

**(2019) 09 CAL CK 0100**

**In the Calcutta High Court**

**Case No :** General Application (GA) No. 464 Of 2018, 627 Of 2006, Temp APO (APOT) No. 104 Of 2006, Appeal From Order (APO) No. 121 Of 2007, Writ Petitions (WP) No.1528 Of 2002

Inspector Of Schools

APPELLANT

Vs

Abhijeet Baidya And Ors

RESPONDENT

---

**Date of Decision :** 30-09-2019

**Acts Referred:**

Code Of Civil Procedure, 1908 — Section 151, 152  
Constitution Of India, 1950 — Article 141, 148(5), 215, 309, 225

**Citation :** (2019) 09 CAL CK 0100

**Hon'ble Judges :** T.B.N. Radhakrishnan, CJ; Dipankar Datta, J; Joymalya Bagchi, J

**Bench :** Full Bench

**Advocate :** Bikash Ranjan Bhattacharya, Subir Sanyal, Kamalesh Bhattacharya, Sakti Pada Jana, Subhrangsu Panda, Baishali Ghosal, T. Dhali, Kishore Datta, Abhratosh Majumder, Joytosh Majumer, T.M. Siddique, Paritosh Sinha, Nilotpal Chatterjee

**Final Decision :** Disposed Of

---

## **Judgement**

Dipankar Datta, J

### **INTRODUCTION**

Dozens of intra-court writ appeals and writ petitions were finally decided by a Full Bench of this Court by a common judgment and order dated July 16, 2013 (hereafter the said order). The Bench comprised of Arun Mishra, CJ. (as His Lordship then was), and Dipankar Datta and Joymalya Bagchi, JJ. (hereafter the Full Bench). The lead matter was APO 94 of 2009 (District Inspector of Schools, SE, Kolkata and Anr. vs. Abhijeet Baidya and Ors.). All the appeals carried by the State Government were dismissed, while the writ petitions succeeded to the extent indicated in the said order. After a special leave petition that the State Government carried to the Supreme Court of India from the said order failed on February 24, 2014, steps were taken to implement the directions contained

therein albeit not to the satisfaction of all concerned who succeeded before the Full Bench.

We are now tasked to decide G.A. No. 464 of 2018, an application for clarification at the instance of one Md. Abdul Ghani (hereafter the applicant). His writ petition [W.P. No. 1528 of 2002] had succeeded before a learned Judge, whereupon the State Government and its officers preferred an intra-court writ appeal [APO 121 of 2007]. By the said order, APO 121 of 2007 too stood dismissed. The present application appears to have been necessitated in the wake of the State Government's understanding of paragraph 77 of the said order and its implementation thereof in a particular manner, which divests the applicant of his right to claim pension with effect from the date following the date of his retirement from service (October 31, 2003) on superannuation, i.e., w.e.f. November 1, 2003. The prayer, therefore, is for a clarification of the said order so as to facilitate payment of pension to the applicant by the State Government from November 1, 2003, instead of from September 10, 2014, i.e., the date on which the applicant refunded the employer's share of Provident Fund with interest and additional interest upon being notified by the State Government the quantum required to be refunded in terms of the said order.

#### THE ORDER UNDER CONSIDERATION

It would be profitable if, at this stage, we sketch a brief outline of the said order as a prologue to our decision on the merits of the rival claims.

A conflict of opinion between Division Benches of this Court comprising two Judges had resulted in a reference being laid before the Full Bench. It was noticed at that point of time that several other matters (intra-court writ appeals as well as writ petitions) were pending on the self-same point. The Full Bench, thus, decided not only the reference but also the other pending appeals and writ petitions by the said order. On one side of the litigation were teachers of non-Government educational institutions from all over West Bengal (hereafter the employees) and on the other side, the mighty State itself as well as its officers.

The challenge in the writ petitions, out of which the matters dealt with by the Full Bench arose, was directed against substitution of para 13 of Revision of Pay and Allowances, 1998 (hereafter ROPA 1998) with effect from July 13, 1999 and amendment made on May 16, 2007 in para 17 of Revision of Pay and Allowances, 1990 (hereafter ROPA 1990) retrospectively, with effect from March 6, 1990, without extending an opportunity to the employees to switch over to the Pension-cum-Gratuity scheme envisaged in the Death-cum-Retirement Benefit Rules, 1981 (hereafter the DCRB Rules).

It would be appropriate at the outset to notice the provisions of para 13 of ROPA 1998 before and after substitution. Originally, rule 13 read as follows:

"The teaching and non-teaching employees of aided/sponsored educational institutions who will opt for the revised scales of pay shall be allowed to enjoy

pensionary benefit including dearness relief at par with the State Government employees. Maximum amount of gratuity shall be raised from Rs.60,000/- to Rs.2,50,000/- (Rupees two lakhs fifty thousand only)." and, after substitution, it read as follows:

"The teaching and non-teaching employees of Aided/Sponsored Educational Institutions who will come under the revised scale of pay as per memorandum no.25-SE(B) dated 12.02.1999 will be allowed to enjoy the retirement benefit as per revised pension order of this Department according to the option exercised by them under West Bengal Recognized Non-Govt. Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981".

Para 17 of ROPA 1990, originally, was in the following terms:

"(1) Age of Superannuation and related issues-(1) Subject to the provisions of para 5, the age of superannuation of all categories of teaching and non-teaching employees who elect to come over to revised scales of pay shall be fixed at 60 years, as per recommendation of the 3rd Pay Commission.

The teaching and non-teaching employees of an aided/sponsored educational institution or organization who will opt for the revised scales of pay shall be allowed to enjoy pensionary benefits including dearness relief at par with State Government employees. Maximum amount to gratuity shall be raised from Rs.36,000/- to Rs.60,000/-."

After substitution, sub-para (2) thereof read as follows:

"(2) The teaching and non-teaching staff of an aided-sponsored educational institution or organization who will opt for the revised scales of pay as per memo No. 33-Edn (B) dated 07.03.1990 shall be allowed to enjoy the retirement benefits as per revised pension order of the Department vide Memo NO. 136-Edn (B) dated 15.05.1985 according to the option exercised by them under the West Bengal Recognized Non-Govt. Educational Institution Employees (D.C.R.B.) Scheme, 1981."

Paragraph 2 of the said order noted the question involved in all the matters, viz. "whether employees have to be given an opportunity to switch over to the Pension-cum-Gratuity Scheme, in view of change made in para 17(3) of Revision of Pay and Allowances 1990 and in para 13 of Revision of Pay and Allowances 1998".

Upon consideration of the rival contentions advanced from the Bar, the Full Bench framed further five questions for determination reading as follows:

"i) Whether a person who has opted for revised pay scale under ROPA, 1990 becomes entitled to pension by virtue of operation of para 17 of ROPA 1990?

Whether an incumbent who has exercised an option under ROPA 1990 can still be conditioned to the rider of option to be exercised under West Bengal Recognized Non-Government Educational Institution Employees DCRB Scheme, 1981,

particularly in view of the amendment effected in paragraph 17(2) vide G.O. 226-SE(B)/1M-102/98, dated 16th May, 2007 and whether the amendment made in paragraph 17(2) can be said to be valid law; that too with retrospective effect?

Whether para 13 of Revision of Pay & Allowance Rules 1998, as amended by Notification dated 13th July, 1999 relating to the employees of West Bengal Recognized Non-Government Aided Institutions can be said to be valid in law?

Whether after amending the para 13 of ROPA 1998 on 13.07.1999 and para 17 of ROPA 1990 in 2007, it was necessary to give fresh opportunity to employees to revise option under West Bengal Recognized Non-Government Educational institution Employees (Death-cum-Retirement benefit) Scheme, 1981?

Whether the time time-limit fixed under the DCRB Scheme, 1981 to submit option can be extended in suitable cases?"

The Full Bench thereafter dealt with the rival contentions and answered the aforesaid five questions in paragraph 74 of the said order. The same, in its entirety, is reproduced herein below:

"74. Thus, we answer the five questions in the following manner:

1) An employee who has opted for revised pay scale under ROPA, 1990 becomes entitled to pension and gratuity by virtue and operation of para 17 of ROPA 1990. It was not necessary for him to exercise fresh option as per Memo dated 16th December, 1991, which was applicable to employees who had not opted for ROPA 1990. Benefit of Pension-cum-Gratuity was conferred due to acceptance of reduced age of superannuation of 60 years under para 17(1) of ROPA 1990 and his right for Pension-cum-Gratuity so accrued could not have been taken away retrospectively by substitution of the provisions of para 17 in 2007 or by substitution of para 13 of ROPA 1998 in 1999.

2) Once option has been exercised under ROPA 1990, a person cannot be subjected to the rider of the option exercised under the DCRB Scheme, 1981 as the invitation of the option under the said scheme was with respect to the employees who elected to continue in service till the age of 65 years and to have the benefit of the old scheme. For such employees opportunity was given to submit fresh options as per Memo dated 16th December, 1991.

The amendment made in para 17(2) of ROPA 1990 on May 16, 2007 cannot be said to be valid price of law as such provisions cannot be substituted with retrospective effect to take away the rights already accrued to an employee. So as to validate provisions of para 17(2) of ROPA 1990, as substituted, it was necessary to invite option for switching over to Pension-cum-Gratuity from CPF-cum-Gratuity when the substitution of para 17(2) of ROPA was made on 16th May, 2007 with retrospective effect.

3) Para 13 of the ROPA 1998 as amended on 13th July, 1999 cannot be said to be valid in the eye of law as it has the effect of taking away benefit conferred by

para 17(2) of ROPA 1990, as the ROPA was made applicable to the employees who had opted for ROPA 1990 and the benefit conferred could not have been taken away by substitution of provisions contained in par 13 of ROPA 1998. It was clearly arbitrary and an unreasonable exercise of power and to treat it as valid and legal, it was necessary to invite fresh option under the DCRB Scheme, 1981 for switching over to Pension-cum-Gratuity as the provisions had been amended drastically which could not operate to the prejudice of the employees in whose favour right to claim Pension-cum-Gratuity had accrued. The substituted provisions of para 13 of ROPA 1998 fail to qualify Wednesbury principles of reasonableness. The action was in utter violation of fair play and justice.

4) In our opinion, after substitution of para 13 ROPA 1998 on 13th July, 1999 and para 17 of ROPA 1990 on 16th May, 2007, in order to save the provisions from the vice of arbitrariness, it was necessary to give an opportunity to the employees to submit fresh option under DCRB Scheme, 1981. As the option exercised earlier in terms of the DCRB Scheme, 1981 was made applicable, it was necessary to give fresh opportunity to exercise an option for switching over to Pension-cum-Gratuity and the State could not have acted to the detriment of the employees opting for ROPA 1990 who chose the rider of reduced age of superannuation i.e. 60 years under para 17(1) of ROPA 1990.

5) In our opinion, as there was drastic change of provisions of para 17(2) of ROPA made by way of substitution in 2007, and ROPA 1998 also interred with the rights conferred upon the employees under para 17(2) of ROPA 1990, all the employees who opted for ROPA 1990 ought to be given fresh opportunity to submit the option to switch over to Pension-cum-Gratuity."

These answers were followed by the operative part of the said order contained in paragraphs 75 to 80 thereof, reading as follows:

"75. Coming to the relief to be granted, it is clear that some of the employees are in service and some of them have retired and averments are on record that they are ready and willing to repay the amount of employer's share of contribution in the CPF together with interest and additional interest as option had not been called from them to switch over to Pension-cum-Gratuity while substituting para 13 of ROPA 1998 w.e.f. 13th July, 1999 and retrospective substitution of para 17(2) of ROPA 1990 on 16th May, 2007 w.e.f. 6th March, 1999.

We direct the State Government to give opportunity to all the petitioners and other employees similarly situated to submit option to switch over to Pension-cum-Gratuity by issuing public notice in at least four newspapers having wide circulation in this State. Three months' time period be given to them to exercise option and let the amount be specified to each and every employee who elects to switch over to Pension-cum-Gratuity to deposit the amount of employer's share of contribution with interest and additional interest which is required to be refunded to the Government within the period specified.

If an employee exercises option, he shall be entitled to Pension-cum-Gratuity in accordance with law with effect from the date refund is made.

Let such exercise be completed within a period of six months from today.

The appeals filed by the State Government are hereby dismissed.

The writ petitions are allowed to the aforesaid extent."

The reasons for the aforesaid answers (in paragraph 74) and the relief ultimately granted are delineated in detail in the judgment of the Full Bench. Bare perusal thereof would reveal an opinion formed by the Full Bench that drastic changes were sought to be made by substituting ROPA 1998 with effect from July 13, 1999 as well as amending ROPA 1990 with effect from March 6, 1990 retrospectively. The Full Bench noted that those who had opted for the revised scales of pay under ROPA 1990 did so waiving their right to continue in service till 65 years of age and agreed to superannuate on attaining the age of 60 years, on the assurance of receiving a higher pay while in service as compared to those who elected to continue to remain in service till attaining 65 years of age, and also to receive pension at par with Government employees and enhanced amount of gratuity. The contention of the employees was that immediately upon opting for the revised scales of pay made available by ROPA 1990, a right accrued in their favour to enjoy a better scale of pay as well as pension and enhanced gratuity and such a vested right could not have been taken away by the arbitrary action of the State Government. Once the employees had changed their position and acted to their detriment by accepting the reduced age of superannuation of 60 years with waiver of right to avail extension of service up to 65 years, the Full Bench was clear in its opinion that accrued rights of the employees could not have been abrogated in the manner the Government ventured to do so.

It would not be inapt to extract below paragraphs 46 to 49 reading as follows:

"46. In our opinion, by way of amendment/substitution of provisions, rights which have accrued cannot be taken away, that to/with retrospective effect. A benefit that has accrued under the existing para 17(2) of ROPA 1990 cannot be taken away by an amendment with retrospective effect or by provisions as contained in substituted para 13 of ROPA 1998.

In our considered opinion, though it is open to the Government to change its policy but change in policy must be in conformity with reasonableness and principles of natural justice. With the substitution of para 13 of ROPA 1998 and para 17(2) of ROPA 1990 with retrospective effect, the provisions entailed adverse civil consequences and were derogatory to the accrued rights of the employees. The option exercised under the DCRB Scheme, 1981 could not have been made the basis for determination whether the employees were entitled to benefit of either CPF-cum-Gratuity. They were made to accept the reduced age of superannuation at 60 years but were granted the benefit of higher pay scale with an assurance that they would be entitled to pension at the par with State

Government employee and enhanced amount of gratuity. Those who opted for the revised pay scale agreed to retire at the age of 60 years with the impression that their winter years of life would be taken care of with pension with par with the Government employees. The employees having been made to change their position, the Government acted in an arbitrary manner by reversion of the employees to the position that was prevailing before they opted for the revised scale in relation to pension. In order to save such provisions from the vice of arbitrariness, it was necessary to give an opportunity to exercise fresh option for switching over from CPF-cum-Gratuity to Pension-cum-Gratuity, which benefit was otherwise available and had accrued in favour of the employees once they exercised option for revised scale of pay as per provisions contained in para 17(2) of ROPA 1990 and para 13 of ROPA 1998, as the same existed before substitution.

It was submitted by the learned Advocate General that by way of substitution of para 13 of ROPA 1998, the Government attempted to re-emphasize provisions of the DCRB Scheme, 1981 which were otherwise in vogue even after framing of ROPA 1990 and it did not take away the vested right.

We are unable to accept the submission. Considering the various provisions, we are constrained to hold that the respondents acted arbitrarily in not giving opportunity for submitting fresh option to switch over to Pension-cum-Gratuity while substituting para 13 with effect from 13th July, 1999 and also when substituting para 17(2) of ROPA 1990 on 16th May, 2007 making the option under the DCRB Scheme, 1981 as relevant. An opportunity was required to be given to the employees to change the option to Pension-cum-Gratuity which benefit was available under 17(2) of ROPA 1990 and even under the provisions of para 13 of ROPA 1998 before substitution. When conditions of service depending on option were changed substantially and the benefit of pension at par and enhanced gratuity were to be taken away and made dependant on option exercised in terms of the DCRB Scheme, 1981, it was necessary to invite fresh option as the benefits conferred and accrued were sought to be taken away. It could not have been so done unless the Government had invited all the employees to submit fresh options so as to avoid the provisions from being termed as oppressive and arbitrary."

#### APPLICANT'S CONTENTIONS

The applicant was represented by Mr. B.R. Bhattacharya, learned senior advocate. According to him, the State Government by taking the words "with effect from the date refund is made" out of context has deprived the applicant of his dues which would have otherwise flowed to him on a true construction of paragraph 77 of the said order in the light of the judgment rendered by the Full Bench. He contended that there cannot be two dates of retirement for the purpose of payment of pension, ~ one in terms of the DCRB Rules and the other as interpreted by the State Government upon a strained reading of paragraph 77. Referring to the DCRB Rules, it was contended that pension is payable from

the date following the date of retirement of a teacher on superannuation and the Full Bench did not direct otherwise. The State Government had deliberately, to wriggle out of its duty to pay pension in accordance with law, had misinterpreted paragraph 77 of the said order thereby resulting in unjust deprivation of poor teachers. He further referred to the plight of hundreds of retired teachers who were in utter penury like the applicant and submitted that creating a vacuum between the date of retirement on superannuation and the date of refund was never the intention of the Full Bench. He, accordingly, appealed to this Bench to issue appropriate clarification so that not only the applicant but other similarly placed retired employees are paid pension from the dates following the dates of their respective retirement on superannuation.

#### CONTENTIONS OF THE RESPONDENTS

Mr. Datta, the learned Advocate General for the State of West Bengal, representing the respondents, questioned the maintainability of the application for clarification at the outset. The points in support of the objection to maintainability of the application are:

The judgment and order of the Full Bench dated July 6, 2013 attained finality, once the special leave petition preferred from the same by the State Government stood dismissed. There being no ambiguity in paragraph 77 of the said order, the State Government obeyed the direction therein by paying pension to the employees with effect from the date refund was made by them of the quantum that they were required to refund. Question of any clarification, therefore, does not arise.

An application for review has to be made in accordance with Chapter 10 of the Appellate Side Rules, which ordains that a memorandum of review has to be presented. In the absence of a memorandum, the present application cannot be construed to be one for review of the said order either.

The present application not being one for review of the said order, a review cannot be had in the disguise of an application for clarification. The remedy now pursued by the applicant is not the appropriate remedy; his remedy was to approach the Supreme Court, if any part of the said order left him aggrieved and dissatisfied. Support was sought to be drawn by relying upon the decisions reported in (2013) 2 SCC 698 [Cine Exhibition (P) Ltd. v. Collector] and (2018) 3 SCC 336 [State of Tamilnadu v. K. Balu].

The applicant did not question the said order prior to commencement of payment of pension to him, and by his conduct he has accepted the said order. Having acquiesced in the developments post issuance of notification dated June 13, 2014 in terms of paragraph 76 of the said order, there cannot be any clarification by this Bench after the said order has been acted upon. The decisions reported in (2003) 8 SCC 671 [State of Nagaland v. Toulvi Kibami] and (2003) 12 SCC 347 [Asha Prasad v. Chandrakant Gopalka] were relied upon to draw support.

An application for clarification could lie if there were unintentional slips or omissions in an order giving rise to ambiguity. The said order neither lacks clarity nor is anything unclear to be clarified by the Court. Since there has been no mistake or omission on the part of the Full Bench, power conferred by section 152 of the Code of Civil Procedure (hereafter the CPC) cannot be invoked and the misconceived application is liable to rejection. The decisions reported in (2004) 5 SCC 353 [Zahira Habibullah Sheikh v. State of Gujarat] and (2004) 12 SCC 713 [Ram Chandra Singh v. Savitri Devi] have been relied on to fortify the submission made.

If clarification is made, as has been sought for by the applicant, the same would fundamentally alter or change the very conditions on which the said order of the Full Bench is based and that is impermissible.

In terms of the Rules framed by this Court, both on the Original Side as well as the Appellate Side, a Full Bench is required to give its opinion on a substantial question of law which might have been referred to it or if a conflict of opinion of two Benches of co-equal strength requires resolution; and based on such opinion, the lis is required to be decided by a Division Bench or a Single Bench, as the case may be. The judgment and order of the Full Bench was rendered to resolve a conflict of opinion of Benches of co-equal strength; hence, an application for review or clarification of the opinion rendered by the Full Bench does not lie.

The present application is vexatious and keeping in mind the law laid down in the decision reported in (2015) 3 SCC 552 [Chaman Lal Saraf v. State of Haryana], it ought to be dismissed.

Insofar as the conduct of the applicant is concerned, Mr. Datta invited our attention to the fact that the applicant has presented a fresh writ petition before this Court [W.P. No. 20315 (W) of 2015] wherein prayers have been made for payment of arrears of pension with effect from the date of retirement without, however, challenging the validity of the notification dated June 13, 2014. Despite pendency of such writ petition, the present application has been filed; therefore, it is clear that the applicant has been pursuing parallel remedies, which is impermissible in law.

On merits, Mr. Datta by referring to a judgment and order dated December 7, 2015 has highlighted that a Single Judge of this Court dismissed W.P. No. 20604 (W) of 2015 (Amal Kanti Chakraborty and 197 Ors. vs. The State of West Bengal & Ors.) holding that the claim of the petitioners before His Lordship was a misadventure. In His Lordship's view, the Full Bench having made it clear that pension would be payable with effect from the date refund is made and the petitioners before His Lordship had accepted the notification, it was held that there was no merit in the writ petition. Our attention was also drawn to the judgment and order dated February 14, 2017 passed by a Division Bench of this Court in MAT 1877 of 2015, which was carried from the said judgment and order

dated December 7, 2015. It was, inter alia, held in paragraph 17 as follows:-

"The writ petitioners having submitted to the directions as contained in the order of the Full Bench, by exercising their option in terms of notification pursuant thereto and are actually receiving their pension on and from the date of their respective refund of government share of CPF, are not entitled to question the same subsequently."

The order dated November 3, 2017 passed by the Supreme Court dismissing the Special Leave Petition, which was carried from such order dated February 14, 2017, was also brought to our notice and it was contended that even the Supreme Court found no reason to fault the Division Bench's understanding of paragraph 77 of the said order.

It has thus been argued by Mr. Datta that several Benches having interpreted the said order in the way the State Government has interpreted and implemented it, any clarification of the nature sought for by the applicant would unsettle the settled position.

While referring to the order of the Division Bench dated February 14, 2017 dismissing MAT 1877 of 2015, our attention was further drawn to the fact that by the self-same order MAT 1459 of 2016 (The State of West Bengal & Ors. vs. Sri. Ranajit Bar & Ors.) was also allowed by setting aside the order under appeal dated May 13, 2016 passed by one of us (Dipankar Datta, J.), whereby W.P. No. 28844 (W) of 2014 (Ranajit Bar & Ors. vs. State of West Bengal & Ors.) [challenging clause 3(x) of the notification dated June 13, 2014], was referred to the Hon'ble the Chief Justice for constituting an appropriate Bench or a larger Bench for the purpose of deciding the issue framed therein, viz.:

"Whether in terms of the judgment and order of the Full Bench dated July 16, 2013 passed by a Full bench of the Hon'ble High Court at Calcutta in the case of District Inspector of Schools (SE), Kolkata & Anr. Vs. Abhijit Baidya & Ors. reported in 2013 (3) Cal LJ 178, a willing employee, who exercises option and is otherwise entitled to pension, would be entitled to pension payable from the date of his retirement or pension payable from the date he makes refund of the amount received by him on account of employer's share of provident fund with interest and additional interest?"

According to Mr. Datta, the reference made by the order dated May 13, 2016 having been set at naught by the Division Bench, this Bench should dissuade from making any clarification as prayed for.

Finally, our attention has also been drawn to a series of orders passed by one of us (Joymalya Bagchi, J.) on writ petitions filed by several employees seeking payment of pension from the date of retirement in contrast to payment made from the date of refund. The decisions rendered by His Lordship are more or less identical. A paragraph from the decision rendered in W.P. 11767 (W) of 2009 (Aruna Pradhan vs. The State of West Bengal & Ors.) was relied on in this behalf,

which is quoted below:-

"This issue is no longer res integra having been decided by a Special bench of this Court by judgment and order dated 16.07.2013 in APO 94 of 2009, GA 665 of 2013 with WP 694 of 2008 with all other 201 connected matters (District Inspector of Schools (SE), Kolkata v. Abhijit Baidya).

In view of the ratio as laid down in the said decision, if the petitioner exercises option in terms of para 76 of the said judgment in favour of the Pension-cum-Gratuity Scheme pursuant to the public notice issued by the State Government, as provided in the said paragraph, seeking such option, and, in the event she has already received upon superannuation benefits under the CPF scheme, the State Government shall within a month from her exercising such option, specify to the petitioner the amount of employees' (sic, employer's) share of contribution with interest and additional interest and call upon the latter to refund the same within a specified time and upon such refund being so made, the petitioner shall be entitled to the benefit of Pension-cum-Gratuity scheme from the date of such refund."

The contention of Mr. Datta, therefore, has been that learned Judges of this Court have uniformly held, upon duly reading the said order, that the retired employees are entitled to pension from the date of refund and there being no valid reason for taking a different view, there is no need for clarification of the said order; accordingly, G.A. No. 464 of 2018 merits outright dismissal.

#### REPLY OF THE APPLICANT

Mr. Bhattacharya contended that the learned Advocate General merely raised technical points without having anything to argue on the merits. According to him, the technical objections cannot override the Court's duty to render justice. In any event, he urged that the applicant had done what law permitted him to do and hence, no exception ought to be taken. Insofar as the conduct of the applicant is concerned, it was contended that even if the conduct were reprehensible the nature and character of the judgment rendered by the Full Bench would not be changed thereby. The only forum that was available had been approached for exercise of its inherent power to remove the injustice caused by the brazen acts of highhandedness perpetrated by the respondents. He brought to the notice of this Bench the plight of the applicant. Having returned Rs.4,89,342.00, which included interest and additional interest as directed by the Full Bench in the said order, payment of pension in favour of the applicant commenced from September 10, 2014 at a time when he is aged 75 +. He did move a writ petition but during its pendency found other Benches of this Court taking a view contrary to what the Full Bench had directed and hence, had no other option but to apply for a clarification in the changed circumstances. He, thus, prayed that appropriate clarification be issued to set things right.

#### THE DECISION

Legislation is the task of the legislature, while it is given only to the judiciary to interpret what the legislature said or intended to say. Whenever the legislature uses words in a statute which are ambivalent and the court perceives that the legislature has failed to express itself unequivocally or without ambiguity, the legislators cannot be called upon to explain what they intended to say by the words they used. Therefore, the essential function of interpretation rests with the judiciary. However, if difficulty arises in interpreting a judgment/order passed by a court because of unintentional slips or omissions on its part and should the author of the judgment/order be available, the parties to the litigation could approach him for a clarification. If a Bench comprises more than one judge and the author is not available but the companion judge is available, normally it is a Bench comprising, inter alia, such judge who is available that deals with the matter. It is only for unavoidable reasons that a Bench, not comprising a Judge who was part of the original Bench, could consider the prayer for clarification. More often than not, sections 151 and 152 of the CPC are pressed into service for achieving the desired result. However, it is always desirable that the clarification, if at all required, is provided by a Judge/Judges who was/were a member/members of the parent Bench.

G.A. No. 464 of 2018 being such an application, seeking clarification of the said order having regard to the dichotomy in understanding of paragraph 77 thereof, it is only just and proper that the clarification, if at all, ought to be issued by the same Bench that delivered it or those Judges of the Full Bench who are still available. It is noteworthy that for hearing and disposing of the application for clarification of the said order, this Bench happens to be the third in the series constituted in succession with the Hon'ble the Chief Justice as the presiding Judge and the other Judges being the common member judges. Be that as it may. Keeping in mind what we have referred to and extracted supra, paragraph 77 of the said order calls for proper interpretation as to what the Full Bench intended in terms of relief to be granted to the retired employees.

Since Mr. Datta has urged that the application is not maintainable, a fortiori, this Bench has no jurisdiction to entertain the same, this Bench considers it appropriate to first remind itself of its own jurisdiction and whether in appropriate cases, not being shackled by technicalities, the inherent power ought to be exercised to remedy injustice wherever it is found. In the process, it would also exercise the consideration of this Bench how far the decisions cited by Mr. Datta are relevant for not entertaining the application and deciding it.

In its decision reported in 1993 Supp (2) SCC 433 [M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.], the Supreme Court while overruling ancient decisions of the Bombay High Court and this Court in respect of admiralty jurisdiction, held that the High Courts continue to enjoy the same jurisdiction as it had immediately before the commencement of the Constitution, as stated in Article 225, and subject to its own Rules, exercise of its manifold jurisdiction, unless barred, is unlimited (emphasis supplied).

Not too long thereafter, the Supreme Court in its decision reported in (2000) 1 SCC 666 (M.M. Thomas v. State of Kerala) noticed the aforesaid decision and after dwelling on the powers that a High Court as a court of record under Article 215 of the Constitution must have, ruled in the following words:

"14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1, a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record.

(emphasis supplied)

More or less ten years later, this is what the Supreme Court in its decision reported in (2010) 12 SCC 585 (Tilak Raj v. Baikunthi Devi) said:

"25. Since the court exists to dispense justice, any mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power vested in the court for subserving the cause of justice. The principle behind the provision is that no party should suffer due to bona fide mistake. Whatever is intended by the court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the court should not bind itself by the shackles of technicalities."

(emphasis supplied)

Even in Ram Chandra Singh (supra) relied on by Mr. Datta, the law is laid down, upon consideration of the decision reported in AIR 1967 SC 1440 (Samarendra Nath Sinha v. Krishna Kumar Nag), in the following terms:

"19. It is no doubt true that in appropriate cases this Court may pass an order ex debito justitiae by correcting mistakes in the judgment but inherent power of this Court can be exercised only when there does not exist any other provision in that behalf. Clerical or arithmetical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention is permissible as has been held in Samarendra Nath Sinha."

(emphasis supplied)

Ram Chandra Singh (supra) also considered the decision reported in (2001) 4 SCC 181 (Jayalakshmi Coelho v. Oswald Joseph Coelho) which, in turn, relied on

the decision reported in (1999) 3 SCC 500 (Dwarka Das v. State of Madhya Pradesh). Paragraphs 21 to 23 are instructive and hence, quoted below:

"21. In Jayalakshmi Coelho whereupon Mr Mishra relied upon, this Court observed:

'13. So far as the legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice.'

This Court upon analysing some earlier decisions of this Court opined:

"13. ... To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or rearguments on merits are required for such rectification of mistake. In a case reported in Dwaraka Das v. State of M.P. this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case."

(emphasis supplied in original)

This decision itself, thus, lays down that in the garb of correction of mistakes arising out of accidental slips or typographical errors, the judgment cannot be altered or modified by this Court in exercise of its inherent power."

In K. Balu (*supra*), again cited by Mr. Datta, a clarification was sought by filing an application that in paragraph 7 of the order dated July 11, 2017, reported in (2018) 13 SCC 133 [Arrive Safe Society of Chandigarh v. State (UT of Chandigarh)], use of the words 'municipal areas' was not intended to exclude areas within the jurisdiction of local self-governing bodies. It was held that in the proceedings before it, the Court was neither called upon to review its judgment nor to modify its orders. Ultimately, the Court issued a clarification that the State Governments would not be precluded from determining whether the principle laid down by the Court in the order dated July 11, 2017 in Arrive Safe Society (*supra*) should also apply to areas covered by local self-governing bodies and statutory development authorities.

In Zahira Habibullah Sheikh (*supra*), the Court found the petition under consideration in essence and substance as one seeking a review under the guise

of making an application for direction and modification. The move adopted was held to be unjustified, clearly misconceived and nothing but sheer abuse of process. It was also held that no exercise could be undertaken virtually for rehearing and altering the judgment which is not to the liking of a party, without there being any apparent error on record whatsoever to call for even a review.

The Supreme Court in *Asha Prasad* (supra) found substance in the submission of the appellant that "when the order had worked itself out in that, nothing further remained to be performed under the order in respect of which review was sought, the High Court should not have interfered and set the clock back as it were, after almost a decade".

*Toulvi Kibami* (supra) was a case where the judgment of the Letters Patent Bench was acted upon and it stood exhausted; hence the review petition was held to be not maintainable.

In *Chaman Lal Saraf* (supra), it was held that the application for clarification is vexatious because the applicant had tried to circumvent the process of the Court by approaching it in the guise of different reasons, although there was no need for clarification as the order is already very comprehensive and succinct. It was also held that under the garb of clarifications, attempts were made to have an order to reopen the case for dealing with points which had been decided earlier.

Having noticed some of the decisions of the Supreme Court offering guidance on the subject as well as considering a couple of decisions Mr. Datta has cited, what follows is that the High Courts in India, being courts of record, (i) have inherent powers which are resident in all courts of superior jurisdiction to correct its record, (ii) exercise unlimited jurisdiction in the sense that the High Courts are competent to determine the scope of its own jurisdiction, (iii) are the repository of all judicial power under the Constitution, except what is excluded, (iv) have a duty to decide disputes brought before it in such a manner that whatever is intended by the court while passing the order or decree is properly reflected therein, (v) ought to nip in the bud any move of a scheming party to have a rehearing of a matter which has been decided on merits previously in the guise of an application for review/clarification/modification; (vi) should do not entertain applications which can be characterised as vexatious; but (vii) can remove injustices arising from unintentional errors without permitting a rehearing on the merits and without amending or modifying its orders.

The decisions cited by Mr. Datta [viz. *Zahira Habibullah Sheikh* (supra), *Asha Prasad* (supra), *Toulvi Kibami* (supra) and *Chaman Lal Saraf* (supra)] in support of his contentions, in the opinion of this Bench, do not really assist him. It is settled law that a decision is an authority for what it actually decides and not what can logically be deduced therefrom. Having regard to the peculiar facts obtaining in each case, the Court held the applications to be not maintainable. Here, the applicant has been vociferous in his grievance that although the State is supposed to represent its people and look after their interests, particularly the

interests of retired teachers like him in their twilight years of life, the State Government with an ill motive has interpreted the said order in such a manner to cause 'unjust deprivation' to the applicant of pension due to him.

Pension, it is well known, is not a bounty but a property. Payment of pension does not depend on the discretion of the Government but is governed by the relevant rules and anyone entitled to pension under the rules can claim it as a matter of right. In the decision reported in (1983) 1 SCC 305 [D.S.Nakara and Ors. vs. Union of India], the position of law on pension was explained in the following words:

"29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retire from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid employment but not senility and penury if there is nothing to fall back upon.

The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see *American Jurisprudence*, 2d, 881).

From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an *ex gratia* payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn

as a disciplinary measure."

The objections to the maintainability of this application raised by Mr. Datta appear to be lacking in substance. The Full Bench not only decided a reference but along with the reference, it decided a bunch of intra-court writ appeals and writ petitions in exercise of appellate jurisdiction and Constitutional Writ jurisdiction, respectively. The said order, therefore, was not merely an advice or opinion on a reference but proceeded to determine the rights of the parties including the applicant. That apart, in view of the allegation of the applicant that the State Government sought to work out the said order contrary to its terms, seeking of a clarification in the above back drop does commend to this Bench to be appropriate and the application does not warrant rejection as vexatious. Further, the order dated November 3, 2017 upholding the order of the Division Bench of this Court dated February 14, 2017 not having been passed by the Supreme Court in exercise of its appellate jurisdiction, no law has been declared binding on this Bench under Article 141 of the Constitution and such order of the Division Bench does not create an impediment in consideration of the application on merits. Question of the applicant pursuing parallel remedies also does not arise, on facts and in the circumstances. Having noticed the fate of 198 retired employees, the applicant was left with no other option but to seek clarification. In the changed circumstances, brought about by dismissal of the claims of such 198 retired employees, the objection is not sustained. In our opinion, action taken by the State Government to work out the said order, allegedly, contrary to its terms would not preclude an aggrieved person to seek a clarification and this Bench finds no reason to uphold any of the objections to the maintainability of this application.

Bearing the dicta as well as the principles in mind, which have been noted above, this Bench would now endeavour to examine whether paragraph 77 of the said order does suffer from any error ~ clerical or otherwise ~ needing correction in exercise of inherent power read with the principles flowing from section 152 of the CPC.

It would appear on a complete reading of the judgment of the Full Bench that several contentions were raised on behalf of the State Government by the former Advocate General for the State of West Bengal, Mr. Bimal Kumar Chatterjee, to thwart the prayers of the employees but all such contentions were overruled. The judgment up to paragraph 74 does not bear any material finding favourable to the State Government. It is clear on a combined reading of the reasons for the conclusions reached and the operative part of the said order, specifying the relief that the employees are entitled to, what the Full Bench intended. The Full Bench neither intended to grant truncated relief to the employees, nor intended to create a divide between in-service teachers and retired teachers who were before it. All the employees, irrespective of their status ~ in-service and retired teachers ~ not having been given opportunity to switch over to the Pension-cum-Gratuity scheme despite agreeing to a lower age of superannuation and despite waiving

their right to avail extension of service on the express assurances as in originally framed para 17(2) of ROPA 1990 and para 13 of ROPA 1998, the Full Bench returned the finding that the State Government's action was arbitrary and oppressive, but it proceeded to save the substitution/amendment by mandating that the employees would have to be given opportunity to opt for the Pension-cum-Gratuity scheme within the time frame to be indicated in a notice by the State Government and upon such option being exercised, the Government would calculate the quantum of money that the employees would have to refund on account of the employer's share of provident fund with interest including additional interest; and only upon the refund being made, the liability would accrue qua the Government to pay pension.

The Full Bench made it clear that the employees would be entitled to be paid Pension-cum-Gratuity in "accordance with law". What does "in accordance with law" connote? That the provisions contained in the DCRB Rules were and are still the law governing the subject of pension payable to the employees, is undeniable. In terms of the DCRB, Rules "...pension will commence from the date following the date of retirement under any of the 4 classes of pension mentioned in para 9 of the scheme". The classes of pension, the rate at which pension would be paid and other related matters had to be factored in in terms thereof, but entitlement to be paid actual financial benefit on account of pension from the date of refund was never intended; rather, the intention was that the entitlement to be paid pension would relate back to the date following the date of retirement but such payment would not commence unless of course the refund as aforesaid were made.

The logic behind this is not far to seek. One cannot lose sight that a vast section of the employees before the Full Bench were retired teachers, who had superannuated long back. Whatever little they did receive on account of Provident Fund dues might have been eaten up by them. Some such employees, despite exercising option for pension and despite being informed of the quantum of the employer's share of provident fund with interest including additional interest, may not have been in a position to immediately refund the same. In view of the exercise of the option within the time limit and other requirements being in order, the entitlement to receive pension from the date following the date of retirement would crystalize but the Full Bench, conscious of the economic condition of the retired employees, conditioned the relief that was granted to them by imposing a rider that payment of pension would be with effect from the date of refund, i.e., to avoid a situation where an employee can claim the dues on account of pension without he making the refund of the employer's share of provident fund with interest including additional interest. There was no other way paragraph 77 could have been interpreted for consequent implementation.

Viewed from another perspective, the irresistible conclusion is this. It was undisputed that many employees had retired on superannuation at the beginning of this century receiving paltry amounts on account of Provident Fund. That is

why they clamoured for pension. Those claiming pension, if held by the Full Bench to be entitled to pension in accordance with law, could not have prayed for receiving the financial benefits accruing to them on account of pension on the dates following the dates of their respective retirement on superannuation because of the pending litigation impugning the substitution/amendment in ROPA 1998 and ROPA 1990, respectively. The Full Bench having ruled in favour of the retired employees, they were first required to opt for pension and then refund the quantum of money notified to each of such optees. What the expression "with effect from the date of refund" implied was the date on which the State Government incurred the liability to release pension, ~ arrears and current. Upon the appeals failing and the writ petitions succeeding, the Full Bench could not have put the clock back by directing payment of pension on the date following the date of retirement on superannuation. The payment of pension in terms of the said order could have started, only if refund were made of the quantum notified. The Full Bench, therefore, was quite clear that payment of pension would be with effect from the date the refund is made and not before, but the entitlement would obviously relate back to the date of retirement on superannuation. In other words, the Full Bench having observed that entitlement to Pension-cum-Gratuity in accordance with law of an employee ought to be preceded by exercise of an option within the time frame fixed in the notice and in the same breath having made refund of money by such employee a condition precedent for payment of pension to start, it necessarily implies that entitlement of such employee (if entitled to pension) to be paid pension from the date following the date of his retirement notwithstanding, actual payment of pension would stand deferred and not commence till such time refund of the employer's share of Provident Fund with interest including additional interest is made by him (employee). There was, thus, no valid reason for the State Government to interpret paragraph 77 of the said order in a manner, which takes away the essence of the judgment and throws considerable doubt on the bona fides of the State Government and its true colours.

While implementing the said order, the State Government altogether ignored the basis of the judgment and the dictum that the employees were entitled to "Pension-cum-Gratuity in accordance with law", meaning thereby the DCRB Rules, and not from the date of exercising option or from the date of acceptance of option but "with effect from the date of refund" of employer's share of Provident Fund with interest including additional interest after the quantum of money to be refunded is notified to the employee. It is noteworthy that the employees expressed their willingness to refund, which was recorded in paragraph 75, and they did not claim interest on the arrears of pension; hence, such interest was not awarded. To put it plainly, a balance was struck by ordering payment of pension according to entitlement without there being an order awarding interest. Indeed, there was no curtailment in respect of the right to receive pension from the date following the date of retirement as per the DCRB Rules but liability of the State Government to pay was deferred till such time

refund was made and entitle an employee to claim pension from the date of his entitlement as per the DCRB Rules.

That apart, sight cannot be lost of the fact that not only retired employees but also in-service employees were litigants before the Full Bench. Insofar as the in-service employees are concerned, they were not under any obligation in terms of the said order to return any amount because the employer's share of provident fund would have, in normal circumstances, been credited in their bank accounts only after their retirement. It could never have been the intention of the Full Bench to create two classes ~ by keeping in-service employees on the one side and the retired employees on the other side ~ and extend to them varying benefits. Reading of the said order does not even remotely suggest so.

The orders passed by one of us (Joymalya Bagchi, J.) while sitting singly, to which the attention of this Bench have been drawn by Mr. Datta, do not support the cause of the State Government since in those orders His Lordship merely reiterated the directions passed by the Full Bench and nothing more can be inferred therefrom.

What remains is the last aspect. In paragraph 89, it was recorded that the appeals filed by the State Government were dismissed; whereas in paragraph 90 the writ petitions were allowed "to the aforesaid extent" suggesting that the right to receive financial benefits on account of pension would not stand crystallised unless the refund were made. The contents of paragraphs 89 and 90 of the said order cannot simply be brushed aside as if it were a formal recording of the results of the intra-court writ appeals and the writ petitions. Commencement of payment of pension from the date refund is made by the employees and not from the date following their dates of retirement would have resulted in the State Government stealing a march over the employees and making windfall gains in financial terms, despite being on the losing side in the legal tussle. If indeed any relief were sought to be extended to the State Government by the Full Bench, its appeals would have been disposed of instead of being dismissed, as recorded, and the writ petitions would not have been allowed. We need not detain ourselves for long and explain what dismissal of an appeal means; suffice it to record that the State Government did not interpret paragraph 77 of the said order in consonance with the paragraphs preceding it, leading to this impasse.

To summarise : while the Full Bench consciously directed that the liability to pay pension in accordance with law will trigger, upon the retired employee refunding the provident fund with interest including additional interest to prevent 'unjust enrichment' to him, the words 'with effect from' in paragraph 77 of the said order by no stretch of imagination can be said to have been incorporated to cause (as the State Government contends) unjust deprivation to a retired employee who is called upon to refund his provident fund with interest only to receive truncated pension from the date of such refund and not from the date following retirement on superannuation as per the DCRB Rules. Such an interpretation of the judgment and order of the Full Bench goes against the very grain of the decision

and consequently calls for a clarification to remove the undesired and pernicious impact such vexatious interpretation may have on the hapless retired employee who is before this Bench.

In the present proceedings, neither the applicant has called upon this Bench to review the judgment and order of the Full Bench on any of the grounds on which a review is permissible, nor has he urged this Bench to modify its order. A clarification is all that he has asked for and this Bench has issued the clarification *ex debito justitiae* without changing the fabric of which the said order is woven bearing in mind the maxim *actus curiae neminem gravabit*.

Although this Bench is more than certain that there is no clerical error in paragraph 77 of the said order and the same has to be read in such manner that it agrees with the judgment, yet, quite a few learned Judges of this Court having accepted the interpretation given to paragraph 77 by the State Government, this Bench proposes to correct paragraph 77, as an alternative to the clarification issued above, in the manner as follows:

"77. If an employee exercises option, he shall be entitled to be paid Pension-cum-Gratuity in accordance with law, upon refund being made."

This Bench, to obviate future complications, issues this clarification too that if in terms of paragraph 77 of the said order an employee has opted for the Pension-cum-Gratuity scheme within the time frame fixed in the notice dated June 13, 2014 and has also refunded the quantum of money that was notified to him/her, he/she shall be entitled to be paid pension from the date following the date of his/her retirement on superannuation in accordance with the provisions in the DCRB Rules.

Before parting, there is a need to make a position clear. There have been decisions of Single Bench/Division Bench in the interregnum based on views contrary to the clarification issued above as well as the correction that has been made in paragraph 77. If the orders of such Benches have attained finality, this clarification issued by this Bench would not permit reopening and revisiting the decisions taken by such Bench(es) in proceedings before it.

What follows from the above is that though the Single Judge and the Judges of the Division Bench (who decided the fate of 198 retired employees) too missed the ethos of the judgment of the Full Bench, the judgment and order of the Division Bench dated February 14, 2017 binds the parties to MAT 1877 of 2015 and with the dismissal of the Special Leave Petition carried therefrom, such unsuccessful employees shall not be entitled to reap any benefit of this order by approaching the Division Bench.

Insofar as the appellants in MAT 1459 of 2016 are concerned, it is not necessary for this Bench to make any observation with regard to the sustainability of the order of the Division Bench dated February 14, 2017 passed therein or the lack of it but considering the fact that the order under appeal before the Division

Bench dated May 13, 2016 did not decide any point on merit apart from not being susceptible to a challenge in an intra-court writ appeal in terms of the Letters Patent, this Bench only hastens to observe that W.P. No. 28844(W) of 2014, out of which MAT 1459 of 2016 arose, being a pending writ litigation, the judgment and order of the Division Bench dated February 14, 2017 allowing MAT 1459 of 2016 (which was directed against an interim order in such writ petition) would not stand in the way of such petitioners to pursue their remedy further, in accordance with law.

All pending writ petitions may be adjudicated by the relevant Benches bearing in mind the clarification/correction of the said order herein before made.