

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Rai Chattopadhyay**

***WPA 25227 of 2017***

**Gopal Chandra Patra  
Vs.  
The State of West Bengal & Ors.**

**For the Petitioner** : Mr. S. Samanta  
: Mr. Balailal Sahoo  
: Mr. U.K. Bhattacharyya  
: Mr. Kaustav Mishra

**For the school authority** : Mr. Tarun Kumar Das  
: Mr. Sujit Bhunia

**For the State** : Mr. Gourav Das  
: Mr. H.K. Das

**Judgment on** : **13.01.2026**

**Rai Chattopadhyay, J. :-**

- The writ petitioner is a retired Headmaster of the school namely, Bikrampur High School (H.S.). He is aggrieved for the reason that the school authority in order to enable him to draw pension after retirement, has not issued a "No Liability Certificate", in his favour. Hence, he has filed the instant writ petition to seek relief inter alia that the "No Liability Certificate" be immediately issued by the school authority; to set aside the letter of the school

authority dated July 31, 2017; to allow him pensionary benefits including gratuity with interest. Before discussing the grounds taken by the petitioner and the counter argument of the respondent school, the factual background of the case may be narrated in a nutshell which is as follows:-

- 2.** February 28, 2017 is the date of retirement of the writ petitioner. Let the pre-retirement factual aspects be narrated first. The petitioner was appointed in a school at South 24 Paraganas district where he worked as the Assistant Teacher from September 10, 1981 to April 02, 1996. With effect from April 03, 1996, the petitioner was promoted and appointed on transfer as the Headmaster in Bikrampur High School, Paschim Medinipur. Pension Payment Order was issued in favour of the petitioner vide memo dated February 08, 2017. On June 19, 2015 the accounts of the school were placed before and accepted by the Managing Committee of the school. The assets and liabilities of the school were disclosed and handed over to a newly constituted Managing Committee on June 22, 2015. In a meeting dated November 24, 2015, the Managing Committee decided that the Headmaster/writ petitioner should submit the pension papers.
- 3.** The petitioner has stated in the writ petition that the 'Finance Sub Committee' of the school resolved and accepted the

accounts furnished, in its meetings dated August 28, 2016 and September 29, 2016. Similarly, accounts of “sinking fund” from June, 2015 to August 31, 2016 was submitted before the committee and accepted on December 03, 2016. The Managing Committee formed a sub-committee to complete the accounts.

- 4.** In the year of retirement of the writ petitioner that is, 2017 the Finance Sub-Committee again met on February 18, 2017 that is, 10 days prior to retirement of the writ petitioner. On the said date before the said committee the petitioner produced the accounts of the school which was accepted by the Finance Sub-Committee as satisfactory. Thereafter, on the date of retirement that is, February 28, 2017, the petitioner had made over charge of the assets, liabilities and existing fund of the school to the Teacher-in-charge, in presence of the members of the Managing Committee. The petitioner has stated in the writ petition that a resolution to that effect was drawn on that date, expressing satisfaction. The petitioner has stated that after making over charge of all assets, liabilities and accounts to the satisfaction of the members of the Managing Committee, he has been released from duty vide the letter of the President dated February 28, 2017, duly countersigned by the respondent No. 4/the District Inspector of Schools, Secondary Education, Paschim Medinipur (hereinafter referred to as “the D.I.”). On or about March 08, 2017, the petitioner submitted before the Teacher-in-charge of

the school, a filled in proforma for issuance of 'No Liability Certificate' to him. Allegedly, since thereafter, the 'No Liability Certificate' as prayed for by the petitioner has not been issued, in spite of his retirement and making over charge after due satisfaction of the members of the Managing Committee on February 28, 2017. According to the petitioner, the school authority having not raised any objection at the time of his retirement and having released him from duty in due course, would not be entitled under the law to withhold the 'No Liability Certificate' to which the petitioner is lawfully entitled to.

- 5.** The post-retirement incidents have been principally depicted by the respondent in their affidavits. In response to the petitioner's representation for release of pension before the D.I. dated April 25, 2017, the D.I. writes to the Teacher-in-charge and vide letter dated May 08, 2017 to issue 'No Liability Certificate' to the retired Headmaster/writ petitioner. Since the same fetched no action on part of the school authority, the petitioner again writes to the D.I. as well as DPPG, in his letter dated June 14, 2017.
- 6.** In response, the Teacher-in-charge of the school informs the petitioner as well as the D.I. vide his letter dated July 06, 2017 the following reasons for which the school authority was restrained from issuance of any 'No Liability Certificate' to the writ petitioner:-

**“Sub: Letter of request to complete the A/C of the school and comply with the Queries of School Authority.**

**Sir,**

**With due respect I, the undersigned, would like to state the following fact to you that four months have elapsed after your retirement from service of the school on 28/02/2017. The following matters hinder me from issuing the N.O.C to you.**

**1. The entries in the cash book from March, 2012 to Feb, 2017 with Voucher Verification are found to be incomplete and inconsistent.**

**A) Vouchers of Financial Year 2012-2013 Amounting to Rs.600.00 are wanting.**

**B) Vouchers of Financial Year 2013-2014 Amounting to Rs.67,528.00 are wanting.**

**C) Vouchers of Financial Year 2015-2016 Amounting to Rs.3,21,770.00 are wanting.**

**D) Vouchers of Financial Year 2016-2017 Amounting to Rs.1,52,518.00 are wanting.**

**Total Amount of Rs-5,42,416.00 (Approx)**

**3. Some Vouchers have been tampered by you.**

**4. Sports Equipment grants of 2014 and 2015 are not entered in the Cash Book and you denied the receipt of the same. A photocopy of the grants is enclosed herewith for your kind information.**

**5. The Audit work from March 2012 to Feb' 2017 (during your service period) is incomplete.**

**Under such circumstances you are requested to appear before the undersigned as well as the School authority within 15 days (fifteen) from the date of receipt of this letter in order to receive N.O.C.”**

**7.** Since thereafter, there has been exchange of several letters inter se the parties, in which the school authority has emphasized about a sum of Rs. 5,42, 416/- being unaccounted for and standing overdue to the petitioner, during the period when he worked in the school as the Headmaster, whereas the writ

petitioner consistently denies the charges and allegations made against him.

8. On October 12, 2017, the D.I. conducted hearing. The D.I. directs the petitioner to physically visit the school and complete ledger and cashbook entries. To this effect, the D.I. writes a letter dated December 22, 2017 to the petitioner. The D.I. has specifically directed as follows:-

***“He is hereby directed to complete the incomplete cash book, ledger book and producing unadjusted vouchers amounting 5,40,000/- (five lakhs forty thousand only) for the financial year 2012-2013, 2013-2014, 2014-2015, 2015-2016 & 2016-2017 (upto 28/02/2017) of Bikrampur high School (H.S.) within one month from the receipt of this letter as per his declaration (attached herewith).”***

9. According to the writ petitioner, in accordance with the direction of the D.I. some accounts in the cashbook he has reconciled. But the others could not have been done so by him due to non-availability of the supporting voucher etc. According to the petitioner, all the entries and corresponding vouchers were kept in the expenditure register and subsequently misplaced from the custody of the school authority itself. In this regard, the petitioner writes letter dated February 26, 2018 to the D.I. for necessary direction but to no avail. Later on, on December 07, 2017 the petitioner has been served with a notice of the Court of learned Chief Judicial Magistrate, Paschim Medinipur in a

complaint case filed by the school authority against him under Section 156 (3) of the Criminal Procedure Code.

- 10.** The school authority, in the affidavit has put forth the facts that, after formation of new Managing Committee in 2015, certain irregularities were found on part of the writ petitioner, regarding management of school funds. That, though the writ petitioner was requested to reconcile the accounts but he did not pay any heed to the same. Also that, from the year 2012, the school accounts was not been audited. According to the respondent/school authority, the facts have been informed to the respondent/D.I. on several occasions vide letters dated February 22, 2016, May 16, 2016 and June 18, 2016 and February 28, 2017 respectively. It is submitted that even after informing the higher authority about the malpractices going on in the school at the behest of the Headmaster that is the present writ petitioner, no steps have however been taken addressing the grievance of the Managing Committee by the said higher authority, as ventilated in the letters mentioned above. The school authority says that before his retirement, the writ petitioner was invited to reconcile the accounts by providing corresponding receipts and or vouchers with respect to the expenditure noted in the Managing Committee meeting dated February 09, 2017. The petitioner however, could not complete the same. According to the respondent/school, on the date of retirement, that is, February 28, 2017, the petitioner

assured to visit the school subsequently and reconcile the books of account but did not take any step towards the same at all in spite of several requests made by the Managing Committee.

**11.** Hence, the Teacher-in-charge undertook an enquiry. The enquiry revealed tampered bills and vouchers in some cases and for others, nothing at all. Thus, defalcations/misappropriation of an amount of Rs. 5,42,416/- was deducted during the period from 2012 to 2017. No corresponding voucher for sports equipment grant was found. Cashbook was found incomplete. Audit of accounts was not done for years together from 2012. Therefore, the Teacher-in-charge vide his letter dated May 25, 2017 informed the D.I. about the entire outcome of enquiry conducted as to the accounts of the school and the finding of the defalcation/misappropriation of school fund allegedly at the behest of the present petitioner. Since thereafter, there has been exchange of letters before the D.I. and subsequently this writ petition was filed. Allegedly, in spite of the D.I. having directed the writ petitioner vide order dated February 30, 2017 to take steps for reconciliation and completion of the ledger and cashbooks the petitioner did not pay any heed thereto.

**12.** Mr. S. Samanta, learned advocate appearing for the writ petitioner has emphatically submitted that the law is now well-settled that the right to pension is constitutionally protected right

of a person having discharged unblemished service for years. He says that the pension is a property like right within the meaning of Article 300A of the Constitution. He says that, neither any statute nor any Rules permit withholding of pension or gratuity of the petitioner after his retirement. Therefore, he has submitted that any action or inaction on part of the respondent of withholding of pension, renders such action as violative of the constitutionally protected right of the writ petitioner and thus not maintainable. In support of his contention Mr. Samanta has referred to the judgment of the Supreme Court in ***Dr. Hira Lal Vs. State of Bihar and Ors.*** reported in **2020 Vol. 4 SCC Pg. 346**. Similar proposition has been upheld by the Supreme Court even prior thereto in case of ***State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr.*** reported in **(2013) 12 SCC 210**, to which Mr. Samanta has also made reference to. An unreported judgment of this Court is also relied on to buttress this argument by Mr. Samanta, that is, dated December 22, 2021 in ***WPST 49 of 2016 (Nishitesth Banerjee Vs. State of West Bengal & Ors.)***.

- 13.** Mr. Samanta has relied on the provisions under West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-retirement benefit) Scheme, 1981 [vide memo dated 136-Edn (B) dated May 15, 1985] (in short DCRB Scheme, 1981). With reference to Scheme 17, Scheme 18 and Scheme 19 thereof,

Mr. Samanta, learned Advocate for the petitioner has submitted that after cessation of the employer employee relationship between the petitioner and the respondent/school after retirement of the petitioner, no punitive measure under the said Scheme can be made applicable in case of the petitioner who has ceased to be an employee/headmaster of the said school. Mr. Samanta has elaborated that for applicability of the provisions under the Scheme, 1981, the person has to be an existing teacher/Headmaster of the institution, for the punitive provisions thereunder to be made applicable as against him. After cessation of his relationship with the institution as a teacher thereof, the provisions of the scheme as above is not applicable. Therefore, according to him, the statutory Rules as above do not permit withholding of pension or gratuity of a retired teacher on whatever pretext. Therefore, according to him, the action of withholding of 'No Liability Certificate', without issuing the same in favour of the writ petitioner by the school authority, is de hors the provisions of Rules and unsustainable and illegal.

**14.** He has further referred to the following judgments:-

*i) Gour Kanti Samanta Vs. State of West Bengal* reported at **(2013) SCC OnLine Cal 5657**

In this case, the employee was found prima facie guilty of misconduct, no departmental enquiry had been initiated even

after four years, and he was allowed to retire without any such proceedings. The Court has found that since the authorities received the report two days before retirement, it was their responsibility to suspend the employee and begin an enquiry. It has been held that, the school's failure to do so, rendered withholding of pension as unlawful.

**ii) *Md. Sayed Vs. State of West Bengal* reported at (2016) SCC OnLine Cal 7496**

In this case, the allegations against the petitioner have never been proved. That apart, no disciplinary action was contemplated against the petitioner during his service tenure. Only an enquiry was sought to be made and on the basis of that no conclusion has yet been reached. Therefore, the Court has held that the authorities are not authorized by law to withhold the pension of the petitioner.

**iii) *Dr. Anisur Rahaman Vs. The State of West Bengal* in WPA 9745 of 2021 dated March 08, 2022**

In this case, since the school withheld all retirement benefits without any proof of allegations, without conducting an enquiry, without initiating disciplinary proceedings during service, and as no such proceedings were pending, the actions have been held to be arbitrary, unfair, mala fide, and illegal.

***iv) The Managing Committee of Mitra Institution (Main) Vs. Dr. Anisur Rahman in MAT 516 of 2022 dated August 03, 2022***

In this matter, no disciplinary or criminal proceedings were pending against the writ petitioner, and the Teacher-in-Charge had no lawful authority to refuse issuance of the No Liability Certificate to the retired headmaster. The Court concludes without reservation that the TIC acted with mala fide intent, and such conduct is strongly disapproved. The appellant's endorsement of the TIC's actions is likewise censured. Accordingly, the Court holds that the conduct of the appellant and the school authorities was unjust, unfair, mala fide, arbitrary, and unlawful.

- 15.** Hence, Mr. Samanta, learned Advocate for the petitioner has insisted that, an order be passed by allowing the writ petition directing immediate issuance of 'No Liability Certificate' by the respondent/school authority in favour of the writ petitioner.
- 16.** Mr. Tarun Kumar Das has represented the respondent school authority. The school authority is the principles contesting respondent in the instant case. The school authority accepts that till the date of retirement of the petitioner there was no steps taken against him in spite of the alleged misappropriation of school fund by the present petitioner, having been ventilated

before the respondent/D.I. vide letters in 2016 as well as 2017, as mentioned above. It is also undisputed that only after retirement of the writ petitioner on February 28, 2017 and on the basis of outcome of an informal enquiry undertaken by the Teacher-in-charge as to the accounts of the school, a complaint case was lodged before the learned Chief Judicial Magistrate, Paschim Medinipur being M.P. case No. 568 of 2017. It has been stated that pursuant to the order of the learned Chief Judicial Magistrate in said complaint case, the police has started specific case against the writ petitioner being Debra PS Case No. 545 of 2017 dated November 27, 2017 under Section 409, 465 of I.P.C. It has been submitted that in the said case, police has submitted charge sheet against the petitioner after conclusion of investigation.

- 17.** Allegedly, in spite of being entrusted with the duty to conduct audit of accounts of the school during that period, the writ petitioner/Headmaster did not take any steps for conducting audit of the school account. The respondent/school has further stated that according to the Court's order dated April 12, 2021 in this writ petition, the school appointed Auditor to conduct audit of accounts for the year 2012 to 2017. The respondent school has stated that though the audit was completed on July 28, 2021 but the auditor never submitted any report. Hence, later on another auditor, namely, Loharuka and Company has been appointed to

accomplish the said audit work, vide order of the Director Of School Education, in his letter dated September 13, 2022. The audit of the accounts of the school was done and completed from the year 2012 - 2013 to the year 2020 - 2021. Mr. Das, learned advocate for the respondent school first produced the report of the auditor by way of a supplementary affidavit in the Court. According to the same which the said respondent highlights in this case, there is a defalcation by the petitioner of an amount of Rs. 5,07,993/-. Also that, the petitioner has obtained from the Block Development Officer a cash amount of Rs. 40,000/- as "Sports Equipment Grant", which fund he has not been accounted for. Therefore, according to the auditor's report as above, the total amount of defalcation by the writ petitioner is Rs. 5,47,993/-. This audit report has been submitted on March 01, 2024 to the Secretary, School Education Department, Commissioner of School Education, DPPG and the D.I.

- 18.** Mr. Das Learned advocate for the respondent No. 2 has emphatically submitted that in accordance with the report of the auditor, there is unambiguous and concrete evidence that the petitioner has defalcated the school fund to the tune of Rs. 5,47,993/-. In such circumstances, with reference to the provisions of Management Rules, 1969, he says that the writ petitioner would not be entitled to be issued a 'No Liability Certificate', as the writ petitioner bears liability to account for the

said defalcated amount to the school. According to him, at best the petitioner can be considered entitled to provisional pension following Scheme No. 19 (5) of DCRB Scheme, 1981 (as per Memorandum No. 990-SE(S)/Pen/IM-14/12 dated July 03, 2013.

- 19.** Mr. Das has largely relied on Clause '1(1.7)', '1(1.8)' and '2(2.2)' in Memorandum No. 88/SE(B)/EES/OIB/IM-9/98 dated May, 26, 1999 which is as follows:-

**"1. Procedure to be followed by the Head of the Institutions (Headmaster/Headmistress/Administrator/Teacher-in-Charge/Sub-Inspector (Circle))**

**1.2 A notice shall be issued by the Headmaster/Headmistress/Teacher-in-Charge/Administrator/Sub-Inspector (Circle), as the case may be, to the retiring employee two years (24 months) in advance from the date of superannuation enclosing along with the Notice, the Part 'A' of the Comprehensive Form (Formal Application for Pension) prescribed herein, Form 'C' (for Commutation of Pension) and Forms for Nomination for Death-cum-Retiring Gratuity and Life-time Arrear of pension, with the direction to submit the said Forms along with other enclosures/documents as indicated in the Comprehensive Forms, 18 (eighteen) months in advance from the date of superannuation.**

**\*\*      \*\*      \*\*      \*\***

**1.7 The Headmaster/Headmistress/Teacher-in-Charge/Sub-Inspector (Circle) shall promptly issue reply to any observation/objection made by the Pension Sanctioning Authority/DPPG in connection with the disposal of any pension case to enable the Pension Sanctioning Authority to issue pension Sanction order in time. In no case the Headmaster/Headmistress/Administrator/Teacher-in-Charge/ Sub-Inspector (Circle) shall take more than a month to meet up the objections so raised :**

**Provided that if any disciplinary proceeding has been instituted during the intervening period between forwarding of pension papers to the District Inspector of Schools/ Pension Sanctioning Authority (PSA) or DPPG, the fact shall be promptly reported to the PSA and DPPG. The pensionary benefit will be stopped, so long as the retiring employee is not honourably acquitted of the charges. Where disciplinary proceeding is pending even after the employee attained the age of**

*superannuation the PSA may sanction Provisional Pension till conclusion of the disciplinary proceedings, but no gratuity or commuted value of person shall be paid during this period. On completion of disciplinary proceedings, if any employee is honourably acquitted, the Pension Sanctioning authority or DPPG, as the case may be sanction the Pension of the employee, indicating therein the amount of Provisional pension sanctioned in favour of the employee concerned and also the period of such payment (if any) for adjustment of the same against final pension :*

*Provided that if any Court of appeal is pending in connection with the retiring/ retired employee or in relation to his pension case (either initiated by the employee concerned or by the School Authority/ Appointing Authority or by Govt.) the pensionary benefit shall be stopped and shall be released as per direction of the Hon'ble Court.*

*1.8 In normal case i.e. in absence of any specific event which has a bearing on the sanction/release or amount of the pensionary benefit of the concerned employee, on the date of superannuation of the employee, the Headmaster/Headmistress/ Teacher-in-Charge/Administrator/Sub-Inspector of Schools (Circle), as the case may be, shall issue a "No Liability/Liability Certificate" (as per Annexure), which shall be handed over to the retiring employee. If the last day of the month is a holiday, the Head of the Institution shall hand over the certificate on the first working day of the next month. The retiring employee shall produce the said certificate to the Pension Disbursing Officer/Treasury Officer for the release of his pensionary benefits.*

*Similar action shall be taken by the Appointing Authority i.e. Secretary or Administrator of the school in respect of the retiring Headmaster/Headmistress/ Teacher-in-Charge of the Secondary School.*

**\*\*      \*\*      \*\*      \*\***

## **2. Procedure to be followed by the Retiring Employee**

*2.2 On the date of superannuation he/she shall hand over the official charge including charge of stores, cash, accounts, etc. if any in accordance with such order as may be issued and collect the "No Liability/Liability Certificate" from the Headmaster/Headmistress/Teacher-in-Charge/Administrator/Sub-Inspector (Circle)."*

Thus, he has submitted that, by application of the Rules as mentioned above, the school is not obliged to issue any 'No Liability Certificate' to the petitioner, who happens to be the erstwhile Headmaster and bears financial liability towards the school, to the extent of the defalcated amount. For these reasons, the respondent says that the writ petition should be dismissed in limini.

- 20.** The learned advocate for the respondent has relied on the following judgment, ***Sephali (Karan) Jana v. State of West Bengal*** reported at **2019 SCC OnLine Cal 9446**.

In this case, the Court has held that if judicial proceedings are continuing against a retired employee, the concerned employee shall be paid a provisional pension for the period commencing from the date of retirement till the date of conclusion of the pending proceedings. The provisional pension shall be adjusted against the final retirement benefits upon conclusion of pending proceedings.

- 21.** Mr. Das has further argued that, the petitioner has previously brought forward his grievance of non-issuance of 'No Objection Certificate' by the School Authority against him, by dint of the earlier writ petitioner, in which he has been directed to be present in the school and reconcile the accounts, which he has failed to do. Accordingly, he says, by application of the principles of res

judicata, the present writ petition filed by him may not stand as maintainable.

- 22.** The learned advocate for the respondent has further placed reliance on the following judgments-

***Barkat Ali v. Badrinarain* reported at (2008) 4 SCC 615**

In this matter, the Court held that the principles of *res judicata* not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage.

***C.V. Rajendran v. N.M. Muhammed Kunhi* reported at (2002) 7 SCC 447**

In this case, it was held that the principle of *res judicata* applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party, it cannot be allowed to be re-agitated by him at a subsequent stage in the same suit or proceedings.

- 23.** After careful consideration of the records and the submissions made by the learned advocates of both the parties, it is found that the writ petitioner has retired from service on February 28, 2017,

upon attaining the age of superannuation, from the post of Head Master of the school. He has made over charges to the Teacher-in-Charge of the school on that date, by handing over the assets and books of accounts thereof. He says to have done so to the satisfaction of the Managing Committee and the Teacher-in-Charge, present at the time of making over charge by him. However the respondent/school has contended that the writ petitioner undertook to subsequently come to school and reconcile the books of accounts, along with submission of the supporting receipts and vouchers. In fact, on some later date, we can see the writ petitioner to have come back to school and made some entries in the books of accounts, for the purpose of reconciliation [as per the supplementary affidavit sworn in by the petitioner, on November 20, 2018, paragraph- 8, pages- 4 to 8]. Hence, admittedly, on the date of retirement the writ petitioner has handed over incomplete accounts books and also not furnished adequate receipts and vouchers. In such view of the facts as emanating from the records itself, this Court is of considered opinion, that even it is taken as sacrosanct that no one has raised any objection at the time of making over charge by the writ petitioner, still there would be no impediment, on later revelation of accounts mismatch and defalcation, to take appropriate steps in accordance with the law, against the responsible person, like, in this case the writ petitioner.

- 24.** In the scenario, that the school authority has found mismatch and defalcation in the accounts books of the school, after departure of the writ petitioner, a letter dated July 6, 2017 was issued to the writ petitioner, as quoted above, specifically disclosing the irregularities detected, amounting to a total of Rs. 5,42,416/- approximately and seeking his attendance for the said purpose. As against the allegations ventilated in the said letter of the school authority, the writ petitioner, by his reply letters has made his stand clear that at the time of making over charge on retirement he has discussed and explained the entire accounts to the satisfaction of the then Managing Committee of the school.
- 25.** It is further noted that a complaint case was lodged against the petitioner by the school authority, in the year of his retirement, that is M.P. Case No. 568 of 2017. That pursuant to an order passed in the same, a specific police case has been started being Debra P.S. Case No. 545/2017 dated 27.11.2017 under sections 409 and 465 of the Indian Penal Code. Its present status is that police has submitted charge-sheet and the trial is now pending.
- 26.** The writ petitioner has not denied the fact that from the 2012, the accounts of the school has not been audited. For the said reason ultimately at the instance of the present management and by an auditor appointed by the Directorate of the School Education, audit has been done as to the accounts of the school for the

period from 2012-2013 to 2020-2021. The report of the auditor, which has been presented before the Court by the respondent/school, by way of an affidavit, assumes a fair amount of importance in this case. The said report has revealed that an amount of Rs. 5,07,993/- has been defalcated by the writ petitioner. Also that the petitioner has obtained from the Block Development Officer Rs.40,000/- in cash as 'Sports Equipment Grant', which he has not accounted for. Therefore the said report of the auditor has revealed a total amount of defalcation committed by the writ petitioner to be Rs. 5,47,993/-. It is noted that the said audit report has been duly circulated by the school authority to the Secretary, School Education Department, the Commissioner of School Education, the DPPG and the DI, Paschim Medinipur.

- 27.** In this factual back ground the writ petitioner has pleaded the grounds that after his retirement, the relationship of him as a teacher of the school has ceased to exist. He has duly made over charges and that has been duly taken over without any objection, by the Managing Committee as well as the Teacher-in-Charge. Also that he has been duly issued the release order as well as the Pension Payment Order. Therefore, according to the provisions of the Scheme of 1981 [vide the memorandum dated May 15, 1985], the petitioner is no further subject thereto, after his retirement.

**28.** Scheme No. 19(1) of the said DCRB Scheme 1981 is worth mentioning here. It says that the full pension admissible under the Scheme is not to be given as a matter of course. In case of approved service, that is admissible, but even then not as a matter of course, since a disjunctive word “or” has been used in the language of Scheme No.19(1) of the said DCRB Scheme 1981. Let Scheme 19(1) of DCRB Scheme of 1981, be quoted as herein below:-

***“19(1) The full pension admissible under this Scheme is not to be given as a matter of course or unless the services rendered has really been approved by the competent authority.”***

**29.** Scheme No.19(2) of the said Scheme has provided that if the service has not been thoroughly satisfactory, the pension sanctioning authority should make such reduction in the amount, as it thinks proper.

**30.** Scheme No.19(4) of the said DCRB Scheme 1981 also assumes importance. It has provided that the service of an employee against whom a charge of corruption has been proved, whether in a specific case or by any presumption based on recorded facts, cannot be considered to be thoroughly satisfactory within the meaning of the Scheme, not entitling him to at least the full pension. According to the said provision a reasonable presumption of corruption by the person based on record, disentitles him from receiving the pension, if not the entire but

from a proportionate amount thereof. Here in this case, strong presumption can be formed on the basis of the auditor's report as well as the affidavit sworn in by the petitioner himself as discussed above, by virtue of which the incomplete account books and possession of the petitioner over a substantial amount of the school fund, is evident.

**31.** Similarly, important is Scheme No. 19 (5) of the said DCRB Scheme 1981, which provides that in case of misconduct of the pensioner, the pension sanctioning authority has the power to withhold or reduce the pension. This provision virtually demolishes the argument of the writ petitioner that after cessation of employer-employee relationship of him with the school on his retirement, he is beyond restraints and bounds of the prevailing statute or Rules. Exactly on the contrary the said Scheme is found to be applicable also in case of a pensioner whose misconduct is on record and/or well presumable. As stated earlier, a strong presumption does exist in case of the present petitioner on the basis of the records produced in this case, as mentioned above.

**32.** This case differs so far as the factual aspect is concerned, with the background of the cases as referred to on behalf of the writ petitioner. Record has revealed here that even during the period of employment of the writ petitioner, against whom only the

higher authority was empowered to take steps, several letters have been written to the D.I. being the higher authority, disclosing anomaly in accounts and requesting for taking steps as necessary, but to no avail. In the cases as referred to, the factual background is only dissimilar. It is a law well settled that a Court's decision is with respect to the particular facts of the case and the facts are different in each and every case. The judgments are to be understood in the context of the particular facts and circumstances of each case. Such decisions are not binding as legal precedents beyond their factual matrix, and their authority is confined to what they explicitly decide. Courts emphasize the importance of analyzing the ratio decidendi within the specific factual background, and decisions should not be overgeneralized or applied mechanically to different cases. In ***Dalbir Singh Vs. State of Punjab*** [reported in ***(1979) 3 SCC 745***], though the Supreme Court has been dealing with an appeal based on criminal laws, has also held that decisions are not binding as law ('law declared'), unless they involve a clear legal principle applicable beyond the case specific facts. For all these reasons the Court is not inclined to final ratio of the judgments as referred to on behalf of the petitioner as applicable, in this case.

- 33.** Arbitrary deprivation of pension is what is prevented under the DCRB Scheme, 1981, as well as various judicial pronouncements of the Court. Also, in this case, the Court is called upon to

adjudicate that there has been gross arbitrariness in the decision of the respondent not to issue 'No Objection Certificate', to the writ petitioner. The statute has provided that the authority to show it's bona fide, must initiate the proceedings, disciplinary or judicial, against the delinquent, prior to the date of his retirement. Evidently, the same is not done in case of the present petitioner. Evidently also, the doors of the higher Authority has been knocked on several occasions, by informing it with the anomaly found in the school accounts at the behest of the petitioner and for the sake of appropriate actions being taken against him. All efforts have gone in vain, though the Court is unable to find any plausible reason for that, in the instant case. Given such inaction by the competent authority, the further fact emerges that the auditor refrains from submitting any report of audit done by him. Reason of the same is also not comprehensible. The accounts of the school have been audited for the second time and all the mismatches and anomalies have come into light. Alongside the same, the petitioner's name has come into light to have been directly connected with the same and having possession of the defalcated amount. The petitioner though has not yet been granted pension as yet, however, given such factual background, it cannot be termed as an arbitrary deprivation of the petitioner, from being granted with pension. On the contrary, the same is logical and supported with well-founded reasons.

- 34.** At this juncture, the DCRB Scheme 19 (5) may be mentioned which has provided for in case of misconduct of the pensioner, the pension sanctioning authority has the power to withhold pension or reduce the pension. It has further stipulated that, the person may be provided with a provisional pension commencing from the date of his retirement, not exceeding the maximum pension which would have been admissible on the basis of his qualifying services up to the date of retirement, but no gratuity or death-cum-gratuity shall be paid to him. The Court finds that, such provision of the Scheme may entitle the petitioner to be eligible for provisional pension vis-à-vis the facts already disclosed against him through the auditor's report and taking into consideration that, even during his service period, several complaints made against him, have remained unattended and not acted upon by the higher Authorities.
- 35.** For the reasons as above, the Court is inclined to dispose of the instant writ petition by referring the matter of issuance of provisional pension, if any, in accordance with DCRB Scheme, 1981 for the petitioner to the Principal Secretary, School Education Department, Government of West Bengal. It is made clear that, decision of the said Authority shall be independent of any observation of the Court made in this judgment and solely on the attending facts and circumstances of the case.

- 36.** Let the said Authority consider and dispose of by dint of a reasoned order the reference so made before it within a period of eight weeks from the date of communication of copy of this order. It is mentioned further that the said authority shall afford opportunity of hearing to the present writ petitioner as well as the school Authority, if need be and decide upon eligibility of the petitioner to be granted with the provisional pension or not and if yes, the amount thereof.
- 37.** With the directions as above, the instant writ petition as well as applications pending if any, are disposed of.
- 38.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**