

04.03.2025
Item No.3
Ct. No.01
RP/SM

FMA 511 of 2024
The Registrar and Chief Personnel
Information Officer and Ors.
Vs.
Ratan Lal Roy substituted by Mrs. Sadhana Roy & Anr.

Mr. Nirmalya Ray, Adv.

....For the Appellants

Mr. Biswabrata Basu Mallick, A.G.P.

Ms. Parna Roy, Adv.

....For the State-Respondent

Mr. Victor Chatterjee, Adv.

... For the High Court Administration

1. This intra-court appeal by the Registrar and Chief Personnel Information Officer, Presidency Small Cause Court, Calcutta and others is directed against the order dated 24th July, 2023 passed in WPA 23596 of 2022. The said writ petition was filed by the respondent no.1 praying for issuance of mandamus to direct the appellants to show cause as to why they have not acted in terms of the Order No.895-JD/L/25-23/2009 dated 20th July, 2012 and Office Order No.180 dated 22nd July, 2014 in association with ROPA Rule 2009. The petitioner also prayed for a direction upon the appellants to immediately act in terms of the Reply letter sent by the 8th respondent, namely, the Pay and Accounts Officer dated 15th February, 2022. The writ petitioner also prayed for a direction upon the appellants to act in terms of the

Circular/Memorandum dated 20th July, 2009. There were other prayers, which are incidental and ancillary to the afore-mentioned prayers, which appeared to be substantial relief sought for in the writ petition.

2. When the writ petition was heard appropriate instruction was not placed to the learned advocate who represented the appellants and this has been recorded so in page No.2 of the impugned order. Therefore, the court having left with no option considered the materials placed on record and ordered that the writ petitioner is entitled to the promotional benefits from 2012 pursuant to an office order No. 180 dated July 22, 2014 and the consequential orders passed by the Chief Judge, Presidency Small Cause Court in Order Nos.217 and 218 both dated 22nd July, 2014. The learned Writ Court further directed that the writ petitioner's pay fixation is to be done in accordance with the Revision of Pay and Allowances (ROPA Rules 2009) and the arrears of ROPA benefits have to be disbursed to the writ petitioner. With regard to the effect of memorandum dated June 11, 2015, is concerned, which had partially modified the earlier notification dated 23rd July, 2014 to resolve various issues arising out of Shetty Commission's recommendations in respect of the employees of District and

Subordinate Courts in the State the learned Writ Court held that the said memorandum dated 11th June, 2015 is not applicable to the petitioner since the same relates to the Additional Supervisory level posts of Head Clerk whereas the writ petitioner was appointed in the Supervisory post of Head Clerk and not in the Additional Supervisory level posts created for appointment of Head Clerk. Further the learned Writ Court noted that the petitioner had superannuated from service as Group-C employee in the year 2020. With regard to the issue as to whether any recovery can be made from the writ petitioner alleging overdrawal of the amount, the learned Writ Court took into consideration the decision of the Hon'ble Supreme Court in the ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334*** and held that no recovery could be made from the writ petitioner. With this reasoning the learned Writ Court directed fixation of pay of the writ petitioner in the promotional post of Head Clerk with effect from December 1, 2012 and upon such pay fixation, the arrears of the promotional benefits shall be disbursed within the time frame. It was further held no amount will be recovered from the petitioner with effect from December 1, 2012 till August 1, 2017 for being "overdrawn amount" by the employer.

3. As noted by the learned Writ Court that the appellants had not placed proper written instruction to the learned advocate who represented them, consequently the learned Writ Court disposed of the writ petition based on the available materials and upon hearing the submissions of the learned advocates of the parties.
4. In this appeal the appellants would contend that the writ petitioner was granted promotion to the supervisory post of Head Clerk with effect from December 1, 2012 vide Office Order No.180 dated 22nd July, 2014 and his pay was fixed in the promotional scale vide Office Order Nos.217 and 218 both dated 22nd July, 2014. After the recommendations of the Shetty Commission there arose a peculiar problem in the Small Causes Court judgeship as equal posts are not available and this necessitated the Chief Judge to write a detailed memorandum to the Judicial Department, Government of West Bengal and ultimately by the Order No.242 dated 16th September, 2021, superseding all previous orders including the Office Order No.180 dated 22nd July, 2014 the position was clarified and according to which the date of promotion of the writ petitioner to the post of Supervisory Head Clerk was to be rectified and to be made effective from 1st August, 2017 instead of 1st

December, 2012. If this order is implemented then it will result in a case of overdrawal between the years 2012 and 2014 which may result in an order of recovery. However, in the light of the order passed by the Supreme Court, the appellants have taken a fair stand that the Office Order dated 16th September, 2021 will not be implemented for the respondent/writ petitioner. Thus, according to the Department, the Office Order No.180 dated 22nd July, 2014 has been implemented with full effect, with all benefits with effect from 1st December, 2012. The writ petitioner was not satisfied with the explanation offered by the appellants and, therefore, he had addressed to the 8th respondent, namely, the Pay and Accounts Officer, who sent a reply dated 15th February, 2022 for better appreciation. The same is quoted hereinbelow:-

*“Government of West Bengal
Kolkata Pay and Accounts Office – II
Finance Department
P-1, Hyde Lane, Kolkata -700 073*

*No. Kol.PAO-II/Admin/ Court Case/ 162
dated 15th February, 2022*

*To
Sri Ratan Lal Roy,
Sodpur, Nataghar,
P.O. Pamsila, P.S. Gholia,
District: North 24 Parganas,
PIN – 700112
(M-9230283832)*

By Speed Post

*Sub: Arrear Payment Claim in respect of
Sri Ratan Lal Roy, Ex-Head Clerk of*

Presidency Small Causes Court,
Calcutta.

Ref: Your Letter No. Nil dated 08.02.2022

Sir,

In reply to your letter mentioned under reference above, the undersigned is to inform you that since this office disposes of different kinds of bills, as submitted by the Drawing and Disbursing Officers under its payment control, question of release of payment from this end, in respect of any kind of bill, does not arise until and unless the same is submitted by the concerned Drawing and Disbursing Officer.

Under the circumstances, the undersigned, as of now, has nothing but to express his inability to take any action in this regard.

Thanking you,

Yours faithfully,

Pay and Accounts Officer
Kolkata Pay and Accounts Office-II."

5. Pursuant to the above communication sent by the 8th respondent, the petitioner submitted a representation dated 4th March, 2022 to the Accountant, Presidency Small Cause Court, Calcutta, requesting him to send a clear statement to Pay and Accounts Office to enable them to take appropriate action. This request appears to have not been complied with till date.
6. Thus, taking note of the stand taken by the appellants before us as well as the grievance expressed by the respondent/writ petitioner, all that can be done in this appeal is to direct the appellants to furnish full information to the 8th respondent as

regards how and what manner the Office Order No.180 dated 22nd July, 2014 was implemented in favour of the writ petitioner with effect from 1st December, 2012 and all pay and allowances, which were disbursed to him based on such Office Order, which according to the appellant, was implemented in the Office Order Nos.217 and 218 both dated 22nd July, 2014. The information which is to be forwarded to the 8th respondent should also be made available to the wife of the deceased writ petitioner, who has been substituted in the place of the writ petitioner as he is no more. On receipt of the information, if still the legal heir of the deceased writ petitioner is aggrieved, it is well open to her to agitate the matter in the manner known to law before the appropriate forum.

7. We make it clear that as observed by the learned Single Bench, no recovery or any alleged overdrawal should be made from the pension payable to the substituted writ petitioner.
8. The learned advocate for the respondent/writ petitioner submitted that the pension is yet to be fixed and disbursed to the wife of the writ petitioner, which shall be done by the appellants within a period of four weeks from the date of receipt of server copy of the order. The legal heir of the respondent/writ petitioner is directed to accept the pension as

computed by the appellants with prejudice to her rights.

9. In the light of the above, the appeal stands disposed of and the direction issued by the learned Single Bench stands superseded by the above direction. The above direction is to be complied with within a period of four weeks from the date of receipt of the server copy of the order.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]