

OD-2

ORDER SHEET
WPO No.1586 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BADAL KUMAR MANDAL
VERSUS
THE CHAIRMAN INDIAN MUSEUM BOARD OF TRUST AND ORS.

BEFORE :
THE HON'BLE JUSTICE RAJASEKHAR MANTHA
Date: 30TH APRIL, 2024.

Appearance:
Mr. C.R. Chakraborty, Adv.; Ms. I. Ghosh, Adv.; Mr. S. Banerjee, Adv.; Ms. P.R. Jaiswarra,
Adv.
...for the petitioner.
Mr. S. Majumder, Adv.; Mr. A. Bakshi, Adv.; Mr. S. Ghosh, Adv., for respondent no.2&3.

1. The Court:- The writ petitioner is aggrieved by the decision of the Indian Museum dated July 30, 2019, reversing the petitioner to the post of Technical Assistant and refixing the pay in the lower grade from that of Senior Technical Assistant. Interestingly, although a decision to this effect was taken, the same was not implemented until the petitioner on July 31, 2023.
2. The brief facts of the case are that the writ petitioner joined the post of "Technical Assistant" in the pay scale of Rs.4500-125-7000/- on April 2, 2001. On June 14, 2005, the petitioner along with other employees were redesignated as "Senior Technical Assistant" and the pay was refixed at Rs.5500-9000/-.
3. The petitioner continued to receive the higher pay scale and remained in the higher post until March 22, 2018 when the petitioner was reverted to the post of "Technical Assistant" from the post of "Senior Technical Assistant".
4. The writ petitioner challenged the same before a coordinate Bench of this court by filing a writ petition. The coordinate Bench directed the petitioner to make a representation to the

Central Government. The Central Government, in reply to the petitioner's representation, only instructed the Director of the Indian Museum on June 12, 2019 to comply with the Circular of the Ministry of Culture dated July 16, 1998.

5. The relevant part of the circular dated July 16, 1998 is set out hereinbelow:

“v) If the employees of Indian Museum, Calcutta have been extended any Personal Promotion or Career Growth Scheme and extended higher scales of pay than available to the corresponding categories of Central Govt. employees, corresponding replacement scale may be given to them as personal to the existing incumbents. On vacation of the post by the existing incumbent due to promotion, resignation, retirement, death etc. the post shall revert to the approval scale of pay for the post. Further, all future incumbents will be extended the approved scale of pay;

vi) Revision of pay scales would be in respect of such post which have been created/upgraded only after obtaining Government of India's approval;

vii) The Indian Museum, Calcutta will not hereafter created any new post or upgrade the pay scale of an existing post without the prior approval of Government of india;”

(emphasis applied)

6. It appears that the Board of Trustees of the Indian Museum had resolved at the meeting of its trustees dated February 19, 1992 to inter alia redesignate the post of Technical Assistant to Senior Technical Assistant and upgrade the pay scale. The said upgradation was in terms of the 4th Pay Commission Report. The relevant portion thereof is set out below:

“10.290. The Department of Culture has proposed the merger of the pay scale of Rs.425-700 and Rs.550-900 of the posts of technical, assistants and senior technical assistants in the Department of Culture in view of the high educational qualifications prescribed for them. Technical assistants and senior technical assistants both assist higher officers in their work and their duties and responsibilities are quite similar. Considering their qualifications, responsibilities and duties, we feel that posts in the scale of Rs.425-700

may be upgraded and merged with the posts in the scale of rs.550-900 and suitably redesignated. the revised scale of Rs.1640-2900 will apply to these posts.”

(emphasis applied)

7. Immediately prior to retirement, the petitioner was made to sign an undertaking that he would not claim any benefits in the revised post. The Museum has not only proposed to reduce the terminal benefits of the petitioner and fixing them at the scale of Technical Assistant but has also sought to effect recovery of the excess pay from 2001.
8. Mr. Majumder, learned counsel appearing for the Museum would argue that the resolution of the Board of Trustees of the Museum of 1992 to upgrade the post of Technical Assistant must be viewed in the context of the circular dated July 16, 1998. It is submitted that the Museum was only authorised to grant upgradations and revisions to specific personnel and to allow career advancement only. The petitioner could not have been granted the benefit of the 1992 decision of the Board of Trustees in the year 2005, in the face of the circular dated July 16, 1998. As on 2005, when the petitioner's post was upgraded to Senior Technical Assistant, the circular dated July 16, 1998 was staring in the face of the Museum. The petitioner having stepped into the shoes of the previous technical assistant could not have been redesignated as senior technical assistant since the granting of benefit of the year 1992 must be deemed person specific.
9. Further reference is made by Mr. Majumder to the Indian Museum Rules published in the Gazette of India dated March 31, 1970 which prescribe at clause (3) that for all posts in the Indian Museum, the Central Government shall make recruitment rules setting out qualifications for each post including promotion and pay scales.
10. Per contra, learned counsel for the petitioner relies upon section 9 of the Indian Museum Act, 1910 which empowers the Trustees of the Museum to appoint officers and servants as they consider necessary for the proper management of the trust property (museum property).

11. Mr. Majumder relies upon the decision of the Supreme Court in the case of **ICAR –vs- T.K. Suryanarayan & Ors., reported in (1997) 6 SCC 766** particularly paragraph 8 thereof.
12. Learned counsel for the petitioner relies upon the decision of the Supreme Court in the case of **State of Punjab –vs- Rafiq Masih (Whitewasher) & Ors., reported in (2015) 4 SCC 334**. Reliance is also placed on the case of **Thomas Daniel –vs- State of Kerala**, reported in **AIR 2022 SC 2153** which approved the Rafiq Masih decision and made certain additions and clarifications thereto.
13. Learned counsel for the parties are ad idem that irrespective of whether the upgradation of pay scale and posts is made contrary to law, recovery of any excess payment received by the petitioner on the ground of such revision cannot be made either at the fag end of the service of the employee or thereafter [Rafiq Masih (supra) and Thomas Daniel (supra)]. The question of any recovery of revision from the petitioner of any alleged excess grant does not and cannot arise and the respondents are restrained from doing so.
14. The question that remains to be considered is the terminal benefit inter alia pension and gratuity of the writ petitioner. Indeed, it is settled law that the benefit obtained by an employee contrary to law and the applicable rules cannot be availed by him for future purposes.
15. What needs to be seen are, the conduct of the parties and the Constitution and Authority of the Indian Museum vis a vis the Central Government, Ministry of Culture.
16. The 4th Pay Commission has admittedly recommended the upgradation of the post of “Technical Assistant” to that of “Senior Technical Assistant” and the same has been uniformly applied by the Central Government to all ministries including autonomous bodies under its control. The resolution of the Trustees of 1992 or the upgradation of the petitioner in 2005 are therefore in harmony with policy of the Central Government.
17. Admittedly, the Indian Museum is a trust. A trust is administered by all trustees. The autonomy of the Museum is derived from section 9 of the Act of 1910. It is essentially

pursuant to this autonomy that the resolution of the Board of Directors of the Indian Museum was adopted in the year 1992 to revise and redesignate the some posts and pay scales to certain employees. The Board of Trustees of the Indian Museum comprise the Governor of the State and a Senior Officials of the Central Government namely the Ministry of Culture.

18. The Central Government has recognised the same in that as per the circular dated July 16, 1998, the Indian Museum was allowed to grant promotion or career growth benefits in higher scales to some employees. Such leverage and discretion granted to the museum is clear and explicit. It is the museum and its trustees that are capable of ascertaining the pay scales payable to certain employees depending on the nature of work they perform and the requirements of the museum.
19. The cryptic communication to the Director of Indian Museum dated June 12, 2019 by the Secretary of the Ministry of Culture in answer to the representation of the writ petitioner would support the view that there is a substantial degree of autonomy vested in the Indian Museum in so far as the pay scales of the posts of its employees. This is in harmony with the autonomy of the Indian Museum to redesignate its employees and for discharge of functions.
20. Insofar as the bar in Clause 7 of the Circular of July 16, 1998 is concerned, such power cannot override the Act of 1910 based on which the Board of Trustees took the decision in the year 1992. That would not, however, not necessarily mean that the Museum can, at its own whim and fancy, fix pay scales and create posts of its own.
21. In this tug of war between the Indian Museum and the Central government, one has to balance the interest of the museum and its autonomy on one side and the liability of the Central Government to fork out some sum of money towards payment of the employees of the museum, in deviation but not in derogation of the Central Govt. policy.
22. In the backdrop of the above, it cannot be said that the redesignation of the petitioner's post as Senior Technical Assistant in the year 2005 with retrospective effect from 2001 was illegal

or beyond the authority of the board of trustees of the museum. The distinction between an act void ab initio and an act performed with ostensible authority must be borne in mind.

23. It is essentially in this backdrop and the facts of the instant case that the decision of ICAR – vs- T.K. Suryanarayan & Ors.(supra) cited by the Museum, must be viewed. In the said case, the Hon'ble Supreme Court was confronted with an erroneous promotion contrary to and dehors the service rules of ICAR being given to its employees. It is essentially in that context that the Supreme Court has held that the benefit given contrary to law cannot create any rights. The doctrine and principle applied by the Supreme Court is that, there is no estoppel against the law.
24. In the instant case, however, this Court can and does see that the Trustees of the Indian Museum found the responsibilities entrusted to the post of Senior Technical Assistant were vital and essential to the functioning of the museum. It is for this purpose that the petitioner having the qualification, i.e. post graduation was redesignated as Senior Technical assistant and given a higher pay scale. The accounts of the Indian Museum are audited by the CAG. From 2005 onwards and until 2018 the petitioners continued to receive the higher pay scale in the higher post. At no point of time did the central government ever raise a audit objection of any objection in law for that matter. This court presumes that no such objection was raised by the central government given the autonomy vested in the Indian Museum inter alia under section 9 of the Act of 1910.
25. Mr. Majumder however points out an audited objection of the year 1016-17 which resulted in the order of reversal in the year 2018. This court is however of the view that a belated audit objection after 20 years of the benefit being conferred on the petitioner cannot be given serious credence.
26. This court is of the view that in the given circumstances, the museum by reason of the Act of 1910 can choose to redesignate the posts and increase the pay scales. However, in the light of the circular of July 16, 1998 and several other circulars and notifications of the central

government, the museum may not do so or give effect to such revision of pay scales and posts without the sanction and approval of the central government.

27. In the facts and circumstances of the case, however, in so far as the writ petitioner is concerned, it would be too late in the day, post-retirement of the petitioner to deprive the petitioner of the benefits of post of senior technical assistant.
28. In the above circumstances, with the caveat of the museum to note as indicated in the previous paragraph, it is ordered that the petitioner's terminal benefits would be calculated in the pay scale of "Senior Technical Assistant". The respondents are restrained from giving effect or further effect to any reversal in the post of the petitioner or recovering any past sums already paid to the petitioner. The respondents shall issue pension payment order to the petitioner as per the last drawn salary of the petitioner in the post of Senior Technical Assistant. The petitioner's other terminal benefits namely like gratuity etc. shall be calculated and paid to the petitioner as the above basis.
29. With the aforesaid observations, the writ is allowed and disposed of. There shall be no order as to costs.

(RAJASEKHAR MANTHA, J.)

tk