IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Jay Sengupta

WPA 16376 of 2024

Dr. Devasis Datta

vs.

The Union of India and Others

For the petitioner	:	Mr. Soumya Majumder, Ld. Sr. Adv. Ms. Sanjukta Dutta Mr. Kinnor Ghosh .....Advocates
For the Union of India	:	Mr. Debajyoti Deb Mr. Anjan Chakraborty ....Advocates
For the respondent Nos. 2 to 4	:	Mr. Subrata Mukhopadhyay Ms. Basabi Raichoudhury Ms. Srijata Mukherjee .....Advocates

Heard lastly on : 10.12.2025

Judgment on : 06.03.2026

Jay Sengupta, J:

1. This is an application under Article 226 of the Constitution of India, inter alia, praying for direction upon the respondent authorities to rescind, recall, revoke or cancel any decision that might have been taken to withdrawing financial benefits granted to the petitioner during the lifetime of his service with the respondent University, to grant the benefit of third career progression to the petitioner with effect from 20th April, 2019 so as to fix his pay at Level-14 with grade pay of Rs. 10,000/- and to pay the arrears of salaries arising out of such re-fixed pay with interest and to collect the petitioner's pay on the basis of the financial upgradation out of carrier progression due on 20th April, 2019 and to make payment of the same with interest.

2. Learned senior counsel appearing on behalf of the petitioner has submitted as follows. The communication dated 27.2.2025 has been issued by the Under Secretary to the Government of India, Department of Higher Education to the Director, IIEST regarding another writ petition being WPA 17610 of 2023 pending before this Court as regards non-selection of a teaching staff for a HAG scale post. In the said communication it has been stipulated that as per provision under section 13 of the NITSER Act, the Board of Governors (BoG) of IIEST, Shibpur shall be responsible for the general superintendence, direction and control of the affairs of the Institute, subject to the provisions of the said Act. At paragraph 5 of the said letter the said Under Secretary has clearly expressed that selection to a post bearing HAG scale is a purportedly administrative matter and the Board of Governors of the Institute is the apex decision making body for such cases. The said fact was wilfully withheld from the notice of the Court until 24.11.2025, leading to the obvious inference or presumption of suppression of material fact. As such, the subject matter falls within the administrative domain of the Apex Body of the Institute and fixation of pay and emoluments or granting of career advancement does not come within the domain of the Union of India in respect of an employee of the Autonomous Body, which is a statutory one. The entire case of respondent IIEST that the salary upgradation was by illegal means is, thus, misleading. In this backdrop, on 28.07.2023 the CVO of IIEST, on 31.08.2023 the 4 Member Committee constituted by IIEST and on 01.09.2023 the Chairperson of the Board of Governors of IIEST, all agreed that petitioner had been granted benefits of upgradation as per Rules. The said committees had considered in depth the aspect of fixation of pay and grant of CAS benefits and upheld the decision of granting of CAS benefits and fixation of pay during petitioner's tenure of service in IIEST. Such conscious decision taken by a Competent Authority of the Autonomous Body cannot be upset at the behest of Union of India, with whom the petitioner did not have any employer employee relationship. The Court vide order dated 29.01.2025 had directed disclosure of statutory provisions warranting issuance of the communication dated 4.6.2024 made by Dy. Secretary (NIT-s) to the Director of IIEST, Shibpur. The Ministry couldn't produce any statutory provision as on date on the basis of which the order dated 04.06.2024 was passed by the Deputy Secretary, NITs-1, effectively annulling the previous orders of the Institute authority fixing pay of the petitioner. That apart, in such administrative matters of pay fixation, the audit observation is wholly beyond authority and jurisdiction as conferred upon the said office through the relevant statutory provision. However, despite this Court having passed an interim order on 4th September, 2024 restraining the respondent authorities from taking coercive steps in the matter evidently Union of India had coercively reduced the pay for computation of pension and retiral dues. On this score, all retiral dues should be released with interest along with grant of benefit of MACP effective from 28th April, 2019 at Pay Level 14- Pay Band 4 (Rs.37,400-67,000/-). G.P. Rs. 10,000/-. As regards the petitioner's status qua an "officer", it is submitted that the post of Secretary to the Vice Chancellor was created by the State Government on 26.09.1994. Such creation of post was in accordance with Clause 3 of the First Bye-Laws 1993-1994 of the Institute-3 (1)(a)(b)(c). Creation of post was solely in the administrative domain of the Institute and the State Government. The advertisement mentioned the post to be an "administrative post". The created post had the pay scale of Rs. 2200-4000/-. The same was revised to Rs. 8000-13,500/- when the post was advertised in 1999 and the petitioner joined in 2000. In 2004, the Institute became Bengal Engineering and Science University, a State-aided University. The First Statutes was framed in 2007. In statute No. 68(1)(j) under Chapter VII of the First Statutes, 2007, the post of "Secretary to the Vice Chancellor" was mentioned as an officer category post. Therefore, the stand in the Affidavit in Opposition that the petitioner was not an officer is contrary to statutory provisions. The University is estopped from contending the same.

The petitioner was an officer since he was appointed against a post created by the State Government in exercise of authority conferred on the State Government to create the post of officer as per Bye-Laws – 3(1) (a), (b) and (c). Furthermore, the First Statutes of 2007 (Statute 68) recognize the post of Secretary to the Vice Chancellor as that of an “officer”. Even if the petitioner is reckoned as holding any other designation, then also by reason of applicability of the G.O. dated 08.03.2001 with requisite length of service and corresponding educational qualification, he was clearly to be accepted as an officer. Petitioner had requisite qualification to hold each of the designated posts. The designation changed with the mapping of the posts consequent upon the restructured identity of the Institute. Even without any change of designation, the petitioner could have been placed at the respective grades of pay in terms of the G.O dated 08.03.2001, by applying the principle of career advancement. In career advancement there is no significance of change of designation. The alleged undertaking was only with reference to change of designation and not for upgradation of pay or revision of pay. As submitted before, the re-designation would not have and actually has not conferred any pecuniary benefit through upgradation or otherwise. The said undertaking has no co-relation whatsoever with the benefit of Career Advancement Scheme as per G.O dated 08.03.2001. Respondent's stand is thus misdirected and perverse. The two judgements cited by the respondent refer to erroneous pay fixation of revision of pay which was implemented on undertaking given in those cases. In this case the moot question and the issue raised is to be decided by this Court as to whether the respondents had at all committed a mistake and as to whether the G.O dated 08.03.2001 could confer financial upgradation to the petitioner through the principle of Career Advancement Scheme. The petitioner had received 2 financial upgradations, one in 2004 and other in 2009. From the Supplementary Affidavit affirmed by the petitioner on 04.09.2024, it appears that the respondents have alleged overdrawal from May 2004. By this they admit that the initial pay fixation was correct and hence, there could not have been any alleged overdrawal from May 2004 if the initial pay fixation was correct. Even the respondents have gone back upon their sanction orders dated 25.07.2024 for retiral dues. The said amount should be released with interest in terms of Central Government's Notification dated 20.12.2021. The audit observation was not final. It was dated 23.02.2023. On 28.07.2023 the CVO of IIEST, on 31.08.2023 the Four Member Committee constituted by IIEST and on 01.09.2023 the Chairperson of the Board of Governors of IIEST, all agreed that petitioner had been granted benefits of upgradation as per Rules. Therefore, the same was not final. At the time of filing the writ petition and even today the final report/order dated 04.06.2024, if at all has not been disclosed. In any event, the Court is deciding as to whether there has at all been any mistake in fixing the pay of petitioner. The points urged by the respondent no. 1 in their written notes of argument pertains to alleged wrong designation with alleged wrongful gains of the writ petitioner. The respondent no. 1 had also indicated an exorbitant amount w.r.t. wrongful financial benefits exceeding Rs. 10 crores, which is absolutely baseless and misconceived in view of the submissions already made hereinabove. It has been further contended on behalf of respondent No. 1 with regard to the applicability of the State Government order dated 08.03.2001 as regards the petitioner's status as an officer. In this regard, it is stated that the writ petitioner had already dealt with the said allegations hereinabove before as also in the previous notes of submission filed before this Court.

3. Learned counsel for the respondent No.1 has submitted as follows. The captioned writ petition is not tenable in the eye of law. The instant application under objection is not maintainable in the eye of law and in its present form. The writ petitioner has no cause of action for filing the instant application under objection against the Respondents. The allegations/ averments made in the instant application under objection purportedly filed by the writ petitioner are entirely and severally misleading and have been made only with an ulterior motive to achieve unjust gain out of same and the respondent herein has also denied and disputed the same. The complainant has indulged in suppression of facts and there is a misrepresentation of material and actual facts. It is pertinent to mention here the following to negate and nullify the writ petitioner's baseless contentions. As per the Office Memorandum Central Vigilance Commission dated 12.05.2023 it is stated that - A complaint was received by the Central Vigilance Commission (CVC) on 18.03.2023 under the Public Interest Disclosure Resolution (PIDR) regarding Sri Devasis Datta, Acting Registrar of the Indian Institute of Engineering Science and Technology (IIEST), Shibpur. Upon review, the CVC found the allegations to be specific and potentially valid, warranting an investigation. The Commission, using its powers under Section 8(1)(d) and

8(1)(h) of the CVC Act, 2003, directed an investigation. The investigation report, along with departmental comments and recommendations on each allegation, must be submitted by 30.06.2023, as the complainee is retiring on 31.07.2023. The complainant's identity has been kept confidential, and it is instructed that no harassment occurs if their identity is revealed. The Chief Vigilance Officer is further advised to gather specific comments from the HOD on the allegations and submit them with the investigation report and other relevant documents to the Commission." To further elucidate the issues surrounding the matter, provisions of CVC Act 2003 are referred to for proper adjudication - Section 8 (1) (d) of CVC Act 2003 - "inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;" Section 8 (1) (h) of CVC Act 2003 - "exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government: Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters." Allegations Against Dr. Datta - Promotions and Financial Upgradation The complaint accused Dr. Datta of misusing the Career Advancement Scheme (CAS) to gain multiple promotions, advancing from Secretary to Vice Chancellor to Joint Registrar, despite not meeting UGC criteria. Misuse of Official Position - Dr. Datta allegedly signed his own promotion order without authorization and bypassed standard procedures. His salary was increased beyond what was legitimate, resulting in a basic pay of Rs 1,65,400 at retirement instead of Rs 99,800. This resulted in unjust financial benefits. Basic issue - The entire matter indicates the alleged irregularities in his promotions and salary increments as mentioned above. His initial appointment was as Secretary to the Vice Chancellor of BESU, which later became IIEST. The position of Secretary was an isolated post with no promotional avenues, but he allegedly received promotions and salary increments that were not in line with UGC (University Grants Commission) guidelines. Starting in the year 2000, Dr. Datta's basic pay was Rs. 8,000 in the pay scale of 8,000-13,500. On April 28, 2004, he was unlawfully upgraded under the Career Advancement Scheme (CAS), (The Career Advancement Scheme (CAS) is designed to promote the career growth of teaching faculty in higher education. It applies to positions like Assistant Professors, Associate Professors, and Professors. Faculty members need to submit applications with their academic achievements, research publications, and teaching experience. The scheme is governed by regulations set by bodies like the University Grants Commission (UGC) in India.), which was not applicable to his post, as CAS was meant for academic and Registrar cadre positions. This resulted in a revised pay of Rs. 25,810. His pay further increased to Rs. 28,230 in 2014 and Rs. 88,700 in 2019 after another MACP (Modified Assured Career Progression Scheme) upgradation. By July 31, 2023, the date of his superannuation, Dr. Datta's basic pay was set to be Rs. 1,65,400, when it should have been Rs. 99,800 according to legitimate scales. Dr. Datta's promotions were based on a misapplication of CAS guidelines by the Board of Management (BOM) of the Institute. In 2000, the post of Secretary to the Vice Chancellor was upgraded without proper authorization, and in 2004, Datta was awarded a promotion through CAS, which was meant only for Registrar-level posts. The BOM failed to examine the criteria properly, leading to a series of salary upgrades that resulted in excess payments amounting to over one crore rupees. The Ministry of Education received a Public Interest Disclosure Resolution (PIDR) complaint on 18.03.2023 forwarded by the Central Vigilance Commission (CVC) through the Vigilance Section. The complaint pertained to allegations of corruption involving the illegal receipt of funds amounting to over Rs 10 crore by Dr. Devasis Datta, Registrar of IIEST, Shibpur, which resulted in wrongful gains for himself and losses to the Government. After examining available documents and an internal audit report, the following observations were made: The State Government Order dated 08.03.2001 was applicable to officer posts of State-aided universities in West Bengal, including the Bengal Engineering College (BEC). However, no post of Secretary to Vice-Chancellor is indicated in the first By-Laws of BEC. Therefore, the financial upgradation awarded to Dr. Dutta based on this order is questionable. Dr. Datta attended a meeting on 12.09.2004 related to his designation. Subsequently, as per the Institute's Executive Council in 2010, he was designated as Deputy Registrar, following the eligibility criteria for the position. Dr. Datta was re-designated as Joint Registrar on 28.04.2014 after fulfilling the required service criteria, though this was allegedly done in violation of the non-teaching Recruitment Rules (RRs). The entire matter involves violations of established norms and improper financial benefits. Based on the above observations, it is clear that Dr. Devasis Datta, Registrar of IIEST Shibpur, has engaged in activities leading to improper financial gains through promotions and salary upgrades in violation of established norms. These actions resulted in wrongful financial benefits exceeding Rs 10 crore. The petitioner is not entitled to get any benefit of upgradation by implementation of third career progression and he is not entitled to get any retiral dues in the upgraded pay. The action of the respondent authorities is conscionable, justifiable with cogent reasons and not arbitrary and as such not violative of Article 14 of Constitution of India. The scheme is governed by regulations set by bodies like the University Grants Commission (UGC) in India.), which was not applicable to his post, as CAS was meant for academic and Registrar cadre positions. The complaint pertained to allegations of corruption involving the illegal receipt of funds amounting to over Rs 10 crore by Dr. Devasis Datta, Registrar of IIEST, Shibpur, which resulted in wrongful gains for himself and losses to the government. In fact no post of Secretary to Vice-Chancellor is indicated in the first By-laws of BEC. The financial upgradation awarded to Dr. Dutta based on the order as aforesaid is questionable and not in accordance the applicable and established norms. The respondent authorities are not liable to release any further retrial dues of gratuity, leave salary and computed value of pension with effect from 28.04.2019 nor is he entitled to get any other relief. The respondent authorities have every right to rescind, recall, revoke or cancel any decision with regard to the financial benefit granted to the petitioner which he is not entitled to during the life time of his service and to act in accordance with law. Rather the financial and promotional irregularities need to be corrected.

4. Learned counsel appearing on behalf of the respondent nos. 2 to 4 has submitted as follows. On 13.03.2018, MHRD issued a letter to the Director, IIEST regarding Pay Mapping of the non-teaching staff of IIEST, Shibpur from State Govt. Pay Scale to Central Govt. Pay Scale which is annexed to the Exception to the Report filed by the Respondent Authority. Refixation order was issued to the petitioner on 02.07.2024. The petitioner annexed an Office Memorandum dated 02.03.2016, issued by the MHRD for recovery of wrongful/excess payments made to Govt. Servant. However, the petitioner submitted that the writ petition should be allowed and all withheld dues with arrears of Career Advancement be released with applicable interest at the GPF rate as per provisions contained in the Hand Book of Retiring Central Govt. Employees and the Gazette Notification dated 20.12.2012 which is annexed to the exception to the report. On 25.07.2024 certain office orders were issued by the IIEST regarding Revised Pension Pay Order, Revised Retiring Gratuity and Revised Commutation Pension Order is collectively marked as Annexure "B" to the Supplementary Affidavit. In the month of

July, 2024, petitioner received Rs.36,820/- as pension instead of Rs.65,970/- which he received in the month of June, 2024. Similarly, he got Rs.22,10,413/- as Revised Commutation Payment as per order dated 25.07.2024 instead of Rs.32,52,690/- which he received on 26.07.2023. In view of the above, the writ petition submitted that the reduction carried out through revised pay fixation, in the amount of pension and commuted value of pension should immediately be stayed. A report was filed by the Respondent authority on 03.07.2023. In the said report it is clearly stated that the petitioner was awarded career advancement / promotion benefit and the said G.O. has already annexed with the writ petition. At the relevant point of time the petitioner was acting as Acting Registrar of IHEST of Shibpur and the petitioner duly received the same. The Petitioner was also awarded senior scale under career Advancement Scheme (CAS) in Pay Scale of Rs. 10,000/-15,900/- w.e.f. 28.04.2004 as per G.O. dated 08.03.2001. The Office order is also annexed. The Petitioner was further promoted to the post of Executive Secretary to Vice Chancellor w.e.f. 28.04.2012 in the Pay Band of Rs. 37,40067,000 with grade pay of Rs.9,000/- from the post of Secretary to Vice-Chancellor. All these pay fixation order have been annexed in the writ petition. Thereafter petitioner wrongly re-designated as Deputy Registrar w.e.f. 04.03.2014 (which is the date of transformation from BESU to IIEST) and further re-designated as Joint Register with Grade Pay Rs.8700/- in pay band 4 w.e.f. 28.04.2014. The relevant Office orders have already been annexed to the writ petition. The Petitioner superannuated on 31.07.2023. It is pertinent to mention here that the retirement benefits of the petitioner were not released by the IIEST considering an observation submitted by the team of Director General of Audit (Central) Kolkata and the Audit Team of Ministry of Education and vigilance report. A copy of said observation and reply has already been annexed to the Report filed by the Respondent Authority. Shri Datta was allowed Grade Pay of Rs.7000/-, 8000/- and 9000/- on grant of Career Advancement Scheme CAS where as the Grade Pay applicable for Non-Teaching Staff is Rs.6,600/-, Rs.7600/-, Rs.8700/-etc. Although Shri Datta was not in the feeder Grade for the post of Registrar, which is an administrative Grade, yet he was designated as Deputy Registrar, Joint Registrar and Acting Registrar and allowed to function/discharge duties attached to these posts. Irregularity in designating those post has also lent to excess fixation of pay and consequently, allowances thereon. Allowing benefit of Career Advance Scheme (CAS) applicable for the administrative office is irregular. Thereafter considering the observation of Audit Team a Committee was formed for verification of the documents on the basis of the CAG's observation relating to the petitioner. A copy of the report of the Committee is also annexed to the said report. It is on record that on 01.09.2023, the then Director of the Institute sought permission from the then Chairperson of BOG (however, at the relevant point of time tenure of chairperson has already expired) for releasing retirement benefits in favour of petitioner. In reply Chairman expressed his view to the effect that if rule permits. However, Accounts Officer of the IHEST expressed his views that before approval of retirement benefit confirmation may be re-examined regarding any pending issues or CAG observation about Dr. Datta and said note was placed before the Registrar. In view of the above, pension of the petitioner was released on 31.10.2023. The GPF of the petitioner was also disbursed. But the Gratuity, commuted value of Pension (CVP) and Leave Salary of the petitioner are still withheld. It is relevant to mention here that a Public Interest Disclosure Resolutions (PIDR) complaints dated 18.03.2023 was also received by the Ministry from Central Vigilance Commission (CVC). Copy of Vigilance Commission and reply thereto is also annexed. In the said reply, of the Ministry of Education, Govt. of India, it was observed that the State Govt. order dated 08.03.2001 was specifically applicable to Officer Post of the State aided Universities the West Bengal/Bengal Engineering College (BEC). However, there is no post of Secretary to Vice Chancellor indicated under Officer Cadre in the First Bye Laws of BEC. Therefore, the Financial Upgradation awarded to Shri Devasis Dutta on the basis of above Govt. order is irregular. It is also observed that despite the fact that Shri Dutta was not in the Feeder Grade of Assistant Registrar and his qualifications did not meet the eligibility criteria for the position of Deputy Registrar, Shri Dutta was re-designated as Joint Registrar with notional effect from 28.04.2014 without fulfilling the criteria of 5 years of service as Deputy Registrar as required as per the non-teaching RRS, which is violation of the provisions of non-teaching RR's. In the said letter, IHEST, Shibpur is requested to workout the excess payment made to Shri Devasis Datta, Ex-Registrar (I/C) IIEST, Shibpur, due to irregular pay fixation and recover the excess amount from him accordingly. It is relevant to mention here that the petitioner deliberately has not mentioned anything regarding Audit Observation, PIDR complaint in his writ petition, which amounts to suppression of materials fact. It is well settled in law that if any person suppressed the material facts in the writ petition, the said writ petition is liable to be dismissed. It is pertinent to mention here that in compliance of the instruction of the Ministry, a refixation order of pay has been issued by the institute Vide RDO/638/24 dated 02.07.2024 which is annexed to the report. It is on record that the writ petition has given an undertaking on 20.10.2022. The said undertaking is not a casual undertaking which has got far reaching legal consequence. It has been clearly stated in the said undertaking that if pay fixation has been fixed contrary to the provision of law, the petitioner will refund the extra money. As such Institute is entitled to proceed with the matter afresh particularly when the central agency found anomalies of pay fixation and designation about Devasis Dutta long before his retirement. The petitioner retired from his service on 31.07.2023 and the petitioner himself admitted in the writ petition, particularly in paragraph 20 that on 23.02.2023 the Institute had received (Institute means petitioner herein) has received the said report of the Central Agency. But the said was not challenged by the petitioner in his petition. It is relevant to mention here that the petitioner has affirmed the writ petition on 25.06.2024. More so, the petitioner is fully aware of the order dated 04.06.2024, but the petitioner also has not challenged it. However it appears from the prayers of the said writ petition that the petitioner is fully aware about the acts and deeds of the Central agencies but regarding issuance of the memo dated 04.06.2024 the petitioner remain silent when the said notice was issued by the Education Department, Union of India, the petitioner was in service in the IIEST Shibpur as a Registrar (Acting) but the petitioner did not challenged the same and also did not disclosed in his three successive supplementary affidavit. It is relevant to mention here that there is an independent computer situated at the office of the Registrar. The petitioner retired from his service on 31.07.2023 but after his retirement Mr. Hari Prasad Sharma found that there is no documents and/or files available in the said computer. Everything was deleted from the said computer for reason best known to the petitioner. In support of the abovementioned arguments, reliance is placed on the judgement of Hon'ble Apex Court reported at (2016) 4 SCC 267. A Full Bench decision of this Court, reported at 2023 SCC Online Cal 5467, is also referred to.

5. I heard the learned counsels for the parties, perused the writ petition, the affidavits, the records as produced and the written notes of submissions.

6. It appears from the records that during pendency of this application, the Registrar (Acting), IIEST, Shibpur by a letter dated 30.08.2024 communicated his order dated 23.08.2024 to the petitioner that as per instruction of the Ministry of Education, Government of India, communicated vide Letter No. F No.32-1/2023-TS, III dated 04.06.2024, the excess overdrawn amount of Rs. 25,02,795/- by the petitioner would be recovered after adjusting Rs. 58,51,453/- from his retirement benefits out of the total overdrawn amount of Rs. 83,54,248/-.

7. On 04.09.2024, this Court, after hearing the parties, recorded its expectation that no coercive measures should be taken by the respondents in this regard.

8. First, the communication dated 27.02.2025 issued by the under Secretary to the Government of India, Department of Higher Education to the Director, IIEST made it clear that the selection to a post bearing HAG scale was a properly administrative matter and the Board of Governance of the Institute was the apex decision making body for such cases. The contention of the petitioner that the said fact was willfully withheld from this Court and brought to light only on 24th November, 2025 could not be satisfactorily countered by the respondents. In any event, the subject matter thus fell within the administrative domain of the apex body of the Institution in respect of the employee of the said autonomous body which was a statutory one.

9. The petitioner's further contention that the Ministry could not produce any statutory provision on the basis of which the order dated 04th June, 2024 was passed by the Deputy Secretary, NITs-1, effectively annulling the previous orders of the Institute authority fixing pay of the petitioner also could not be effectively dealt with by the respondents.

10. It is also alleged that despite this Court recording an expectation on 4th September, 2024 that the respondent authorities would not be taking coercive steps in the matter, the respondent Union of India had coercively reduced the pay for computation of pension and retiral dues of the petitioner.

11. Going back to the very beginning, the post of Secretary to Vice Chancellor was created by the State Government on 26th September, 1994 in accordance with Clause 3 of the First Bye-Laws 1993-1994 of the Institute. Creation of such post was solely in the administrative domain of the Institute and the State Government. The advertisement mentioned it to be an "administrative post". It had a pay scale that was revised when the post was advertised in 1999. The petitioner joined it in 2000. In 2004, the Institute became Bengal Engineering and Science University, a State-aided University. The First Statutes was framed in 2007. In statute No. 68(1)(j) under Chapter VII of the First Statutes, the post of "Secretary to the Vice Chancellor" was mentioned as an officer category post. In this regard, it was further contended on behalf of the petitioner that even if the petitioner was reckoned as holding any other designation, then also by reason of applicability of the G.O. dated 08.03.2001 with requisite length of service and corresponding educational qualification, the petitioner was clearly to be accepted as an officer.

12. The petitioner purportedly had the requisite qualification to hold each of the designated posts. The designation apparently changed with the mapping of the posts consequent upon the restructure identity of the Institute. Even without any change of designation, the petitioner would have been placed on respective grades of pay in terms of the said G.O. dated 08th March, 2021 by applying the principle of carrier advancement.

13. The G.O. dated 08.03.2001 provided for career advancement of an "officer". It also categorically stated that an officer of the rank of Assistant

Registrar or equivalent enjoying the senior scale of pay of Rs. 10,000-325-15200/- would be eligible for promotion to the post of the Deputy Registrar or equivalent if he/she fulfilled certain conditions.

14. It appears that the petitioner had received two financial upgrades, one in 2004 and the other in 2009. Apparently, the respondents alleged overdrawal from May, 2004. The petitioner contended that if they admit that the initial pay fixation was correct, then there could not have been any alleged overdrawal from May, 2004.

15. Merely because there is an adverse audit observation on 23rd February, 2023, the same cannot be treated as final or sacrosanct. On 28th July, 2023 the CVO of IIEST, on 31st August, 2023 the 4 Member Committee constituted by IIEST and on 01st, September, 2023 the Chairperson of the Board of Governors of IIEST, all agreed that petitioner had been given benefits of upgradation as per Rules.

16. On the other hand, it was contended on behalf of the respondent No.1 that the petitioner's salary got increased beyond the legitimate limits, mainly because of mis-application of CAS scheme. The CAS scheme was allegedly designated to frame the carrier growth of teaching faculty in higher education. It applied allegedly to positions like Assistant Professors, Associate Professors, and Professors. But, the scheme was not applicable to the petitioner's post. The designation of Secretary was an isolated post with no promotional avenues. But, the petitioner allegedly received promotion and salary increments that were not in line with the UGC guidelines. In 2004, he was unlawfully upgraded under the CAS. His pay further increased in 2014-2019 after another MACP upgradation. According to the respondent No. 1, by 31st July, 2023, the date of his superannuation, the petitioner's basic pay was said to be Rs. 1,65,400/- when it should have been actually Rs. 99,800/- according to the legitimate scales. The upgradation of the post of Secretary in 2000 was without proper authorization. These are alleged corrupt practices which prompted the vigilance authorities to step in. The actions resulted in wrongful financial benefits exceeding Rs.10 crores, as per the respondent No.1.

17. The above referred contentions of the respondents are not borne out from a plain reading of the order dated 08.03.2001 as referred to above, which also speaks of a promotional avenue. Clause 3.1(b) of the First Bye-Laws of 1993-94 provided that the Board of Governors might create and institute such other posts of Officers and as might be deemed necessary from time to time. According to the petitioners, the creation of the post was in pursuance of Clause 3 of the Bye-Laws. The First Statutes of the University of 2007 also referred to the post of Secretary to the Vice-Chancellor as an officer. Hence, there should not be any doubt that at least by 2007, it was made clear that the post was that of an officer. The subsequent contrary views of the Ministry, as available in the record, and the IIEST were, therefore, absolutely perverse.

18. This is indeed a very peculiar case where the petitioner, a qualified individual, joined a post, got promotions and pay upgrades, but at the fag end of his carrier, he faces the prospect of his finances and retiral benefits all being undone because the concerned authorities, at a much later date, suddenly and apparently on a complaint, woke up from their slumber and realized that mistakes were committed in the pay fixations, upgrades and promotions given to the petitioner over a long period of time.

19. It may be germane to mention that the nomenclature of a particular post may not be the deciding factor. What are of prime importance are the nature of the job and the pay grade which is pegged to a particular designation.

20. Moreover, different authorities over a period of time including the CVO of IIEST on 20th July, 2023, the Four Member Board considered by the IIEST on 31st August, 2023 and the Board of Governance of the IIEST on 01st September, 2023 agreed that the petitioner had been granted the upgradation as per Rules. If the Institute now takes a different view at such a belated stage, it would appear that instead of acting as an autonomous body, they are being persuaded by the views of the other respondent authorities and acting on their dictation.

21. In any event, the respondents have not been able to give any explanation or details for their estimate alluded to relating to the complaint that there had been consequent unjust enrichment of a fantastic sum of Rs.10 crores, as mentioned in the written notes.

22. The petitioner, on the other hand, has been able to show the clear progression by which he was promoted and given increased pay structure over a long period of time. He alone could not have been responsible for such upgrades. If the Institution or the Government had any objection to this, they ought to have pointed out the same at the earliest. Then the petitioner could have moved out and done some other thing. The process through which promotions were given to the petitioner and pay upgrades were given were done officially and cannot be presumed to be suspect, that too at such a belated stage. On the contrary, there is a presumption that such official acts have been done regularly.

23. That apart, several authorities of the IIEST had endorsed such progression of the petitioner although the Union Government and its machineries had tried to impose a contrary view.

24. Therefore, the respondents ought to be estopped from taking a totally different view of the situation as regards the petitioner's employment conditions and effectively penalize him for having worked in such capacity for all these long, at this belated stage. Denying the petitioner his retiral dues at the fag end of his carrier would be a complete abuse of administrative powers.

25. As regards the purported undertaking given by the petitioner on 20.10.2022 that if the pay fixation had been contrary to the provisions of law, the petitioner would refund the extra money, if at all, this was a qualified undertaking. According to the petitioner, the undertaking was in reference to change of designation and not for upgradation or revision of pay. In any event, the respondents had not been able to prima facie show that the pay fixation was erroneous. Moreover, an undertaking can hardly outweigh one's constitutional or statutory rights.

26. Moreover, there are decisions where the Hon'ble Apex Court has frowned upon the practice of penalizing employees and deducting sums from their pay after passage of inordinately long period of time. On this reliance is placed on the decision in State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334. There, among other things, it was held that in the following situations, recoveries from employees shall be impermissible in law –

> *"………*
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
> *………*
> *(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, will be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employees right to recover.*
>
> *……."*

27. Here, the petitioner retired on 31.07.2023. But, the order of recovery purportedly passed on 23.08.2024 was communicated to the petitioner by a letter dated 30.08.2024.

28. Hence, the petitioner is covered by more than one clause (as mentioned above) of the ratio in Rafiq Masih (supra) so that no sum would be recoverable from him by the employer.

29. Rafiq Masih (supra) is a celebrated judgement of the Hon'ble Supreme Court that had ruled the field for so many years. The respondent authorities can hardly claim that they were unaware of the decision. Yet, they have chosen to not only disregard the interim order passed by this Court, but also pass orders/take actions in complete violation of the ratio laid down by the Hon'ble Supreme Court in Rafiq Masih (supra).

30. In view of the above discussions and in the interest of justice, this Court is inclined to pass the following directions –

(i) The respondent authorities shall cancel their action, if any, and shall desist from taking any action towards re-fixation of pay of the petitioner and/or withdrawal of any service or retiral benefit due to the petitioner during the lifetime of his service.

(ii) The respondent authorities shall cancel all subsequent steps taken or orders passed in this regard.

(iii) The respondent authorities shall pay all the retiral benefits to the petitioner on the basis of his designation and pay fixation as on the date of his superannuation, with arrears if any to be paid within six months from the date of communication of this order along with simple interest at the rate of 6% per annum.

31. However, this Court, quite likewise, is not inclined, after passage of such time from superannuation, to grant any other additional benefit that had not been extended to and/or was not made available to the petitioner as on the date of his superannuation.

32. With these observations and directions, the writ petition is disposed of.

33. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)

Later:

Learned counsel appearing on behalf of the IIEST prays for stay of the order passed.

The prayer is considered and is rejected.

(Jay Sengupta, J.)