

**(2001) 06 CAL CK 0035**

**Calcutta High Court**

**Case No:** Writ Petition No. 18845 (W) of 2000

Nikhil Kumar Mukherjee and  
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** June 13, 2001

**Citation:** 106 CWN 745

**Hon'ble Judges:** Amitava Lala, J

**Bench:** Single Bench

**Advocate:** K.D. Banik and Krishanu Banik, for the Appellant; Mrinmoy Baghchi and Nabamita Pal, for the Respondent

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### **Judgement**

Amitava Lala, J.

At the time when initially the writ petition was moved under the heading "listed motion", I have carefully considered the submission as made by the petitioners and I found the refusal of granting relief by the Director of School Education, West Bengal in pursuance to the order of the court is wrongful in law which cannot be fact-oriented for the purpose of exchange of affidavits and keep it pending for final disposal. But since the court was not inclined to be satisfied in respect of the service, a direction was given to serve all the contesting respondents and to file an affidavit-of-service before this court when the matter will appear under the heading "to be mentioned" so that the court can reappraise the view upon being satisfied with the service and pass the necessary orders. Accordingly, affidavit-of-service, which is in file, be kept in the record. The short point involved in this writ petition as to whether the incremental benefits of petitioners' service will be governed by the memorandum no. 372-Edn(B) dated 31.7.81 and such petitioners will be able to file their option forms. On numerous occasions, several Benches of this court were pleased to hold in favour of the petitioners therein which according to the petitioners have supportive value in respect of the dispute herein.

2. Under the impugned order, the Director of School Education, West Bengal feels that since the memorandum clearly directs applicability with effect from 1.4.81 and since the petitioners' service were approved on 11.5.81, the benefits in their favour in respect of higher Scale of pay cannot be said to be "existing". Hence, whatever benefits they were getting those are surplus and will be returned. Accordingly, the option forms were also cancelled.

3. I believe there is a fallacy on the part of the authority in holding the case of the petitioners as not "existing" because of the reason that the same is made effective from 1.4.81 and in the note at the bottom of such memorandum it is prescribed that all existing secondary school teachers will be allowed annual increments etc. in the revised scales of pay following the guidelines under the note. Therefore, if the effective date from 1.4.81 is conjointly read with the note being "All existing Secondary School teachers will be allowed annual increments...", then it will be understood that the memorandum has its prospective value. Moreover, statute is always prospective endless it is specified giving the retrospective effect. As because the memorandum dated 31.7.81 has given an effective date from 1.4.81, it cannot alter the situation impliedly by saying that the same has no prospective value. Prospective value of the incremental benefits are always available because the same is condition of service irrespective of issuance of memorandum. Under the aforesaid circumstances, I have no other alternative but to hold in favour of the petitioners.

4. Accordingly, I set aside the impugned order under memo no. 159/1(5)LC dated 24.8.2000 and direct the authorities to accept the option forms, if any, within a period of one month from the date of communication of this order.

5. Thus, the writ petition stands disposed of by treating as on day's list as "for orders". There will be no order as to costs.

6. Since no affidavit-in-opposition has been filed by the contesting respondents, the allegations contained in the writ petition are not admitted. This writ petition was moved jointly by the several petitioners on the self-same cause of action. Since the court fees are paid on account of the 1st writ petitioner, the other writ petitioners are directed to put their court fees within a period of two weeks from such order excepting the petitioner no. 1 as against whom the court fees are treated as made. The order will be effective subject to payment of court fees.