

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

Present:

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

**MAT 1101 of 2025
CAN 1 of 2025
CAN 2 of 2025**

**The Deputy Secretary, Backward Classes Welfare & Tribal Development
Directorate & Anr.**

Vs.

Sri Subhasish Das & Ors.

With

**MAT 1102 of 2025
CAN 1 of 2025**

**Aswini Kumar Yadav, The Commissioner of Backward Classes Welfare &
Tribal Development Directorate**

Vs.

Subhasish Das & Ors.

With

**MAT 1128 of 2025
CAN 1 of 2025**

**The Deputy Secretary, Backward Classes Welfare & Tribal Development
Directorate & Anr.**

Vs.

Subhasish Das & Ors.

Appearance:

For the Appellants/State : **Mr. Kishore Dutta, Ld. AG/Sr. Adv.
Mr. Sirsanya Bandopadhyay, Adv.
Mr. Degangshu Dinda, Adv.**

For the Respondents : **Mr. Amarnath Sen, Adv.
Mr. Malay Dhar, Adv.
Mr. Biswajit Sarkar, Adv.
Mr. Shouvik Naskar, Adv.**

Heard On : **09.09.2025**

Judgment On : **16.09.2025**

Sujoy Paul, J.:

1. These *intra* court appeals are arising out of Judgment of Learned Single Judge passed in WPA No. 11914 of 2021 decided on 8th February, 2024. Thus, with the consent of parties, these matters were analogously heard and decided by this common Judgment. Parties were heard on the question of maintainability as well as on merits.

Factual Backgrounds:

2. The Writ Petitioners/Respondent herein (hereinafter called as 'employees') filed WPA No. 11914 of 2021 seeking benefit of revised pay and emoluments as per the memorandums issued by the State Government from time to time.
3. The Government issued first memorandum on 16th September, 2011 and made it clear in Clause (iv) that remuneration of casual/daily rated/contractual workers who had not yet complete 10 years of service will be equivalent to 75 per cent of remuneration subject to a minimum of Rs. 5,000/- per month.
4. In Clause (v), it is mentioned that such casual/daily rated/contractual workers who will complete 10 years service on 1st July every year will come under the purview of this order provided *no such worker if engaged after 1st April, 2010 will come under the purview of this order.*
5. Another memorandum dated 25th February, 2016 was issued whereby the Government decided to revise the benefits as follows:

“(i) All contractual/casual/daily rated workers shall continue to be in engagement up to the age of 60 years. Engagement of contractual/casual/daily rated worker shall not be terminated except as prescribed in the above referred Memo.

(ii) Consolidated monthly remuneration of contractual/casual/daily rated workers will be as follows:

Group D		
Period of engagement	Present	Proposed
Less than 5 years	Rs. 7,000/-	Rs. 10,000/-
5-10 years	Rs. 7,000/-	Rs. 12,000/-
10-15 years	Rs. 8,500/-	Rs. 14,000/-
15-20 years	Rs. 8,500/-	Rs. 17,000/-
More than 20 years	Rs. 8,500/-	Rs. 20,000/-

Group C		
Period of engagement	Present	Proposed
Less than 5 years	Rs. 8,500/-	Rs. 11,500/-
5-10 years	Rs. 8,500/-	Rs. 13,500/-
10-15 years	Rs. 11,000/-	Rs. 16,000/-
15-20 years	Rs. 11,000/-	Rs. 19,000/-
More than 20 years	Rs. 11,000/-	Rs. 22,500/-

(Emphasis Supplied)”

6. Yet another memorandum dated 8th February, 2019 was issued whereby the consolidated remuneration was again revised. The relevant portions reads thus:

“Group-‘D’

Period of engagement	Existing remuneration	Revised remuneration
Less than 5 years	Rs. 10,000/-	Rs. 12,000/-
5 to less than 10 years	Rs. 12,000/-	Rs. 14,000/-
10 to less than 15 years	Rs. 14,500/-	Rs. 16,500/-
15 to less than 20 years	Rs. 17,000/-	Rs. 19,000/-
20 years and above	Rs. 20,000/-	Rs. 22,000/-

Group-‘C’

Period of engagement	Existing remuneration	Revised remuneration
Less than 5 years	Rs. 11,500/-	Rs. 13,500/-
5 to less than 10 years	Rs. 13,500/-	Rs. 15,500/-
10 to less than 15 years	Rs. 16,000/-	Rs. 18,000/-
15 to less than 20 years	Rs. 19,000/-	Rs. 21,000/-
20 years and above	Rs. 22,500/-	Rs. 24,500/-

(Emphasis Supplied)”

- 7.** The employees in the instant case were admittedly engaged after 1st April, 2010. One such appointment order dated 19th June, 2018 is already placed on record. The bone of contention of employees before the writ court was that after having completed 5-10 years of service, they are entitled to get the revised benefits as per memorandum dated 25th February, 2016 and 8th February, 2019 respectively. The stand of the Government, on the other hand, was that by memorandum dated 25th February, 2016 and 8th February, 2019, only rates/consolidated pay have been revised. The conditions relating to eligibility/entitlement prescribed in the memorandum dated 16th September, 2011 will remain intact.
- 8.** The Learned Single Judge by impugned order opined that the memorandum dated 25th February, 2016 and 8th February, 2019 shows that the eligibility/impediment of completion of particular years of service on a cut of date has been given complete go by and therefore, the employees are entitled to get the benefit of revised remuneration on completion of stipulated years of service.

MAT 952 of 2024:

9. Admittedly, the State filed this MAT to assail the judgment passed on 8th February, 2024 in WPA 11914 of 2021. The said MAT was listed before the Division Bench and was withdrawn on 2nd January, 2025. Pertinently, while withdrawing the *intra* Court appeal, no liberty was prayed for or granted to seek review or file another *intra* Court appeal.

RVW 8 of 2025:

10. RVW 8 of 2025 was filed seeking review of Judgment passed in WPA 11914 of 2021. In the initial hearing of said review, a conditional *interim* order was granted to the State by directing them to deposit the amount of revised remuneration before the Registry of this Court. Subject to fulfilling that condition, *interim* order was granted on 18th February, 2025. After hearing both the parties by judgment dated 2nd July, 2025, the review petition was dismissed.

MAT 1101 of 2025:

11. MAT 1101 of 2025 is filed against the basic judgment dated 8th February, 2024 passed in WPA 11914 of 2021.

MAT 1102 of 2025:

12. MAT 1102 of 2025 is filed against the Judgment of review in case no. RVW 8 of 2025 decided on 2nd July, 2025.

MAT 1128 of 2025:

13. MAT 1128 of 2025 is filed against the order dated 18th February, 2025 wherein in the contempt jurisdiction, the learned Single Judge decided

to implement the aforesaid conditional order passed in review jurisdiction. In other words, the amount which was directed to be deposited before the registry of this Court was directed to be released in the contempt jurisdiction and this order of release became subject matter of challenge in this *intra* court appeal. Thus, it is crystal clear that all these *intra* Court appeals are arising out of the main judgment dated 8th February, 2024 passed in WPA 11914 of 2021. For this reason, with consent, the matters were analogously heard.

Preliminary Objection:

14. The learned Counsel for the employees has raised two fold preliminary objection. The *first* objection is that previous *intra* Court appeal MAT No.952 of 2024 was withdrawn without liberty to file review petition or file a fresh *intra* Court appeal. Thus, main MAT 1101 of 2025 itself is not maintainable. In support of this contention, he placed reliance on an unreported Judgment of High Court of MP in **WA No. 1163 of 2017 (Rafiq Riwani vs. M.P. State Waqf Board & Ors.)** decided on 29th January, 2018 and on two Judgments of Delhi High Court in **LPA No.114 of 2013 (Neelam Arya vs. Din Mohd. (Deceased) & Ors.)** and **LPA No. 599 of 2017 (Delhi Development Authority vs. Kishan Chand Saini (D) Thr. His LRs.)**. The *second* objection is that when review petition is dismissed, the doctrine of merger is not applicable. Against such Judgment passed in review jurisdiction, *intra* Court appeal is not maintainable. Reliance is placed on a Full Bench decision of MP High Court reported in **1995 MP LJ 4 (Seema Subhash Mitra &**

Anr. vs. Lotika K. Mitra & Ors.) and Judgment of Supreme Court reported in **AIR 2023 SC 5674 (Rahimal Bathu & Ors. vs. Ashiyal Beevi)**.

15. A recent Judgment of Supreme Court in **S. Tirupathi Rao Vs. M. Lingamaiah & Ors.** decided on 22nd July, 2024 was referred to show that the scope of interference in review jurisdiction is limited. Under the garb of review, entire matter cannot be re-agitated or reargued. Lastly, the Judgment of Supreme Court in **2006 (5) SCC 399 (Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.)** was referred to contend that the order passed in contempt jurisdiction does not fall within the ambit of 'Judgment' under the Letters Patent and therefore, MAT 1102 of 2025 is not maintainable against order passed in exercise of contempt jurisdiction. Under the Contempt of Courts Act, appeal is maintainable only if the person is found to be guilty of committing contempt.
16. On merits, it is submitted that the learned Single Judge has rightly held that in view of subsequent memorandums dated 25th February, 2016 and 8th February, 2019, the eligibility conditions mentioned in the first memorandum dated 6th September, 2011 have lost its significance. Even otherwise, on arithmetic calculation also, the employees deserve to succeed. To support this contention, the reasons assigned by the learned Single Judge in the impugned judgment and judgment passed in review were heavily relied upon. The judgment of RVW 8 of 2025 reads thus:

“38. At this juncture if I again look to the tabular statements as available in the notification dated 25.02.2016 which was brought into effect on and from 01.03.2016 it reveals that the review petitioners i.e. the State and its functionaries proposed for enhancement of emoluments of those category of contractual staff who worked less than five years as well as for a period of 5-10 years also.

39. If I accept the argument of Mr. Bandyopadhyay that clause (V) of the notification dated 16.05.2011 was never given a go-bye by the publication of the subsequent two notifications, it appears to this Court that the tabular chart showing increased rate of emoluments in respect of category of staff worked ‘less than five years’ and ‘5-10 years’ would become a fallacy.

40. **On the contrary it appears to this Court that simple arithmetical calculation goes to show that for the sake of argument if a worker is appointed on 02.04.2010, his tenure of service as on 01.03.2016 i.e. the date of effect of notification dated 25.02.2016 comes to 5 years 10 months 29 days i.e. within the category of ‘5-10 years’.**

(Emphasis Supplied)”

Stand of State regarding Preliminary Objection:

17. Shri Kishore Dutta, learned Advocate General, in order to overcome the preliminary objections, relied on the Supreme Court judgment reported in **(1981) 4 SCC 8 (Shah Babulal Khimji vs. Jayaben D. Kania & Anr.)** and urged that even an order dismissing an application for review would be appealable under Letters Patent being a ‘judgment’ though it is not made appealable under Order 43 Rule 1. A Full Bench decision of Madras High Court reported in **2021 SCC OnLine Mad 1148 (District Collector & Ors. Vs. N. Udayappan & Anr.)** is pressed into service to contend that Para 61.2 and 62.2 are broad enough to cover the present *intra* Court appeals.

18. The learned Advocate General also relied on **AIR 1962 SC 256 (Union of India vs. Mohindra Supply Co.)** to put forth the contention that

against the judgment passed in review jurisdiction also, the *intra* Court appeal is maintainable. The Full Bench decision of Madras High Court in ***N. Udayappan (supra)*** was referred to contend that simple withdrawal of previous *intra* Court appeal will not deprive the State to file another appeal. In tune with ***N. Udayappan (supra)*** it is urged that the earlier withdrawal amounts to “mechanical recording of disposal or dismissal of appeal in the order is of no relevance and it is the substance of order that has to be seen”. Interestingly, learned Advocate General also placed reliance on the judgment of Supreme Court in ***Midnapore Peoples’ Coop. Bank Ltd. (supra)*** to contend that *intra* Court appeal is maintainable against an order passed in review jurisdiction. Emphasis is laid on Para 11 (V). On merits, the stand of the State is that the subsequent two memorandums dated 25th February, 2016 and 8th February, 2019 provide the benefit of revision of emoluments but nowhere relaxes the eligibility conditions mentioned in Clause (iv) and (v) of basic memorandum dated 16th September, 2011. The learned Single Judge has failed to consider these conditions in their true perspective. Hence, on merits also, the State deserves to succeed.

- 19.** The parties confined their arguments to the extent indicated above. The employees filed written notes as well. We have heard the parties at length and perused the record.

Analysis:

- 20.** The admitted facts are that against the basic order passed by learned Single Judge in WPA No.11914 of 2021, MAT No. 952 of 2024 was filed

before the Division Bench and was withdrawn on 2nd January, 2025. Importantly, while withdrawing the *intra* Court appeal, Appellant/State neither prayed for nor got any liberty to file review petition or file another *intra* Court Appeal against the said Judgment dated 8th February, 2024. In this backdrop, whether this *intra* Court appeal is maintainable is the fundamental question to be decided by us. The learned Advocate General contended that the withdrawal of previous appeal does not constitute *res judicata* or constructive *res judicata*. In view of full bench Judgment of Madras High Court in the case of **N. Udayappan (supra)** also, the withdrawal of appeal only amounts to mechanical recording of the disposal and such disposal/dismissal of appeal is of no relevance. Before dealing with this full bench decision, we deem it proper to deal with the contention of learned counsel for employees/objectors.

21. The employees relied upon a Division Bench Judgment of M.P. High Court in **Rafiq Riwani (supra)**. Pertinently, in this case, the writ appeal was filed against the order of learned Single Judge and this *intra* Court was dismissed as withdrawn. No liberty was prayed for and granted to file either review petition or a fresh writ appeal. However, a review petition was filed which came to be dismissed on 20th November, 2017. After considering certain Judgments of Supreme Court, the Madhya Pradesh High Court in the above judgment opined that after withdrawal of writ appeal without obtaining liberty, it was no more open to the petitioner to file fresh writ appeal. A careful reading of this Judgment in **Rafiq Riwani (supra)** shows that it is basically founded

upon the ratio of the Judgment of Supreme Court in ***Sarguja Transport Services vs. State Transport Appellate Tribunal M.P., 1987 (1) SCC 5***. It is apt to quote Paragraph 9 which reads thus:

*“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case (Daryao vs. State of U.P., AIR 1961 SC 1457) is of no assistance. But **we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again.** While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, **the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.** In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition.”*

(Emphasis supplied)

- 22.** A bare perusal of this paragraph shows that second Writ Appeal (MAT 952 of 2024) cannot be entertained on the ground of public policy. *Intra* Court appeal is an extension of writ proceeding. The tendency to file another writ appeal challenging same judgment must be discouraged. Otherwise, it may lead to bench-hunting tactics. Learned Advocate General was right in contending that principle of *res judicata* may not be applicable but in our considered opinion the ‘public policy’ is certainly attracted and therefore second *intra* Court appeal cannot be

entertained when first appeal was withdrawn without liberty to file afresh.

- 23.** We also find substantial force in the argument of learned counsel for employees based on the Judgment of Delhi High Court in ***Neelam Arya (supra)***. The Delhi High Court considered the Judgment of Supreme Court in case of ***Shah Babulal Khimji (supra)*** and reproduced Paragraph 122 of the Judgment in its detailed Judgment. The said Paragraph reads thus:-

*“When the Court dismisses a review petition, it merely takes a view that no new important matter or evidence as contemplated in Rule 1 of Order 47 of the Code of Civil Procedure has been discovered, there is no mistake or error apparent on the face of the record and there is no other sufficient reason for reviewing of the judgment/order in question and, therefore, declines to exercise the jurisdiction vested in it to review its judgment/decreed or order. **Such an order cannot be said to be an order deciding or adversely affecting, directly and immediately, any valuable right of the parties and, therefore, would not qualify as ‘judgment’ within the meaning of clause 10 of Letters Patent, in terms of the decision of the Supreme Court in Shah Babulal Khimji (supra). Consequently, no appeal against an order dismissing the review application is maintainable either under Code of Civil Procedure or under Clause 10 of Letters Patent.**”*

(Emphasis supplied)

- 24.** In ***Neelam Arya (supra)***, it was held that *intra* Court appeal against the Judgment passed in review is not maintainable.
- 25.** The Apex Court in recent Judgment in ***Rahimal Bathu (supra)*** held as under in Paragraph 24:-

*“24. What is clear from the above observations is, that where the review is allowed and the decree/order under review is reversed or modified, such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated, reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law. **But where the review petition is dismissed, there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge***

within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.”

(Emphasis supplied)

26. This Judgment was quoted with profit in another Judgment by Delhi High Court in the case of **Kishan Chand Saini (supra)**. The Delhi High Court opined that in view of Judgment of **Shah Babulal Khimji (supra)** and **Rahimul Bathu (supra)** the review petition are not maintainable.
27. It is noteworthy that judgment in **Kishan Chand Saini (supra)** was arising out a writ petition and, therefore, the argument of learned Advocate General that principle flowing from Order 47 Rule 1 cannot be pressed into service when review is arising out a petition under Article 226 of the Constitution cannot be accepted. We respectfully agree with the view taken by M.P. and Delhi High Court in the above judgments.
28. So far Judgment of Madras High Court in **N. Udayappan (supra)** is concerned, on which heavy reliance is placed by learned Advocate General, suffice it to say that after this full bench decision, the Apex Court has drawn the curtains on this issue in the case of **Rahimul Bathu (supra)**. It was clearly held that against a Judgment passed in review jurisdiction where review petition is dismissed, *intra* Court appeal is not maintainable. Apart from this, Paragraph 61.2 of Judgment **N. Udayappan (supra)** shows that it deals with such Judgment of a review petition where additional material/grounds were referred and upon consideration of such additional material/ground, a

further consideration on merits had taken place. Such consideration when evident from the order, an appeal against such order passed in review jurisdiction can be filed. In the instant case, the impugned order passed in review jurisdiction shows that the State filed the review to re-agitate and re-argue the points based on same material before the review court. In other words, no additional material was placed and raised before the Court hearing review petition. This is trite that in exercise of review jurisdiction, Court cannot rehear the entire matter on merits. If there exists mistake apparent on the face of the record which can be established without any elaborate argument, review jurisdiction can be exercised. Under the garb of review jurisdiction, matter cannot be permitted to be re-argued. **(See Jain Studios Ltd. v. Shin Satellite Public Co. Ltd., (2006) 5 SCC 501; Kamlesh Verma v. Mayawati, (2013) 8 SCC 320 and Madhusudhan Reddy v. V. Narayana Reddy, (2022) 17 SCC 255)**

29. The Judgment passed in review jurisdiction challenged herein shows that the same points were reiterated and for this reason, the learned Judge opined that review petition is not maintainable and there is no ground which necessitated review of the main Judgment. Thus, para 61.2 of full bench Judgment in **N. Udayappan (supra)**, even otherwise, does not help the State.
30. The next reliance was on Paragraph 62.2 of the same Judgment by learned Advocate General. A careful reading of this Paragraph shows that it was recorded that when appellate Court has not entered into the merits of the appeal '*but permits a review to be carried therefrom*', the

Court opined that mechanical recording of disposal/dismissal is normal. In the instant case, while withdrawing the *intra* Court appeal, no such permission was granted to file a review petition. Thus this Judgment in ***N. Udayappan (supra)*** does not improve the case of the State.

31. In view of foregoing analysis, in our Judgment, after having withdrawn the previous *intra* Court appeal without liberty, it was no more open to the State to file another *intra* Court appeal against the said Judgment dated 8th February, 2024. Similarly, we are of the considered opinion that Judgment of review petition when review petition was dismissed, cannot be called in question in *intra* Court appeal. Even otherwise, on merits also we find no flaw in the Judgment passed in the review jurisdiction. Since no error apparent on the face of the record could be pointed out, the learned Single Judge rightly dismissed the review petition.
32. So far order passed in contempt jurisdiction is concerned, since we are not inclined to entertain *intra* Court appeal against the basic Judgment dated 8th February, 2024 passed in WPA No.11914 of 2021 and the order passed in Review Petition No. 8 of 2025, the order passed in contempt petition is only a consequential order and hence does not require any interference. The question whether against an order passed in contempt jurisdiction (where contemnor has not been punished), *intra* Court appeal under the Letters Patent will be maintainable or not is kept open to be decided in an appropriate case.

33. On merits also, we find no illegality in the impugned judgment of learned Single Judge. The contractual employees who have rendered stipulated years of service before the cut of date and after cut of date forms a homogenous class. If two different remunerations are prescribed for such similarly situated employees solely on the basis of cut of date, it will amount to an exercise of dividing a homogenous class and creating a class within the class which infringes Article 14 of the Constitution. Apart from this, we give our stamp of approval to the logic adopted by learned Single Judge in para 39 and 40 of judgment passed in review jurisdiction for holding that subsequent memorandum are indeed applicable and employees herein are entitled to get revised remuneration.

34. As analysis above, all the MATs are devoid of substance and are accordingly **dismissed**. The Judgment passed by learned Single Judge in WPA No. 11914 of 2021 and in Review No. 8 of 2025 dated 2nd July, 2025 are affirmed. No cost.

(SUJOY PAUL, J.)

I agree.

(SMITA DAS DE, J.)