

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

Present:

The Hon'ble Justice Jay Sengupta

WPA 14712 of 2024

Parthanil Roy

vs.

Indian Statistical Institute and Ors.

For the petitioner : Mr. Kallol Basu
.....Advocate

For the respondents : Mr. D.N. Ray
Ms. Sayani Roy Chowdhury
.....Advocates

Heard lastly on : 09.12.2024

Judgment on : 24.02.2025

Jay Sengupta, J:

1. This is an application praying for quashing and setting aside of the impugned office order bearing no. PU/720/PAY-FIX/1193 dated 13.05.2024.

2. Leaned senior counsel appearing on behalf of the petitioner submitted as follows. The petitioner was offered a position of Assistant Professor at the Theoretical Statistics and Mathematics Unit, Kolkata of Indian Statistical

Institute vide an initial appointment letter bearing Office Order No. PU/203/REC/C 546 dated 28.07.2010. Such letter of appointment was modified by a subsequent office order bearing No. PU/203/REC/C535 dated 27.06.2011, thereby fixing the pay at Rs. 37400 in the Pay Band (PB) 4 of Rs. 37400-67000 together with Academic Grade Pay (AGP) of Rs. 9000, which was accepted by the petitioner on 21.07.2011. As such, the purported non-compliance of the conditions stipulated in the recruitment rules notified in terms of the office order dated 27.07.2011 could not and did not arise as the same could not be made applicable to recruitments made prior to that. As a consequence, the formation of opinion as reflected in the show cause notice bearing Office Order No. D.O./2024/34 dated 23.01.2024 was incorrect as the respondent authority concerned failed to take into consideration this anomaly in the chronology of the events. The contention of the Indian Statistical Institute that one had to complete three years “in that grade” i.e., PB-3 (15600-39100)+AGP Rs. 8000 before moving to PB-4 is completely misconstrued and baseless as such condition was completely absent in the relevant 6th CPC implementation order bearing F. No. 23-1/2008-TS.II dated 16.09.2009 whose paragraph 2 stated, “on completion of 3 years of service in the shall move to Pay Band of Rs. 37400-67000 (PB) with an Academic Grade Pay (AGP) of Rs. 9000”. Use of such language and non-inclusion of the terms “in that grade” in paragraph 2 of the order bearing F. No. 23-1/2008-TS.II dated 16.09.2009 was a result of a conscious choice of words, which would also be evident from the fact that when the order bearing F. No. 23-1/2008-TS.II dated 18.08.2009 underwent another amendment by way of order

bearing F. No. 23-1/2008-TS.II dated 22.09.2009, the language of paragraph 2 of the order bearing F. No. 23-1/2008-TS.II dated 16.09.2009 remained unaltered. As such, the respondent authorities concerned were not permitted to read the expression "in the grade" into paragraph 2 of the order bearing F. No. 23-1/2008-TS.II dated 16.09.2009 to deny the accrued rights of the petitioner. Assuming, but not admitting, that the paragraph 2 of the order bearing F. No. 23-1/2008-TS.II dated 16.09.2009 was capable of giving an interpretation of using the expression "in that grade", even then the interpretation which benefitted the employee must be resorted to. The 6th CPC implementation order bearing F. No. 23-1/2008-TS.II dated 16.09.2008, was further amended vide order bearing F. No. 23-1/2008-TS.II dated 22.09.2008. As per the amended order, it was stated that out of 10 years' experience prescribed for the post of Professor, four years should be at a level equivalent of Associate Professor in those institutes or any other Indian or foreign institutions of comparable standards and the same might be decided by the institute itself. As such, even if the experience condition for the movement to PB-4 for the Assistant Professors given in paragraph 2 of the said order bearing F. No. 23-1/2008-TS.II dated 16.09.2008 was made similar to those for the Professors given in paragraph 4 of the said order bearing F. No. 23-1/2008-TS.II dated 16.09.2008 and as further amended by the said order bearing F. No. 23-1/2008-TS.II dated 22.09.2008, the 3 years' experience gained by the petitioner as Assistant Professor at the Michigan State University, USA was counted and given due credit, after equivalence of the levels and comparable standards of the institutions as per the decision of

the authorities of Indian Statistical Institute. Moreover, Indian Statistical Institute was ranked 1401 in the World as per the QS World University Rankings whereas the Michigan State University was ranked 136 in the year 2024. As such, the question of non-comparability between the two could not arise. The then Director had granted such pay fixation after being satisfied with the equivalence of the level of Assistant Professor and the comparable standards of the Michigan State University with that of the Indian Statistical Institute. Therefore, there was no occasion for the respondent authorities concerned to reopen such issue as there was nothing on record to suggest that the Director was without jurisdiction or debarred from conferring such benefit to the petitioner. At Michigan State University, the petitioner was receiving about 70,000 US dollar per year which was then around Rs. 3,00,000 per month, and on the basis of the representation of the Indian Statistical Institute at PB-4 and thereby, materially altered his position to his disadvantage. As such, the respondents were estopped from revisiting such pay fixation and that too at such a belated stage after 13 years when such pay fixation was not at all contrary to any law prevailing at that point of time. After the acceptance of the offer of appointment by the Indian Statistical Institute along with all its conditions and even its subsequent modification by the petitioner, the contract between the petitioner and Indian Statistical Institute stood concluded and all such terms and conditions were binding on both the petitioner and the institute and its officials. Thus revisiting the refixation of pay of the petitioner which was made in the year 2011, and that too, in the year 2024 was itself without jurisdiction and bad in law as it was

violative of principles of promissory estoppel. There was no scope for the institute to reduce the pay of the petitioner and make any recovery of alleged excess payment. Furthermore, there was long unexplained delay of nearly 13 years on the part of the respondent authorities concerned which amounted to acquiescence. As such the respondent authorities concerned were estopped from re-fixing the pay of the petitioner or making any recovery from him. The Indian Statistical Institute was an authority within the meaning of Article 12 of the Constitution of India. Action in fairness was the ultimate motto of an authority under Article 12 of the Constitution of India. Every such authority was considered to be a role model employer. In the instant case, the valuable right of the petitioner already accrued. The so-called violation and the alleged overpayment after nearly thirteen years of continuous service could not be given any credence in any manner whatsoever. There was no suppression or misrepresentation on the part of the petitioner far less to speak about any misconduct. The authority itself had allowed the prayer of the petitioner based on true and correct statements. The petitioner was induced to believe the promise made to him by the authority in the year 2011. Now, after a considerable period of time, the authority could not take an unreasonable and illegal stand and thereby abridge the right of the petitioner where admittedly, he was not at fault in any manner whatsoever. Reliance was placed on the judgment reported in 2024 SCC ONLINE CAL 2786. It was respectfully submitted that the impugned office order bearing No. PU/720/PAY-FIX/1193 dated 13.05.2024 was immediately preceded by the offer letter from the Indian Institute of

Technology, Bombay. Furthermore the statement of the Administrative Officer in the Affidavit-in-Opposition in Paragraph 6.vii to 6.ix in which the deponent submitted that the Indian Statistical Institute was in the process of seeking approval of the Government for waiver of recovery in respect of the petitioner by referring to DoPT guidelines being F. No. 18/26/2011-Estt(Pay-I) dated 06.02.2014 and F. No. 18/03/2015-Estt(Pay-1) dated 02.03.2016 showed the harassive mindset of the authorities, when in the 7th meeting of the Council of the Indian Statistical Institute for the term 2022-2024, it was informed by the respondent no. 4, the Chief Executive (Administration and Finance), that Department of Expenditure had opined that DoPT orders were not suo motu applicable to autonomous bodies such as Indian Statistical Institute. The Indian Statistical Institute was an authority within the meaning of Article 12 of the Constitution of India. Such an authority should not discriminate any person under the sun, and not only that, no arbitrary or mala fide decision could be taken by an authority under Article 12 of the Constitution of India. In the instant case, the Indian Statistical Institute had taken a contrary stand and had always been insisting to send the entire issue of recovery to the concerned ministry grossly suppressing the Department of Expenditure's clarification in this regard which had been recorded in the proceedings of the Council Meeting mentioned above. Such conduct was deplorable and showed the mala fide on the part of the respondent authorities. On the other hand, the alleged excess payment had been made for nearly 13 years before the impugned office order bearing No. PU/720/PAY-FIX/1193 dated 13.05.2024 was issued. This time gap

exceeded the threshold of 5 years in *State of Punjab v. Rafiq Masih* (2015) 4 SCC 334, as well as of 10 years in *Thomas Daniel v. State of Kerala* 2022 SCC Online SC 536. As such, no recovery of the alleged excess payment claimed by ISI was legally feasible. The impugned Office Order bearing No. PU/720/PAY-FIX/1193 dated 13.05.2024 disclosed no reason as to why the explanation offered by the petitioner was not found to be satisfactory and besides, the same being cryptic, the impugned order was violative of principles of natural justice as it did not provide the materials such “1) Relevant portion of the Inspection Report of CAG on the accounts of ISI for the year 2014-15. 2) The complaint that had been received via Central Vigilance Commission in this context” which formed the purported basis of such order. The purported Audit Observation Reference 11 (OBS-1162169) could not be made a basis to deny the accrued right of the petitioner when the same was not sacrosanct and having no force at all and such delayed observation should not be given any credence at all. Reliance was placed on an unreported judgement of this High Court dated 30.04.2024 passed in WPO 1586 of 2023. The impugned order if allowed to be implemented would cause an immediate monthly loss of about Rs. 11,000/- and it would also carry forward for several years as the IIT Bombay will fix the pay on the basis of his pay at Indian Statistical Institute, as mentioned in the Terms and Conditions attached to the offer letter from IIT Bombay numbered AO/HR-1 (HRM-1)/33/2024 dated 26.03.2024. The petitioner submitted the 3 months’ notice for technical resignation to ISI with an intent to join IIT Bombay as per the terms and conditions of the said offer letter and was thus eligible for pay

protection. As such, the suggestion of the Indian Statistical Institute that the petitioner would not suffer any loss was completely misconstrued and the same was mala fide. The petitioner did not play any role regarding his selection process, more particularly fixation of his pay scale, and there was no misrepresentation on the part of the petitioner which prompted the respondent authorities concerned to grant such pay fixation so as to make recovery of the alleged excess payment. There was also no evidence to suggest that the then director who granted such pay fixation was subjected to any disciplinary proceeding or even a show cause. Assuming, but not admitting, that he was given a punishment of censure as alleged in the affidavit in opposition, the nature of punishment imposed on the previous Director also suggested that the alleged proven misconduct therein was not considered by the Institute to be a serious one. Thus, the action of the respondent authorities clearly demonstrated bias and smacked of malice. As such, the same was mala fide and violative of Article 14 of the Constitution of India.

3. Learned senior counsel for the respondent Institute submitted as follows. The Indian Statistical Institute (ISI) was a Registered Society under the Societies Registration Act, 1860 and was governed by the Indian Statistical Institute Act, 1959. ISI is an autonomous Institute under the administrative control of the Ministry of Statistics and Programme Implementation (MoSPI), Government of India and was almost fully funded by the Government of India. Being under the administrative control of the Government, ISI was bound by the rules and regulations issued by the

Government from time to time. As ISI was funded by the Government of India, ISI needed to comply with all the rules, regulations and guidelines issued by the Government of India on financial matters. The respondent Institute (ISI) had autonomy on academic matters since the ISI Act, 1959 granted power to the Institute to hold examinations and grant degrees and diplomas in subjects as may be determined by the Institute from time to time. As far as the financial matters are concerned, ISI Act provided that for the purpose of enabling the Institute to discharge its functions efficiently, the Central Government would pay to the Institute in each financial year such sums of money as the Government considered necessary by way of grant, loan or otherwise. As ISI functioned with grant from the Government of India, the Institute had to adhere to all the finance related regulations of the Government. Since ISI did not have its own financial rules approved by the Government, the General Financial Rules (GFR) notified by the Government of India were also applicable to ISI. The Nodal Ministry (MoSPI) vide letter under ref. I-12011/5/2016-ISI dated 27/01/2017 had clarified that ISI being a fully funded autonomous body of the Ministry, the Institute had to follow the procedures laid down by Government of India. The referred letter dated 27/01/2017 of MoSPI has been attached as Annexure-I. As such, ISI followed the Government rules in the matter of grant of pay and allowances to its employees including fixation of pay, annual increment and grant of retirement benefits. The faculties of ISI used to enjoy UGC pay scales prior to 2009. The Union Cabinet vide its meeting held on 15/01/2009, had approved to delink the pay scales of the faculty members of ISI from the UGC

pay scales and to bring them at par with the pay scales of the faculty members of Indian Institute of Science (IISc), Bangalore, with the condition that the faculty Recruitment Rules of ISI would be at par with that of IISc. In compliance to the said instruction, ISI adopted the IISc pay scales for its faculty members through a Council meeting held on 22/02/2009 and also followed the IISc Recruitment Rules as modified from time to time. In 2009, the Ministry of HRD vide order dated 18/08/2009 had revised the pay scales of the CFTIs as per the recommendation of the 6th pay commission, which included the pay scales of the faculties of IISc also. Accordingly, the pay scales for the faculties of ISI were also revised. As per the provisions of the orders issued by the Ministry of HRD in their orders dated 18/08/2009 (Annexure-II) and subsequently 16/09/2009 (Annexure-III), it was evident that two essential criteria were required for appointment of Assistant Professor in CFTIs like IISc and hence, in ISI. i) For appointment of Assistant Professor, one should have 3 years of post-PhD industrial/research/teaching experience excluding the experience gained while pursuing PhD. ii) An Assistant Professor would be placed in the Pay Band PB-3 (15600-39100) + AGP Rs. 8000 and after completion of 3 years of service in that grade, he would be entitled to be placed in PB-4 (37400-67000) + AGP Rs. 9000. Thus, it was clear that for an Assistant Professor to be eligible for grant of pay in PB-4 + AGP Rs. 9000, a person should satisfy both the above conditions (i) and (ii), implying that the person required to have at least six years of relevant experience after PhD. The petitioner, Dr. Parthanil Roy, was correctly appointed as Assistant Professor at the Institute as he had the

requisite three years' post-doctoral research/teaching experience that he had gained as an Assistant Professor at the Michigan State University. However, he was wrongly granted higher pay in PB-4+AGP Rs.9000 straightaway at the time of his joining the respondent Institute, i.e., ISI, on 03.08.2011 although he did not possess 3 years' residency period as Assistant Professor in PB-3 + AGP Rs. 8000. In other words, the petitioner was wrongly appointed in PB-4+ AGP Rs. 9000 well before he had acquired 6 years of relevant experience after PhD. Thus, it is clearly evident that the petitioner was wrongly granted higher pay in PB-4+ AGP Rs. 9000 at the time of his joining ISI which resulted in erroneous pay-fixation in his favour. The matter of wrong pay-fixation of the petitioner Dr. Parthanil Roy was brought to the knowledge and notice of the respondent Institute through an audit observation and vigilance complaint. ISI had internally examined the complaint and it was established that the petitioner was indeed granted the higher pay in PB-4+ AGP Rs. 9000 before the due date of his entitlement. On being satisfied that the petitioner was irregularly granted higher initial pay, ISI issued an order vide no. PU/720/PAY-FIX/1193 dated 13/05/2024 (Annexure-IV) to revise his pay to the correct Basic Pay, which the petitioner has challenged through the instant writ petition. To deal with the excess payment made to the petitioner, the relevant Government guidelines had been referred which stated that immediate corrective action was required to be taken wherever excess payments have been made. Therefore, a show-cause notice was issued to Dr. Parthanil Roy informing him that his pay would be re-fixed and rectified as the initial grant of PB-4+ AGP Rs. 9000/- at the time of his joining

the Institute was erroneous. He was afforded an opportunity to represent his case. He had submitted a reply to the show cause notice which was not found satisfactory. As such, the order bearing no. PU/720/PAY-FIX/1193 dated 13/05/2024 was issued to revise his pay to the correct Basic Pay. Apart from revision of the pay, no other issue relating to the service matter of the petitioner had been proposed to be affected through the pay revision order. The date of initial appointment of the petitioner in ISI to the post of Assistant Professor and subsequent promotions to the higher posts of Associate Professor w.e.f. 01/11/2015 and Professor w.e.f. 01/01/2020 would not undergo any change and consequently, neither his service seniority nor his seniority in the present post would be adversely affected. The petitioner was currently drawing pay in pay level 14A, cell no. 8 with basic pay of Rs. 1,95,700, which needed to be revised to the immediately below cell no. 7 in the same pay level 14A with basic pay of Rs. 1,90,000. A statement showing the pay actually drawn by the petitioner throughout his service at ISI vis-à-vis the pay due to him had been attached as Annexure-V. Also, the 7th CPC Academic Pay Matrix for CFTIs had also been attached as Annexure-VI. Only the pay of the petitioner had been proposed to be revised to the correct Basic Pay through the pay revision order. There would be no adverse effect on the career prospect of the petitioner as a consequence of the pay revision. The petitioner had submitted an application to IIT Bombay for the post of Professor and requested ISI for issuance of NOC. In response, ISI had issued an NOC to him and he was subsequently selected for the said post in IIT Bombay. If the petitioner joined IIT Bombay, he would continue to

draw pay in pay level 14A applicable to the level of Professors in CFTIS like IIT, IIM, IISc, ISI etc. The petitioner had wrongly referred to the agenda no. B.3.3.2(R) of the minutes of the 7th meeting of the ISI Council held on 28/05/2024 at its Bangalore Centre, which dealt with another matter regarding pay fixation of an employee of the Institute, namely Dr. Prasanta Pathak, who had already retired from the service. By referring to the said minutes, the petitioner wrongly attempted to mislead the Court by providing a false narrative that the DoPT orders on over payment of pay and allowances to the Government employees was not applicable to ISI and the Institute's Council was competent enough to waive off recovery of the excess amount already paid to the petitioner. In this regard, it was reiterated that ISI operated with funds from the Government of India and hence, had to abide by all the rules, regulations and guidelines of the Government which had financial implications. Since overpayment of pay and allowances to the petitioner had an effect on the Government exchequer since it was paid entirely from the Grants-in-aid provided to ISI by the Government of India, ISI's Council needed to resort to the Government for appropriate decision whether the excess payment could be waived or not. Moreover, the Standing Service Orders of the Institute, through which the service rules of the employees were guided, specify that in any matter in which there were no existing orders or accepted conventions in the Institute, relevant rules of the Government of India would be deemed to be applicable until other provisions were made by the Institute. No rule in ISI exists regarding overpayment of pay and allowances to its employees and therefore, the Government rules,

more specifically the DoPT orders issued in this respect, were applicable to ISI. As per Government guidelines, waiver of recovery of excess payment made to Government employees could be allowed only with express permission of the Department of Expenditure (DOE) under the Ministry of Finance. ISI was presently not contemplating recovery of the excess payment made to the petitioner. The Institute was in the process of writing to the nodal Ministry (MoSPI) with the request for obtaining approval from the Department of Expenditure, Ministry of Finance for waiver of recovery of the excess payment. ISI would take the necessary steps as per the directives to be received from the Ministry in this respect. It was amply clear from the above paragraphs that being an Institute funded by the Government of India, ISI had acted as per the guidelines issued by the Government. On detention of the error in pay fixation of the petitioner, ISI had taken immediate corrective measure by issuing the pay revision order dated 13.05.2024. Prior to issuance of the pay revision order, a show-cause notice was issued to the petitioner and he was afforded an opportunity to represent his case. ISI had adhered to the Government norms and had not violated any of the constitutional provisions. Therefore, this Court would be pleased to kindly allow ISI to implement the pay revision order and dispose of the writ petition without any relief to the petitioner. In regard to this matter, the following judgements were referred to - a) Union of India and Ors. Vs. Bhanwar Lal Mundal (2013 SCC SC 776); b) Md. Subid Ali Vs. Union of India through the Secretary and ors. (2024 SCC CAL 7705).

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. First, the comparison of rankings of the ISI and the petitioner's former employee the Michigan State University as done by one QS World University Ranking is not much relevant in the present context. Such ranking may not be acceptable to all concerned in this country. In fact, such rankings are often based, among other things, on physical infrastructure, teachers-student ratio and the like, which would quite obviously be unfavourable in our densely populated country. Nor is the income of around 70,000 US dollar per year easily comparable to an amount in Rupees arrived at simply by using exchange rates. One may argue the need to take the actual purchasing power of the two currencies in question into account. However, it does not appear that the respondent authorities have made any discrimination against the petitioner in this regard.

6. Furthermore, the contention of the petitioner that the terms "in that grade" was not included in the order dated 16.09.2009 quite hardly be a clinching ground as the recruitment and promotion of a teacher of the University/Institute would be directly guided by the recruitment rules of the latter.

7. As contended on behalf of the respondent authorities, the faculties of the ISI used to enjoy UGC pay scales prior to 2009. In its meeting held on 15.01.2009, the Union Government approved to delink the pay scales of the faculty members of ISI from the UGC pay scales and to bring these at par

with the pay scales of the faculty members of IISc, Bangalore, with a condition that the Faculty Recruitment Rules of the ISI would be at par with that of the IISc. Accordingly, the ISI adopted the IISc pay scales for its faculty members through a Council meeting held on 22.02.2009 and also followed the IISc Recruitment Rules as modified from time to time.

8. As per the provisions of the orders issued by the Ministry of HRD in their orders dated 18.08.2009 (Annexure – II) and subsequently, 16.09.2009 (Annexure – III), it was evident that there were two essential criteria for the appointment of Assistant Professor in CFTIs, like the IISc and hence, in the ISI. For appointment of Assistant Professor, one should have three years of post-PhD industrial/research/teaching experience excluding the experience gained while pursuing PhD. An Assistant Professor would be placed in the Pay Band PB-3 (15600-39100) + AGP Rs. 8000 and after completion of three years of service in that grade, he would be entitled to be placed in the PB-4 (37400-67000) + AGP Rs. 9000. A person had to satisfy both the conditions. He was thus required to have at least six years experience after PhD.

9. In view of the above requirements, the petitioner was correctly appointed as an Assistant Professor at the Institute as he had the requisite three years' post-doctoral research/teaching experience that he had gained as the Assistant Professor at the Michigan State University. However, he was wrongly granted higher pay in PB-4 + AGP Rs.9000 straightaway at the time of his joining the respondent Institute, i.e., the ISI on 03.08.2011 although he did not possess three years' residency period as Assistant Professor in PB-3 + AGP Rs.8000. In other words, the petitioner was wrongly appointed in

PB-4 + AGP Rs.9000 well before he had acquired six years of relevant experience after PhD. This resulted in erroneous pay fixation.

10. As an error has been detected in the pay fixation of the petitioner, the respondent authorities would be justified in getting the same corrected and fixing a proper pay scale or rather, giving effect to the particular pay scale from the correct dated.

11. It has also been submitted on behalf of the respondent authorities that the respondent Institute was contemplating praying for waive for recovery of excess payment made to the petitioner before the concerned authorities. But, the impugned order speaks of the possibility of taking further action.

12. Be that as it may, the petitioner was not responsible for fixing his own pay. It was the respondent authorities who did so. The error, if any, ought to have been pointed out by the authorities soon after the date on which the higher pay was granted to the petitioner. But, there is a purported delay of thirteen years in raking up the issue of erroneous pay fixation and excess payment. There was indeed an inordinate delay and serious laches on the part of the respondents not to have detected such error in time. If the same had been detected and intimated to the petitioner in time, he might have taken proper steps or even shifted out to other Institutes that would have offered him better pay.

13. In this regard, reliance is placed on the decision in the State of Punjab vs. Rafiq Masih, reported at (2015) 4 SCC 334. There, a much lesser period of

five years was prescribed for detecting an error for the purpose of claiming refund.

14. Therefore, in view of such delay and laches, it shall not be open to the respondent to claim refund of excess payment that was purportedly made due to errors on their part, that too after the lapse of such a long time.

15. In view of the above discussions, the impugned office order dated 13.05.2024 is set aside. But, the respondent authorities shall be permitted to re-fix the pay of the petitioner in accordance with law and relevant Rules. However, they shall not be entitled to seek refund of any amount paid in excess to the petitioner in view of the inordinate delay and serious laches on their part in detecting the purported error in pay fixation and intimating the same earlier to the petitioner.

16. With these observations and directions, the writ petition is disposed of.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)