

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

15 10.7.2025
Sc Ct. no.2

WPA 5236 OF 2024

Swapan Kumar Das

Vs.

The Union of India & Ors.

Mr. S. S. Sarkar
Ms. Tanusri Chanda.

....For the Petitioner

Mr. Nand Lal Singhania

....For the Respondent
No.1

Mr. Indrajeet Dasgupta
Mr. Arijit Bakshi
Mr. Soumya Mukherjee
Mr. Gourab Maity.

....For the Respondent
Nos. 2, 3 & 4

Affidavit-of-service, filed in Court today, is taken on record.

Mr. S. S. Sarkar, learned counsel with Ms. Tanusri Chanda, learned advocate appears for the petitioner.

Mr. Nand Lal Singhania, learned counsel appears for the respondent no.1.

Mr. Indrajeet Dasgupta, learned counsel appears for the respondent nos. 2 to 4.

The petitioner was an employee of the Indian Museum. The petitioner has retired on **September 30, 2019**. Through this writ petition the petitioner has challenged the alleged impugned action as to cancellation of the two advance increments and the promotion of the

petitioner to the post of **Head Assistant (Education)** on the ground that, the post was not in existence in the **Indian Museum Recruitment Rules, 1977**. On the basis whereof, according to the petitioner, an impugned order was passed on **March 17, 2018**.

Learned counsel for the petitioner submits that, the petitioner had started working by virtue of promotion as **Head Assistant (Education)** since **February, 2009**. But suddenly in **2018** he was demoted and the overdrawn payment was recovered from the petitioner.

The petitioner filed a previous writ petition, **WPA 3440 of 2020** which was disposed of by a coordinate Bench by its order dated **September 20, 2023, Annexure-P8 at page 53** to the writ petition when the recovered amount was directed to be paid to the petitioner and, accordingly, the petitioner has been paid. The order shows that, there was an observation that, the coordinate Bench had not gone into the merits of the issue with regard to whether the post was a sanctioned post or not and liberty was granted to the petitioner to file a separate application before the appropriate forum in this regard.

The petitioner then submitted its representation dated **November 22, 2023, Annexure-P11 at page 63** to the writ petition, the same has not yet been decided.

The question now first has to be decided by the appropriate authority is, **whether the post, Head Assistant (Education), was a sanctioned post or not**

when the petitioner was elevated at the same in the year 2009 and thereafter the consequential decisions would automatically follow.

After considering the submissions made on behalf of the parties and on perusal of the materials on record the petitioner is directed to serve a copy of complete set of the writ petition along with a copy of today's order upon the respondent no.2 forthwith.

After receiving the said communication from the petitioner, the respondent no.2 upon issuing a prior hearing notice of at least ***two weeks*** and after granting the petitioner an opportunity of hearing shall decide the issue in the light of the case made out in the writ petition by passing a reasoned order in accordance with law.

The entire exercise shall be carried out and completed by the respondent no.2 positively within a period of ***six weeks*** from the date of issuance of the hearing notice to the petitioner. The reasoned order shall be communicated to the petitioner within a further period of ***two weeks*** from the date of the said reasoned order to be passed by the respondent no.2,

It is needless to mention that, the petitioner shall be entitled to be represented before the respondent no.2 along with his duly authorized representative.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner and subject to the said order passed by the coordinate Bench dated ***September 20, 2023***, the petitioner shall be at liberty to

urge whatever points he wishes to urge by relying upon whatever records and documents he wishes to rely upon before the respondent no.2 but the same shall not travel beyond the scope of the case made out in the writ petition.

In the event the reasoned order goes in favour of the petitioner then the appropriate authority/authorities shall take all necessary and consequential steps to give an immediate effect to the said reasoned order in accordance with law but positively within a further period of **six weeks** from the date of the said reasoned order to be passed.

It is also made clear that, this order shall not create any right or equity in favour of the petitioner if the petitioner does not succeed to his claim before the respondent no.2 strictly in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions this writ petition, **WPA 5236 of 2024** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)