

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 18121 of 2019
Sital Kumar Biswas & ors.
versus
State of West Bengal & ors.
with
WPA 4256 of 2018
I.A. No. CAN 1 of 2019 (Old No. CAN 6215 of 2019)
Sekhar Chowdhury & ors.
versus
State of West Bengal & ors.
with
WPA 4257 of 2018
I.A. No. CAN 1 of 2019 (Old No. CAN 6216 of 2019)
Sipra Bera & ors.
versus
State of West Bengal & ors.**

For the petitioners
(in WPA 18121 of 2019) : Mr. Soumya Majumder
Mr. Victor Chatterjee
.....advocates

For the petitioners
(in WPA 4256 of 2018)
(in WPA 4257 of 2018) : Mr. Arup Kumar Lahiri
Mr. Udayan Dutta
.....advocates

For the Housing Board : Mr. Amitava Mitra
Mr. Subhadip Banerjee

For the State : Mr. Tapan Kumar Mukherjee,
learned senior advocate
Mr. Pinaki Dhole
Ms. Debdooti Dutta

For the Housing Deptt.
(in WPA 4256 of 2018) : Mr. Susanta Pal
Mr. Prabir Kumar Ray

Reserved on : 10.05.2023

Judgment on : 25.09.2023

Hiranmay Bhattacharyya, J.:-

1. These writ petitions are at the instance of the ex-employees of West Bengal Housing Board (hereinafter referred to as “the Board”). WPA 4256 of 2018 (hereinafter referred to as ‘WP-1’) has been filed praying for a writ in the nature of mandamus directing the respondents to allow the writ petitioners to get the retiral benefits on the basis of the last drawn pay structure at the time of their retirement upon implementation of the Career Advancement Scheme, 1990 as well as modified Career Advancement Scheme, 2001 after setting aside the order of the Finance Department vide Memo being U.O.No. 883 Group-P1 dated 17.10.2017 and the order of the Housing Department, Government of West Bengal vide Memo No. 1505-H2/1M-64/17 dated November 28, 2017.
2. WPA 4257/2018 (hereinafter referred to as “WP-2”) has been filed claiming identical reliefs as that in WP-1.
3. WPA 18121 of 2019 (hereinafter referred to as “WP-3”) was filed praying for issuance of a writ of mandamus commanding the respondent authorities to release the leave salary to the petitioners along with interest for delayed payment and also interest on gratuity due to delayed payment of such gratuity. Since identical question of law and fact arise for consideration in these writ petitions, the same were heard analogously and are being decided by this order.
4. The petitioners are ex-employees of the Board. The Board adopted the Career Advancement Scheme (for short “the CAS”) of the State Government in its Special Board meeting held on 20.11.1995 and extended the benefits of the said scheme to its employees and officers. The Career Advancement Scheme was subsequently modified by the Government and the modified Career Advancement Scheme (for short “MCAS, 01”) was introduced. The Board, in its meeting held on 28.06.2001, decided to implement the MCAS 01 for the employees of the Board. The petitioners were allowed the benefits of MCAS 01 since

the year 2001. The Finance Department Government of West Bengal vide order dated 17.10.2017 opined that MCAS, 01 has not been allowed to any undertaking or autonomous body and hence MCAS benefit may not be allowed to the employees of the Housing Board. By the said order, the Board was requested to take necessary steps for recasting the pay of the employees of the Board by withdrawing MCAS, 01 benefit and for taking further action. The Deputy Secretary, Government of West Bengal, Housing Department issued a communication addressed to the Housing Commissioner of the Board dated 20.11.2017 for recasting the pay of the employees of the Board. Challenging the order of the Finance Department dated 17.10.2017 and the communication made by the Deputy Secretary to the Government of West Bengal Housing Department dated 28.11.2017, WP-1 and WP-2 have been filed by separate groups of ex-employees of the Board. The petitioners in WP-3 have prayed for release of the leave salary along with interest.

5. Mr. Lahiri, learned advocate appearing for the petitioners in WP-1 and WP-2 contended that benefits of ROPA and other financial benefits sanctioned by the Government of West Bengal cannot ipso facto become applicable for the employees of the Board unless the Board in a duly convened meeting decides to adopt the same. He further submitted that the Board do not depend upon the Government of West Bengal for meeting its expenses including the liability of paying the salary, allowances and other benefits of the employees of the Board. He contended that Board meets the expenditure for payment of salary and other benefits to its employees from its own source. By referring to the minutes of the meeting of the Board held on 28.06.2001, Mr. Lahiri contended that the Board adopted the MCAS, 01 and extended the benefits of the said scheme to its employees and the salary of the employees of the Board was revised accordingly. He further submitted that a good number of employees have retired from service after enjoying the benefits of the MCAS, 01 and they were paid their respective retirement benefits on the basis of the last pay drawn

in terms of MCAS, 01. He also submitted that the benefits of MCAS, 01 which were allowed to the writ petitioners in the year 2001 is sought to be withdrawn after 17 years. He further submitted that since the writ petitioners had been enjoying the benefits of MCAS, 01 without any objection from the government for long 17 years, the Government of West Bengal have acquiesced in the enjoyment of the benefit of the MCAS. Therefore, according to Mr. Lahiri, the State having acquiesced in the enjoyment of the benefit of MCAS for such a long period of time cannot now direct withdrawal of such benefit. In support of such contention he referred to the decision of the Hon'ble Supreme Court in the case of **Narayangarh Co-operative Vs. Narayan Routh & another** reported at **AIR 1977 SC 112**, **Baljeet Singh and ors. vs. State of Uttar Pradesh and ors.** reported at **(2019) 5 SCC 33** and **Md. Zamil Ahmed vs. State of Bihar and ors.** reported at **(2016) 12 SCC 342**. He, further submitted that several existing employees of the Board are still enjoying the benefits of MCAS, 01 and the order under challenge has not been given effect to in the case of existing employees. Mr. Lahiri further contended that an opportunity of hearing ought to have been afforded to the petitioners before passing an order withdrawing the benefits of MCAS, 01 as the same had serious civil consequences. He further submitted that no opportunity of hearing was afforded to the petitioners before issuing the order withdrawing the benefits of MCAS, 01. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Shekhar Ghosh vs. Union of India and anr.** reported at **(2007) 1 SCC 247** and **Balco Captive Power Plant Mazdoor Sangh and anr. .vs. National Thermal Power Corporation and ors.** reported at **(2009) 1 SCC (L&S) 472**. Mr. Lahiri further contended that the benefit of MCAS, 01 is a condition of service. He submitted that the West Bengal Housing Board Act, 1972 (for short "the 1972 Act") more particularly Section 50 thereof does not permit the government to pass direction regarding condition of service. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **State of Uttar**

Pradesh vs. Preetam Singh and ors. reported at **(2014) 15 SCC 774**. He further submitted that the power of revision or correction is not permissible after a long period of time. In support of such contention he referred to a decision of the Hon'ble Supreme Court in the case of **Joint Collector Ranga Reddy District and anr. vs. D. Narsing Rao and ors.** reported at **(2015) 3 SCC 695**. He further contended that the authority after allowing the benefits of MCAS, 01 are estopped/precluded from making any recovery from the retirement benefits of the petitioner. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **State of Punjab and ors. vs. Rafiq Masih (White Wahser) and ors.** reported at **(2015) 4 SCC 334**, **Thomas Daniel vs. State of Kerala and ors.** reported at **AIR 2022 SC 2153** and **State of U.P. and anr. vs. Uptron Employees' Union, CMD and ors.** reported at **(2006) 5 SCC 319**.

6. Mr. Majumdar learned advocate appearing for the petitioners in WP-3 adopted the argument of Mr. Lahiri.
7. Mr. Tapan Kumar Mukherjee learned Senior Advocate representing the State of West Bengal seriously disputed the contentions of the learned advocates for the petitioners. Mr. Mukherjee contended that the State Government has pervasive control over financial affairs of the Board. In support of such contention he placed reliance upon the provisions laid down in Section 21 of the 1972 Act and contended that the State Government was empowered to approve or disapprove the budget of the Board. Mr. Mukherjee placed strong reliance upon the provisions of Section 50 of the 1972 Act and contended that the State Government was empowered to give directions to the Board and it is the duty of the Board to comply with such directions. He contended that the power of the Government to give necessary directions to the Board shall also include directions regarding conditions of service of the employees including the pay structure, and other service benefits. He further contended that the Board has no power to grant any financial benefit unless it is approved by the State Government. He

also contended that the Board had extended the benefit of MCAS, 01 *suo motu* to its employees and such fact was not informed to the Finance Department. He further submitted that the Board has no independent power to grant any financial benefit as per Section 50 of the 1972 Act. He therefore, submitted that since the initial grant of MCAS, 01 by the Board to its employees was without the approval of the State Government, the Board was obliged to recast the pay of the employees as per the directions of the Government. Mr. Mukherjee contended that since the petitioners enjoyed the financial benefit without the approval of the State, such excess payment can be recovered from the salary in view of the proposition of law laid down by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and ors. and ors. vs. State of Uttarakhand and ors.** reported at **(2012) 8 SCC 417**.

8. Mr. Mitra learned advocate appearing for the Board contended that the Board has to act in terms of the directions issued by the State Government from time to time in terms of Section 50 of the 1972 Act . He further submitted that the employees appointed under the Board in terms of Section 12 of the Act will also be governed by the directions issued by the State of West Bengal time to time through Housing Department. He also submitted that in terms of the communication dated 28.11.2017 the pay scale of the retired employees have been recasted under the directions of the Housing Department. Mr. Mitra further contended that excess payment made due to wrong/ irregular pay fixation can always be recovered. In support of such contention he placed reliance upon decision of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal** (supra).
9. Heard the learned advocates for the parties and perused the materials placed.
10. The West Bengal Housing Board introduced the Career Advancement Scheme in respect of its employees to improve the standard administration and career prospect under its order dated 04.12.1995.

The Finance Department of Government of West Bengal modified the existing Career Advancement Scheme of the State Government employees under Memo no. 3015-F dated 13.03.2001. The Board in its meeting held on 28.06.2001 approved the modification in respect of Career Advancement Scheme under Finance Department order no. 3015-F dated 13.03.2001 and decided to adopt the same in the West Bengal Housing Board. It was also decided that modified Career Advancement Scheme, 01 will come into effect from 01.01.2001.

11. The Pay Anomaly Committee was constituted for making suitable recommendations on various issues including the issue of extension of benefits of MCAS, 01. Such Committee after considering various factors did not recommend any modification in the policy adopted by the Board. The observation of the Pay Anomaly Committee is as follows-

“Extension of benefits of MCAS etc. :- The board officials reported that Board had adopted the policy of extending benefits of said MCAS etc vide its resolution dated 28.06.2001 in its 366th Board Meeting. Since this was done in line with policies adopted by the Govt at that time, Board’s decision taken in its autonomous capacity, it cannot be said to be illegal. This decision has already been under implementation for a very long time and has virtually become fait accompli. In fact, Special Audit has not recommended its reversal in so many words. Besides, after such a long time, even if reversal is resorted, there would be a total topsy turvy situation, particularly when many of the concerned employees have already retired out with such benefits awarded. The issue being similar in nature to the issues at para 1 & 2 above, this committee does not recommend any modification in the said adopted policy.”

12. Thereafter, the Finance Department, Government of West Bengal under Order dated 17.10.2017 opined that MCAS, 01 has not been allowed to any undertaking or autonomous body and hence MCAS benefit may not be allowed to the employees of Housing Board. In the light of the opinion of the Finance Department, the Deputy Secretary, Government of West Bengal Housing Department by a written communication dated 28.11.2017 directed the Housing Commissioner, West Bengal Housing Board to take necessary action

for recasting the pay of the employees of the West Bengal Housing Board by withdrawing the MCAS, 01 benefit.

13. The decision of the Finance Department and the consequential direction of the Deputy Secretary, Government of West Bengal Housing Department for recasting the pay of the employees of the West Bengal Housing Board by withdrawing MCAS, 01 benefit is the subject matter of challenge in WP-1 and WP-2.

14. From the pleadings of the respective parties, the following issues arise for consideration in these writ petitions.

(i) Whether the State Government has jurisdiction to issue directions regarding the fixation of conditions of service of the officers and employees of the West Bengal Housing Board under the provisions of the 1972 Act.

If the answer to the said issue is in the affirmative, the next issue that would arise for consideration is –

(ii) Whether the amount drawn by the employees in terms of the decision of the West Bengal Housing Board for extension of the benefits of MCAS, 01 can be recovered from the writ petitioners from their retirement benefits.

15. The issue No. (i) is first taken up for consideration.

16. The West Bengal Housing Board Act, 1972 was enacted to provide for the constitution of a Housing Board for West Bengal and for matters connected therewith or incidental thereto. The Board was constituted in terms of Section 3(1) of the 1972 Act. Subsection 2 of Section 3 states that the Board shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name and shall be competent to acquire and hold property both movable and immovable, enter into contract and all things necessary for the purpose of the 1972 Act. Section 5(1) of the 1972 Act

deals with the constitution of the Board. Section 5(1) is extracted hereinbelow-

“5. (1) The Board shall consist of a Chairman who shall be the Minister-in-Charge of the Housing Department of the State Government and a Vice-Chairman to be appointed by the State Government and the following other members, that is to say,—

(a) (i) Secretary, in-Charge of Town and Country Planning Branch of the Development and Planning Department, ex-officio,

(ii) Secretary, Finance Department, ex-officio,

(iii) Secretary, Housing Department, ex-officio,

(iv) Housing Commissioner, ex-officio, and

(b) five other persons appointed by the State Government: Provided that the State Government may appoint a whole-time Government servant to act as the Vice-Chairman of the Board in addition to his own duties.”

17. It is thus evident that the Board is comprised of Secretaries of the Finance and Housing Department of the State apart from Secretary of other departments as well as other persons appointed by the State Government.
18. Section 12 deals with the appointment of officers and other staff of the Board. Subsection 1 thereof states that the Board shall have a Commissioner who shall be the Chief Executive Officer and one or more Assistant Housing Commissioner and such other officers and employees as the Board may consider necessary for the efficient performance of its functions. Subsection 2 states that the appointment of the Housing Commissioner shall be made by the State Government and the appointment of other officers and employees of the Board shall be made by the Board.
19. Section 12 of the 1972 Act vests the Board with the absolute authority to appoint its other officers and employees. There is no provision in Section 12 authorising the State Government to determine the conditions of service of the officers and employees of the Board: The power of the Board to appoint its officers and employees is for efficient

performance of its functions. Power to determine service condition is implicit in the power to appoint.

20. Section 17 of the 1972 Act deals with the powers and duties of the Board. The principal function of the Board is to undertake works for the framing and execution of the Housing Schemes for the State of West Bengal. Section 17 of the said Act which deals with powers and duties of the Board is extracted hereinbelow-

“17. (1) Subject to the provisions of this Act the Board may, from time to time, incur expenditure and undertake works for the framing and execution of such housing schemes as it may consider necessary and such housing schemes may include housing schemes in relation to lands and buildings vested in or in the possession of the State Government.

(2) The State Government may, on such terms and conditions as it may think fit to impose, entrust to the Board the framing and execution of any housing scheme and the Board shall thereupon undertake the framing and execution of such scheme.

(3) The Board may, on such terms and conditions as may be agreed upon and with the previous approval of the State Government, take over for execution any housing scheme, on behalf of a local authority or cooperative society, or on behalf of an employer, for building houses mainly for the residence of the employees of such local authority, co-operative society or employer, as the case may be [or for the residence of the members of such co-operative society].”

21. Section 26 of the 1972 Act deals with the other duties of the Board. Section 26 is extracted hereinbelow-

“26. (1) [The Board shall take necessary measures to maintain, allot, lease, sell or otherwise use the Board premises in such manner as it may decide and shall collect rent, price, compensation and damages in respect thereof.]

(2) The Board may,—

(i) provide technical advice to the State Government and scrutinize projects under housing schemes when required by the State Government to do so;

(ii) undertake research on various problems connected with housing in general and find out in particular the economical methods of constructing houses suited to local conditions;

(iii) undertake comprehensive surveys on problems of housing;

(iv) do all things for—

(a) unification, simplification and standardization of building materials;

(b) encouraging pre-fabrication and mass production of house components;

(c) organising or undertaking the production of building materials for residential or non-residential houses;

(d) securing a steady and sufficient supply of workmen trained in the work of construction of buildings (and for the manufacture of building materials.)

(3) Subject to such rules as may be made in this behalf the Board may, from time to time, (and for any particular area) appoint one or more Committees or invest any local or other authority for the purpose of discharging such duties or performing such functions as it may delegate to them and any such Committee or local or other authority may discharge such duties or perform such functions (with due regard to the circumstances and requirements of that particular area) [accordingly.]”

22. Mr. Mukherjee learned advocate for the State would vehemently contend that Section 50 of the 1972 Act vests the State Government with the power to give directions to the Board and it is the duty of the Board to comply with such directions. Section 50 of the 1972 Act would be relevant for the purpose of deciding the issues involved in these writ petitions and therefore, the same is extracted hereinafter-

“50. The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act. It shall be the duty of the Board to comply with such directions.”

23. Section 50 of the 1972 Act empowers the State Government to give directions to the Board which in its opinion are necessary or expedient for carrying out the purposes of this Act. In order to decide the extent of the power of the State Government to issue direction under Section 50 of the 1970 Act this Court has to consider as to what are the purposes of this Act. After reading the 1972 Act it appears to this Court that the purpose of the 1972 Act was to constitute a Board for undertaking works for the framing and execution of the Housing Schemes of the State of West Bengal and not for framing the

conditions of service of the officers and employees of the Board. It would be further evident from Section 12 that the appointment of the officers and employers are for efficient performance of the functions of the Board.

24. Section 43 of the 1972 Act empowers the Board to make regulations consistent with the 1972 Act and any rules made thereunder. Subsection 2 deals with the subject matter for framing regulations. Clause (d) of Subsection 2 of Section 43 was inserted by Section 6 of the West Bengal Housing Board (Amendment Act) 1976. Section 43(2)(d) is extracted hereinbelow-

“43. (1) The Board may from time to time, with the previous sanction of the State Government, make regulations consistant with this Act and with any rules made under this Act.

(2) Such regulations may provide for—

(a) the management and use of buildings constructed under any housing scheme;

(b) the principles to be followed in allotment of tenements and premises;

(c) regulating its procedure and the disposal of its business;

[(d) the conditions of service of the employees of the Board other than those taken over and employed under sub-section (1) of section 13.]”

25. Therefore, Section 43(2)(d) empowers the Board to frame regulations for conditions of service of the employees of the Board other than those employees taken over and employed under Sub Section 1 of Section 13 of the 1972 Act. The writ petitioners are not the employees falling within Section 13(1) of the 1972 Act. Therefore, the Board has exclusive jurisdiction to frame regulations and to take a policy decision on the conditions of service of its officers and employees apart from those falling under Section 13(1).

26. The issue as to whether the State Government has the power to issue direction for regulating the service conditions of the employees of a body corporate constituted under a Statute fell for consideration before the Hon'ble Supreme Court in **Preetam Singh** (supra). The Hon'ble Supreme Court after considering the provisions of U.P. Avas

Evam Vikas Parishad Adhiniyam, 1965 held that the State of Uttar Pradesh had no right to issue directions on conditions of service of the authority constituted under the 1965 Act. The Hon'ble Supreme Court held thus –

“16. In our view, the State of Uttar Pradesh, had the right to issue directions only in respect of the functions assigned to the Vikas Parishad under Section 15 of the 1965 Act. The conditions of service of employees, in our considered view, do not constitute the functions of the Vikas Parishad, and as such, we are satisfied that the directions contemplated under Section 2(1) of the 1975 Act, do not extend to the directions issued by the State of Uttar Pradesh in the impugned Orders dated 13.9.2005 and 12.7.2007. We therefore find no merit in the first contention advanced by the learned counsel for the appellant.”

27. Subsequently two Hon'ble Judges' of the Supreme Court in the case of **State of Uttar Pradesh vs. Virendra Kumar & ors.** in the order dated 10.02.2020 arrived at a conclusion that the view taken in **Preetam Singh** (supra) needs reconsideration. Accordingly the core issue whether the act of determining service conditions of the employees and officers of the Board is one of its statutory functions were referred to a large bench.
28. Three Hon'ble Judges in the case of **State of U.P. & ors. vs. Virendra Kumar & ors.** reported at **2022 SCC Online SC 1628** held that the decision in **Preetam Singh** (supra) lays down the correct law. The Hon'ble Supreme Court in Para 43 of the said reports summarised its conclusions which are extracted hereinafter.

“CONCLUSIONS ON THE THREE QUESTIONS

43. The aforesaid discussion is sufficient to answer the three questions framed. Subject to what we have held above, we concur with the view taken by this Court in Preetam Singh's case. Our answers to the three questions are as under :

Q.1 Whether the judgment of this Court in Preetam Singh's case laying down that conditions of service of officers and employees do not constitute the functions of the U.P. Avas Evam Vikas Parishad lays down the correct law more so when the judgment does not refer to provisions of Sections 8, 92, 94(2)(nn) of the 1965 Act ?

A: The decision lays down the correct proposition of law.

Q.2 Whether the view expressed in Preetam Singh's judgment that functions of the U.P. Avas Evam Vikas Parishad are only the specific functions enumerated in Section 15 of 1965 Act which does not include the service conditions of employees of the Board lays down the correct law ? Whereas the functions of the Board referred to in other provisions of Act, Rules and Regulations as has been expressly provided in Section 15(1) by use of the expression "subject to the provisions of this Act and the Rules and Regulations" shall also be functions of the Board which induces service conditions of officers and employees as per Section 95(1)(f) of the 1965 Act.

A: The first part of the question is answered in the affirmative. The functions of the Board are as specified in Section 15 and other relevant sections in Chapter III of the 1965 Act. The second part is answered in the negative.

Q.3 Whether the State Government had no jurisdiction to issue directions regarding service conditions of officers and employees of the U.P. Avas Evam Vikas Parishad under the provisions of the 1965 Act and 1975 Act and all other enabling powers with the State Government?

A: Answered in affirmative. But the State Government can always frame Rules in the exercise of powers under clause (nn) of sub-section (1) of Section 94 of the 1965 Act for determining the conditions of service of the servants and officers of the Board. Whenever there is any inconsistency between Regulations framed under clause (f) of sub-section (1) of Section 95 and the Rules framed under clause (nn) of sub-section (1) of Section 94, the Rules will prevail and to that extent, the provisions of the Regulations which are repugnant to the Rules shall be void."

29. Section 17 of the 1972 Act deals with the powers and duties of the Board. Section 26 of the Act deals with the other duties of the Board. The appointment of other officers and employers are made by the Board under Section 12 for efficient performance of its functions. Section 17 read with Sections 26 and 12 of the 1972 Act and the preamble of the Act leads to the conclusion that purpose of the 1972 Act is not for fixing the conditions of service of its other officers and employers. To the mind of this Court the power of the State Government to issue directions as contemplated under Section 50 of the 1972 Act cannot be extended to include directions to regulate and/or control the conditions of service of the officers or employees of the Board. The Board constituted under Section 3 of the 1972 Act has

the power to frame regulations to provide for the conditions of service of its officers and employees under Section 43(d). In the absence of any regulations being framed in that regard, the Board also has the authority to issue administrative orders, circulars etc. with regard to condition of service of its officers and employees and also to adopt the policy/scheme of the Government in order to extend benefits of such scheme to its officers and employees as the Board being the appointing authority of its other officers and staffs has the power to determine their conditions of service.

30. In the light of the aforesaid discussion, this Court holds that the State Government do not have jurisdiction to issue directions regarding fixation of conditions of service of the officers and employees of the Board under the 1972 Act. Only the Board has the jurisdiction to frame regulations and take policy decision in this regard. The first issue is, therefore, answered in the negative.
31. Before proceeding to decide the second issue this Court shall deal with the contention of Mr. Mukherjee, learned Senior Advocate for the State that the State is having financial control over the Board as would be evident from Section 21 that every budget of the Board has to be sanctioned by the Government.
32. Section 19 provides for laying the budget before the Board. Subsection 2 thereof speaks of the heads for which provision is to be made in the budget. Section 21 states that every budget sanctioned by the Board is to be approved by the State Government. Section 23 states that after the budget is approved by the State Government, the Board shall cause the housing schemes, in respect of which provision is made in the budget, to be published in the Official Gazette and proceed to execute such scheme. After reading the provisions relating to preparation and sanction of the budget of the Board and approved by the State Government this Court is of the considered view that the power vested upon the Government to approve the budget is primarily to regulate and control the framing and execution of housing scheme

for which purpose the Board has been constituted. That by itself cannot lead to the conclusion that the State Government has the power to issue directions for fixing the service conditions of the officers and employees of the Board.

33. That apart it is not the case of the State Government that since 2001 the Board has not sent budgets to the State Government for its approval. Therefore, even if the argument of Mr. Mukherjee is accepted then it goes without saying that the State Government has approved the grant of MCAS, 01 benefit by the Board to its officers and employees while approving the budgets of the Board since the year 2001.
34. Moreover, the Secretaries of the Housing department and the Finance Department of the Government of West Bengal are the members of the Board. The Minister-in-Charge of the Housing department is the Chairman and the Vice Chairman is also appointed by the State Government. Such being the constitution of the Board, the State cannot now be allowed to contend that the State was not aware of the extension of MCAS by the Board. The policy decision of the Board taken way back in the year 2001 cannot be allowed to be recalled/ withdrawn after a lapse of more than 17 years.
35. Accordingly the order of the Finance Department, Government of West Bengal dated 17.10.2017 and the directions contained in communication made by the Deputy Secretary, Government of West Bengal Housing Department to the Housing Commissioner of the Board dated 28.11.2017 are without jurisdiction and therefore the same are liable to be set aside and quashed. The consequential steps taken by the Board pursuant to the orders dated 17.10.2017 and the communication dated 28.11.2017 are also liable to be set aside and quashed.
36. Since the first issue is answered in the negative, the question of overdrawal does not arise in the case on hand. The second issue has

thus become academic and therefore the same does not arise for consideration in these writ petitions.

37. The other decisions cited by the learned advocates for the respective parties have not been dealt with as those are of no assistance for deciding the principal issue raised in these writ petition in view of the findings rendered by this Court.
38. WP-3 has been filed praying for release of leave salary along with interest to the writ petitioners and also for a direction to pay interest on delayed payment of gratuity.
39. After going through the several orders passed in WP-3, it does not appear to this Court that the relief on account of interest on alleged delayed payment of gratuity was pressed.
40. It has been alleged in WP-3 that the respondent authorities have taken a stand that MCAS, 01 ought not to have been implemented. It has been further alleged that the authorities were attempting to recover the additional amount paid to the employees on account of implementation of MCAS, 01 from the amount to be paid on account of leave encashment.
41. It appears from the order of the coordinate bench dated 15.3.2022 that the admissible dues on account of leave encashment have already been paid.
42. It is the specific stand of the Board that after making necessary adjustments, the leave encashment benefits have been paid to the writ petitioners.
43. This Court has already held that the orders dated 17.10.2017 and 28.11.2017 are liable to be set aside and quashed. It has been further held that all consequential steps taken by the Board pursuant to the aforesaid orders are also liable to be set aside and quashed. Therefore, the Board has to pay retirement benefits after taking into account the

benefits in terms of MCAS, 01 which was extended by the Board pursuant to its policy decision.

44. In view therefore, this Court holds that the Board has to recalculate the retiral benefits of the petitioners including leave encashment by including the benefits arising out of MCAS, 01 and to pay the differential amount, if any, to the writ petitioner within a specified time.
45. The Board calculated the retirement benefits of the petitioners by recasting their pay pursuant to the directions of the State Government. The legal issue as to whether the State Government was competent to issue such directions upon the Board was pending consideration before this Hon'ble Court since the year 2018. In view thereof, this Court is of the considered view that the Board should not be saddled with the liability to pay interest on leave encashment. Therefore, the prayer of the petitioners to pay interest on leave encashment stands rejected.
46. For all the reasons as aforesaid, order of the Finance Department, Government of West Bengal dated 17.10.2017 and the order of the Deputy Secretary to the Govt. of West Bengal, Housing Department dated 28.11.2017 are set aside and quashed. All consequential steps taken by the Board pursuant to the orders dated 17.10.2017 and 28.11.2017 are also set aside and quashed. The respondent authorities are directed to recalculate the retiral benefits of the writ petitioners including leave encashment on the basis of last pay structure as per the Modified Career Advancement Scheme, 2001 and thereafter make payment of the differential amount of the retirement as well as other benefits to the petitioners. Any amount on account of alleged overdrawal, if recovered, shall also be paid to the petitioners. The entire exercise in terms of this order shall be completed and payment as directed above be made as expeditiously as possible but positively within a period of eight weeks from the receipt of the server copy of this order.

47. Accordingly, WPA No. 4256 of 2018 and 4257 of 2018 stand allowed.
WPA 18121 of 2019 stands allowed in part. There shall be, however,
no order as to costs.
48. Urgent photostat certified copies, if applied for, be supplied to the
parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita, Anupama)