

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

Present:

The Hon'ble Justice Jay Sengupta

WPA 16358 of 2024

Dr. Goutam Kumar Paul

-vs-

Indian Statistical Institute & ors.

For the petitioner : Mr. Pradip Kumar Tarafder
Mr. Sourav Sengupta ...
.....Advocates

For the respondent nos. 1 to 3 : Mr. D. N. Roy
Ms. Sayani Roy Chowdhury
.....Advocates

For the UOI : Mr. Rudrajyoti Bhattacharyya
.....Advocate

Heard lastly on : 11.12.2024

Judgment on : 24.02.2025

Jay Sengupta, J:

1. This is an application praying for quashing of purported Office Order No. PU/720/PAY-FIX/1192 dated 13.05.2024 and for a direction upon the respondent authorities to hold that upgradation of the pay of the petitioner from PB-3 from PB-4 and subsequent pay fixation on promotion and as per recommendation of the 7th Pay Commission to be valid.

2. Learned senior counsel representing the petitioner submitted as follows. The prime issues involved in the writ petition are enumerated as under. Whether the upgradation of the petitioner from PB-3 in the scale of Rs. 15,600-39,100 to PB-4 in the scale of Rs. 37,400-67,000/- by the then Director of ISI was valid and covered by the Recruitment Rules of the Institute? Whether the show cause notice issued by the respondent for re-fixation of pay on account of overpayment of pay and allowances and recovery of the alleged excess payment paid wrongfully to the petitioner and whether the order of re-fixation of the pay of the petitioner dated 13.05.2024 was valid, justified and tenable in the eye of law? As regard to the Issue No.1, the ISI Recruitment Rules came into force w.e.f. 22.02.2009. The said Rules specifically provided for eligibility conditions of Assistant Professor which requires (a) Ph.D. degree in any of the relevant subjects and consistently strong academic records throughout; and (b) three years post-doctoral research, preferably including some teaching (eligibility conditions may be relaxed in exceptional cases). The salary of the said Assistant Professor was prescribed PB-3 Rs. 15,600-39,100 with minimum pay of

Rs.30,000/-with grade pay of Rs.8000/- plus usual allowances. The said Rule specifically provided that after completion of 3 years' services in PB-3, would be placed in PB-4 Rs.37,400-67,000 with grade pay of Rs.9000/-plus usual allowances. From the said Rule, it was clear that the Assistant Professors who had completed 3 years' service in PB-3 would be placed in PB-4 with Grade Pay of Rs.9000/-. So, the eligibility requirement for such upgradation was only completion of 3 years of service in PB-3 and there was no mention of any additional requirement of higher grade pay. The said Rules also did not restrict that such completion of 3 years' service in PB-3 had to be done in the ISI, the respondent herein only and not in any other University or Institute. The Rule maker consciously excluded the requirement of specific grade pay while fixing the eligibility requirement for upgradation from PB-3 to PB-4. The intention of the Rule maker was clear and unambiguous. The term "Pay Band" and the term "Grade Pay" were completely two different and distinct concepts. This was clearly illustrated by the 6th Pay Commission in its report at paragraph 1.2.3 at internal page 7 wherein it had been, inter alia, stated that "Grade Pay" was in the nature of 'Fitment Benefit' while the pay in the running "Pay Band" was computed by adding the basic pay and dearness allowances. While dealing with identical circumstances, the Hon'ble Supreme Court in the case of Swastik Gases Pvt. Ltd. vs Indian Oil Corporation Ltd. reported in (2013) 9 SCC 32 held that for construction of eligibility criteria or clause in the Rule or agreement, the maxim, *expressio unius est exclusio alterius* came into play as there was nothing mentioned in the Rule about the additional requirement of a

particular grade pay. The said legal maxim meant that expression of one was the exclusion of another. In the instant case, by making an express provision in the Rule that "after completion of 3 years of service in PB-3, they would be placed at PB-4 with higher grade pay of Rs.9000/-", the Rule Maker had consciously excluded the additional requirement of a particular grade pay along with PB-3 for being considered for such upgradation to PB-4. Reliance was also placed on the case of J. Jayalalitha & Ors. vs State of Karnataka & Ors. reported at (2014) 2 SCC 401 wherein it was held inter alia that there was yet an uncontroverted legal principle that where a statute required to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or method of performance were impliedly and necessarily forbidden. The aforesaid settled legal proposition was based on a legal maxim *expressio unius est exclusio alterius*, meaning thereby that if a statute provided for a thing to be done in a particular way, then it had to be done in that manner and in no other manner and following any other course was not permissible. Applying the aforesaid provision of rule of the respondent, ISI, and applying the ratio laid down by the Hon'ble Supreme Court, since the petitioner was already placed in PB-3 of Rs. 15,600-39,100 w.e.f. January, 2011 while in service at Jadavpur University and the petitioner joined as an Assistant Professor at ISI on 08.08.2013 in the same scale of pay, i.e., PB-3 of Rs.15,600-39,100 with the pay of Rs.33,430/- (i.e., with additional three increments over the minimum required joining pay of Rs.30,000/-), maintaining service continuity. Therefore, on 20.05.2015, when the petitioner was granted upgradation to PB-4 by the

then Director of ISI, more than the minimum requirement of three years' service in PB-3 has been fulfilled by the petitioner. So, the appointment as well as the upgradation to PB-4 was valid, proper and in strict compliance with the provisions of the Recruitment Rules of ISI which came into force w.e.f. 22.02.2009. In the instant case, since the respondent in issuing the aforesaid purported show cause notice against the petitioner not only had acted arbitrarily, illegally and with mala fide intention but also acted in clear violation of the Recruitment Rules of the respondent ISI and as such, the entire action of the said concerned respondents were liable to be declared nullity. The Hon'ble Supreme Court in the case of Sukdev Singh vs Bhagat Ram reported in (1975) 1 SCC 421 held that the words rules and regulations were used in an Act to limit the power of the statutory authority. The powers of statutory bodies were derived, controlled and restricted by the statutes which created them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers was ultra vires. The reason was that it went to the root of the power of such corporations and the declaration of nullity was the only relief that was granted to the aggrieved party. As regards to the Issue No. II, the issuance of the show cause notice on the alleged grounds mentioned therein were not only baseless, unfounded and suffered from utter non-application of mind to the relevant facts and circumstances of the case, but the same was also actuated with malice in fact and malice in law. This would be clearly evident from the materials on record that the petitioner joined ISI on 08.08.2013 maintaining service

continuity and on that date, the petitioner was already an Assistant Professor in the scale of PB-3 in Jadavpur University for more than 2 years 7 months and since the petitioner had joined the ISI on 08.08.2013 in the same scale of PB-3, the petitioner had already completed 1 year 9 months and 16 days in the same Scale of PB-3 in ISI. So, as on 20.05.2015, the petitioner had completed more than three years' service as an Assistant Professor in PB-3. Therefore, the placement of the petitioner in the scale of PB-4 w.e.f. 20.05.2015 was made in strict compliance with the Recruitment Rules of ISI. The said Recruitment Rules did not say that such three years' service in PB-3 had to be completed in ISI only and not from any other Institute or University. As such, the allegation made in the show cause notice that the petitioner was granted the scale of PB-4 prematurely on the ground that the petitioner did not complete 3 years' service in PB-3 in respondent ISI was wholly baseless, untenable and also suffered from utter non-application of mind to the relevant facts of the case and was explicitly contrary to the provisions of the Recruitment Rule of ISI. The purported acts and/or actions of the concerned respondents in issuing the show cause notice dated 23.01.2024 was patently arbitrary and mala fide, which would be further evident from the fact that after lapse of near about 6 years from the date of placement of the petitioner in PB-4, on the basis of an anonymous complaint alleging that such placement was irregular, the Vigilance Officer of the respondent, ISI, by a letter dated 31.03.2021 sought for comments and/or views from the petitioner which he submitted on 09.07.2021 explaining the correct state of affairs and on receipt thereof, the Vigilance Officer did not

proceed with the matter any further. Pertinently, as per the Office Order of the Central Vigilance Commission dated 14.08.2020, the investigation of the complaint must be strictly completed by three months from the date of receipt of the complaint. Since there was no merit in the said anonymous complaint, the initiation of investigation by the said Vigilance Officer was not called for. In the aforesaid backdrop, after a lapse of 8 years of the placement of the petitioner in PB-4, the concerned respondent once again reopened the issue by constituting a 3 members' Committee on 28.04.2023 to review the case of upgradation of the petitioner in PB-4. The said committee submitted its purported report on 27.06.2023, inter alia, observing that the petitioner was granted higher pay in PB-4 plus AGP Rs. 9000/- irregularly before the due date of his entitlement in contravention to the extant Rules of the Institute and recommended the respondent, ISI, for obtaining approval from the Department of Expenditure, Ministry of Finance for waiver of recovery of excess payment and if the Department of Expenditure refused to grant approval for waiver of the recovery, a show cause notice would be issued to the petitioner for rectification of the premature grant of upgraded pay. Nearabout after 9 years from the date of placement of the petitioner in PB-4, an Audit Enquiry Reference was raised on 28.12.2023 to the effect that it was noticed that the petitioner was placed in PB-4 w.e.f. 20.05.2015 after completing only 1 year 9 months and 16 day only from the date of joining as Assistant Professor at the respondent ISI and sought for clarification from the respondent ISI regarding the reason for such placement of the petitioner in PB-4. The ISI by their communication dated

02.01.2024, inter alia, submitted that the upgradation of the petitioner was done on the basis of the instruction of the then Director, ISI were not same at the time of appointment of the petitioner and that UGC pay scales were applicable at Jadavpur University and ISI followed IISc Pay scales and also submitted that there was no Rules available regarding upgradation of Assistant Professors from PB-3 to PB-4 considering the period of 6 years from the date of viva voce of his Ph.D degree. On receipt of the reasons and/or clarifications supplied by the respondent ISI, on the next day, i.e., on 03.01.2024, the Senior Audit Officer, after detailed scrutiny of the entire service records and all other relevant documents, prepared a detailed Audit Observation Report by reiterating the fact that the petitioner was upgraded to PB-4 just after completion of only 1 year 9 months and 16 from the date of joining as Assistant Professor at respondent ISI. It was further observed that in reply to the Audit enquiry, the Institute confirmed that no such Rule was available regarding upgradation as Assistant Professors from PB-3 to PB-4 considering the period of 6 years from date of viva voce of his Ph.D. degree. The respondent ISI accepted the fact that upgradation from PB-3 to PB-4 was based on such decisions which are not supported by any rule /instruction of the appropriate authority which resulted in irregular upgradation of the petitioner from PB-3 to PB-4. In the said Audit Report, the Senior Audit Officer, inter alia, advised the respondent ISI for making necessary revision of pay of the petitioner. Thereafter, the said purported show cause notice was issued on 23.01.2024. Curiously enough, in the said show cause notice, there was no whisper about the said Audit

Observations made by the Senior Audit Officer. The chronology of the events showed that after the date of placement of the petitioner in PB-4 on 20.05.2015, pay revisions and promotions were made and almost 14 Half-yearly and 7 Annual Audits were undertaken and Audit Reports thereof were submitted, but no questions at all were raised during all these years. Even on receipt of an anonymous complaint alleging irregularity in the placement of the petitioner in PB-4 by the Vigilance Officer and comments and/reply received from the petitioner on 19.07.2021, the said Vigilance Officer found that initiation of investigation could not be called for and was not proceeded with any further. But for reasons best known to the respondent authorities, the concerned respondents reopened the said issue and moved very fast with the aim of pushing through the matter hastily in issuing a show cause notice to the petitioner, and that too, on the unfounded and baseless allegations. These facts clearly demonstrated how the concerned respondent had proceeded in undue haste. While dealing with the issue of haste, The Hon'ble Supreme Court in the case of Noida Entrepreneur's Association vs. Noida and Ors. reported at (2011) 6 SCC 508 held that when a thing was done in a most hasty manner, mala fide would be presumed. It was further held that anything done in undue haste could also be termed as arbitrary and could not be condoned in law. Reliance was also made in the case of Bahadur Sinh Lakhubhai Gohil vs. Jagadishbhai M. Kamalia and Ors. reported at (2004) 2 SCC 65. In applying the ratio laid down in the aforesaid two cases, the entire action of the respondents in issuing the purported show cause notice in haste manner was liable to quashed being

arbitrary and infected with the vice of mala fide apart from being violative of the recruitment rules of ISI in force. In view of the aforesaid facts of the case and as well as position of law as discussed above, the respondents were not liable to re-fix the pay of the petitioner and also recover the purported excess payment made to the petitioner. The respondent ISI in their Affidavit-in-Opposition referred to the two orders dated 18.08.2009 and 16.09.2009 issued by the Ministry of Human Resource and Development (in short, MHRD) and also an order of certification dated 28.06.2011 issued by the MHRD and submitted that those orders are essential for appointment as Assistant Professor in Centrally Funded Technical Institutes (in short CFTIs) like IISc and therefore, in ISI also. Relying on the said orders, the respondent ISI submitted that an Assistant Professor will be placed in PB-3 (Rs.15,600-39,100) plus AGP Rs.8000 and after completion of 3 years of service in that grade, he would be entitled to be placed in PB-4 (Rs.37,400-67,000) plus AGP Rs.9000. It was immaterial in which Institute the faculty had served, but he or she mandatorily had to possess three years of experience in PB-3 plus AGP Rs. 8000 before being upgraded to PB-4 plus AGP Rs.9000/-. This submission was absolutely misconceived, untenable and also contrary to the aforesaid order dated 16.09.2009 inasmuch as, in paragraph 2 of the MHRD Order dated 16.09.2009 it was specifically mentioned that the Assistant Professors in IITs, IISc Bangalore, IIMS, NITIE Mumbai and IISERS on completion of three years of service in PB-3 would move to pay band of Rs. 37,400-67,000 (PB-4) with an AGP of Rs.9000 and would however continue to be designated as Assistant Professor. There was no mention or

requirement of AGP Rs. 8000/- anywhere in the said order. It was further stated that in MHRD letter dated 28.06.2011, the clarification was only for the IITs. There were many other Centrally Funded Technical Institutes (in short CFTIs) such as IIM, IISER, NITIE, IISc, etc. for which, this was not applicable since the other institutes had not been mentioned specifically and separately, like they had been mentioned in the order dated 18.08.2009 and 16.09.2009. Further, when MHRD came up with a further amendment to its order dated 18.08.2009 and 16.09.2009 vide the letter dated 22.09.2009, it consciously chose not to amend paragraph no.2 of the MHRD order dated 16.09.2009, signifying that this paragraph had to be read as it was. Furthermore, it was pertinent to mention here that both the MHRD orders dated 18.08.2009 and 16.09.2009 were not applicable to respondent ISI since, as an Autonomous Institute, it had already framed its own separate recruitment rules vide Office Order dated 27.07.2011 which came into force w.e.f. 22.02.2009.

3. Leaned counsel for the respondent 1 to 3 submitted as follows. 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 will be at par with that of IISc. (Indian Institute of Science). On 27th July 2011, an internal order vide office order no. D.O./19032 was issued by the then Director of ISI in line with the relevant orders of MHRD to formalize the recruitment rules of the Respondent Institute ISI. As per the aforesaid order, an

Assistant Professor would be placed in 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. It was immaterial in which Institute the faculty had served, but he/she mandatorily had to possess 3 years of experience in PB-3 + AGP Rs. 8000 before being upgraded to PB-4+ AGP Rs. 9000. Here, Dr. Goutam Kumar Paul was granted higher pay in PB-4+ AGP Rs. 9000/- irregularly before the due date of his entitlement in contravention to the extant rules of the Institute. Prior to joining ISI, Dr. Goutam Kumar Paul was working at Jadavpur University wherein he was entitled to UGC pay scale of Pay Band PB-3 (15600-39100) + AGP Rs. 7000 (evident from annexure P-2). After joining ISI on 08.08.2013, he was granted PB-3 + AGP Rs. 8000. Later, he was granted higher pay in PB-4 (37400-67000) + AGP Rs. 9000 w.e.f. 20.05.2015, i.e., before completion of three years in AGP of Rs. 8000. The criteria that an Assistant Professor could be upgraded to PB-4 + AGP Rs. 9000 only after serving for three years in PB-3 + AGP Rs. 8000 was also clarified by MHRD vide letter under F. No. 17-9/2010-TS.1/pt. file dated 28.06.2011 to the IITs which had been attended as Annexure R-4. The petitioner Dr. Goutam Kumar Paul completed Ph.D on 20.05.2009 from ISI. The petitioner worked in Jadavpur University from 18.07.2006 to 07.08.2013. The pay enjoyed by him at Jadavpur University prior to joining ISI was in the UGC pay scale of Pay Band PB-3 (Rs.15600-39100) + AGP Rs. 7000. In the reply dated 29.01.2024 to the show-cause notice, the petitioner himself admitted of the wrongful/excess payment made to him because he had referred to the relevant DoPT O.M. No.

18/03/2015-Estt (Pay-1) dated 02.03.2016, which dealt with wrongful/excess payments made to Government servants. In this regard it was submitted that though the pay of the petitioner would be revised to the correct level, the respondent Institute was not presently contemplating recovery of excess payments already made to him till 13.05.2024. In terms of the Government Guidelines, the Institute was in the process of seeking approval of the Government for waiver of the recovery of excess payments made to the petitioner. As the petitioner was enjoying interim order in his favour, the amount of recovery was yet undecided. In case the writ was decided against the petitioner, the amount of excess payment paid on account of interim order, would not be considered for seeking approval of the Government for waiver.

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

5. The contention of the petitioner is quite correct that the terms “Pay Band” and the term “Grade Pay” were different and distinct concepts. On this, the petitioner sought reliance on the report of the 6th Pay Commission at paragraph 1.2.3 wherein it was provided that “Grade Pay” was in the nature of fitment benefit while the pay in the running “Pay Band” was computed by adding the basic pay and dearness allowances.

6. However, the Union Cabinet in 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 IISc, Bangalore, with the condition that the faculty recruitment Rules of the two Institutions would be at par. On 27.07.2011, an internal order vide office order no. D.O./19032 was issued by the then Director of ISI in the tune that the relevant orders of MHRD to formalize the Recruitment Rules of the respondent Institute. As per the aforesaid order, an Assistant Professor would be placed in PB-3 (15600-39100) + AGP Rs. 8000/- and after completion of 3 years of service in that grade pay, he would be entitled to be placed in PB-4 (37400-67000) + AGP Rs. 9000/-. It was immaterial in which Institute the faculty had served, but he/she mandatorily had to possess 3 years of experience in PB-3 + AGP Rs. 8000/- before being upgraded to PB-4 + AGP Rs. 9000/-. But, according to the respondent authorities, the petitioner was granted higher pay in PB-4 + AGP Rs. 9000/- irregularly before the due date of his entitlement. Admittedly, before he joined ISI, the petitioner was working in Jadavpur University where he was entitled to UGC pay scale of PB-3 (15600-39100) + AGP Rs. 7000/-. It was only after joining ISI on 08.08.2013 that the petitioner was granted PB-3 + AGP Rs. 8000/-. But, he was granted higher pay in PB-4 (37400-6700) + AGP Rs. 9000/- with effect from 20.05.2015 i.e., before completion of 3 years' in AGP Rs. 8000/-.

7. One has to go by the relevant Rules of the Institute in order to find out whether a candidate is fit to get a higher Pay Band + Grade Pay. Conceptual nuances between Pay Band and Grade Pay would hardly make any difference in this.

8. In the instant case, it appears that the petitioner was granted higher pay in PB-4 + AGP, but few months before he completed his service with pay in PB-3 + AGP Rs. 8000/- (be it in the ISI or in any earlier Institute). Therefore, the respondent authorities would be justified in correcting the error and fixing a proper pay scale or rather, giving effect to the particular pay scale from the correct date.

9. It has also been submitted on behalf of the respondent authorities that at present the respondent Institute was not contemplating recovery of excess payment made to the petitioner. However, the impugned order speaks of the possibility of taking further action.

10. 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 i.e., immediately after 20.05.2015. There was indeed an inordinate delay and serious laches on the part of the respondents not to have detected any error in pay fixation of the petitioner from 2015 onwards. If the same had been detected and intimated to the petitioner in time, he might have taken appropriate steps or even shifted out to other Institutes that would have offered him better pay.

11. 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.

12. 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.

13. 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.

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

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

(Jay Sengupta, J.)