IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATESIDE

W.P.A.10852 of 2016
with
CAN 2 of 2023
Anil Kumar Ghosh & Ors.
Versus
The State of West Bengal & Ors.

For the Petitioners : Mr. Soumya Majumder, Sr. Advocate
Ms. Sanjukta Dutta, Advocate

For the State : Mr. Amal Kr. Sen, Ld. AAG
Mr. Arindam Chattopadyay, Advocate
Ms. Lipika Chatterjee, Advocate

For the KMDA : Mr. Sirsanya Bandyopadhyay, Advocate
Mr. Satyajit Talukder, Advocate
Mr. Arindam Chatterjee, Advocate

Hearing concluded on : 4^{th} September, 2025

Judgment On : 11^{th} September, 2025

Saugata Bhattacharyya, J.:

1. Petitioners were employees of Kolkata Improvement Trust (for short 'KIT'), Kolkata Metropolitan Water and Sanitation Authority (for short 'KMW&SA') and Kolkata Metropolitan Development Authority (for short 'KMDA'). Subsequently KIT and KMW&SA merged with KMDA and as such, petitioners were considered as employees of KMDA. All the petitioners retired on superannuation and were permitted to commute pension in terms of Calcutta Metropolitan Development Authority Employees' (Death-cum-Retirement Benefit) Regulations, 1988 (hereinafter referred as 'said Regulations of 1988'). Petitioners have

expressed common grievance that though they were permitted to commute their pension up to the extent of 40% of pension but on completion of 15 years from the date of commutation they were not provided the benefit of restoration of commuted portion of pension. Even after completion of 15 years from the date of commutation of pension petitioners were receiving pension at reduced rate since there was denial by respondent authorities to restore commuted portion of pension. Hence present writ petition was filed, *inter alia*, challenging a communication dated 8th October, 2009 being No. 3444-UD/O/M/SB/E-10/07(Pt.) issued by the OSD and Ex-Officio Deputy Secretary to the Government of West Bengal, Urban Development Department and decision of the Principal Secretary, Finance Department communicated by the Assistant Secretary to the Government of West Bengal, Finance Department (Law Cell) vide memo dated 3rd January, 2014.

2. Since in the said Regulations of 1988 there is no explicit provision for restoration of commuted portion of pension petitioners raised demand before the concerned authority of KMDA to extend the benefit of restoration of commuted portion of pension on completion of 15 years from the date of commutation as same is permissible under other pension Regulations. KMDA approached the concerned State respondent vide memo dated 5th February, 2007 and subsequent memo dated 18th June, 2009 for approval in order to include necessary provision which would permit the retired employees of KMDA to get benefit of restoration of commuted portion of pension, in the said Regulations of 1988. In this

regard, necessary decision was taken by KMDA in its 151st meeting convened on 6th December, 2006.

3. Vide communication dated 8th October, 2009 OSD and Ex-Officio Deputy Secretary regretted and expressed inability to agree with the proposal forwarded on behalf of KMDA seeking approval for inclusion of provision relating to restoration of commuted portion of pension. Subsequently in terms of order dated 25th June, 2013 passed by a Co-ordinate bench on disposing of earlier writ petition being WPA 18140 of 2011, Principal Secretary, Finance Department took decision which was communicated vide memo dated 3rd January, 2014of the Assistant Secretary to the Government of West Bengal, Finance Department (Law Cell). In the impugned decision of the Principal Secretary signed on 2nd January, 2014 it was stated policy decision was required to formulate for granting benefit of restoration of commuted portion of pension and same was not taken for the pensioners ofstatutorybodies, undertakings, local authorities etc.Unlike teachers working in government aided recognized schools similar policy decision was not extended to any statutory body or corporation. It was also recorded that when additional expenditure needed for granting benefit of restoration of commuted part of pension to the employees of KMDA at par with State government employees, can be borne by the KMDA without depending upon State exchequer, proposal for amendment as forwarded by KMDA can be accepted. As a resultwhereof vide said decision of the Principal Secretary, KMDA was informed that the proposal forwarded by the KMDA by their

communications dated 5th February, 2007 and 18th June, 2009 was not accepted.

4. Mr. Soumya Majumder, learned senior advocate representing the petitioners has drawn attention of this court to Regulations 38 and 52 of the said Regulations of 1988 and argued that though there is provision for commutation of pension for retired employees of KMDA but it is not provided in Regulation 38 how to restore commuted part of pension on expiry of 15 years from the date of commutation if opted by the pensioners of KMDA. Therefore, Regulation 52(2) should come into play wherein it has been provided any matter not covered by Regulations of 1988 shall be decided mutatis mutandis on the basis of the provisions in this behalf in the rules of the State government.

5. In case of State government employees the West Bengal Services (Commutation of Pension) Rules, 1983 are applicable and Rule 30 provides for restoration of commuted portion of pension. Rule 30 made the State government employees eligible to get benefit of restoration of commuted portion of pension after 14 years from the date when pension at the reduced rate after commutation was paidor with effect from 1stApril, 1981 whichever is earlier. Subsequently vide memorandum dated 19th August, 1987 issued by the Finance Department period of 14 years was enhanced to 15 years for restoration of commuted portion of pension with effect from 1st April, 1985 or after completion of 15 years from the date of retirement, whichever is later. According to petitioners,

on the strength of Regulation 52(2) of the said Regulations of 1988, Regulation 30 of the West Bengal Services (Commutation of Pension) Rules, 1983 read with memorandum dated 19th August, 1987 issued by the Finance Department thereby enhancing the period from 14 years to 15 years with effect from 1st April, 1985 apply in case of petitioners and there is no need to add further regulation in order to make the petitioners eligible to get benefit of restoration of commuted portion of pension.

6. It was contended on behalf of petitioners that in terms of Regulation 38 of said Regulations of 1988 employees of KMDA were eligible to commute $^{1}/_{3rd}$ of their pension and not beyond that but in consonance with memorandum dated 27th October, 1998 issued by the Principal Secretary to the Government of West Bengal, Finance Department revising pensionary benefits of the State government employees consequent upon revision of pay, retired employees of KMDA including petitioners were permitted to commute to the extent of 40% beyond $^{1}/_{3rd}$ of pension as contemplated under Regulation 38 albeit said memorandum dated 27th October, 1988 was applicable to State government employees only.

7. It was submitted on behalf of petitioners that entire process of making reference to the State government by KMDA seeking amendment of Regulation or addition of Regulation was in willful excess and in willful abdication of its statutory duties if same is not termed as fraud.

According to petitioner there can be no administrative action beyond the statutory prescription.

8. Relating to the policy decision as was found required in an appropriate case which emanates from the impugned decision of the Principal Secretary it was submitted there ought not to be any policy decision not to allow restoration of commuted part of pension in favour of pensioners of KMDA. In the event there is such policy decision same needs to be termed as arbitrary warranting interference by this court in exercise of writ jurisdiction. In this regard reliance was placed on the following judgments :

i. **(2001) 8 SCC 491 (Union of India & Ors. vs. Dinesh Engineering Corporation & Anr.)**

ii. **(2023) 8 SCC 240 (Madras Aluminium Company Limited vs. Tamil Nadu Electricity Board & Anr.)**

9. On behalf of KMDA Mr. Sirsanya Bandyopadhyay, learned advocate submitted that in terms of Section 139 of the West Bengal Town and Country (Planning and Development) Act, 1979 KMDA framed said Regulations of 1988 with the approval of the State government which was notified on 9th August, 1990. Regulation 38 of the said Regulations of 1988 does not provide restoration of commuted portion of pension. Government memorandum dated 19th August, 1987 contains provision for restoration of commuted portion of pension after 15 years from the date of retirement which was not adopted by KMDA and parimateria provision was not incorporated in the said Regulations of 1988.

10. In consideration of persistent demand from the pensioners of KMDA in 151st meeting convened on 6th December, 2006it was decided to forward proposal to the Finance Department, Government of West Bengal seeking approval for amendment and addition of new Regulations in the said Regulations of 1988 permitting the retired employees to get the benefit of restoration of commuted portion of pension, in this regard letters dated 5th February, 2007 and 18th June, 2009 were sent to the concerned State authorities.

11. It was contended on behalf of KMDA that it had very meagre income from its own resources; salary and other allied financial liabilities were borne by the State government by sanctioning requisite amounts from the State budget. Therefore KMDA is not in a position to bear that additional expenditure for extending such benefit to the petitioners. According to KMDA retired employees were permitted to commute up to 40% of their pension based on prior approval of the State government and in this regard reliance was place on the order dated 5th February, 2010 issued by the Officer on Special Duty, KMW&SA. It was argued that enhancement of commutation to the extent of 40% from 1/3rd of pension was not permitted simply in terms of government memorandum dated 27th October, 1998 but steps were taken in terms of Regulation 52(1) of the said Regulations of 1988 with the previous approval of the State government pending adoption by KMDA. Therefore the stand of KMDA was unless approval is accorded by the State government for adding necessary provision in said Regulations of 1988 for restoration of

commuted portion of pension, simply in terms of Rule 30 of the West Bengal Services (Commutation of Pension) Rules, 1983 read with memorandum dated 19th August, 1987 issued by the Secretary to the Government of West Bengal, Finance Department invoking Regulation 52(2) of said Regulations of 1988 petitioners cannot be provided with such benefit. Petitioners come under the purview of said Regulations of 1988 unlike State government employees who are governed by West Bengal Services (Commutation of Pension) Rules, 1983 and aforesaid government memo dated 19th August, 1987.

12. On behalf of KMDA reliance was placed on the following judgments :

i. **(1976) 4 SCC 548 (Vijayawada Municipal Council vs. Andhra Pradesh State Electricity Board & Anr.)**

ii. **(2014) 1 SCC 258 (State of Andhra Pradesh through IG, NIA vs. Mohd. Hussain alias Saleem)**

13. State respondents were represented by Mr. Amal Kumar Sen, learned Additional Advocate General who submitted that Regulation 52(2) does not come in aid of petitioners since commutation of pension of the employees of KMDA is adequately provided under Regulation 38 of the said Regulations of 1988. It was argued that if any matter is not covered by the said Regulations of 1988 shall be decided mutatis mutandis on the basis of the provision in this behalf in the rules of the State government but that is not the situation in the present case as Regulation 38 contemplates commutation of pension for retired employees. It was also submitted that dispute cropped up since there is

absence of provision in Regulation 38 permitting the retired employees to get benefit of restoration of commuted portion of pension after 15 years from the date of commuting pension and such issue cannot be addressed by taking shelter under Regulation 52(2) in view of the existence of provisions under Regulation 38. During course of submission Mr. Sen has given the list of five organizations where employees can commute pension but there is absence of provision relating to restoration of commuted portion of pension after 15 years. According to State respondents KMDA is not a singular organization where retired employees are not permitted to get the benefit of restoration of commuted portion of pension.

14. Reliance was placed on the following judgments :

i. **(2019) 4 SCC 479 (Senior Divisional Manager, Life Insurance Corporation of India & Ors. vs. Shree Lal Meena)**

ii. **(2016) 10 SCC 77 (State of Himachal Pradesh &Ors. vs. Rajesh Chander Sood& Ors.)**

iii. **(2022) 2 SCC 25 (Union of India &Ors. vs. N. Murugesan & Ors.)**

15. On analyzing the submissions made on behalf of parties it appears sole question which requires answer is whether petitioners being retired employees of KMDA are entitled to get benefit of restoration of commuted portion of pension on expiry of 15 years from the respective dates when they commuted pension in terms of Regulation 38 of the said Regulations of 1988.

16. In order to find answer to the aforesaid question this court finds it apt to quote Regulation 38 and Regulation 52 of said Regulations of 1988 infra:-

> *"38. **Commutation by employee**.- An employee who is eligible for pension under these regulations shall be entitled to commute for a lump sum payment at the rate indicated in Annexure II any portion not exceeding one-third of his pension which has been or may be granted to him under these regulations, provided that the employee against whom a judicial or departmental proceeding has been instituted or a pensioner against whom any such proceeding has been instituted shall not be permitted to commute any portion of his pension during the pendency of such proceeding."*

> *"52. (1) **Amendment of the regulations**.- Subject to the approval of the Board, these regulations may be amended or modified mutatis mutandis on the model of the corresponding rules of the State Government.*
>
> *(2) Any matter not covered by these regulations shall be decided mutatis mutandis on the basis of the provisions in this behalf in the rules of the State Government".*

17. As per Regulation 38 petitioners were permitted to commute part of their pension on superannuation though initially petitioners were permitted to commute part of pension not exceeding $^{1}/_{3}$rd but in terms of government memorandum dated 27th October, 1998 which was applicable in case of State government employees, were permitted to commute up to 40% of pension. It requires mentioning that one office order was issued dated 5th February, 2010 by Officer on Special Duty,

KMW&SA with the previous approval of the State government under the provision of Regulation 52(1) of the said Regulations of 1988 enhancing limit of commutation from $^{1}/_{3rd}$ of pension to 40%.

18. Though it is stated in aforesaid order dated 5th February, 2010 of Officer on Special Duty, KMW&SA the steps were taken in terms of Regulation 52(1) but said Regulation postulates amendment or modification of the said Rules of 1988 mutatis mutandis on the model of the corresponding rules of the State government subject to approval of the Board. Basis of enhancing limit of commutation of pension from $^{1}/_{3rd}$to 40% according to KMDA is this order dated 5th February, 2010 from which it does not appear that Regulation 38 was amended or modified. Only approval of State government was provided vide communication dated 18th December, 2009 but approval/adoption of Board/Authority was not explicit therefore steps taken by issuing order dated 5th February, 2010 does not appear in consonance with Regulation 52(1) albeit limit of commutation was enhanced as aforesaid.

19. In sharp contrast to the steps taken by respondent authorities while enhancing limit of commutation from 1/3rd to 40% in the present case for providing the benefit of restoration of commuted part of pension to the petitioners on convening a meeting on 6th December, 2006 it was decided to send a proposal to the State authority for approval in order to add one Regulation in the said Regulations of 1988. Such proposal which was forwarded vide letters dated 5th February, 2007 and 18th June, 2009 was

regretted by the State authorities vide communication dated 8th October, 2009 and a decision was taken by the Principal Secretary, Finance Department on 2nd January, 2014.

20. In consideration of aforesaid facts it transpires that two different methods were resorted to while enhancing limit of commutation of pension from $^{1}/_{3}$rd to 40% and for taking steps to extend the benefit of restoration of commuted part of pension after 15 years.

21. It was argued on behalf of State respondent that it is not a case of invocation of Regulation 52(2) of the said Regulations of 1988 since Regulation 38 postulates commutation of pension. According to State respondent if there was no provision in the said Regulations of 1988 relating to commutation of pension Regulation 52(2) would have been invoked otherwise not.

22. Court needs to take into consideration that petitioners are pensioners and benefit of restoration of commuted portion of pension depends on interpretation of Regulation 38 vis-à-vis Regulation 52. Since said Regulations of 1988 which is under consideration is pension Regulations liberal interpretation needs to be subscribed. At the same time court cannot brushaside the outcome in the event case made out by the respondent authorities is accepted.

23. Petitioners retired on different dates being employees of KMDA and in terms of Regulation 38 of the said Regulations of 1988 they were permitted to commute their pension to the extent of 40%. The methodology adopted while commuting pension was disclosed by filing an affidavit on behalf of KMDA which was affirmed on 16th April, 2025. Relevant part of the said affidavit is quoted below:-

> *"6. That pursuant to the direction above, this affidavit is being filed clarifying/disclosing the period taken into consideration for determining the commutation value of pension in respect of the petitioners, as under.*
>
> *a) The calculation for determining the commuted value of pension was made on yearly basis.*
>
> *b) As per annexure-II at page 9 of the earlier affidavit affirmed on 26.03.2025, the Commuted value of pension (CVP), as was paid once in a lump, was calculated on the basis of Commutation value for a pension of Rs. 1 per annum. Therefore, the monthly commuted amount of pension needed to be converted into yearly commuted amount of pension.*
>
> *c) Thus, in the formula for determining the commuted value of pension (CVP), as mentioned under paragraph 7(ii) at page 4 of the said affidavit affirmed on 26.03.2025, monthly commuted portion of pension required to be multiplied by 12 to convert it to the annual commuted amount or annual commuted value and the amount so arrived at after such multiplication by 12 was further multiplied by Commutation factor to determine the final amount of Commuted Value of Pension (CVP) as was paid once in a lump."*

24. From the said affidavit it appears that for getting the benefit of commutation of pension petitioners received pension at the reduced rate

for a period of 15 years as such, after expiry of 15 years if benefit of restoration of commuted portion of pension is not extended, petitioners would be unnecessarily penalized by receiving pension at the reduced rate during their life time, leading to preposterous situation.

25. An absurd stand was taken by the KMDA on affirming affidavit for filing a report on 11th September, 2023, in paragraph 7 it was averred since there is no specific provision in the said Regulations of 1988 for determining the period of commutation, petitioners are required to suffer deduction of part of pension till death which was commuted after superannuation in terms of Regulation 38. In contradistinction to the statements made in paragraph 7 of the said report which was affirmed on 11th September, 2023 a different situation was found on perusal of a letter dated 16th September, 2013 issued by the Officer on Special Duty, KMW&SA addressed to the Joint Secretary to the Government of West Bengal, Urban Development Department wherefrom it appears there was admission that the employees of KMW&SA who crossed 15 years period from retirement did not receive benefit of restoration of commuted part of pension like State government employees though the annuity value was fixed on the basis of 15 years span. Therefore, notwithstanding averments made in paragraph 7 of the aforesaid report it is found that petitioners commuted pension as per prevalent norms for a period of 15 years, not beyond that. During course of hearing it was also not demonstrated on behalf of respondent authorities that similar provision exists in any other local authorities/autonomous bodies where employees

once commute pension are compelled to get reduced pension for the rest of their life.

26. It is apparent from Regulation 38 that though retired employees are provided with opportunity to commute pension but restoration of commuted portion of pension after 15 years is not provided therein requiring invocation of Regulation 52(2) of the said Regulations of 1988. Regulation 52(2) can only be invoked in aid of petitioners, if appropriate provisions applicable to the State government employees granting benefit of restoration of commuted part of pension are not available to the petitioners. The West Bengal Services (Commutation and Pension) Rules, 1983 read with government memorandum dated 19th August, 1987 contained provisions permitting State government retired employees to have their commuted portion of pension restored after 15 years. Therefore petitioners on the strength of Regulation 52(2) are entitled toget benefit of restoration of commuted portion of pension in terms of government memorandum dated 19th August, 1987.

27. Regulation 38 prescribes a retired employee of KMDA can commute up to $^{1}/_{3}$rd of pension but keeping parity with the norms relating to commutation of pension applicable in case of State government employees KMDA employees are also permitted to commute up to the extent of 40% of pension though same is not provided in Regulation 38. An attempt was made on behalf of KMDA by placing reliance on order dated 5th February, 2010 issued by Officer on Special Duty, KMW&SA to

offer an explanation that enhancement of limit of commutation of pension from $^1/_3$rd to 40% was not automatic but based on approval of the State government. However, it could not be demonstrated that steps were taken for amending or modifying said Regulations of 1988 as required under Regulation 52(1). Mere approval by the State government as disclosed in order dated 5th February, 2010 pending adoption of provisions relating to commutation of pension in connection with Regulation 38 cannot satisfy requirement of Regulation 52(1) of said Regulations of 1988. Principal Secretary, Finance Department in the impugned order which was communicated vide memo dated 3rd January, 2014 while rejecting the proposal of KMDA for restoration of commuted portion of pension of the petitioners stated a policy decision is required to be implemented but State government did not take any policy decision for extending benefit of restoration of commuted portion of pension in relation to pensioners of statutory bodies, undertakings, local bodies etc. But such finding of the Principal Secretary appears to be erroneous. Retired employees of Kolkata Municipal Corporation are getting benefit of restoration of commutedpart of pension and in this regard an office order dated 20th November, 2010 issued by Chief Manager (S.R.A./C and Pension) is annexed at page 160 of the writ petition.

28. In **Shree Lal Meena** (supra) Hon'ble Supreme Court decided whether the employees who resigned are entitled to get benefit of pension schemes as the pension schemes relate back to the period during which those employees tendered resignations. In aforesaid context it was observed

that when the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. The provisions will have to be read as they read unless there is some confusion or they are capable of another interpretation. Thus it would be inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they were not meant for by the legislature. But the case at my hand relates to different fact situation where petitioners were permitted to commute pension on superannuation in terms of specific pension regulation but they are not being permitted to get benefit of restoration of commuted portion of pension after expiry of 15 years and the methodology which was adopted by KMDA in order to extend the benefit of restoration of commuted portion of pension is found to be contrary to Regulation 52.

29. In **Rajesh Chander Sood** (supra) in paragraph 90 it was decided by the Hon'ble Supreme Court claim of pay parity, identical retiral benefits by the employees of Corporate Bodies at par with government employees of State of Himachal Pradesh is wholly misconceived. It was held therein that the State government may legitimately choose to extend different rights in terms of pay scales and retiral benefits to civil servants. In the present case petitioners are not claiming parity of retiral benefits but case is made out for extending benefit of restoration of commuted part of pension after expiry of 15 years when petitioners were permitted to

commute pension on superannuation in terms of Regulation 38 of the said Regulations of 1988. Such claim also rests on Regulation 52(2) providing resolution of issue when same is not covered by said Regulations of 1988 mutatis mutandis on the basis of similar provision in the rules of State government.

30. In **N. Murugesan**(supra) Hon'ble Supreme Court defined acquiescence and laches in paragraph 25 in the context that after accepting appointment and on expiry of four years nine months from the date of joining claim was laid by submitting representation that as appointment was made by way of direct recruitment employee should be treated as regular and to be permitted to continue till date of superannuation. However, at the time of taking charge there was no demur by employee and in this context acquiescence and laches were defined. It is significant to state herein that in paragraph 25 it was observed that concept of acquiescence is to be seen on a case to case basis. Based on interpretation offered by Hon'ble Supreme Court on acquiescence and laches on behalf of State respondent though it was argued once petitioners accepted the benefit of commutation of pension in terms of Regulation 38 wherein there is no provision for restoration of commuted portion of pension after expiry of 15 years petitioners cannot pray for payment of full pension. But it is not a case of acceptance of terms and conditions of service at the time of appointment rather benefits are required to be extended in terms of pension regulations and accordingly petitioners are provided with opportunity to commute pension. It is found

in the present case based on facts that Regulation 52(2) is required to be applied in view of existence of provisions relating to restoration of commuted portion of pension for State government employees.

31. In connection with Regulations 52(1) and 52(2) of the said Regulations of 1988 **Vijayawada Municipal Council**(supra) and **Mohd. Hussain alias Saleem**(supra) were relied upon to highlight certain doctrine of interpretation of statute to impress upon this court that on application of those doctrine respondent authorities decided not to extend benefit of restoration of commuted part of pension to the petitioners in absence of amendment or modification of pension regulations. It is discussed above that acceptance of the contentions of the respondent authorities would land up to a preposterous situation resulting in payment of pension to the petitioners at reduced rate even after completion of 15 years from the date of commutation, for the rest of life. Said Regulations of 1988 being beneficial regulations warrants liberal interpretation in favour of the pensioners/petitioners.

32. In the impugned decision of the Principal Secretary, Finance Department dated 2nd January, 2014 it was stated that government did not take any policy decision on granting benefit of restoration of commuted part of pension to the retired employees of KMDA as policy decision was taken in favour of employees of recognized non-government educational institutions.Even existence of policy decision denying right of petitioners to get benefit of restoration of commuted part of pension after

expiry of 15 years from the date when petitioners commuted pension as per relevant rules of the said Regulations of 1988 is amenable to judicial review as it was decided in **Dinesh Engineering Corporation** (supra) by the Supreme Court. Taking note of the argument advanced on behalf of appellants in **Dinesh Engineering Corporation** (supra) that policy decision was not open to courts to interfere,law was enunciated that court would not ordinarily interfere with policy matters but that did not mean that courts abdicated their rights to scrutinize whether the policy in question was formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind material on record. It was further held any decision, be it a simple administrative or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise it will be violative of the mandate of Article 14 of the Constitution. In **Madras Aluminium Company Limited** (supra) taking note of view expressed by the Supreme Court in **Shrilekha Vidyarthi (Kumari) vs. State of U.P.** reported in **(1991) 1 SCC 212** observation was made in case of contractual obligation where State is party, State is expected while exercising its powers and discharging its functions acts indubitably as per minimal requirements of public law. The fact that a dispute falls into the contractual realm does not relieve the State of its obligation to comply with the requirements of Article 14. Therefore, policy decision or absence of it ought not take away right of petitioners herein being pensioners to get benefit of restoration of commuted part of pension after expiry of requisite period nor it can compel the petitioners to get pension at the reduced rate beyond the requisite period of 15 years, for the rest of their life. Such stand of the respondent authorities denying claim of the petitioners seeking restoration of commuted part of pension offends reasonableness and is contrary to Article 14, discriminatory in nature. In case of service contracts where presence of State/ Statutory Organization is found as employer said employer is under obligation to comply with requirements of Article 14 as it has been held in **Madras Aluminium Company Limited** (supra) in different context.

33. In aforesaid conspectus impugned letter dated 8th October, 2009 issued by OSD & Ex-Officio Deputy Secretary to the Government of West Bengal and decision of the Principal Secretary, Finance Department which was communicated vide letter dated 3rd January, 2014 of the Assistant Secretary to the Government of West Bengal, Finance Department (Law Cell) are set aside. Consequently, concerned respondent authorities are directed to restore commuted part of pension of the petitioners by four weeks from date. Respondent authorities are also directed to release arrear pension to the petitioners which is payable due to revival of commuted part of pension, from the date following the date of completion of 15 years to be reckoned from respective dates of commutation of pension by the petitioners, by six weeks from the date of communication of this order. Arrear pension shall carry interest at the rate of 8% per annum from the date full pension on revival of commuted

part of pension is payable to the petitioners till the date of release of same.

34. The writ petition stands disposed of. Pending application, if any, also stands disposed of.

35. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)