

ORDER

OD – 1

WPO/542/2015
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KEYA KAR
VERSUS
STATE OF WEST BENGAL AND OTHERS.

BEFORE:
THE HON'BLE JUSTICE ANIRUDDHA ROY
Date : 17th January, 2025.

APPEARANCE:

Ms. Keya Kar (in person)
petitioner.

Mr. P. K. Roy, Advocate
Mr. Ankit Sureka, Advocate
Mr. Biplab Das, Advocate
Mr. P. S. Pal, Advocate
... for respondent Nos.3, 4, 5, 6 & 9.

Mr. Srijan Nayak, Advocate
Ms. Rituparna Maitra, Advocate
... for respondent No.7.

The Court:-

1. Ms. Keya Kar, the writ petitioner appears in person. Mr. Pradip Kumar Roy, learned senior Advocate appears for the respondent nos. 3, 4 5, 6 and 9. Mr. Srijan Nayak, learned Advocate appears for respondent nos.7 and 8, the employer co-operative society.
2. This is a hearing matter upon affidavits.
3. The petitioner on February 10, 1987 was appointed as a clerk of respondent no.7, the employer co-operative society (for short 'the employer'). She was dismissed from service for the first time on May 29, 2004. She was reinstated in service on April 11, 2014 in terms of an

order passed by the Assistant Registrar, Cooperative Society. After joining, the petitioner received her due salaries from 2004 to 2014 aggregating to a sum of Rs.11,39,249/-. Such payment was made on or about July 22, 2014. Meanwhile, the Assistant Registrar, Cooperative Society announced to give the effect of **5th Pay Commission**, which was effected from August 22, 2014 and the petitioner by a memo dated August 22, 2014 was asked to give an undertaking subject to which the payment was to be made with all the benefits to the petitioner. The petitioner refused to execute that undertaking.

4. The petitioner then again was dismissed from service on August 3, 2016. At that juncture, the petitioner has filed this writ petition with the following prayers:

“a) A Writ of and/or in the nature of Mandamus, commanding the respondents, each one of them, their servants, agents and/or assigns more particularly the Registrar of Co-operative Societies, West Bengal to expunge and/or delete the condition of pay revision as mentioned in the memo dated 22.8.2014, forthwith;

b) A Writ of and/or in the nature of Mandamus, commanding the respondents, each one of them, their servants, agents and/or assigns more particularly the Registrar of Co-operative Societies, West Bengal to allow the revision of pay and allowance of the petitioner in terms of ROPA, 2009 of KMC without any condition and undertaking of the petitioner;

c) A Writ of and/or in the nature of Mandamus, commanding the respondents, each one of them, their servants, agents and/or assigns more particularly the Registrar of Co-operative Societies, West Bengal to pay the arrear of revision of pay and allowance of the petitioner in terms of ROPA, 2009 of KMC without any condition and undertaken of the petitioner;

d) A Writ of and/or in the nature of Mandamus, be issued declaring the condition imposed in the memo dated 22.8.2014 as ultra vires, forthwith;

e) A writ of and/or in the nature of Certiorari do issue directing the respondents more particularly the Registrar of Co-operative Societies, West Bengal to transmit the entire records of the case forming the basis of imposition of condition in the order of pay revision, to this Hon'ble Court and to certify them and on being so certified, quash the same so that conscionable justice may be administered to the parties.

f) A writ in the nature of prohibition do issue prohibiting the respondents from giving any effect or further effect of the conditions imposed in the memo dated 22.8.2014, in any manner whatsoever;

g) Rule NISI in terms of prayer (a), (b), (c), (d), (e) and (f) as above;

h) An order do issue directing the respondents to revise the pay and allowance of the petitioner provisionally till disposal of the writ petition;

i) Ad-interim order in terms of prayer (h) as above;

h) And to pass such further order or orders as to your Lordships may deem fit and proper;"

5. The petitioner retired on and from **January 31, 2019**.

6. The respondent nos.4 and 5 have filed their affidavit-in-opposition. The petitioner has filed her affidavit-in-reply thereto.

7. The principal claims of the petitioner today as would be evident from the prayers in the writ petition are two-fold, **firstly**, to expunge and delete the condition of pay revision shall be effected only upon execution of the undertaking, mentioned in the said memo dated August 22, 2014, which the petitioner refused to execute. **Secondly**, the petitioner claims the benefit of pay and allowance in terms of **ROPA, 2009**, without any undertaking or condition.

8. In so far as the first prayer of undertaking is concerned, the admitted position is that the petitioner has not executed the same. The content of the memo dated August 22, 2014 would be available from the document which is **Annexure-P/6 at page 58** to the writ petition. The stipulation sought to be executed by way of undertaking from the petitioner are quoted below:

“1. No arrear salary to be allowed.

2. All pending works including preparation of accounts for audit and member list/voter list for ensuing election within short period of time. An undertaking to be taken from the employees to this effect.”

9. On a close scrutiny of the said clauses of undertaking, this Court is firstly of the view that, ROPA, 2009 has its statutory flavour. If it is decided by this Court that ultimately ROPA, 2009 is applicable to the

petitioner and the petitioner is eligible to receive all the benefits thereunder to which the petitioner if is found to be entitled in accordance with law, then this undertaking will, in any event, be overruled in view the statutory operation of ROPA, 2009. In the event, ROPA, 2009 permits the petitioner to receive arrear salary, then by executing this undertaking such statutory provision cannot be overridden. Rest of the provisions for undertaking were related to the service tenure of the petitioner. Since, the petitioner has already retired as mentioned above, Clause 2 of the undertaking as quoted above has become irrelevant at this juncture and will have no force and effect on the petitioner in any manner. In the event it is found by this Court ultimately that ROPA, 2009 shall apply to the petitioner or if the same is not applicable for the petitioner, then also the undertaking mentioned in Clause 1 quoted above, would be no effect and force. If ROPA, 2009 permits the petitioner to receive arrear salary, the petitioner will be eligible to receive arrear salary and if ROPA, 2009 does not provide for receiving arrear salary, then the petitioner will automatically not receive the arrear salary. Therefore, ROPA, 2009 will be the guiding factor, which has its statutory flavour. Thus, in view of the above, this Court is of the firm view that the said memo dated August 22, 2014 with the stipulation mentioned therein

Annexure-P/6 at page 58 to the writ petition shall have no binding force or effect upon the petitioner.

10. Now, this Court proceeds to decide whether **ROPA 2009** is applicable to the petitioner. To decide this issue the two most vital documents are the **communication of the Deputy Registrar of Cooperative Society dated August 28, 2014 Annexure P-7 at page 59** and **the Resolution of the employer Cooperative Society dated August 28, 2014 Annexure P-8 at page 60 to the writ petition.**

11. From the said **communication dated August 28, 2014 at page 59** to the writ petition, it appears that the said communication was addressed to the Special Officer of the Employer Cooperative Society, who was in control and charge of the affairs of the Cooperative Society under the provision of Section 36 of the West Bengal Cooperative Societies Act, 2006 at the relevant point of time.

12. The content of the said communication is quoted below:

"You are allowed, following direction of RCS, West Bengal, vide his Memo No. 3125 dt. 22.08.2014 to make disbursement of salaries and allowances e.g., Gratuity, Leave encashment etc. to the existing employees of your society in the revised Pay scale as per ROPA,2009 of the Kolkata Municipal Corporation, which has been sanctioned and enclosed herewith, from the month of August, 2014, sub to the condition that no arrear salary and allowances be disbursed and the

undertaking from each employee as desired by RCS, West Bengal be taken before such disbursement.

A compliance report is to be sent at once."

13. Pursuant to and in terms of the said direction of the Deputy Registrar of Cooperative Societies, the Special Officer of the employer Cooperative Society adopted the **resolution dated August 28, 2014 at page 60** to the writ petition. The resolution is quoted below:

"RESOLUTION.

Whereas following directions of the Registrar of Co-operative Societies, West Bengal, vide his Memo No. 3125 dated 22/08/2014, and subsequent direction of the Deputy Registrar of Co-operative Societies, Co-operation Directorate, Kolkata Range, vide his Memo No. 1422/I-223/48 dated 28/08/14, the undersigned has been allowed to make disbursement of salaries and allowances, e.g. Gratuity, Leave encashment etc. to the existing employees of the society, in the revised pay scale as per ROPA 2009 of the Kolkata Municipal Corporation, from the month of August, 2014 subject to the condition that no arrear salary and allowances be disbursed and the undertaking from each employee, as desired by the Registrar of Co-operative Societies, West Bengal be taken before such disbursement.

Now, therefore, in exercise of the power conferred upon me, it is resolved to disburse the salary and allowances to the existing employees strictly in compliance with Memo No. 1422/I-223/48 dated 28/08/2014 of the Deputy Registrar of Co-operative Societies, Co-operation Directorate, Kolkata Range.

The secretary of the society Shri Arindranath Chakraborti is hereby directed to take necessary measures in this regard. He is also directed to take personal care

to obtain the undertaking, as desired by the R.C.S, W.B from each employee before such disbursement. Special care shall be taken for preparing and checking of the respective bill."

14. The Special Officer being in-charge of the affairs of the employer Cooperative Society by exercising his power under the Statute had adopted the said Resolution under which the Society resolved that the revised pay scale shall apply as per **ROPA, 2009** from the month of August, 2014 subject to the conditions that no arrear salary and allowances be disbursed and subject to obtaining the undertaking from each employee.

15. This Court has already held that the undertaking contained in the said letter dated August 22, 2014 at page 58 to the writ petition shall have no effect on the petitioner.

16. **ROPA, 2009** having a statutory flavour since been adopted by Cooperative Society and the Cooperative Society having agreed to revise the pay scales of the existing employees as on August 28, 2014 as per **ROPA, 2009**, the petitioner being an **existing employee** then, shall be eligible to receive all the benefits under **ROPA, 2009** in accordance with law.

17. The said communication dated August 28, 2014 further shows that the Deputy Registrar of Cooperative Societies decided that the

benefit of revised pay scale as per **ROPA, 2009** of the Kolkata Municipal Corporation was sanctioned from the month of August, 2014. Accordingly, the Resolution of the Cooperative Society dated August 28, 2014 resolved to grant the revised pay scale as per **ROPA, 2009** of the Kolkata Municipal Corporation from the month of August, 2014.

18. The petitioner refers to **Clauses 7 and 11** from **ROPA, 2009**, in support of her contention that she must receive the benefit of **ROPA, 2009** with effect from January 1, 2006 being the date of effect of **ROPA, 2009**.

19. **Clause 7** provides for fixation of pay in revised pay structure of employees *appointed as 'fresh recruit' on or after 1st day of January, 2006*. Admittedly, the petitioner was employed in 1986. Therefore, the said provision laid down under **Clause 7** of **ROPA 2009** shall not govern the petitioner, as the petitioner was not a fresh recruit on or after January 1, 2006.

20. **Clause 11 (2)** of **ROPA, 2009** deals with payment of arrears and the relevant periods mentioned under the said Clause are all between 2006 and 2010 whereas by virtue of the said Resolution, the employer Cooperative Society decided to give effect the revised pay scale as per **ROPA, 2009** of the Kolkata Municipal Corporation from the month of

August, 2014. Therefore, the provisions laid down under **Clause 11** to **ROPA, 2009** will have no application in the case of the petitioner.

21. The provisions from **ROPA, 2009** are adopted by the employer Cooperative Society as a guideline to pay the revised pay scales to its existing employee which includes the petitioner but from the month of August, 2014. This means clearly that on and from August, 2014 whatever benefits the petitioner is eligible to receive in accordance with law, the same shall be strictly in terms of **ROPA, 2009**.

22. In view of the foregoing reasons and discussions, the Respondent No. 7, being the employer Cooperative Society shall calculate the dues of the petitioner payable to her on and from August, 2014 till her date of retirement in accordance with **ROPA, 2009** according to law. Taking the cut-off date as August 1, 2014 if it is found from records that any arrear is due and payable to the petitioner in terms of **ROPA, 2009**, the same shall also be calculated and determined. On the basis of such calculations the entire amount including the arrears as directed herein, if any, shall be paid to the petitioner by Respondent No. 7 along with **interest @ 5% per annum** since August 1, 2014 till August 3, 2016 and then from August 3, 2016 till the date of actual tendering of the amount to the petitioner after deducting the amount on account of salaries and benefits already paid.

23. It is also noted that, in the event from records it appears to the Respondent No. 7 that all other employees, who were similarly placed as that of the petitioner, have been granted the benefit of **ROPA, 2009** since January 1, 2006, then the pay fixation of petitioner shall also be done accordingly.

24. The entire exercise directed above for calculation of dues and making of payment to the petitioner shall be completed by Respondent No. 7 positively within a period of two months from the date of communication of this order.

25. It is made clear that, this order shall not be treated as a precedence.

26. With the above observations and directions this Writ Petition being **WPO/542/2015** stands disposed of, without any order as to costs.

(ANIRUDDHA ROY, J.)

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