

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APO No. 49 of 2025

Keya Kar

Vs.

The State of West Bengal & Others.

For the appellant : Mr. Soumya Majumdar, Sr. Adv.
Mr. Ratikanta Pal, Adv.
Ms. Afreen Begum, Adv.

For the State : Mr. Santanu Kr. Mitra, Sr. Adv.
Mr. Amartya Pal, Adv.

For the Registrar of : Mr. Pradeep Kumar Roy, Sr. Adv.
Co-operative Society Mr. Ankit Sureka, Adv.
Mr. Partha Sarathi Pal, Adv.

Hearing concluded on : 02.09.2025

Judgment on : 24.09.2025

Md. Shabbar Rashidi, J.:-

1. The appeal is directed against judgment and order dated January 17, 2025 passed in WPO No. 542 of 2015.

2. By the impugned order, learned Single Judge disposed of the writ application being WPO No. 542 of 2015 with certain directions that is to say:

“22. In view of the foregoing reasons and discussions, the Respondent No. 7, being the Employer Cooperative society shall calculate the dues of the petitioner able to her on and from August, 2014 till her date of retirement in accordance with ROPA, 2009 according to law. Taking the cut-off date as August 1, 2014 if it is found from records that any arrear is due and payable to the petitioner in terms of ROPA, 2009, the same shall also be calculated and determined. On the basis of such calculations the entire amount including the arrears as directed herein, if any, shall be paid to the petitioner by Respondent No. 7 along with interest @ 5% per annum since August 1, 2014 till August 3, 2016 and then from August 3, 2016 till the date of actual tendering of the amount to the petitioner after deducting the amount on account of salaries and benefits already paid.

23. It is also noted that, in the event from records it appears to the Respondent No. 7 that all other employees, who were similarly placed as that of the petitioner, have been granted the benefit of ROPA, 2009 since January 1, 2006, then the pay fixation of petitioner shall also be done accordingly.

24. The entire exercise directed above for calculation of dues and making of payment to the petitioner shall be completed by Respondent No. 7 positively within a period of two months from the date of communication of this order.”

3. It is submitted on behalf of the petitioner that the learned Single Judge erred in law by not considering the fact that neither Registrar nor the Deputy Registrar had the authority to curtail the benefits flowing from ROPA, 2009.

4. It was further submitted on behalf of the petitioner that the petitioner was entitled to the benefits of ROPA, 2009 on and from January 1, 2006. There was no reason to allow such benefits to the petitioner with effect from a later date i.e. August 1, 2014. According to learned advocate for the petitioner, the rights of the petitioner for an enhanced salary were bestowed on the basis of ROPA, 2009. The effective date, according to ROPA, 2009, was January 1, 2006. No reason was assigned by learned Single Judge for holding the petitioner to be entitled to the benefits of ROPA, 2009 from August 1, 2014.

5. Learned advocate for the petitioner further submitted that the learned Single Judge failed to take into consideration the provisions of Rule – I and Rule II Clause 2 (a) of ROPA, 2009 pertaining to Kolkata Municipal Corporation whereby the petitioner has been prevented from the full benefits of ROPA, 2009 which she was entitled to.

6. On the other hand, learned advocate for the respondents submitted that although, Respondent No. 7 generally followed the actions of Kolkata Municipal Corporation with regard to the service conditions and pay structure of its employees, nevertheless, the Calcutta Corporation Cooperative Credit Society Ltd. is a separate legal entity and is not bound by the decisions taken by the Kolkata Municipal Corporation. It is well within its rights to take independent decisions with regard to the service benefits and emoluments of its employees.

7. Learned advocate for the respondents also submitted that following the guidelines adopted by the Kolkata Municipal Corporation, the respondent authorities have agreed to grant the benefits of ROPA 2009 to its employees with effect from the month of August 2014. Such decision on the part of respondents does not violate the provisions of Rule 7 or Rule 11 of the ROPA Rules of the Kolkata Municipal Corporation. The administrative decision not to grant arrears of salary upon revision of pay cannot be faulted.

8. The petitioner was appointed as a Junior Clerk by the Board of Directors of the respondent society and she has been working as such since February 10, 1987. Initially, the salary of the petitioner was withheld by the Chairman of the respondent society in February 2004 and a suspension order was issued against the petitioner on June 3, 2004. The petitioner approached the High Court by a writ petition and on the basis of an order passed in such writ petition being WP No. 10677 (W) of 2004, salary of the petitioner due for the period prior to her suspension was ordered to be released. In terms of an observation made in such writ petition, the petitioner preferred a statutory appeal. Upon conclusion of a disciplinary action against the petitioner, the disciplinary authority and Board of Directors through its Chairman imposed a penalty upon the petitioner on the basis of the enquiry report. The petitioner was inflicted with an order of penalty of dismissal from service. In the meantime, Board of Directors was

dissolved and the management of the respondent society was managed by a special officer. After several grounds of litigations, the petitioner was reinstated in service by an order passed on April 4, 2014. The petitioner joined her duties on April 11, 2014 in pursuance of such letter.

9. It is further case of the petitioner that in pursuance of a report dated May 20, 2014 by the Deputy Registrar of Co-operative Societies, Kolkata Range, the Registrar of Co-operative Societies, West Bengal by its letter dated August 22, 2014 directed the Deputy Registrar to proceed with the revised of pay scale of the employees of the society in terms of the pay scale of Kolkata Municipal Corporation subject to the conditions, namely,

- a. "No arrear salary to be allowed;*
- b. All pending works including preparation of accounts for audit and member list/ voter list for ensuing election within short period of time, and undertaking to be taken from the employees to that effect."*

10. In pursuance of such directions from the Registrar Co-operative societies, the Deputy Registrar issued a memo dated August 28, 2014 intimating the special officer of the society to make disbursement of salaries and allowances, e.g., gratuity, leave encashment etc. to the existing employees of the society in the revised pay scale as per ROPA, 2009 of Kolkata Municipal Corporation which was sanctioned from the month of August, 2014, subject to the aforesaid two conditions. In

pursuance of such direction, the Special Officer and Inspector of Co-operative Societies adopted a resolution to disburse salary and allowances of the existing employees strictly in compliance with the memo dated August 22, 2014. The Secretary of the respondent society was directed to take necessary measures and to take personal care to obtain the undertaking as desired by the Registrar of Co-operative Society, West Bengal before disbursement of the revised pay scale.

11. It was the specific case of the petitioner that the petitioner made a representation before the Secretary of the society on August 9, 2014 asking him to take steps/necessary action for updating and completion of the accounts of the share section where, the petitioner was then posted, for the financial year April, 2013 to March, 2014 since the petitioner joined the said section on April 11, 2014. It was her contention that she could not be held liable to complete the work for the financial year April, 2013 to March, 2014, i.e., before she joined in the said section. Consequently, the petitioner declined to give the requisite undertaking. At the same time, by a letter dated August 9, 2014, the petitioner also said her to be transferred to some other section from where she was working. It was submitted that since the petitioner declined to give the undertaking as required by the memo dated August 22, 2014, her pay and allowances were not revised in terms of ROPA, 2009 of Kolkata Municipal Corporation. In such view of the facts, the Inspector of Co-operative Societies, RTAH Cell, RCS,

West Bengal & Special Officer, Calcutta Corporation Co-operative Credit Society Ltd. by his letter dated September 4, 2014 intimated the Deputy Registrar of Co-operative Societies that the petitioner was not agreeable to give the requisite undertaking and sought for specific directions over the matter. In response to such letter, the Deputy Registrar of Co-operative Societies, by his letter dated September 15, 2014, instructed the Special Officer to act in terms of the directions given in memo dated August 22, 2014. The petitioner also made a representation before the Special Officer to act in accordance with ROPA, 2009 of Calcutta Municipal Corporation, more specifically Rule 7 and Rule 11 thereof.

12. From the materials placed before us, it emerges that the appellant was aggrieved with the memo regarding fixation of the salary in terms of ROPA 2009 on two counts, namely:

- i. She was not agreeable to execute the undertaking with regard to clearance of arrears of work as required by the impugned memo in terms of the directions of the Registrar, Cooperative Societies.*
- ii. It was the claim of the petitioner that ROPA 2009 was required to be implemented with effect from January 1, 2006. By the impugned memo, in respect of the respondent society, it was sought to be implemented with effect from August 2014 and there was no provision for payment of arrears of such fixation with effect from January 1, 2006.*

13. So far as first point is concerned, the learned Single Judge, by the impugned judgment and order, set the controversy at rest by holding that,

9. On a close scrutiny of the said clauses of undertaking, this Court is firstly of the view that, ROPA, 2009 has its statutory flavour. If it is decided by this Court that ultimately ROPA, 2009 is applicable to the petitioner and the petitioner is eligible to receive all the benefits thereunder to which the petitioner if is found to be entitled in accordance with law, then this undertaking will, in any event, be overruled in view the statutory operation of ROPA, 2009. In the event, ROPA, 2009 permits the petitioner to receive arrear salary, then by executing this undertaking such statutory provision cannot be overridden. Rest of the provisions for undertaking were related to the service tenure of the petitioner. Since, the petitioner has already retired as mentioned above, Clause 2 of the undertaking as quoted above has become irrelevant at this juncture and will have no force and effect on the petitioner in any manner. In the event it is found by this Court ultimately that ROPA, 2009 shall apply to the petitioner or if the same is not applicable for the petitioner, then also the undertaking mentioned in Clause 1 quoted above, would be no effect and force. If ROPA, 2009 permits the petitioner to receive arrear salary, the petitioner will be eligible to receive arrear salary and if ROPA, 2009 does not provide for receiving arrear salary, then the petitioner will automatically not receive the arrear salary. Therefore, ROPA, 2009 will be the guiding factor, which has its statutory flavour. Thus, in view of the above, this Court is of the firm view that the said memo dated August 22, 2014 with the stipulation mentioned therein Annexure-P/6 at page 58 to the writ petition shall have no binding force or effect upon the petitioner.”

14. Since the appellant has already superannuated, there was no point in obtaining an undertaking from her as to the clearance of arrear works in the office. The respondents have not challenged such finding by the learned Single Judge and it has attained finality.

15. As regards point No. ii, the learned Single Judge held that the Deputy Registrar of Cooperative Societies had decided that the benefit of revised pay scale as per ROPA, 2009 of the Kolkata Municipal Corporation was sanctioned from the month of August, 2014. In consonance thereof, the Cooperative Society, by its resolution dated August 28, 2014 decided to grant the revised pay scale as per ROPA, 2009 of the Kolkata Municipal Corporation from the month of August, 2014.

16. At the time of hearing, the learned advocate for the appellant referred to Clauses 7 and 11 from ROPA, 2009, in support of the contention that the appellant was entitled to receive the benefits of ROPA, 2009 with effect from January 1, 2006 being the effective date of ROPA, 2009. The learned Single Judge observed in the impugned judgment and order that Clause 7 of the ROPA, 2009 related to fresh recruits appointed on or after January 1, 2006. The appellant was appointed much earlier, sometimes in 1986. Therefore, Clause 7 was not applicable in respect of the appellant.

17. Clause 7 of the Kolkata Municipal Corporation Revision of Pay & Allowance Rules, 2009 is reproduced here which reads:

“7. Fixation of pay in revised pay structure of employees appointed as fresh recruit on or after 1st day of January, 2006- (1) *The pay of direct recruits to a particular post carrying a specific grade pay shall be fixed on or after the 1st day of January, 2006, at the entry level pay in the pay band as indicated in Part-E of Schedule I to this resolution.*
 (2) *The provisions of sub-para (1) shall also be applied in the case of those recruited between 1st day of January, 2006 and the date of publication of this Resolution.*
Provided that.....”

18. Therefore, on a plain reading of the provisions of Clause 7 of the Rule of 2009, we are in complete agreement of the findings of the learned Single Judge to the effect that such clause is not applicable in the case of existing employees. The appellant was admittedly an existing employee having been appointed in the year 1986. At no stretch of imagination, she was a fresh recruit in terms of sub-para (1) or sub-para (2) of Clause 7 of the Rules of 2009.

19. The other contention of the appellant is that the respondent authorities decided to implement the ROPA 2009 in complete violation of Clause 11 of the ROPA Rules of 2009 of the Kolkata Municipal Corporation. Clause 11 of the Rules of 2009 is set out as under:

“11. Payment of arrears.- (1) Notwithstanding anything contained elsewhere in this Resolution, or in any other Resolution or order for the time being in force, no arrears of pay to which an

employee may be entitled in respect of the period from 1st day of January, 2006 to the 31st day of March, 2008, shall be paid to the Employee.

(2) (a) The arrears of pay to which the Employee may be entitled to in respect of the period from 1st day of April, 2008 to 31st day of March, 2009, shall be paid in three consecutive equal yearly installments in cash from the year 2009-2010.

(b) An employee, who retired on any date between 1st day of January, 2006 to the 31st day of March, 2008, shall not be entitled to any arrears of pay for the period up to 31st day of March, 2008.

(c) An employee, who retired between the periods from the 31st day of March, 2008, to the 1st day of April, 2009, but before publication of this Resolution in the Official Gazette, shall receive arrears of pay for the period from the 1st April, 2008 to the date of his retirement, in cash.

Explanation”

20. The learned Single Judge considered the provisions of Clause 11 of the Rule of 2009 and held that the provisions of such Clause provided for payment of arrears of pay for the periods specified therein and held the same to be not applicable to the employees of the respondent Cooperative Society. The respondent Cooperative Society, in its wisdom, decided to implement the recommendations from August 2014. The periods contemplated in Clause 11 of the Rule of 2009 refers to the periods prior to the date of implementation of ROPA 2009 by the respondent Cooperative Society. Sitting in writ jurisdiction, the Courts are not expected to substitute its views with

the decisions taken by a competent authority unless a manifest error, telling upon the fundamental rights of the petitioner or a class is demonstrated.

21. The impugned judgment and order has noted that the provisions from ROPA, 2009 are adopted by the employer Cooperative Society as a guideline to pay the revised pay scales to its existing employee which includes the petitioner but from the month of August, 2014. As noted above, the respondent society, upon consideration of the report submitted by the Deputy Registrar of Cooperative Societies and taking stock of the financial stability of the respondent society, took a conscious administrative decision to implement the recommendations of ROPA 2009 with effect from August 2014. The ROPA Rules, 2009 of the Kolkata Municipal Corporation provided for arrears to be paid to its employees for the periods mentioned in Clause 11 thereof whereas, the respondent Cooperative Society chose not to pay any arrears for the period prior to the date of implementation of the recommendations. Such decision was equally applicable as against each and every employee of the society concerned. In that view of the facts, we are not in a position to hold the decision of the Cooperative Society is bad on the anvil of violation of fundamental rights of the employees including the appellant.

22. Therefore, in the light of discussions made hereinbefore, we find no reason to interfere with the impugned judgment and order. We affirm the same.

23. Consequently, the instant appeal being **APO No. 49 of 2025** along with connected applications, if any, is hereby dismissed without any order as to costs.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

25. I agree.

[DEBANGSU BASAK, J.]