 6075 – F dated June 21, 1990 was not automatically applicable to the employees of state government undertaking. It was contended that the learned Single Judge was misdirected in observing that the OSD and Ex-officio Deputy Secretary, Government of West Bengal, by his memorandum No. 2676-W.T. 7T-18/2005 dated August 14, 2007 had directed implementation of the memorandum No. 7552 (80)-F dated September 4, 2000 and that it was not specific to Corporation.

6. Learned advocate for the appellant further submitted that the learned Trial Judge erred in holding that the communication vide memorandum No. 2676-W.T. 7T-18/2005 dated August 14, 2007 was directed to implementation of memorandum No. 7552 (80)-F dated September 4, 2000 and not the memorandum, which was inconsistent with the memorandum of 2001. It was also contended

that the learned Single Judge failed to appreciate the difference between the employees of State Government and the employees of State Government Undertaking and the several memorandum issued directing Career Advancement Schemes specific to such class of employees.

7. Learned advocate for the appellant also submitted that the learned Single Judge erred in holding that since both the notifications being memorandum No. 7552 (80)-F dated September 4, 2000 and memorandum No. 3015-F dated March 13, 2001 were issued following recommendation of 4th Pay Commission, there was no rationale why the benefits of memorandum of 2001 could have not been extended to the employees of Corporations.

8. Relying upon the decision reported in **(2021) 17 Supreme Court Cases 435 (New Okhla Industrial Development Authority and Another vs B. D. Singhal and Others)**, learned advocate for the appellant submitted that the High Court should not enter into the realm of policy making which is exclusive domain of the executive authority.

9. Learned advocate for the appellant also cited the decision rendered in **(2013) 5 Supreme Court Cases 427 (Rajasthan State**

Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and Others)

on the proposition that executive instructions which have no statutory force, cannot override the law.

10. Placing reliance upon the case reported in **(1997) 3 Supreme Court Cases 321 (State of Haryana and Others Vs. Ram Kumar Mann)**, **(2020) 19 Supreme Court Cases 317 (Commissioner of Municipal Administration and Another vs. M.C. Sheela Evanjalín and Others)**, **(2007) 4 Supreme Court Cases 737 (Directorate of Film Festivals and Other vs Gaurav Ashwin Jain and Others)** and **(2016) 6 Supreme Court Cases 532 (Kulwinder Pal Singh and Others vs. State of Punjab and Others)** learned advocate for the appellant contended that negative equality cannot be claimed as a matter of right. The High Court exercising writ jurisdiction, is to see if the petitioner has been able to establish the existence of his right instead of looking into the fact that similar relief has been granted to some others.

11. On the contrary, learned advocate for the private respondents submitted that the High Court has abundant powers of judicial review over subordinate legislation. Legislations with regard to

Promotion or benefits of Career Advancement Scheme should be construed favorable to employees. On such proposition, learned advocate for the private respondent relied upon **(2008) 5 Supreme Court Cases 416 (A. Satyanarayan and Others vs. Purushotham and Others)**.

- 12.** It has also been contended on behalf of the private respondents that similar benefits of Career Advancement Scheme were extended to other employees of the Corporation. As such, he should not be discriminated and similar benefits should also be given to him in terms of Memo No. 3015-F dated March 13, 2001.
- 13.** The petitioner is an employee of the appellant Corporation. He joined service in February, 1997 as a clerk. The Government of West Bengal decided to implement CAS benefits in the Corporation. By a writing bearing No. 2676-WT/18/2005 dated August 14, 2007, the OSD and Ex-Officio Deputy Secretary to the Government of West Bengal, Transport Department, communicated with the Managing Director of the Corporation to implement CAS in the Corporation with effect from August 1, 2007 following the directions and guidelines in Memo No. 3015-F dated March 13, 2001.

14. It was the contention of the writ petitioner that since he had joined the service in 1997 and was later regularized in accordance with the Rules, became entitled for first CAS upon completion of 8 years of service and was awarded such benefits with effect from February, 2005. The writ petitioner also came up with a case that other employees of the Corporation were duly awarded first and second CAS upon completion of 8 years and 16 years of service, respectively, treating 1986 as the base year, in terms of the guidelines provided in Memo No. 3015-F dated March 13, 2001.

15. According to the case of the writ petitioner, the benefits of the CAS in terms of Memo No. 3015-F dated March 13, 2001 were made applicable to the employees of Corporation and several employees were extended with the benefits of CAS on completion of 16 years of service in February, 2013. The writ petitioner also become eligible for second CAS benefit on completion of 16 years of service in February, 2013. However, he was not favored with such benefits. He made a representation in this regard but of no avail. Ultimately, the writ petitioner came up with a Writ Petition which resulted in the impugned judgment and order.

- 16.** As evident, there was no benefit of CAS prevalent either for the employees of State Government or State Government Undertakings prior to 1990. It was first introduced by the Memo No. 6075-F dated June 21, 1990 which is reproduced as follows:

**GOVERNMENT OF WEST BENGAL
FINANCE DEPARTMENT
AUDIT BRANCH**

No. 6075-F

Calcutta, the 21st June, 1990.

The question of career prospects of the employees holding various posts and services under the Government has been under consideration of the Government for sometime past. In conformity with the commitment of the Government to the improvement of (a) the standard of administration and (B) the career prospects of the State Government employees at all levels as announced in the Government policy statement December 30, 1989. The Governor is now pleased to decide to implement a career advancement scheme in the following manner.

2. The Government employees in revised pay scale nos. 1 to 16 will be allowed to move to their respective next higher scales on completion of ten years of continuous and satisfactory service in their respective revised scales and their corresponding unrevised scales taken together and to move to the scale next above the first higher scale on completion of further ten years of continuous and satisfactory service in the first higher scale and the corresponding unrevised scales under previous ROPA Rules taken together. Every movement to such higher scales will be subject to the fulfillment of usual norms of promotion. This general scheme of career advancement will, however, be subject to provisions undernoted:

(i) A Government employee who was first appointed to a post in any of the unrevised scale numbers 1 to 13 and who had already moved to the next higher scale after 18 years of service in terms of Rule of the West Bengal Services (ROPA) Rules, 1981 will be deemed to have got the benefit of movement to the first higher scale. On completion of total service of twenty years without any further promotion/ appointment to higher scale of pay he will now get advancement to the second higher scale.

(ii) A Government employee who has completed service of ten years or longer without any promotion will move from the revised scale in relation to him to the first higher scale and after serving in that scale for two years will get advancement to the second higher scale, provided that the total period of his service in the first higher scale after a total period of his service in the first two scales is not less than twenty years.

(iii) A Govt. employee who has got normal promotion to a post in the first higher scale within ten years of service will have to complete total service of twenty years before he gets advancement to the second higher scale with reference to the feeder post.

(iv) A Government employee in revised scale number 16 (or its unrevised equivalent) holding teaching and allied post in college of medicine, engineering, technology, arts and crafts or in Polytechnic will get advancement to revised scale number 22 after completion of eight years of service. He will not be eligible for any further advancement under this scheme. In respect of teacher of medical colleges, the decision taken in Department of Health and Family Welfare Notification No. H/MA/1503/JS11/90 dated 30th May, 1990 shall apply.

(v) A Govt. employee directly recruited to a post in the revised scale number 17 (or its unrevised equivalent) will be allowed advancement to the first higher scale on completion of ten years of service. He will not be eligible to any further advancement under this scheme.

(vi) When a Government employee has got benefit of only one promotion or advancement to a scale similar to or above the second higher scale, he will not get any further advancement under this scheme except fixation benefit rule 42A of WBSR, Pt.I on completion of twenty years of service.

(vii) Where the scale of a Government post is the same as that of the feeder post, it will be treated as the scale of the feeder post for advance under the scheme. Special pay, if any attached to the promotional post shall remain as a separate element.

(viii) Where a Government employee is borne on a scale higher than the basic scale for the post as personal to him, the scale personal to him will be treated as the basic scale for his advancement under the scheme.

(ix) When a Government employee comes within the quota of higher grade in the first higher scale under the existing promotional policy after getting the first higher scale in accordance with the career advancement scheme, he will not be eligible to get any fixation benefit for the second time. He will, however, remain eligible for second higher scale after total service of twenty years. If the scale of the higher grade is above the first higher scale, the pay of the Government employee on his appointment to first higher grade, will be fixed under Rule 42(1) (i) from the first higher scale. He will, however, be eligible for the benefit of pay fixation in the

same scale under Rule 42A of WBSR, Pt. I after completion of total service of twenty years.

(x) Where a Government employee comes within the quota of second higher grade under the existing promotional policy after getting the second higher scale on completion of total service of twenty years, he will not get any fixation of benefit if the scale of second higher grade is the same as the second higher scale. If however, the scale of the second higher grade is higher, the pay of the Government employee, on his appointment to the second higher grade, will be fixed under Rule 42(1) (i) of WBSR, Pt. I, from the second higher scale.

(xi) Where a Government employee whose scale of pay of the promotion post is next higher scale gets promotion after enjoying the benefit of career advancement scheme for twenty years, he will be allowed to retain the higher scale in the promotional post, as personal to him, and his pay on promotion will be fixed in terms of rule 42 (1) (i) of WBSR, Pt. I.

(xii) A school teacher who has got the benefit of movement to a scale similar to or above the second higher scale on the basis higher qualification acquired during service will not get any benefit under this scheme except the benefit of fixation of pay under 42A of WBSR, Pt. I on completion of total service of twenty years. Provided that a school teacher who has got benefit of movement to a scale next above on the basis higher qualification acquired during the service will be eligible to only one movement to the second higher scale under this scheme on completion of total service of twenty years.

(xiii) A school teacher who acquires a higher qualification which entitle him to the first scale after movement to the first higher scale on

completion of ten years of service will not be eligible for any further benefit for acquiring the said higher qualification. He will, however be eligible for the second higher scale on completion of total service of twenty years.

(xiv) Secondary teachers, Headmasters/Headmistresses with Doctorate Degree in the subject taught or in an allied subject shall get two additional increments from the date of the convocation on which such degree is awarded. Provided that those who obtained this degree prior to the date of coming over to the revised scale shall get two additional increments from the date with effect from which they elect to draw pay in the revised scale.

(xv) The Officers of the Engineering Services, West Bengal Factories Service and West Bengal Boilers Service will continue to be guided by the existing promotion policy as enunciated for them in 1985. Over and above such promotional facilities and Assistant Engineer may be allowed to move to the next higher scale on completion of ten years of service, if he has not already been fitted in the next higher scale under the existing scheme. Similarly, Executive Engineer will be allowed to move to the next higher scale in relation to their posts on completion of satisfactory service of twenty years as Assistant Engineer and Executive including three years of service as Executive Engineer, if they have not already moved to that scale in terms of the existing promotion policy.

The Superintending Engineer will, likewise, be allowed to move to the next higher scale in relation to their posts on completion of twenty-six years of satisfactory service as Assistant Engineer, Executive Engineer and Superintending Engineer, including one year's of service as

Superintending Engineer, if they have not already got that scale in terms of the existing promotion policy.

(xvi) The officers of other State Services and West Bengal General Service (Secretariat) as indicated in the annexure will continue to be guided by the existing promotion policy enunciated for them in 1981 and subsequent thereto. However, the additional benefits granted on the adhoc basis to the State Services in terms of G.O. No. 13639-F dt. 18.12.87 w.e.f. 1.1.87 will stand withdrawn from the date of effect of the new career advancement scheme which will be applicable in addition to the existing policy, provided that the officers who have already been allowed or will be allowed the benefit of higher scale of pay under this G.O. prior to the date of effect of this career advancement scheme will continue to retain the said scale/corresponding revised scale as personal to them.

The officers of such services who do not move to the first higher scale and second higher scale within ten and twenty years of total service respectively since entry into basic grade under the existing promotion policy, will be allowed to move to such higher scales on completion of ten and twenty years of total service irrespective of the quota of such higher scale.

For movement to the second higher scale a minimum of 2 years' service in the former higher scale out of a total period of service of 20 years in the cadre concerned will be necessary.

WBCS (Ex.) and other services and also West Bengal General Service (Secretariat) are allowed the revised scale No. 19 and the numbers of

posts in this scale along with eligibility criteria for various services are indicated in the Annexure.

The distribution of posts in the basic grade under the existing promotion policy will stand reduced by the equivalent number of posts granted in revised scale No. 19 WBCS (Ex.) Officers who will get scale No. 19 will be designated as Joint Secretary if posted in the Secretariat. If such an officer as posted outside, he will be declared equivalent to Joint Secretary.

In case of unified services, the seniority and the length of service are not always coterminous. In such services, the movement from the basic grade to both the first higher scale and the second higher scale and also to revised scale No. 19 will be subject to the condition that in case any junior officer in a service moves to such higher scale on completion of the prescribed length of service, the officers senior to him in the said service but not yet having put in the requisite length of service will be allowed to move to the said higher scales from the date such higher scales have been allowed to their juniors by suitably relaxing the eligibility criteria as regards the length of service. The length of service rendered in the junior cadre prior to unification will not be considered for the purpose of movement to higher scales under the new career advancement scheme. The existing distribution of posts in various promotional scales (as per existing promotional policy) will mean the distribution as it existed prior to the issue of Memo No. 13639-F dt. 18. 12. 87.

(xvii) 4 (four) posts Special Secretary/Secretary in the revised scale No. 21 are sanctioned for WBCS (Ex.) and such posts are to be encadred in this service by inclusion of some of the existing ex-cadre posts of Special Secretary/Secretary and/or by creation. Such posts are to be filled up by

selection from amongst those WBCS (Ex.) Officers who have completed twenty-five years of total service in the cadre including three years as Joint Secretary.

The post of Director of Agriculture is elevated to the rank of Ex-officio Secretary in the revised pay scale No. 21.

One post of Special Commissioner, Commercial Taxes in the revised scale No. 21 is created and such post is to be filled up by selection from amongst the Additional Commissioners who have put in a total service of thirty years since entry into West Bengal Commercial Tax Services including six years in the post of Additional Commissioner.

The post of Director of Animal Husbandry, Director of Animal Health, Milk Commissioner and Director of Bureau of Applied Economics and Statistics are elevated and given the revised pay scale No. 20.

(xviii) Fixation of pay on movement to higher scales of pay in terms of existing promotion policy and/or career advancement scheme will be made under Rule 42A of WBSR, Pt. I unless anything to the contrary has been indicated hereinbefore.

(xix) The existing promotion opportunities available of the promotion policy statement of 1981 will continue to be available to various services and posts in addition to the career advancement scheme introduced now.

(xx) The posts in scale Nos. 19 and 21 for each service as shown in the Annexure should be filled up on strict observance of eligibility criteria and the usual norms and condition of promotion, i.e. seniority-cum-merit should also apply to appointments to the aforesaid scales. Eligibility

condition for scale No. 19 (revised) for all other services mentioned in the Annexure may be the same as for the WBCS (Ex.) as also mentioned in the Annexure.

(xxi) The provisions of this order shall have effect notwithstanding anything to the contrary in WBSR or in any other Rules.

(xxii) The post in scale Nos. 19 and 21 as mentioned in the Annexure as well as the posts indicated in para (xvii) foregoing will be created by the concerned Administrative Departments. For example in case of WBCS (Ex.), the post will be created by the Home (PAR) Department.

(xxiii) This career advancement scheme will be effective from 1st April, 1989.

***Sd/- J. C. Ghosh
Deputy Secretary to the
Government of West Bengal.***

17. The aforesaid Memorandum issued by the Deputy Secretary to the Government of West Bengal specifically indicated that it was exclusively applicable to the employees of the State Government and was to be effective from April 1, 1989. It did not include the employees of the State Government undertakings.

18. The said memorandum of 1990 specifically provided that the Government employees in revised pay scale nos. 1 to 16 will be allowed to move to their respective next higher scales on completion of ten years of continuous and satisfactory service in their

respective revised scales and their corresponding unrevised scales taken together and to move to the scale next above the first higher scale on completion of further ten years of continuous and satisfactory service in the first higher scale.

- 19.** The benefits of such Memorandum was extended to the employees of the State Government undertakings by a separate Memorandum issued in the year 2000 being Memorandum No. 7552 (80)-F dated September 4, 2000. The purport of said memorandum was as under: -

Government of West Bengal

Finance Department

Audit Branch

Writers' Building, Calcutta

No.7552 (80)-F

Dated the 4th September, 2000

MEMORANDUM

1. Following the recommendations of the 4th Pay Commission in respect of various corporations / Undertakings / Statutory Bodies etc. covered under Resolution No. dated 27.11.1995. It was decided that the Finance Department Memo No.3402-F, dated 6.4.2000 that in cases where benefits like Career Advancement Scheme etc have been extended without proper Government approval in violation of Chief Secretary's Circulars issued from time to time. Such benefits are to be ignored at the time of fixation of Pay in the revised scale. Subsequently a number of

departments have brought it to the attention of the Government that the interest of the employees serving in different corporations/ undertakings etc had been very seriously affected by this decision of the government and should, therefore, be reviewed.

2. The matter was reviewed by the Government in the light of these issues.

3. After careful consideration of the matter the Governor has been pleased to order as follows:-

(a) The benefit of Career Advancement Scheme will be extended to the employees of all the corporations/ Undertakings etc covered by the 3rd Pay Commission. However, the benefit will be available only notionally with effect from 1.4.89 and the actual cash benefit will be available from 1.9.2000, and in all such cases while giving benefits under the Career Advancement Scheme, the scale benefits will be strictly in the next higher scale as per schedule of scale of pay in WBS ROPA RULES 1990, irrespective of whether such scale exists in the said corporation/ Undertakings etc or not.

It is further made clear that appointment to next higher scale as per Career Advancement Scheme shall be subject to all terms and conditions as laid down in Finance Department Memo No.6075-F, dated 21.6.90 as applicable of State Government Employees.

(b) In the case of various corporations/ Undertakings etc, which have already awarded the C.A.S benefits to their employees without Government approval the said benefit as are not inconsistent with the provisions of C.A.S 1990 for the State Government employees shall stand regularised.

(c) The cases of corporations/ Undertakings who have introduced new Pay scale of certain posts by way of fresh creation/upgradation without prior approval of the Government are also hereby regularised subject to the condition that such employees of those corporation/Undertakings will not be eligible to draw the benefit of Career Advancement Scheme.

***Joint Secretary to the
Government of West Bengal
Finance Department.***

20. Such memorandum dated September 4, 2000 specifically stipulated that the benefits of appointment to next higher scale as per Career Advancement Scheme shall be subject to all terms and conditions as laid down in Finance Department Memo No.6075-F, dated 21.6.90 as applicable to State Government Employees i.e. on completion of continuous satisfactory service of 10 years and 20 years respectively.

21. The appellant Corporation adopted the memorandum No. 7552 (80)-F dated September 4, 2000 and extended the benefits of CAS to its employees with by a writing being No. 2676-WT 7T-18/2000 dated August 14, 2007. The date of implementation of CAS was proposed to be with effect from August 1, 2007. The aforesaid writing specifically mentioned that the benefit of CAS proposed to be extended to the employees of the appellant

Corporation (then CTC) was in accordance with Finance Department Memo No. 7552 (80)-F dated September 4, 2000, which provided for CAS on completion of 10 years and 20 years of satisfactory service.

22. In the meantime, the State Government came up with another scheme of CAS vide Memo No. 3015-F dated March 13, 2001 modifying its earlier memo of 1990. It provided that a Government employee may be allowed to move to his respective next higher scale on completion of **eight years** of continuous and satisfactory service in his revised scale of the post and its corresponding unrevised scales taken together and to move to the scale next above the first higher scale on completion of **further eight years** of continuous and satisfactory service in the first higher scale and the corresponding unrevised scales under previous WBS (ROPA) Rules taken together and to move to the scale second next above the first higher scale on completion of **further nine years** of continuous and satisfactory service in the second higher scale and the corresponding unrevised scales under previous WBS (ROPA) Rules taken together.

23. By doing so, the State Government made modifications in the previous memorandum dated June 21, 1990 to the effect, that three CAS movements on completion of continuous and satisfactory service of 8 years, 16 years and 25 years were provisioned in the memo of 2001 instead of two CAS movements on completion of continuous and satisfactory service of 10 years and 20 years, available in the memo of 1990. The memo of 2001 explicitly stated in the memo of 2001 that “Other provisions of the existing career advancement scheme as contained in this Department No. 6075-F, dt. 21.6.90 which are not inconsistent with the provisions of this memorandum shall continue to remain in force.

24. All the provisions in the memo dated March 13, 2001 specifically refer to ‘Government Employee’ which is sufficiently indicative that the provisions of such memo were applicable exclusively to the employees of State Government. Nothing has been brought forth to establish that akin to memo dated September 4, 2000, the benefits of memo dated March 13, 2001 were ever extended to the employees of Corporations and Government Undertakings. It was a policy decision within the exclusive domain of the State Government to take a call.

25. In the case of **New Okhla Industrial Development Authority (Supra)**, it was observed by the Supreme Court that,

“22. Whether the age of superannuation should be enhanced is a matter of policy. If a decision has been taken to enhance the age of superannuation, the date with effect from which the enhancement should be made falls within the realm of policy. The High Court in ordering that the decision of the State Government to accept the proposal to enhance the age of superannuation must date back to 29-6-2002 has evidently lost sight of the above factual background, more specifically (i) the rejection of the original proposal on 22-9-2009; and (ii) the judgment of the Division Bench dated 17-1-2012 [Kanhaiya Lal v. State of U.P., 2012 SCC OnLine All 4554] refusing to set aside the order rejecting the proposal on 22-9-2009 which has attained finality. But there is a more fundamental objection to the basis of the decision of the High Court. The infirmity in the judgment lies in the fact that the High Court has trenched upon the realm of policy making and has assumed to itself, jurisdiction over a matter which lies in the domain of the executive. Whether the age of superannuation should be increased and if so, the date from which

this should be effected is a matter of policy into which the High Court ought not to have entered.”

26. In the impugned judgment and order, learned Single Judge observed that the while extending the benefit to the employees of the corporation, the authorities wrongly referred to the memo of June 21, 1990 in so far as on August 14, 2007, there was no existence of such memo of June 21, 1990. As on the date it was only the memo dated March 13, 2001 in operation and, therefore, three tier CAS benefits was the only scheme available to be extended to the employees of Appellant Corporation. The two tier CAS stood modified with the memo dated March 13, 2001.

27. To our understanding, such modifications in the Career Advancement Scheme brought through the memo of March 13, 2001 never wiped out the original memo dated June 21, 1990. It continued to remain operative. Moreover, the modifications made in the original memo of 1990 were directed only in respect of the Government employees. The employees of the government undertaking and Corporations continued to be governed by the original memo of 1990. A legislation specifically targeted to a

particular class of persons cannot be made applicable to other class of persons in the teeth of Article 14 of the Constitution.

28. Supreme Court in the case of **Ram Kumar Mann (Supra)** observed in the following terms

“3. The question, therefore, is whether the view taken by the High Court is correct in law. It is seen that the respondent had voluntarily resigned from the service and the resignation was accepted by the Government on 18-5-1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on 18-5-1982. It may be that the Government for their own reasons, had given permission in similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them. The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or

relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Article 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits."

29. The impugned judgment while granting relief to the writ petitioner also notes that CAS benefits in terms of the memo of 2001 were extended to several employees of various Corporations/Undertaking and the Corporations/Undertakings framed guidelines for implementation of the same and extended the benefits for several years. Such action on the part of Corporations/Undertakings and its continued practice were construed as tacit approval by the government.

30. We are unable to subscribe to such view. A practice based on wrong appreciation of a legislation for howsoever long, cannot be sanctified. In the case of **Gaurav Ashwin Jain (Supra)**, it is held that,

“22. When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are

*similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law.
.....”*

- 31.** Similarly in the case of **M. C. Sheela Evanjalin (Supra)**, the Hon’ble Supreme Court noted that there cannot be any parity in illegality. Relying upon the authority of **Kulwinder Pal Singh v. State of Punjab**, the Supreme Court also held in the aforesaid decision that Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities and if the State committed the mistake, it cannot be forced to perpetuate the same mistake and also that merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality.” Similar principles were laid down by the Supreme Court in the case of **Kulwinder Pal Singh (Supra)**.

32. In the case of **Rajasthan State Industrial Development & Investment Corpn. (Supra)**, it was laid down by the Supreme Court that,

“27. Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines, etc. which run contrary to statutory laws cannot be enforced.”

33. In the said case the Hon’ble Supreme Court also observed that,

“34. Be that as it may, there can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be asked to act in contravention of law.”

34. The case of (**A. Satyanarayana Supra**),

“34. A statutory rule, it is trite law, must be made in consonance with constitutional scheme. A rule must not be arbitrary. It must be reasonable, be it substantive or a subordinate legislation. The legislature, it is presumed, would be a reasonable one. Indisputably, the subordinate legislation may reflect the experience of

the rule-maker, but the same must be capable of being taken to a logical conclusion.”

35. In the instant case, the issue is not of the framing of Rules but in fact, a Circular/Guideline was misconstrued and misinterpreted by the authorities in extending certain benefits to a class of employees who were not covered by such Circular/Guideline. We have also noted that Article 14 of the Constitution does not ordain negative equality and that there can be no estoppel against the State from refusing to grant a favour which it extended to some other persons under misconception and misinterpretation of law. The party claiming a relief must establish his right to receive such relief. We have noted earlier that nothing was placed before us that the benefits under the memo of 2001, exclusively applicable to the Government employees, were ever extended to the employees of Corporations/Undertakings.

36. In view of discussions made hereinabove, the impugned judgment and order dated May 9, 2024 passed in W.P.O. No. 226 of 2016 is set aside.

37. Accordingly, the instant appeal being **APO No. 95 of 2024** is hereby allowed but without any order as to costs and thus,

disposed of. In view of the disposal of the Appeal, connected applications, if any, shall stand disposed of.

- 38.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

- 39.** I agree.

[DEBANGSU BASAK, J.]