IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Rai Chattopadhyay

FMA 1661of 2019
+
IA No.: CAN 2 of 2018 [IA No.: CAN 1429 of 2018] [Stay]
+
IA No.: CAN 3 of 2021

The State of West Bengal
Versus
Professor Parimal Debnath & Ors.

For the Appellant / State	:	*Mr. Joyak Kumar Gupta,*
For the Writ Petitioners /Respondents Applicants in IA No.: CAN 3 of 2021.	:	*Mr. Ekramul Bari,* *Mr. SK. Imtiaj Uddin.*
For the UOI/ Respondent No. 35	:	*Mr. Kumar Jyoti Tewari,* *Ms. Debjani Ghosal.*
Hearing is concluded on	:	*20th April, 2026.*
Judgment On	**:**	**8th May, 2026.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by the State of West Bengal through its functionary being the Principal Secretary, Department of Higher Education challenging an order dated 31.08.2017 passed by the learned single Judge in the writ petition being WP 18646 (W) of 2015.

2. Records would reveal that the writ petition was preferred primarily praying for issuance of necessary directions upon the respondents to release the revised arrear payment of 80% of the central share for the period from 01.01.2006 to 31.03.2009 and for quashing the notifications dated 25.09.2013, 03.10.2013 and 17.10.2014. The said writ petition was disposed of with a direction upon the respondents to pay the balance amount of entitlement to the writ petitioners, in accordance with law. In course of hearing of the writ petition an order was passed on 10.05.2016 and pursuant thereto, a committee constituted for verification of records of the writ petitioners regarding their re-employment filed its report on 20.07.2016. In the stay application filed in connection with the appeal an order dated 05.11.2019 was passed directing the appellant to secure an amount of Rs. 1,20,00,000/- with the learned Registrar General, High Court, Calcutta for stay of operation of the order impugned.

3. Mr. Joyak Gupta, learned advocate appearing for the appellant argues that the benefit of revised pay as per the notification dated 31.12.2008 issued on behalf of the Ministry of Human Resource Development, Department of Higher Education (in short, MHRD) was applicable to substantive post holders and the re-employed employees were not entitled to such pay revision. The benefits of revised pay for the period from 01.01.2006

to 31.03.2009 were allowed to be enjoyed by the teachers who are in regular service and not to the teachers re-employed after superannuation on the basis of the notification dated 15/16.11.1979. Such issue, as urged, was glossed over by the learned single Judge without returning any finding on the same. Such infirmity warrants interference in the present appeal.

4. Mr. Gupta contends that the learned single Judge having arrived at a finding that *'there is substance in the contentions of the learned Advocate General that, persons who ought not to have been re-employed had received re-employment'* and that *'the notification dated November15/16, 1979 has been misused,'* erroneously exercised discretion in favour of the writ petitioners when their re-employment itself was doubtful.

5. He argues that in consonance with the provisions contained in the scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission (hereinafter referred to as the said Scheme) notified *vide* memo dated 31.12.2008, notifications were issued on behalf of the Higher Education Department on 25.09.2013, 03.10.2013 and 17.10.2014 in which it was categorically indicated that Scheme was *'not applicable to the teachers re-employed for any term before 01.01.2006, between 01.01.2006 and 31.03.2010 or after 31.03.2010'*. In view thereof, it ought to have been appreciated that no legal right of the writ petitioners was infringed warranting interference. The said notifications were consequential to the Scheme and ought not to have been glossed over on a purported plea that the same cannot be given retrospective effect.

6. Mr. Tewari, learned advocate appearing for the Union of India submits that the Central Government had already provided the financial assistance to the State in terms of the Scheme for the period from 01.01.2006 to 31.03.2009, as would be explicit from the memo dated 14.08.2012, 17.10.2014 and 19.05.2015. In view thereof, the allegation that the Union of India and its functionaries had failed to discharge their statutory obligations, is absolutely unfounded.

7. Mr. Bari learned advocate appearing for the writ petitioners/respondents denies and disputes the contentions of Mr. Gupta and submits that a perusal of the memo dated 14th August, 2012 would reveal that the central government in terms of the Scheme, as detailed in the notification dated 31.12.2008 had already provided financial assistance for the period from 01.01.2006 to 31.03.2010, to the extent of 80% as reimbursement to the state government which had opted for the revised pay scale and had agreed to provide 20% of the arrears from its own resources. The contents of the memo dated 17.12.2009 would reveal that 20% of arrears in connection with revision of pay structure under the UGC pay revision scheme has already been sanctioned by the state authorities and as such the state respondents cannot take a plea that only the permanent teachers would be entitled to the benefits of the said Scheme and not the teachers re-employed. In view thereof, the learned single Judge rightly directed the authorities to pay the balance amount of entitlement to the writ petitioners and there is no infirmity in such direction.

8. Mr. Bari further submits that the writ petitioners were re-employed strictly on the basis of the notification dated 15/16.11.1979 wherein it was

categorically stated that re-employment shall be made only in an appropriate existing scale of pay on which the teacher concerned retired from service. Such re-employment has not been challenged and having extracted the writ petitioners' service during the period of re-employment, the appellants cannot take a plea that the said notification had been misused and that the writ petitioners have been illegally appointed.

9. Drawing our attention of this Court to the memoranda dated 25.09.2013, 03.10.2013 and 17.10.2014, Mr. Bari submits that the stand of the State respondents that the benefits under the Scheme are *'not applicable to teachers, re-employed for any term before 01.01.2006, between 01.01.2006 and 31.03.2010 or after 31.03.2010'* is absolutely unsustainable in law inasmuch as there is no provision towards curtailment of such benefits in respect of the teachers re-employed in the Scheme and moreso when the State respondents have already disbursed 20% of the benefits and accepted the entitlement of the writ petitioners.

10. We have heard the learned advocates appearing for the respective parties at length and we have given my anxious consideration to the facts and circumstances of the case and considered the materials on record.

11. Indisputably, the writ petitioners were superannuated on a date after 01.01.2006 and before 01.04.2009 and were re-employed within the period from 01.02.2006 to 31.03.2009 for a period five years. Such re-employment was in terms of the notification dated 15/16.11.1979 and they were placed in the appropriate existing scale of pay of the post on which the teacher concerned retired from service. Neither the State Government nor the Central Government had challenged such re-employment. The observation

of the learned single Judge that the notification 15/16.11.1979 has been misused is not in respect of the writ petitioners' re-employment. The argument of the appellant that the notifications dated 25.09.2013, 03.10.2013 and 17.10.2014 clearly restricts the benefits under the Scheme to the teachers who have been re-employed was rightly discounted by the learned single Judge since no such restriction was imposed by the appellant contemporaneously with the promulgation of the Scheme *vide* notification dated 31.12.2008 and as the said notifications have no retrospectivity.

12. A close perusal of the Scheme contained in the notification dated 31.12.2018 does not reveal any bar towards conferment of the benefits to the teachers re-employed. There is no specific clause debarring re-employed teachers from the benefits of revision of pay scale. The Scheme categorically provided that assistance from Central Government to State Government for revision of pay scale of teachers shall be limited to the extent of 80% for the period 01.01.2006 to 31.03.2010 and that from 01.04.2010 the entire liability on account of revision of pay scales shall be taken over by the State Government. All the writ petitioners were in existing posts as on 01.01.2006 and were superannuated after 01.01.2006. In view thereof, the learned single Judge rightly exercised discretion in favour of the writ petitioners. An appellate power interferes not when the order appealed is not right but only when it is clearly wrong and the appellate Court in exercise of judicial review cannot lightly interfere with a reasoned order passed.

13. The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any patent error of law in the order impugned.

14. Accordingly, the appeal and the connected applications are dismissed.

15. However, the appellant shall be at liberty to apply for withdrawal of the secured amount and upon submission of an application to that effect, the Registrar General shall within two weeks thereafter take steps to refund the secured amount along with the accrued interest subject to compliance of necessary formalities and upon deduction of necessary charges.

16. There shall, however, be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Rai Chattopadhyay, J.) **(Tapabrata Chakraborty, J.)**