Judgment Dated: 15-10-2026
WBCHCA0120002024

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
WP.CT 53 OF 2024

1. **Union of India,**
   through the Secretary, Ministry of Finance, Government of India, North Block, New Delhi-110001;
2. **Chairman,**
   Central Board of Direct Taxes, North Block, New Delhi- 110001;
3. **The Principle Chief Commissioner of Income Tax,**
   West Bengal & Sikkim, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata – 700069;
4. **Assistant Commissioner of Income Tax (Personnel & Estt), Kolkata,**
   P-7, Chowringhee Square, Kolkata- 700069.

]…PETITIONERS

-VERSUS-

Aloka Sahis,
daughter of Late Ajit Sahis, residing at village Haritaki Bagan, P.O. Kundua Dihi, District – Bankura, Pin – 722102, West Bengal.

]…RESPONDENT

Appearance:
Mr. Sukumar Bhattacharyya,
Ms. Moumita Mondal,
Ms. Oindrila Chatterjee.

...Advocates for the Petitioners

Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
Mr. Abdur Rahim.

...Advocates for the Respondent

CORAM: RAVINDRA V. GHUGE, CJ.
&
OM NARAYAN RAI, J.

RESERVED ON : SEPTEMBER 28, 2026

PRONOUNCED ON : OCTOBER 15, 2026

JUDGMENT (PER: OM NARAYAN RAI, J.):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. This writ petition lays challenge to the orders dated November 12, 2018 and August 29, 2023 passed by the learned Central Administrative Tribunal, Kolkata Bench[1] in OA No. 450 of 2018[2] and R.A. No.06 of 2020 respectively.

3. By the order dated November 12, 2018 the OA filed by the original applicant was permitted to be withdrawn on condition that the original applicant will furnish an undertaking before the writ petitioners that she would acquire Madhyamaik qualification within a period of 5 years in terms of the offer of appointment, failing which the writ petitioners (i.e. the respondents in the OA)

[1] **Hereafter "the Tribunal"**
[2] **Hereafter "the OA"**

would be at liberty to terminate the service of the original applicant after expiry of 5 years from the date of appointment.

4. By the order dated August 29, 2023, the application for review being R.A. No.6 of 2020 was dismissed by the Tribunal.

FACTUAL MATRIX:

5. A summary of the relevant facts, as may be gathered from the material on record, is as follows:-

a. The father of the original applicant was an employee of the income tax department. He died in harness on October 31, 2000.

b. Thereafter, the original applicant made an application for her appointment on compassionate grounds. The Selection Committee of the Income Tax Department, which was constituted for the purpose of examining applications for compassionate appointments, considered the said application and recommended her case for appointment on compassionate grounds.

c. The original applicant was then issued a memorandum (letter of appointment) dated April 04, 2016 by the Joint Commissioner of Income Tax, Headquarters (Personnel & Establishment) thereby offering the original applicant appointment in the post of Multi-Tasking Staff (Trainee)[3]. The said letter clarified that the original applicant would be

[3] **Hereafter "MTS (Trainee)"**

regularised only after attaining the minimum prescribed educational qualification (i.e., matriculation) as the relevant rules.

d. The original applicant accepted the terms and conditions of service as mentioned in the letter of appointment dated April 04, 2016 and joined the post of MTS (Trainee) on May 02, 2016.

e. After the original applicant had served for about one and half years, a letter dated December 14, 2017 was served upon her by the Assistant Commissioner of Income Tax, Headquarters (Personnel & Establishment), Kolkata thereby informing the original applicant that as her appointment to the post of MTS (Trainee) on compassionate ground had been made without complying with the due process in terms of the DoPT OM dated December 11, 2009, therefore, in terms of Rule 5 (1) of the CCS (Temporary Services) Rules, 1965 a notice for termination of the original applicant's service had been issued to her. Under the cover of the said letter, a notice of termination of service of even date was also served upon the original applicant. The said notice indicated that the original applicant's services would stand terminated with the expiry of a month from the date of receipt of such notice by the original applicant.

f. The original applicant challenged the said letter before the Tribunal by filing OA 57 of 2018. However, since the said OA was not preceded by any representation to the writ petitioners, the same was disposed of by the

Tribunal by an order dated January 29, 2018 by permitting the original applicant to make a comprehensive representation to the Principal Chief Commissioner of Income Tax, West Bengal & Sikkim[4]. The PCCIT was directed to consider and dispose of the original applicant's representation within a period of six weeks from the dated of receipt thereof with a further direction that status qua as on date should be maintain till disposal of the representation as also for a further period of one week from the date of communication of the result to the original applicant.

g. The original applicant, made a representation before the PCCIT which was considered and disposed of by a speaking order dated March 19, 2018 thereby rejecting the original applicant's request for compassionate appointment. Feeling aggrieved thereby the original applicant approached the Tribunal again by filing OA 450 of 2018. The writ petitioners (i.e., the respondents before the Tribunal) filed their written statement/affidavit in reply[5] to the original application but on November 12, 2018 when the matter was taken up for hearing by the Tribunal the learned advocates representing the respective parties agreed that the OA could be *"permitted to be withdrawn with an undertaking before the respondents that the applicant shall acquire the qualification of Madhyamik within 5 years' time limit in terms of the offer of appointment,*

[4] **Hereafter "the PCCIT"**

[5] **Hereafter "the reply"**

failing which the respondents shall be at liberty to terminate her service in terms of the offer of appointment upon expiry of 5 years' time limit from the date of appointment".

h. More than one year three months thereafter, the writ petitioners (i.e., the respondents before the Tribunal) filed an application for review of the said order dated November 12, 2018 passed by the Tribunal. The same was initially dismissed by the Tribunal by an order dated July 03, 2020 on the ground of delay. The writ petitioners carried the said order to this Court by filing WP.CT 48 of 2020. The said writ petition was disposed of by a Co-ordinate Bench of this Court by an order dated November 18, 2020 thereby setting aside the Tribunal's order dated July 03, 2020 and requesting the Tribunal *"to take back the application covered by that order and consider the same in accordance with law also noticing the principles of law enunciated in the Full Bench judgment of this Court"* in the case of ***Union of India & Others vs. Central Administrative Tribunal & Another***[6].

i. The Tribunal thereafter heard the matter on remand on August 29, 2023 and dismissed the review application by observing that the same was devoid of merit.

[6] **WP.CT 271 of 2001, decided on October 08, 2002**

j. Feeling aggrieved thereby, the writ petitioners have approached this Court by way of the present writ petition.

SUBMISSIONS OF THE PARTIES:

6. The learned advocate appearing for the writ petitioners submitted that the impugned order dated November 12, 2018 lacks validity in the eye of law as the same was passed on the basis of an invalid concession given the learned advocate representing the writ petitioners before the Tribunal. It was submitted that once a reply had been filed by the writ petitioners (who were the respondents before the Tribunal) asserting that the appointment of the original applicant was non-est in the eye of law since she had been appointed without following the procedure, it was not open to the learned advocate appearing for the writ petitioners to make any concession before the Tribunal that was inconsistent with the stand taken in the reply, without taking any instruction from the writ petitioners.

7. It was then submitted that since the original applicant lacked the minimum educational qualification for the purpose getting compassionate appointment, prior approval of the Secretary, Ministry of Finance, Department of Revenue was mandatory in terms of the scheme for compassionate appointment. It was contended that since such approval was not taken prior to the petitioner being appointed, her appointment was null and void. It was next submitted that

concession of the learned advocate for the writ petitioners could not have cured the invalidity of the appointment.

8. It was then argued that the review application of the writ petitioners was not considered by the Tribunal at all. Instead, the Tribunal dismissed the same on the specious ground that it was not permissible for the Tribunal *"to act as an appellate authority in respect of the original order by hearing the matter afresh in a review application to facilitate a change of opinion on merits"*.

9. It was further submitted that since the order dated November 12, 2018 disposed of the OA only on the basis of the oral agreement of the learned advocates representing the respective parties before the Tribunal therefore, while deciding the application for review the Tribunal was necessarily required to ascertain as to whether the consent or concession granted by the learned advocate for the writ petitioners was valid or not. It was argued that there was no room for the Tribunal to take any decision on the merits of the case while deciding the review application.

10. *Per contra* the learned advocate appearing for the original applicant supported the orders impugned herein and submitted that the petitioner had acquired the requisite minimum qualification within the period of five years from the date of her appointment as indicated in the letter of appointment dated April 04, 2016.

11. It was contended that the original applicant had done whatever was doable at her end and even if there was any procedural lapse the same was attributable to the writ petitioners. It was argued that the original applicant should not be made to suffer for the fault on the part of the writ petitioners.

ANALYSIS & DECISION:

12. Heard the learned Counsels appearing for the respective parties and considered the material on record.

13. The order dated November 12, 2018 was passed by the Tribunal on the basis of an oral agreement and oral concession of the learned advocates representing the respective parties. It now *well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement*[7] and that *advocates are not entitled to make concessions or give any undertaking to the court without express instructions from the client*.[8] That being the legal position, if it is alleged that an order passed by a Court is based on it invalid and unauthorised concession, it would be the duty of the Court to assess the worth of such an allegation and to right the wrong by using its inherent power to act *ex debito juticiae*.

[7] **Himalayan Coop. Group Housing Society vs. Balwan Singh & Others, (2015) 7 SCC 373**

[8] **Bar of Indian Lawyers vs. D.K. Gandhi PS National Institute of Communicable Diseases & Another, (2024) 8 SCC 430**

14. The review application clearly mentions that the learned advocate representing the writ petitioners had no authority to make such concession permitting the original applicant to continue in service on the basis of the undertaking that she would acquire the requisite minimum educational qualification within a period of five years in terms of the letter of appointment. It has been the consistent case of the writ petitioners that the authority to engage candidates lacking the minimum educational qualification rests with the Secretary of the Revenue Department. Yet, the Tribunal has not dealt with such aspect of the matter at all while dismissing writ petitioner's review application. The order simply records thus:-

> *"**2**. The reason assigned by the review applicant herein (i.e. the original respondents) is that the applicant did not possess requisite qualifications at the relevant time and therefore he ought not to have been granted time to pass Madhyamik Exam and obtain a certificate thereof. However, this submission is not tenable since it is brought to the knowledge of this Tribunal that the original applicant has already been allowed to pursue his studies and that he has already passed the requisite examination.*
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> ***3**. In the light of above, we do not find any substantial ground in the present application for review of the order passed by this Tribunal. At this stage, it is apt to mention that the scope for judicial review is very limited and it is not permissible for this Tribunal to act as an appellate authority in respect of the original order by hearing the matter afresh in a review application to facilitate a change of opinion on merits. Bearing in mind the said principle laid down by the Hon'ble Apex Court in various judgments, this Tribunal is of the considered view that the submission of Learned Counsel for the review applicants, if accepted, will amount to substituting the view already taken by this Tribunal in the order under review. Thus, the submission of the applicant is not acceptable. It cannot be said that the finding recorded by this Tribunal in order under review is based on any misconception of fact. This Tribunal finds that*

there appears to be no error apparent on the face of record justifying the exercise of power under sub-clause (f) of sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985.

In view of the above discussions and in the light of the law laid down by Hon'ble Apex Court, the review application is devoid of merit and accordingly, the same is dismissed. No costs."

15. The aforesaid terse order of the Tribunal clearly reveals that it has rather trod a different path. The orders impugned therefore deserve to be set aside. In such a situation, the easiest way for us to close the issue would have been to remand the matter back to the file of the Tribunal for a fresh consideration. However, looking at the following facts of the case, we deem it fit to deal with the matter differently, without remitting it back to the Tribunal for a fresh litigative round:-

a) The original applicant being a lady seeking compassionate appointment after the death of her father has already achieved the required minimum educational qualification within the time indicated to her in the appointment letter issued to her ;

b) She is not at fault in the procedural lapse in her engagement (as would be apparent from the facts delineated hereinabove as well as the reasons given hereunder);

c) The litigation has already spanned over eight years (in view of two original applications by the original applicant, one review application by the writ petitioners and an in between writ petition by them which led to rehearing of the review application) and

d) There is no involvement of fraud or any other malpractice in the engagement of the original applicant.

16. It is evident from the speaking order dated March 19, 2018 impugned before the Tribunal that the original applicant's case for compassionate appointment was recommended by a selection committee constituted for such purpose and that the petitioner was offered appointment *"under the Cadre Control Authority of the Pr. Chief Commissioner of Income Tax, West Bengal & Sikkim"*.

17. The said speaking order further reveals that upon having accepted the appointment the original applicant wrote a letter dated November 02, 2016 to the PCCIT requesting the said authority to relax the condition of threshold educational qualification up to the 10th standard required for MTS post. The said order indicates that since the PCCIT did not have authority to relax the condition as regards educational qualification the petitioner's request was referred to the Central Board of Direct Taxes. It was only then that the CBDT pointed out that the original applicant's appointment was *dehors* the procedure and directed the PCCIT to terminate of the appointment of the petitioner with liberty to forward a fresh application of the applicant along with all details and facts to the CBDT if it was felt that the case was meritorious.

18. The aforesaid gamut of events clearly indicates that the original applicant was never at fault at all. However, it cannot also be ignored that in matters

relating to compassionate appointment the scheme governing such appointment rules supreme. In the case at hand, para 6(B)(b) of the scheme for compassionate appointment is relevant. The same is quoted herein below:-

> *"(b) In exceptional circumstances Government may consider recruiting persons not immediately meeting the minimum educational standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum qualification prescribed under the recruitment rules. The emoluments of these trainees, during the period of their training and before they are absorbed in the Government as employees, will be governed by the minimum of the-1S pay band Rs.4440-7440 without any grade pay. In addition, they will be granted all applicable Allowance, like Dearness Allowances, House Rent Allowance and Transport Allowance at the admissible rates. The same shall be calculated on the minimum- IS pay band without any grade pay. The period spent in the-1S pay band by the future recruits will not be counted as service for any purpose as their regular service will start only after they are placed in the pay band PB-1 of Rs.5200-20200 along with grade pay of Rs.1800. (**Para 1 of O.M. No.14014/2/2009-Estt.(D) Dated the 11th December, 2009**)*
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> ***Note** In the case of an attached/subordinate office, the Secretary in the concerned administrative Ministry/Department shall be the competent authority for this purpose."*

19. The aforesaid provision indicates that persons who do not meet the minimum education standard may be engaged as trainees by the Government and the Secretary in the concerned Administrative Ministry/Department would be the competent authority for such purpose.

20. In the present case, admittedly, the original applicant lacked the threshold educational qualification and the decision to engage the petitioner as MTS (Trainee) was not taken by the relevant Secretary. Looking at the case from such

an angle the petitioner's appointment cannot be said to be valid. Yet, as indicated earlier, the CBDT had directed the PCCIT to forward the fresh application of the original applicant to it for consideration, if the original applicant's case was meritorious. It, therefore, appears that all was/is still not lost for the original applicant.

21. Since, a lot of time has already passed and the fault is not of the original applicant, this Court is of the view that instead of calling upon the original applicant to file a fresh application, her case file lying with the writ petitioners should itself be sent to the CBDT for the consideration grant of *ex post facto* approval to the original applicant's case. Needless to mention that the competent authority would also consider the fact that the original applicant has acquired the minimum qualification within the time indicated in the appointment letter issued to her.

22. We are conscious of the legal position that an appointment made without prior approval of competent authority is a nullity[9] and it is precisely for this reason that we are not passing any order directing regularisation of the original applicant but sending the matter to the competent authority for considering grant of *ex post facto* approval to the original applicant's appointment.

23. The PCCIT shall take steps to forward the case file of the original applicant to the CBDT in terms of this order within two weeks from date and

[9] **Union of India & Another vs. Raghuwar Pal Singh, (2018) 15 SCC 463**

the competent authority i.e. the Secretary, Department of Revenue, Ministry of Finance shall take a decision on the original applicant's appointment within two weeks thereafter.

24. WP.CT 53 of 2024 stands disposed of. No costs.

25. Rule is made absolute.

26. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

[OM NARAYAN RAI, J.] **[RAVINDRA V. GHUGE]**
CHIEF JUSTICE