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**(2007) 03 CAL CK 0066**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 4741 (W) of 2002**

Juthika Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 02-03-2007

**Acts Referred:**

**Citation :** (2007) 2 CALLT 423 : (2007) 115 FLR 595

**Hon'ble Judges :** Maharaj Sinha, J

**Bench :** Single Bench

**Advocate :** Subir Sanyal and Goutam Dey, for the Appellant; Kallol Bose, for the Respondent

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## Judgement

Maharaj Sinha, J.—An order of the Director of the School Education, West Bengal, dated 16th October, 2001, is essentially under challenge in this writ application. The said order according to the writ petitioner should be set aside and the writ petition should be given "pay protection" in her favour as sought for by the writ petitioner herself.

2. Needless to mention, in the above order the Director of School Education concerned {in short Director) simply said that the question of pay protection in favour of the writ petitioner, an assistant teacher of the United Missionary Girls' High School (Primary Section), Calcutta did not arise.

3. The learned Counsel Mr. Subir Sanyal appearing on behalf of the writ petitioner submitted at the hearing that the order of rejection of the Director gave rise to most fundamental question whether the petitioner was entitled to pay protection of Rs. 50/- with consequential service benefits on the writ petitioner's subsequent appointment to the post of assistant teacher from the post of a clerk of the same institution and secondly whether the period of service of the petitioner as clerk should be taken into account for computation of the period of service of the petitioner for determining the petitioner's entitlement to pensionary benefits on her retirement from the post of assistant teacher of the

institution.

4. It is an admitted position that the petitioner joined the United Missionary Girls' High School at Calcutta as an approved clerk on 8th January, 1969 and worked till 30th June, 1985 as clerk, she was entitled to draw and was drawing her salary and dearness allowance every month.

5. The petitioner, however, was appointed as an assistant teacher by the said school with effect from 1st July 1985, as a vacancy arose in the normal course of events due to transfer of a teacher to another school. The Director of School Education, West Bengal, by an order dated 16th May, 1990 initially approved her appointment as an assistant teacher with effect from 1st May, 1990. However, by a subsequent order dated 24th July, 1997 the Director approved the service of the petitioner as an assistant teacher of the said school with effect from 1st July, 1985, namely, with effect from the date of her appointment as an assistant teacher and her pay was directed to be refixed at Rs. 300/- per month as trained assistant teacher with yearly increment from time to time as admissible as per pay-scale enjoyed by her though her basic pay as clerk of the said institution was Rs. 350/- per month.

6. Mr. Sanyal submitted that the above fixation of the writ petitioner's salary at Rs. 300/- on her appointment as an assistant teacher of the said institution did not protect her basic pay of Rs. 350/- which she was drawing as an approved clerk of the said institution and as a result the petitioner suffered financial loss in the absence of pay protection which the petitioner was entitled to under the provisions of the applicable rules. Fixation of pay and allowances of the teaching and non-teaching staff of an aided institution, submitted Mr. Sanyal, were governed by the Revision of Pay and Allowances Rules (in short ROPA Rules) as made from time to time by the State Government and since the petitioner was appointed as an approved assistant teacher of the said institution with effect from 1st July, 1985, her case was governed by the provisions of Clause 7 of ROPA Rules 1981. For the sake of convenience Clause 7 of ROPA Rules 1981 is set out below:

Pay fixation on promotion or appointment. Notwithstanding anything contained elsewhere, where a non-Govt., employee holding a post in a substantive, officiating or temporary capacity is promoted or appointed in a substantive, officiating or temporary capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him/her, the initial of pay of such non-Govt. employees in the scale of pay of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his/her pay in respect of the lower post by one increment at the stage at which such pay has accrued.

7. As aforesaid, relying on the above Clause of the ROPA Rules, it was submitted by the learned Counsel on behalf of the petitioner that on her appointment to the post of an assistant teacher from the post of clerk of the institution in question,

the petitioner became entitled to the protection of her basic pay as drawn by her, namely, Rs. 350/- as clerk of the institution and also to the fixation of her pay at the stage next above the pay by one increment in terms of the above provisions of the said rules. It was also emphasized that the petitioner was appointed to a substantive post which indeed carried duties and responsibilities of greater importance than the duties and responsibilities the petitioner had to discharge as a clerk of the institution.

8. On the above basis, the basic pay of the petitioner to the higher post could not, in any event, be reduced as was sought to be done by the Director by his order dated 16th October, 2001. The effect of the order of the Director, namely, the impugned order was to deprive the petitioner of her entitlement to the pay protection on her appointment to a higher post which carried greater duties and responsibilities as contemplated and covered by the above Clause 7 of the ROPA Rules 1981. In support of the claim of the petitioner for pay protection in terms of the above Rule 7, the learned Counsel for the petitioner also relied on a Judgment of the Supreme Court in the case of K. Gopinathan Vs. Union of India (UOI), .

9. It was further submitted on behalf of the petitioner that the petitioner on her retirement with the expiry of 30th June, 2007 should be entitled to her pensionary benefits in terms of Clause 7(b) of the pension scheme 1981 as the petitioner was appointed as an approved clerk of the institution in question on 8th January, 1969 and worked as such till 30th June, 1985 and then was appointed as the assistant teacher of the same institution on and from 1st July, 1985. Therefore, since the petitioner has served the institution continuously as a whole time approved employee, the period of her service as an approved clerk of the institution, namely, from 8th January, 1969 to 30th June, 1985 should be counted as qualifying service for determination and computation of her pension and/or pensionary benefits.

10. The above submissions of the learned Counsel on behalf of the petitioner on the question of her entitlement to pensionary benefits, I presume, are based on an apprehension on the part of the petitioner that she might be deprived of the legitimate pension or pensionary benefits on her retirement which is not far off as the petitioner is to retire from her service with the expiry of 30th June, 2007.

11. In spite of earlier directions, the respondents concerned did not file any affidavit or affidavits-in-opposition to contest this proceeding at any point of time, as such the present proceeding has remained uncontested throughout. Even though no affidavit or affidavits have been used by the respondents to contest this proceeding, on the prayer of the learned Counsel Mr. Kallol Bose on behalf of the respondents, I gave him leave to rely on the written notes of his submission and on that basis both the learned Counsel on behalf of the petitioner and on behalf of the respondents, namely, Mr. Sanyal and Mr. Bose prepared their respective notes of submissions which are on record.

12. Although the learned Counsel in his notes of arguments, it appears, has sought to state some reasons in support of the order of refusal of the Director for pay protection in favour of the writ petitioner, the Director himself, I am afraid, did not, think it necessary to give even a single line reason in rejecting the claim of the petitioner for pay protection. The Director, as aforesaid, simply said that "the question of pay protection in favour of Smt. Juthika Biswas (the petitioner herein), assistant teacher of the United Missionary Girls' High School (Primary section) does not arise in this regard".

13. The Director refused to give the petitioner the pay protection as the Director thought that it was not an appropriate case for extending any pay protection in favour of the writ petitioner. It is impossible for a reasonable man with a reasonable and rational approach to appreciate the impugned order of the Director dated 16th October, 2001 the first place. The Director treated himself to be the final authority to decide the fate of the petitioner without giving any reason, without disclosing any ground in support of his decision, and I have no manner of doubt that he simply decided to pass the order as he did in rejecting the claim for pay protection to the petitioner as he himself did not know on what ground, or on what basis he could refuse such pay protection to the petitioner, or in favour of the petitioner in the first place.

14. I do not think I need to spend much time on the impugned order of the Director dated 16th October, 2001, as in my opinion, the order of the Director does not merit any consideration as the same is utterly meritless as evident from the order itself.

15. Therefore, the reasons which were sought to be given by the learned Counsel on behalf of the respondents in his notes of submissions should be rejected outright. Firstly, because the Director concerned did not give a single line reason in support of his decision and secondly, the learned Counsel on behalf of the respondents has simply tried to support the utterly unreasoned order of the Director only on the ground that since the duties and responsibilities of a clerk of an institution "are completely different from the duties and responsibilities of an assistant teacher", the petitioner is not entitled to any pay protection and there is no provision for granting, pay protection in a case like the petitioner.

16. The learned Counsel in his notes, however, has referred to a Government Order, G.O. No. 37-Edn. (B) dated 31st July 1981, in which provision has been made "for pay protection of employees of non-Government recognized aided educational institution" but that Government Order according to the learned Counsel for the respondents does not apply to the case of the petitioner. Why the so-called Government Order will not apply or does not apply, cannot, however, be made out from the noted submissions of the learned Counsel for the respondents. No copy of the said Government Order has also been annexed or provided for.

17. In my opinion, the learned Counsel on behalf of the respondents has tried to

set up a ground in support of an utterly meritless order, namely, the impugned order of the Director dated 16th October, 2001 which should be rejected outright and I reject the same. The said ground, as aforesaid, is that the petitioner is not entitled to pay protection as the duties and responsibilities of the petitioner as clerk were completely different from the duties and responsibilities of an assistant teacher.

18. The above ground is utterly misconceived in view of the clear and specific provision in the said clause 7 of the ROPA Rules 1981. Admittedly, the petitioner herein, firstly held a substantive post in the institution as an approved clerk thereof, and then was appointed to another substantive post (as an assistant teacher) "carrying duties and responsibilities of greater importance than those attached to the post held by" her previously.

19. The view that I have taken, I do not think that the case relied on in the notes of argument of the learned Counsel on behalf of the respondents in S.B.I, v. K.P. Subayan 2003(4) SCC 646 need be dealt with herein, as the said case, in my opinion, has no application to the case of the petitioner in the first place. The case of the petitioner, in my opinion, is squarely covered by clause 7 of the ROPA Rules 1981 which is a non-obstante clause of wide amplitude. The Director, in my opinion, most wrongfully and illegally by his order, the impugned order herein, sought to deprive the petitioner of her entitlement to pay protection way back in the year 2001, which, in other words, was an utter arbitrary exercise of power on his part. The order of the Director dated 16th October, 2001 is thus set aside.

20. The respondents are directed to protect the pay of the petitioner as an assistant teacher of the institution in question by fixing her basic pay at Rs. 350/- and the petitioner will also be entitled to one increment in the next stage with effect from 1st July, 1985 with all consequential service benefits on the basis of above fixation of pay. This direction is to be implemented within four weeks from the date of communication of this order.

21. Needless, to mention, for the purpose of determining the petitioner's pensionary benefits, the service period of the petitioner as clerk of the institution from 8th January, 1969 to 30th June, 1985 shall be taken into account by the respondents or the authority or authorities concerned.

The writ petition is thus disposed of.

There will be no order as to costs.

Urgnt xerox certified copy of this Judgment, if applied for, be given expeditiously.