

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 174 of 2023

**The State of West Bengal and others
Versus
Sri Basaki Nath Dhabak and Another**

For the Petitioner/State : Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Pinaki Dhole,
Mr. Somnath Naskar.

For the Respondents : Mr. Lutful Haque,
Mr. Soumitra Chatterjee,
Mr. Taharima Khatun.

Judgment on : May 06, 2025.

Madhuresh Prasad, J.:

1. The writ petition has been filed by the State which was the respondent before the West Bengal Administrative Tribunal (SAT), challenging the order dated 08.12.2022 passed in O.A. No. 2535 of 2006 by the West Bengal Administrative Tribunal ("Tribunal" for short).

2. The respondent No. 1 is legal heir of the original first applicant before the Tribunal and the respondent No. 2 was the second applicant before the Tribunal. They moved the Tribunal complaining that the impugned order granting them the revised scale was not in

compliance with the earlier orders passed in their favour in O.A. No. 292 of 2000.

3. The brief factual background is that the applicants before the Tribunal were Gauge Readers in the office of the Superintending Engineer, Mayurakshi Canel Circle under the Irrigation and Waterways Directorate, Government of West Bengal. After publication of West Bengal State (Removal of Pay Anomaly) Rules, 1981 ('ROPA' for short) several Gauge Readers moved the High Court by way of a writ petition praying for revision of their basic grade scale of Rs. 280/--617/- to 300/--685/- as per ROPA. The High Court was pleased to pass orders in favour of the Gauge Readers, which was duly complied by the State Authorities. Thereafter all the Gauge Readers were being extended the same benefit by the authorities pursuant to direction/s separately issued in their favour by the Court.

4. The applicants, however, continued to be deprived of such benefit of ROPA. They thus filed O.A. No. 292 of 2000 before the Tribunal. The Tribunal directed for grant of revised pay scale of Rs. 300/--685/- as per ROPA from the date of the applicant's appointment as Gauge Readers. The Deputy Secretary to the Government of West Bengal I & W Department granted the revised pay scale of Rs. 300/--685/- to the applicants vide an order dated 10.07.2003 bearing No. 1001/1E.

5. On 29.07.2005 the Deputy Secretary vide Memo No. 1048 – 1E – 21/2005 held that the revised pay earlier granted by the High Court in the case of others with whom the applicant was claiming parity was the personal pay of those individual petitioners and not revision of their basic grade pay scale for the post of Gauge Readers. The Deputy Secretary was thus of the view that the petitioners could not be granted any benefits under the Career Advancement (CA) Scheme, 1990; or Modified Career Advancement Scheme (MCA) 2001 since such benefit is related to the basic grade pay and not personal pay. Accordingly he held the applicants liable for consequential refund of the benefits received under the C.A.S. Scheme in terms of earlier order No. 1001/1E dated 10.07.2003.

6. The applicants were aggrieved by this communication and thus approached the Tribunal for restraining the State Authorities from giving effect to the Memo No. 1048 – 1E – 21/2005 dated 29.07.2005. They also prayed for direction to allow them to continue availing the benefit under CA and MCA scheme granted since the higher pay scale of Rs. 300/--658/- was granted to all the gauge readers by virtue of revision of their basic grade pay as per ROPA. Thus they were entitled to the benefits in terms of the earlier order of the Deputy Secretary bearing order No. 1001/1E dated 10.07.2003. The O.A. No. 292 of 2000 filed by the applicants was disposed of on the basis of consent being given by the State Counsel recorded in the order. The learned State Counsel submitted before the SAT that the

applicants were similarly situated as applicants of one O.A. No. 11786 of 2007 and in light thereof a direction should be given to the respondents to pass a reasoned order.

7. Instead of directing the respondents to pass a reasoned order, the Tribunal proceeded to direct the 4th respondent namely the Director of Personnel and E.O. Chief Engineer to dispose of the applicant's claim in light of earlier order of the Tribunal passed in O.A. No. 11786 of 2007. The Tribunal further directed that if any amount has been deducted from the employee the same was required to be refunded within a period of three months.

8. The learned State Counsel submits that the original applicant No. 1 had expired during pendency of the O.A. before the Tribunal. A belated application was filed for substitution of his legal heirs. The same was numbered as M.A. No. 242 of 2019. The State opposed the application on the ground of delay. The applicants, thus, withdrew the M.A. No. 242 of 2019 with liberty to take appropriate steps. The M.A. No. 242 of 2019 for substitution as well as the M.A. No. 242 of 2019 for condonation of delay in filing the substitution were thus dismissed by the Tribunal by its order dated 30.08.2022 in the following terms:

“In view of the above, both the MA’s are dismissed as withdrawn. Therefore, the applicant are at liberty to take appropriate steps, if so advice.”

9. Since the M.A. for substitution had been withdrawn it is submitted that there was no substitution of the applicant No. 1. The O.A. insofar as the applicant No. 1 was concerned, stood abated. In support of such submissions he has relied upon the provisions contained in Order XXII Rule 3 C.P.C.

10. Insofar as claim of applicant No. 2 is concerned, it is submitted that the applicant No. 2 had joined together with applicant No. 1 by filing a single application before the Tribunal in terms of Rule 5(a) of the West Bengal Administrative Tribunal (Procedure) Rules 1994 (hereinafter referred to as the '1994 Rules'). Rule 5(a) reads as follows:

“(5) Notwithstanding anything contained in sub-rules (1) to (3), the Tribunal may permit:-

a) more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter; or...”

11. Both applicants were thus raising a common cause of action. Thus in view of the abatement of the case on account of death of the first applicant, the relief in respect of both applicants stood abated. In support of such submissions the learned State Counsel has relied upon decisions of the Apex Court in the case of ***B.S. Bajwa and Another vs. State of Punjab and Others*** reported in ***(1998) 2 SCC 523***, ***Veer Kunwar Singh University Ad Hoc Teachers Association and Others Vs. Bihar State University (C.C.) Service Commission and Others*** reported in ***(2009) 17 SCC 184***,

Hemareddi (Dead) Through Legal Representatives Vs. Ramachandra Yallappa Hosmani and Others reported in **(2019) 6 SCC 756**. He has also relied upon judgments passed by a Single Judge *coram* in the case of **Narayana Bhat Vs. Narasimha Sastry** reported in **1987 SCC Online Kar 328** on 06.11.1997 copies of these two citations have been handed over to the Court.

12. He further submits that the Original Application was to be supported by a verification to be executed as per format prescribed in Form II of the 1994 Rules. The verification in the Original Application was done only by the applicant No. 1. Since the applicant No. 1 expired during pendency of the matter before the Tribunal the verification executed by the applicant No. 1 could not be relied upon. He thus submits that even in respect of the applicant No. 2 there was no duly verified application for relief in terms of the 1994 Rules. Learned State Counsel submits that in the above circumstance, there being no application before the Tribunal, the final impugned order passed by the Tribunal in respect of both applicants is without jurisdiction.

13. Insofar as the applicant No. 1 is concerned, learned Counsel for respondent submits that direction to consider his claim has been issued by the Tribunal as a “**judgment on admissions**” as per Order XII Rule 6 C.P.C. He thus submits that the Tribunal’s order, impugned in the present proceedings, does not require any interference.

14. In reply to the submissions made by the learned Counsel for the respondent, in respect of applicant No. 1 is concerned, the State Counsel has further submitted that there is no admission as required on the form, in terms of Order XII Rule 5 C.P.C. for invoking powers under Order XII Rule 6 C.P.C. and passing judgment on admission.

15. Insofar as the applicant No. 2 is concerned, learned Counsel for the respondent submits that he had filed a duly executed Vokatnama along with the application. The application before the Tribunal was containing the verification in support thereof, executed by applicant No. 1. The applicant No. 2 continued to be represented though a counsel in support of the Original Application before the Tribunal and, there was no occasion, whatsoever, not to consider the case of applicant No. 2.

16. The Court has put a specific query to the learned State Counsel as to what is the effect of the concession recorded on behalf of the State in the impugned final order in the following terms:

“Mr. Ghosh appearing on behalf of the state submits that this matter is already a settled matter by an order of the Tribunal in OA-11786 of 2007. The present applicant is also similarly situated as the applicants of OA-11786 of 2007. Therefore, an order directing the respondent to pass a reasoned order in the light of order in OA-11786 of 2007 will be appropriate.”

17. The learned State Counsel, relying on the provision contained in Order III Rule 1 C.P.C. has responded by submitting that the concession of the State Counsel was not binding on the State.

Conclusion:

18. Insofar as the State's first submission regarding abatement, relying upon Order XXII Rule 3 C.P.C. read with Rule 5(a) of the 1994 Rules, this Court would at the very outset take note of the fact that such objections relying upon provisions contained in the C.P.C. were not advanced before the Tribunal. For the first time it is being advanced in the present proceedings wherein the High Court is exercising extraordinary writ jurisdiction under Article 226 of the Constitution of India in respect of an order passed by the Tribunal under the provisions contained in the Administrative Tribunals Act, Section 22 of which mandates that a Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, but shall be bound by the principles of natural justice. The order of the Tribunal impugned in the present proceedings is based on an explicit admission of the learned State Counsel that the applicants are similarly situated as the applicants of O.A. No. 11786 of 2007 which fact is still not in dispute.

19. Insofar as the judgments of the Apex Court relied upon by the learned State Counsel in the case of ***Hemareddy (Supra)***, ***Veer Kunwar Singh University (Supra)*** and ***B.S. Bajwa and Another (Supra)***, in support of State's submission that in view of abatement of the case of the first applicant, the case of the second applicant also stood abated, the Court finds that judgment in the case of ***Hemareddy (Supra)*** has been passed in a matter arising out of a

suit, whereas in the present case the Tribunal was exercising jurisdiction under the Act. One out of the two appellants in the said case before the Apex Court had passed away at the first appellate stage before the High Court. The first appeal was filed against dismissal of the suit. The High Court took note of the admitted position therein that no steps were taken for substitution in respect of the deceased appellant and thus held that the appeal had abated insofar as the deceased appellant is concerned. The Hon'ble Supreme Court considered the facts of the said case that adoption of D-1/ D-2, which was challenged in the suit, was found to be legal *qua* the deceased appellant. The other appellant therein (appellant-H) had joined the appellant, since deceased; and thus the two did not have any distinct claims. Since the adoption had been held valid insofar as one of the appellant was concerned, if appellant-H were to be held entitled to a decree that the adoption of D-1 was illegal, the same would be contrary to the decree which attained finality between his late brother and the defendants. The Apex Court was of the view that there would be irreconcilable conflict and thus affirmed the finding of the High Court in the first appeal, holding abatement of the appeal as a whole. In the case of ***Hemareddy (Supra)*** the two appellant did not have any distinct claims and the Apex Court was thus of the opinion there was likely to be irreconcilable conflict if the claim of one was to be upheld for one and not for the other. The facts in the present case are different, where it is still not in dispute that the issue regarding their entitlement to the revised scale is settled, and

that their case is similarly situated to applicants of O.A. No. 11786 of 2007 wherein the same relief was granted. In the instant case there is no finding regarding one out of the two applicants being disentitled to the relief, as in the case of **Hemareddy (Supra)**.

20. From a plain reading of Rule 5(a) of the 1994 Rules it is clear that the same only contemplates allowing more than one applicant to join together to file a single application if they have a common interest in the matter. In the instant case after considering the bundle of facts (cause of action) of the two applicants therein and the nature of relief prayed for, the Tribunal allowed the two applicants to file one application together since they had a “**common interest in the matter**”.

21. Rule 5(a) also does not contemplate any requirement of filing separate verification/s by all applicants who join together to file a single application. Therefore, plea raised by the learned AGP that the second applicant cannot rely on the verification executed by the first applicant is unacceptable.

22. Reliance placed on Order XXII Rule 3 C.P.C. by the learned Counsel for the petitioner insofar as the second applicant is concerned is clearly untenable in the eyes of law. In the present case, even though the two applicants were relying upon the same precedent/s to claim the benefit of ROPA, the rights of the two applicants before the Tribunal were distinct and severable. They had

a common interest and were claiming identical relief, based on identical facts, but not a common relief. In the present case even after demise of the first applicant the right to sue of applicant No. 2 survived. It is not a case where the surviving applicant's right to sue did not subsist after demise of applicant No. 1. We are thus of the opinion that reliance placed on Order XXII Rule 3, to assail the order of the Tribunal passed under the Act, with respect of the second applicant is unsustainable.

23. The other two decisions in the case of ***Veer Kunwar Singh University (Supra)*** and ***B.S. Bajwa and Another (Supra)*** relied upon by the learned Counsel for the petitioner are in support of the submissions regarding counsel's concession not being binding on the State. We thus proceeded to consider the two judgments. In the case of ***Veer Kunwar Singh University (Supra)*** the concession of the Additional Advocate General therein, made before Division Bench of the High Court was on a point of law, keeping in background the fact that the petitioners therein were *ad hoc* teachers and were claiming appointment against existing vacancies based on the concession granted by the Additional Advocate General. Such concession was in conflict with Section 57 of the Bihar University Act which provided that appointment to the post of teachers and officers was to be done by the Bihar State University (Constituent Colleges) Service Commission. The Supreme Court further took note of the earlier judgment of the Constitution Bench in the case of ***Secretary, State***

of Karnataka and Others vs. Umadevi (3) and Others reported in **(2006) 4 SCC 1**.

24. In the case of **B.S. Bajwa and Another (Supra)** settled seniority of the appellants vis-à-vis the respondents as reflected by the confirmation list published by the department from time to time was disturbed by order of the High Court after more than a decade. The affected third parties thus preferred Letters Patent Appeal wherein the Division Bench concluded that acceptance of the writ petition would adversely affect the service conditions of the in-service employees like the appellants by altering their seniority and putting them to disadvantageous position. The Division Bench, however, proceeded to grant the benefit of seniority/ service from an even earlier date on the basis of a concession made by the Advocate General. The Apex Court thus found that concession on behalf of the State would not bind the third party respondents whose seniority and rights had crystallized, and the issue should not have been reopened. The Apex Court found that concession of the Advocate General was a concession on a point of law, which had been withdrawn by filing a review petition before the High Court itself. It was under such circumstance that the concession was not sustained by the Apex Court to create any right in favour of the petitioners therein.

25. In the present case, however, the rights of the applicants to receive the revised scale is not in dispute till date. It is not the case of

the respondents that the concession being relied upon is a concession opposed to any Statute, Rule, notification, etc. regarding grant of revised scale. The respondents have chosen not to withdraw the concession recorded on their behalf by their counsel before the Tribunal.

26. Insofar as decision of the learned Single Judge in the case of **Narayana Bhat** (Supra), we find that the decision being relied upon is by the learned Single judge of the Karnataka High Court, having no binding effect on this Division Bench. We, however, ventured to examine the judgment to see whether it has any persuasive value. We have found that the facts in the case of **Narayana Bhat** (Supra) was clearly distinguishable from the facts and circumstances arising for consideration in the present case. In the case before the Karnataka High Court the two defendants in the suit were alleged to be joint trespassers having jointly invaded the property. The plaintiff claimed mandatory injunction that the “Kattabuni” be reconstructed at the cost of the two defendants and on their failure through the intervention of the Court. It was under such circumstance that the Court found based on facts that the action brought by the plaintiff was inseparable as both defendants were held jointly liable for the act complained of.

27. As noticed above in the present case the applicants No. 1 and 2 were not claiming any benefit jointly. They had individual claims, but based on identical facts and relying upon the same precedent to claim

the benefit based on a common interest. On perusal of the Tribunal's order we find that submission of the State Council has been recorded that the claim of the petitioners/ applicants before the Tribunal is already a settled matter by the order of the Tribunal in O.A. No. 11786 of 2007. The learned State Counsel has further stated in unambiguous terms that the applicant is similarly situated as the applicant of O.A. No. 11786 of 2007. Having accepted the claim of the applicants to be covered by decision in O.A. No. 11786 of 2007 the State Council has made a prayer that the authorities be directed to pass a reasoned order in light of order passed in O.A. No. 11786 of 2007.

28. Considering such submission of the State Counsel the Tribunal has proceeded to direct the respondent No. 4 to consider and dispose of the applicant's claim in light of earlier order passed by the Tribunal in O.A. No. 11786 of 2007 on 26.08.2009 within a stipulated time frame. The Tribunal has further directed that while according such consideration the respondent will examine whether any amount which had been deducted was required to be refunded, then the same to be refunded within the period of three months from the date of communication of the order passed by the Tribunal. We find no reason to interfere with such direction issued in favour of the applicant No. 2 who was throughout represented before the Tribunal, for the simple reason that the direction of the Tribunal is in terms of the specific submission advanced on behalf of the State Government.

29. Insofar as the first applicant before the Tribunal is concerned the Tribunal has not passed similar specific positive direction in favour of the first applicant. Insofar as the plea of the learned AGP that the substitution application had earlier been withdrawn, we find such submission does not enure to the benefit of the State. The MA(s) filed for setting aside abatement and substitution filed before the SAT were dismissed as withdrawn but with a liberty to the applicant No. 1 **“to take appropriate steps”**. This order dated 30.08.2022 passed by the Tribunal has never been assailed by the State.

30. By the impugned order the Tribunal has merely accorded liberty to the legal heirs of the respondent No. 1 to submit any written representation. In our opinion the Tribunal had left it open for the first applicant to take steps in its earlier order dated 30.08.2022 dismissing the applications for substitution. The filing of representation was thus one amongst other “appropriate steps” available to the first petitioner. We thus find no reason to interfere with such direction of the Tribunal because there is no dispute regarding the claim of both applicants 1 and 2 being covered by earlier decision of the Tribunal in O.A. No. 11786 of 2007.

31. We at this juncture would record that it is not the case of the State even in these proceedings that the applicant’s case was not covered by decision in O.A. No. 11786 of 2007. The learned AGP has made several submissions, recorded above. However, no submission has been advanced to the effect that the concession of the learned

State Counsel recorded in the Tribunal's order regarding the claim being covered by the earlier order passed by the Tribunal in O.A. No. 11786 of 2007, being incorrect. We thus find denial by the authorities to acknowledge the similarity to be arbitrary since it was the claim of the applicants before the Tribunal that they be allowed to continue with their pay scale and CAS benefits as has been allowed to the applicants of O.A. No. 11786 of 2007.

32. The State authorities cannot be permitted to arbitrarily deny consideration of their claim, which it is not in dispute is at par with applicants of O.A. No. 11786 of 2007. The authorities cannot be permitted to treat two similarly situated employees with such discrimination. Denial of consideration of their claim, in terms of the impugned order passed by the SAT in view of their undisputed concession recorded in its order. Such denial would be discriminatory and offend Article 14 of the Constitution of India. The State Authorities cannot be permitted to raise legal intricacies of procedure, recorded above, like a private litigant to defeat an otherwise undisputed claim. In this connection, this Court is inspired by decision of the Apex Court in the case of **Popatrao Vyankatrao Patil vs. State of Maharashtra** reported in **(2020) 19 SCC 241**. The Apex Court taking note of earlier decision in the case of **Bhag Singh and Others vs. Union Territory of Chandigarh Through the Land Acquisition Collector, Chandigarh** reported in **(1985) 3 SCC 737** has considered the issue regarding raising of such pleas by the State. The

Apex Court has reiterated the settled legal position in paragraph 14 of the judgment that the State should act as a model litigant and has quoted with approval the earlier decision in the case of **Bhag Singh** (supra), which is being extracted herein:

“14. ...

9. In a three-Judge Bench judgment of Bhag Singh v. State (UT of Chandigarh) [Bhag Singh v. State (UT of Chandigarh), (1985) 3 SCC 737] this Court held : (SCC p. 741, para 3)

‘3. ... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.’ ...”

33. This Court is, therefore, not inclined to interfere with the order passed by the Tribunal in exercise of its extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

34. The writ petition is dismissed in the above terms.

35. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)