

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 25608 of 2016

Rasmoni Ghosal

Vs.

State of West Bengal & Ors.

For the Petitioner

: Mr. Biswaroop Biswas

: Ms. Sabita Khutia (Bhunya)

: Krishna Pada Santra

For the State

: Mr. Gourav Das

Heard on

: 25/02/2025

Judgment on

: 25/02/2025

Rai Chattopadhyay, J. :-

(1) Impugned in this writ petition is an order of the Commissioner of School Education, West Bengal, dated **September 12, 2016**, by dint of which the said respondent has rejected the petitioner's prayer for grant of postgraduate scale of pay. Hence, being aggrieved, the petitioner has filed the present case.

(2) The background facts may be narrated in a nutshell. On **April 1, 1992**, the petitioner was appointed as an Assistant Teacher in bioscience group. However, before entering into the service, the petitioner had completed her Masters' degree in Arts, in History subject. According to the petitioner, though she was appointed in bio science group, but was assigned with the duty to impart teaching for classes IX and X, in the subject History, due to dearth of appropriate number of teachers. The petitioner has stated on oath that according to her information, she has been assigned History classes upon prior approval to that effect, accorded by the District Inspector of Schools, Secondary Education, Paschim Medinipur (hereinafter referred to as "*the DI*") and in terms of a resolution by the school managing committee. She says that she has been allotted more than six classes per week in History subject. Therefore, according to the petitioner, she would be eligible for grant of post graduate scale of pay as per rules, even if her higher qualification is in History subject, which is not relevant to the subject of her teaching for which she has been appointed, that is bioscience group of subjects. In this regard, the petitioner has relied on a government notification **No. 57-SE(S) dated January 27, 1995** (hereinafter referred to as "*No.57*").

(3) Mr. Biswas has represented the petitioner in this case. Mr Biswas refers to a document, that is, a letter of the DI, dated June 4,

1996, addressed to the Secretary of the school. He says that by dint of the said letter, the DI has allowed grant of postgraduate scale of pay to the petitioner with effect from **February 1, 1995**. Mr Biswas has further submitted that pursuant to the said order of the DI and since thereafter, the petitioner has been continuously granted, the post graduate scale of pay without any hindrance, till issuance of the letter dated **June 8, 2001** by the same authority, that is DI. It is submitted that by dint of the said letter, such grant of post graduate scale of pay to the petitioner has been withdrawn. Mr. Biswas for the petitioner challenges such withdrawal of post graduate scale of pay earlier issued to the petitioner, which she has continuously enjoyed for a considerable period of time. He says that challenging the said order dated **June 8, 2001**, the petitioner has earlier moved this court by filing a writ petition being WP No. 9850 (w) of 2001. Mr Biswas has immensely relied on the order of the court passed in the said writ petition, dated **July 23, 2014**. He says that the court's decision is unambiguous and categorical, as regards the said order of the DI to withdraw the postgraduate scale of pay of the writ petitioner, to be unsustainable in law. Hence, the court has set aside the said order of DI dated **June 8, 2001**. Allegedly, even then the respondent Commissioner of School Education, in the impugned order dated **September 12, 2016**, has relied on the order of the DI dated **June 8, 2001**, which has already been set aside by the court earlier, in the

above case. According to Mr Biswas, the respondent authority has erred in applying the provisions of ROPA 1998 in case of the petitioner, whereas, he says, that the petitioner should be governed under the provisions of **ROPA 1990**. Also, that in the particular facts and circumstances of this case, the petitioner should be treated as governed under the notification **No.57**, as above. Hence, according to Mr. Biswas, the benefits granted to the petitioner earlier as regards the post graduate scale of pay should have been considered to be just fair and proper decision and withdrawal thereof is only irrational, arbitrary and illegal. Hence, he has sought for setting aside the impugned order dated **September 12, 2016** and grant of post graduate scale of pay to the writ petitioner.

(4) A judgment has been relied on by Mr. Biswas, that is an unreported one in **WPA No. 21094 of 2021 dated January 25, 2022 [Sri Paramjit Jana Vs The State of West Bengal & Ors. (Via Video Conference)]**, of the Hon'ble Coordinate Bench, on the proposition that the respondent authorities would not be eligible to express grievance or not to act in accordance with or rely on the earlier order of the court, unless and until the said order has been challenged by the same, before the superior forum, in due course of time. He mentions that since the order of this court dated **July 23, 2014**, passed in the writ petition No. WP No. 9850 (w) of 2001, has

never been challenged by the said respondents, they should have no other escape route than to comply with the same in true spirit thereof.

(5) Mr. Das, for the state has vociferously put forth the challenge of the state respondent as to the contentions and prayer of the writ petitioner, in the present case. According to Mr. Das, an error shall always be an error, subject to correction upon detection, in accordance with law. Hence, according to the state respondent, grant of postgraduate scale of pay to the petitioner has been an error on part of the said respondent. It is submitted that the order of the DI dated **June 4, 1996** was an error which was subsequently revised by dint of the order of the said authority dated **June 8, 2001**.

(6) Mr. Das says that in terms of notification **No.57**, the petitioner could not have been granted higher scale of pay, in so far as, the two preconditions as mentioned therein, have not been complied with in case of the present petitioner. In this regard he has referred to the said notification **No. 57** and submitted that an Assistant Teacher should be entitled for issuance of higher pay scale, on the basis of his/her higher qualification in non-relevant subject, on fulfilment of the mandatory preconditions that he takes at least six classes per week as officially allotted to him within the normal work load and with the prior permission of the concerned DI and strictly in

accordance with the actual academic need of the school. According to Mr. Das, all these conditions as enumerated in the notification **No. 57** are compulsory, in order to be granted with the benefits thereunder. In the petitioner's case, though the benefits have been granted to her, but none of those conditions are found to have been complied with. Mr. Das has submitted that an act which is in clear contravention of the government notification and is in violation thereof, cannot be substantiated. Hence, according to him, the order granted in favour of the petitioner dated **June 4, 1996**, thereby allowing postgraduate scale of pay to her, is always reversible, being in contravention with the rules.

(7) So far as the earlier order of this court dated **July 23, 2014** in WP No. 9850(W) of 2001 is concerned, according to Mr. Das, the court in the same has granted liberty to the respondent authority to consider the petitioner's prayer afresh by relegating the same to the said respondent authority. Mr. Das says that such order of the court is not qualified with any condition whatsoever as a result of which it can be considered as incumbent for the said respondent authority not to revert back to its earlier order dated **June 8, 2001**. He has denied that any order which has earlier been set aside by the court was repeatedly relied on by the respondent Commissioner of School

Education, West Bengal, while issuing the impugned order dated **September 12, 2016**, as alleged.

(8) During his argument, Mr. Das has relied on the following judgments of this court:

- (i) **State of West Bengal vs Tulsi Kumar Mukherjee** reported in **2001 2 CHN 294**,
- (ii) **State of West Bengal vs Ranjit Kumar Maity** reported in **2012 3 CHN 532**,
- (iii) **Dilip Kumar Ghosh vs State of West Bengal and Others** reported in **2022 5 CHN 289**.

The said judgments are with regard to compulsory compliance with the conditions as enumerated in the said notification **No.57**, particularly that regarding obtaining prior permission of the DI to assign classes to a teacher of a subject which is not relevant to the usual subjects of his teaching. By referring to the judgment of **Ranjit Kumar Maity (supra)**, Mr. Das has submitted that in case of apparent violation of the said government order, the court has held that no grounds including infraction of the principles of natural justice even, should be a valid ground to set aside such an order. Therefore Mr. Das says that no interference of this court is warranted as to the impugned order, and the present writ petition may be dismissed.

(9) The petitioner has come up a long way, fighting for her claim. Admittedly, her higher qualification is in a non-relevant subject, that is History. She has been qualified with a higher degree in the subject History, from a date prior to her joining in the service on **April 1, 1992**. With effect from **February 1, 1995**, the benefit of post graduate pay scale has been advanced in favour of the petitioner. The same has however, been withdrawn subsequently, by dint of an order of DI dated **June 8, 2001**. Later on, the Court vide order dated **July 23, 2014** in W.P. No. 9850 (w) of 2001, has set aside the DI's order dated June 8, 2001. This order of the Court dated July 23, 2014, has never been challenged by the respondents. Instead, what they did was to consider the petitioner's prayer for grant of higher pay scale, afresh, in terms of the Court's order dated **July 23, 2014**, by the other respondent that is the respondent No.6/Commissioner of School Education, West Bengal.

(10) But in effect, it is the same exercise repeated by the respondent authorities while considering the writ petitioner's prayer as above, afresh. If one looks into the grounds of the impugned order dated **September 12, 2016** and that dated **June 8, 2001**, which has been earlier set aside by the Court, can find the both to have been based on same grounds, for rejection of the petitioner's prayer as

mentioned above. Therefore, the second order that is the one impugned in the present case, is neither a consideration afresh of the petitioner's prayer nor based on any fresh grounds other than what have been already set aside by the Court vide its order dated July 23, 2014. This Court finds that the respondent authority could not have relied on the same grounds as earlier, to deal with and reject the petitioner's prayer for grant of higher pay scale. The same having already been set aside by the Court earlier. The Court directs for consideration of the petitioner's prayer afresh, after setting aside of the said order. Therefore, the respondent authority would not be at liberty to rely on the ground on which the earlier order was based on but was not acceptable to the Court. On that score, the impugned order is an irrational, unreasoned and arbitrary one.

(11) A benefit already advanced to the petitioner would how far be eligible to be withdrawn through the process of review by the competent authority of its own order, has been the subject matter of consideration of the Court in various cases. Review of its own order by the competent authority has been held to be not an inherent power of the authority but has to be conferred by and derived from the statute itself which may provide for the same either expressly or by necessary implication. In 2019, the Supreme Court has held in the case of **Naresh Kumar vs Government of NCT** reported in **(2019) 9 SCC**

416, that it is a settled law that power of review can be exercised only when the statute provides for the same. In the absence of any such provision in the statute concerned, such power of review cannot be exercised by the authority concerned. The Supreme Court has relied on its earlier decisions to reiterate that in absence of any provision of the Act granting an express power of review, it is manifest that a review could not be made and the order in review if passed, is ultra vires, illegal and without jurisdiction.

(12) A relatively old judgment of the Supreme Court may also be relied on that is, **Patel Narshi Thakersh1 and others Vs. Shri Pradyuman Singhji Arjunsingh1** reported in **(1971) 3 SCC 844** which has propounded the same proposition in the following words:

4.

**

The order passed by Mr Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr Mankodi was liable to be set aside.

(13) Therefore, it would be contrary to the law settled as mentioned above, to review and reassess its own order by the government or its instrumentality, even if an error has occurred in any order, passed earlier. An order passed earlier, even if erroneously, may be subject to its review by the same authority in absence of any statutory provision as regards the same, is an erroneous proposition by itself, which has no sanction of or sanctity in law. Or otherwise that would open the floodgate for perpetually inconclusive orders being passed by the authorities concerned. The submissions to that effect made on behalf of the State respondent are unacceptable, for the reasons as stated above.

(14) Let it be mentioned that the propositions settled by the judgments as referred to by the writ petitioner as indisputable in so far as the benefits under the notification is allowable, only upon fulfilment of the conditions, if any, stipulated in the said notification. The writ petitioner seeks benefits under notification **No. 57**. the same has provided that:

Sub : Granting of pay according to qualification to the Assistant Teachers of Non-Government Secondary Schools.

The undersigned is directed to say that the question of granting higher scales of pay according to qualification to the Assistant teachers of Non-Government Jr. High Schools/Jr. High Madrasahs and High Schools/High Madrasahs (including Higher Secondary Schools/Higher Secondary Madrasahs) in

this State who have obtained higher qualification in subjects not relevant to their respective subject or group in which they were appointed in the schools but relevant to their respective teaching subject had been under consideration of the State Government for some time past. Such 'a situation exists in some secondary schools where, in the academic interest of the students the authorities of the schools have allotted classes on particular subjects to some approved teachers of the schools who were, respectively, appointed for a different subject/group as per available vacancies, The Education Department also is not in a position always to sanction the required number of additional posts to the schools owing to financial stringencies, . Considering the prevailing situation in the secondary schools in this State as Mentioned above, the State Government in the Education Department has decided as follows to cope with the said situation and in the academic interest of the schools:— (i) Approved Assistant Teachers of non-Government Secondary Schools and Madrasahs who will take classes in subjects relevant to their respective higher qualification, though appointed/approved respectively in a different group/subject other than the aforesaid teaching subject shall, henceforth, be allowed to draw pay according to their respective higher qualification, as prescribed by the State Government, provided such Assistant Teachers within the normal workload upon the written consent of the concerned teacher and with the prior permission of the concerned District Inspector of Schools and strictly according to the actual academic need of the individual school.

(15) In the present case, though the petitioner has stated on oath as regards the compliance being made with the provisions of the said notification in her case, her such contentions are challenged by the State. Such challenge however, is somewhat evasive as the

respondent has not come up with any specific contrary fact in this case.

(16) So far as the question of recovery of the excess payment is concerned, that has been tested by the Court on the anvil of balancing of the conflicting claims of the employer's equitable right to recover vis-à-vis hardship caused to the employee in case of recovery. In the case of **State of Punjab & Ors vs Rafiq Masih & Ors** reported in **(2015) 4 SCC 334**, the Supreme Court has held that recovery of amount paid in excess without fault of the recipient would be impermissible. In this case, however the court is not concerned with recovery of any amount. The court desires to follow the doctrine therein, that is of no fault of the recipient. In a State action, as to what the beneficiary has never been a party during the process of decision making and has not contributed in any way as to the decision arrived at by the authorities, if can be made to suffer an error, if any, in the said decision.

(17) The age-old principles on which the human societal structure is based is that the state is not to act as a business house but only towards the utmost welfare of its inhabitants. The State and its instrumentalities are expected to look at myriad aspects and not just profits. When the State acts on the sheer strength of its bargaining power and taking advantage of its position to impose

unilateral, un-equitable and unreasonable decision on an employee, who did not even have any other choice but to accept the decision of the authority, it is not only a very sorry state of affairs but also is in violation of the rules of equity and fair play.

(18) The respondent has taken a stand of apparent error having taken place in allowing the petitioner with the higher pay scale, which, it says, tantamount to gross violation of the existing and applicable rules and is required to be remedied by stopping such existing benefit already advanced to the petitioner. However, the model employer State, though having accepted its error in disposition of functions, has not come up with any record to show that as regards commission of the said error it has ever made an endeavor to take steps in accordance with law, to fix up the liability for such erroneous disposition of the State functions. The respondent has acted as if the only remedy to be done is to stop the benefits to the recipient and to leave its system, scot-free.

(19) The conflict is in between an order which has been passed, as stated, without due compliance with the statutory provisions and rules and lack of any power of review of the authorities, being granted under any statute. A benefit having already been advanced, which for the arguments sake, if is accepted not to be in accordance with the provisions of the government notification, can

hardly be withdrawn, for the only reason, that it has been erroneously extended. All the factors as discussed earlier should intervene, to strike a balance only when the Court can look forward to grant an equitable relief.

(Rai Chattopadhyay, J.)