IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

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

IN THE MATTER OF
WPA 7048 of 2022

Suranta Ganguly
Vs.
West Bengal & Ors.

For the Petitioner : Mr. Kallol Basu, Sr. Adv.,
Mr. Suman Banerjee, Adv.

For the State : Mr. Somnath Ganguli, Sr. Adv. & AGP,
Mr. Jayanta Samanta, Adv.,
Mrs. Ujani Pal (Samanta) Adv.

For the UGC : Mr. Anil Kumar Gupta, Adv.

Reserved on : 15.07.2025

Judgment on : 16.09.2025

Subhendu Samanta, J.

1. Petitioners are the all teachers of State Government aided colleges, they are aggrieved and dissatisfied with alleged illegal and arbitrary action on the part of the State Respondent Authorities against the order of pay a revision of Government of West Bengal vide G.O No.- 1306 (22)- U/77-17 dated 30.12.2019 where under pay scale of University and College Teachers and Librarians are revised in terms of G.O 5562-F dated 25.09.2019.

2. The brief fact of the matter is that the Government of India, Ministry of Human Resources Development, Department of

Higher Education, vide letter dated 2nd November, 2017 addressed to Secretary, University Grand Commission, has disclosed the decision of the Government of India regarding a scheme of revision of pay of teachers and equivalent cadres in University and Colleges following the revision of pay scales of Central Government employees on the recommendation of 7th Central Pay Commission (7th CPC). In terms of said memorandum University Grand Commission vide memo dated 30th January, 2018, has declared a scheme for revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of pay scales of Central Government of employees recommendation of 7th Central Pay Commission (CPC). Revised pay and revised rates of dearness allowance under the said scheme was effected from 01.01.2016.

3. The State of West Bengal has also implemented revision of pay in respect of Teachers of Government-aided Universities, Government- aided Colleges, Teachers of Government Colleges, certain other equivalent cadres (teaching posts of State-aided University and Government Colleges, Registrar/controller of examination, Inspector of Colleges and Financial officers of State-aided Universities vide impugned Notification dated 31st December 2019. Under the said notification the date of implementation of revised pay was given effect notionally from 1st January, 2016 and actually from 1st Day, of January, 2020.

4. Petitioners are not aggrieved about the scale of pay revision and structures thereof but they are aggrieved regarding the date of

implementation of such pay revision. It is the sole contention of the petitioner that when the State of West Bengal has adopted the same pay structure as per direction of University Grand Commission in pursuance to the memo dated 2nd November, 2017 of Ministry of Human Resources Development, they must have implemented the pay structure from 01.01.2016not from 01.01.2020. The petitioners case is that by delay implementation of the said scheme, the petitioner's valuable right of pay protection has been infringed.

5. Hence this writ.

6. Mr. Kallol Basu, Learned Senior Counsel, appearing on behalf of the petitioners submits that on the earlier occasion in terms of recommendation of 6th Central Pay Commission (6th CPC) by the Government of India pay structure of the teachers of the University and Colleges of the State had received pay revision from the date when it was implemented by the University Grand Commission, but in the present case though the pay scale, as declared by the UGC was adopted in toto by the State of West Bengal but date of implementation of the pay scale was arbitrarily ordered to be implemented from 1st January, 2020 instead of 1st January, 2016.

7. Mr. Basu, further submits that in passing the impugned memo of pay revision the State of West Bengal has not assigned any reason why the implementation of such revision was given effect to from 01.01.2020. He further submits that in the affidavit-in-opposition the State respondent was also silent about decision

of their action. Mr. Basu, further argued that teachers and other equivalent academic staffs in Central Universities and Colleges are enjoying the same pay revision/pay scale in terms of 7th Central Pay Commission. But the present petitioners being the teachers and other equivalent academic staffs are deprived by the State respondents for getting the same pay protection since 01.01.2016.

8. Mr. Basu, has argued on the principle that "equality follows the law", he submits that the *maxim of course* universally true, there would never have been occasion for development of separate law than equitable principles. He submits when teachers and other academic staff or Central Government employees are receiving pay revision from 01.01.2016, the petitioner being teachers and academic staff of State- aided universities and colleges of equivalent status under the State of West Bengal are entitled to the equivalent pay- protection. He submits that the State has not assigned any reason why they are deprived.

9. Mr. Somnath Ganguly, Learned A.G.P, appearing on behalf of the respondent authorities submits that State-aided University and State Government –aided colleges in the State of West Bengal have been established and financed absolutely by the State of West Bengal out of its own fund, neither the Central Government nor the University Grand Commission have afforded any financial contribution or assistance towards setting up in such colleges or universities, or the salaries and

allowances of the teachers and other academic staffs of State-aided colleges and Universities have been paid by the State Government out of its own fund. He further submits that Central Government scheme issued by the Ministry of Human Resources Development (MHRD) vide letter dated 02.11.2017 has not been accepted or adopted by the State Government. The prerogative to accept or adopt whereof was a discretion and/ or a policy decision of State of West Bengal.

10. Mr. Ganguly further submits that Section 12(d) of the UGC Act only enables UGC to “advice” and “recommend”. Therefore, it is clear from the statute itself i.e., any regulation of UGC under UGC Act cannot be mandatory in nature upon particular State.

11. Mr. Ganguly further confronted that, the State has never adopted the scheme of 02.11.2017 of Central Government, the State Government has never sought for any reimbursement, the State of WB on its own volition revised pay scales of teachers and other academic staffs of State-aided Universities and Colleges of West Bengal volition with effect from 01.01.2016 (notionally), and actually, from 01.01.2020. He further submits that the scheme of Central Government dated 2nd of November, 2017, has specifically made it clarificatory that any state may adopt said scheme subject to fulfilment of certain condition. He submits that the State of West Bengal has not adopted the said scheme, but has implemented a fresh scheme for pay revision of teachers and other academic State-aided universities and state-aided colleges.

12. Respondent No. 6 University Grand Commission has used affidavit-in-opposition against the writ petition and also placed written notes of argument. It is the positive submission on behalf of the UGC that no prayer has been made against respondent No. 6 in the writ petition but it is their categorical submission that UGC Regulation and its Amendment issued by the UGC, from time to time, are mandatory in nature and cannot be overlooked at any stage.

13. Having heard the Learned counsels for the parties also considering submissions and pleadings the place on record by the parties it appears that the petitioner are aggrieved against the action of the State respondents for not implementing revised pay structure from 01.01.2016.

14. The scheme for revision of pay of teachers equivalent cadres of Universities and Colleges was recommended by the Government of India vide their memo dated 2nd November, 2017. In the said memo Clause 16 has disclosed regarding the applicability of the scheme.

15. For better appreciation of the issue involved herein Clause 16 of the said Memo is required to be set out.

16. Applicability of the Scheme:

i) This Scheme shall be applicable to teachers and other equivalent academic staff in all the Central Universities and Colleges there-under and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The *implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by UGC and amendments thereof in this behalf. Universities implementing this Scheme shall be advised by UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.*

(ii) This Scheme does not extend to the cadres of Registrar, Finance Officer and Controller of Examinations for which a separate Scheme is being issued separately.

(iii) This Scheme does not extend to the Accompanists, Coaches, Tutors and Demonstrators. Pay of the said categories of employees shall be fixed in the appropriate relative Level to their existing Pay in each university/ institution corresponding to such fixation in respect of Central Government employees as approved by the Central Government on the basis of the recommendations of 7th Central Pay Commission

(IV) This Scheme may be extended to universities, Colleges and other higher educational institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and condition:

(a) Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited, by way of reimbursement, to the extent of 50% (fifty percent) of the additional expenditure involved in the implementation of the pay revision, for the universities, colleges and other higher educational institutions funded by the State Government.

(b) The State Government opting for revision of pay shall meet the remaining 50% (fifty percent) of the additional expenditure from own sources.

(c) The proposal for reimbursement on account of pay revision in State funded universities, colleges and other higher educational institutions shall be submitted in the prescribed format by the State Governments. The state bills preferred by the State Governments for reimbursement during 2017-18 and 2018-19 would be met to the extent of 50% of additional financial impact during these two years. There would be no central assistance thereafter.

d) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 01.01.2016 to 31.03.2019.

(e) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 01.04.2019.

(f) Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 01.01.2016.

(g) State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce pay higher than those mentioned in this Scheme, and shall give effect to the revised bands/ scales of pay from 01.01.2016; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay as approved by the Central Government and not to any higher pay fixed by the State Government(s).(h) Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and pay scales mentioned herein above.

16. It appears from the Clause 16 of the said scheme that the scheme issued by the Central Government shall be applicable to teachers and other equivalent academic staffs in all the Central Universities and Colleges thereunder and institutions deem to

be universities whose maintenance expenditure is made by the UGC.

17. <u>On the other hand it has also been provided therein that the scheme may be extended to the universities, colleges, and other higher educational institutions coming under the purview of said Registrars provided State Government wish to adopt and implement the scheme subject to following the terms and conditions.</u>

18. So on the plain perusal of the said scheme it appears that it is not mandatory for the State to adopt the scheme automatically but it has given liberty to the State Governments to adopt and implement the same scheme subject to following some conditions. Conditions contained the procedure how to meet financial burden by the State along with procedure for reimbursement.

19. It is the case of the petitioner that the respondent State authorities has not assigned any reason why they should not adopt the scheme, further, it is the argument of the petitioner that though, the State respondent have adopted similar scheme of pay revision but not ordered to implement the same from 01.01.2016. On the other hand the argument placed on behalf of the State respondents is that this is a policy decision of State and it cannot be called in question in writ jurisdiction under the scanner of judicial review.

20. In deciding the issue whether the justification of State Government regarding date of implementation of revised of pay

structure is a prerogative of a State or they are duty bound to follow the direction of Central Government regarding implementation of the scheme in as it is. Clause 16 of memo dated 2nd November, 2017 of MHRD is crystal clear that State Government is not duty bound to adopted the scheme. More over there are some conditions to be followed if State wants to implement the scheme. It is positive assertion of the state that they have not adopted the scheme or the conditions laid down thereunder.

21. Whether this action of the State has deprived the equitable right of the petitioner? It is admitted that the petitioners are teachers and equivalent staffs of State-aided colleges and universities. It is also admitted that their salary and other allowance have been paid by the State Government out of their own funds.

22. Following the decision of Hon'ble Supreme Court In **State of Maharastra and Ors. Vs. Bhagban and Ors.** reported in **(2022) 4 SCC 193,** wherein the Hon'ble Supreme Court has held that court should refrain from interfering with policy decision, which might have cascading effect and having financial implications.

23. In the above mentioned judgment the Division Bench of Hon'ble Bombay High Court has allowed the pensions of employees of WALMI (Independent autonomous body and society registered under Societies Registration Act 1860) at par with State Government employees. Hon'ble Supreme Court upon hearing has set aside the order and opined that :-

Now, so far as the observations made by the High court that the amount available with WALMI and deposited with EPF towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to the employees and, therefore, there is no justification and/or reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI is concerned, it is to be noted that merely because WALMI has a fund with itself, it cannot be a ground to extend the pensionary benefits. Grant of pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits. Therefore merely because at one point of time, WALMI might have certain funds does not mean that for all times to come, it can bear such burden of paying pension to all its employees. In any case, it is ultimately for the State Government and the Society (WALMI) to take their own policy decision whether to extend the pensionary benefits to its employees or not. The interference by the Judiciary in such a policy decision having financial implications and/or having a cascading effect is not at all warranted and justified.

24. In the present case it appears to me that the scheme of the MHRD itself has framed particular policy by which a State has to adopt the same. So it is a discretion of the State Respondents either to adopt or to rescind it. In the present case State respondent has not adopted the same. I find there is no illegality in the State action.

25. Claiming equitable relief before a Court under Article 226 of Constitution of India for issuing prerogative writs and direction upon the State authority to implement a particular scheme from a particular date can only be entertained if State, according to law, is duty bound, to implement the same. It appears that decision of the State which may lead to financial responsibilities upon the State cannot be interfered in writ jurisdiction. When State has discretion to adopt a financial responsibility the same is within the sole prerogative of the State respondents. Thus,

the court under writ jurisdiction cannot enforce to change a policy decision of State respondents to carry out the responsibilities having financial implications.

26. Under the above observations, I find no merit to entertain the instant writ petition.

27. Accordingly the writ petition is dismissed and disposed of, connected applications, if pending are also disposed of.

28. 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.)