

State of West Bengal and Others

Vs

Debdas Kumar and Others

With

State of West Bengal and Others

Vs

Kamal Kumar Bhadra and Others

Civil Appeal Nos. 1196 of 1986 and 830 of 1991

(L. M. Sharma, Smt. M. S. Fathima Beevi JJ)

19.02.1991

JUDGMENT

M. FATHIMA BEEVI, J. –

1. The West Bengal Services (Revision of Pay and Allowance) Rules, 1970 (hereinafter referred to as '1970 Rules'), issued in exercise of the power conferred by the proviso to Article 309 of the Constitution of India, vide Notification No. 5212.F dated December 30, 1970 on the basis of the Pay Commission Report specified the revised scales of pay of the government employees in various departments with effect from April 1, 1970. Schedule I of the 1970 Rules relates to services generally.

2. The Government of West Bengal issued Notification No. 10303.F dated November 19, 1974, amending the 1970 Rules. The notification material for the purpose of these cases is set out below :

"Notification No. 10303.F, Dated November 19, 1974###

In exercise of the powers conferred by the proviso to Article 309 of Constitution of India, the Governor is pleased to direct that the following amendment shall be made in the West Bengal Services (Revision of Pay and Allowance) Rules, 1970, published with Finance Department Notification No. 5212.F, dated December 30, 1970, as amended from time to time, namely :

Amendments

In Scheduled I, Part B, to the said rules the following amendments shall be made :

I. In the cadre of Assistant Engineers under different departments, the Intermediate Selection Grade shall be at 15 per cent of the cadre in the scale as shown in column (3) of the Schedule.

II. In departments/offices having services/posts as shown in column (i) in the scale as

shown in column (2) of the Schedule, there shall be no Intermediate or New Selection Grade as the case may be at 10 per cent of the services/posts (except in the cadre of Assistant Engineer) in the scale as shown in column (3) of the Schedule.

III. From August 1, 1974, the New/Intermediate Selection Grade shall be raised to 15 per cent, from 10 per cent.

IV. (i) Sub-Assistant Engineers having Engineering Degree shall have an initial start in the existing scale of Rs. 300-600 at the stage of Rs. 360 per month. They will also get the benefit of age relaxation for direct recruitment either through the Public Service Commission or for ad hoc appointments.

(ii) All Test Relief Overseers and other diploma holder Engineers will henceforth be termed as Sub-Assistant Engineers.

(iii) Sub-Assistant Engineers with LEE who have supervisor's licence from the Commerce and Industries Department will get a qualification pay of Rs. 50 per month.

(iv) Gazetted status is hereby conferred on the members of the Subordinate Engineering Services and all Sub-Assistant Engineers.

V. The existing scale, namely Rs. 375-10-415-15-610-20-650 prescribed for the members of the non-gazetted Health Service having MBBS, or MMF qualifications shall be changed to Rs. 357-10-415-15-610-20-650 (E.B. after 8th and 18th stages) higher initial start at Rs. 450.

VI. All Licentiate Medical Officers in the West Bengal Health Service (Non-Gazetted) who have completed 10 years of service shall be eligible for appointment in the West Bengal Health Service (Gazetted) within the existing cadre strength of the basis grade provided they are found suitable for the basis grade in consultation with the Public Service Commission.

VII. The New or Intermediate Selection Grades sanctioned above shall be admissible after 10 years of service in the grade next below.

VIII. Unless otherwise stated above and in the Schedule, these amendments shall be deemed to have come into effect from First day of March, 1974.

IX. The Notifications Bearing No. 2194.F, 2195.F and 2197, dated March 11, 1974, stand cancelled.

X. No prior consultations with the Public Service Commission shall be necessary for making appointments to New/Intermediate Selection Grades sanctioned in this notification."

3. The said notification contained a Schedule. The relevant items dealing with Engineering is provided as follows :

Schedule Service/Posts Existing scale New/Intermediate Selection Grade Rs. Rs.1.

Engineering Services/Posts(i) Assistant 475-30-685-35-1000-50-1150, 825-50-875-60-1415 Engineer with selection grade for 5 per cent of the cadre on 1150-50-1350(ii) Executive 825-50-875-60-1475 1535-60-1775 Engineer(iii) Sub-Assistant 300-10-430-15-600 with 560-20-700-25-825(a) Engineer higher initial start at Rs. 300##

4. The respondents in Civil Appeal No. 1196 of 1986 and the respondents in the other civil appeal arising out of SLP (Civil) No. 5298 of 1987 are diploma holder Engineers employed in various departments of the Government of West Bengal in the post of Operator-cum-Mechanics/Electricians etc. in the scale of pay of Rs. 230-425. These respondents filed two writ petitions bearing No. C.R. Nos. 6053(W) of 1978 and C.R. No. 6593(W) of 1978 before the High Court of Calcutta, claiming that by virtue of sub-para (ii) of Para IV of the Notification No. 10303.F dated November 19, 1974, the writ petitioners who are diploma holders in Engineering are to be termed as Sub-Assistant Engineers and given the benefit of that post and the scale of pay of Rs. 300-600. They contended inter alia that the benefit of the aforesaid notification was given to similarly situated persons in the other departments of the Government of West Bengal and the writ petitioners employed in the Agriculture Department had been subjected to discriminatory treatment.

5. The State Government contended before the High Court that sub-para (ii) of Para IV of the said notification applies only to the Overseers, Estimators and Sub-overseers already holding the scale of pay of Rs. 300-600 and not to Operator-cum-Mechanics/Electricians etc. like the writ petitioners whose scale of pay is Rs. 230-425. According to the State, the said notification was merely one changing the designation of various technicians and engineers having scale of pay of Rs. 300-600 but having different designations and was meant to give uniformity of designation to all the aforesaid officials in the same scale of pay of Rs. 300-600. It was also the contention of the State that they being Operator-cum-Mechanics whose recruitment qualifications is much less than the diploma in Engineering, the writ petitioners cannot or are not entitled to be re-designated as Sub-Assistant Engineers. These contentions were repelled by the learned Single Judge who by judgment dated September 19, 1979, allowed the writ petitions. In the judgment, Sabyasachi Mukharji, J. (as he then was) held as under :

"Now it is important to emphasise that the said notifications covered 'other diploma holder Engineers'. Now, if those who were Engineers or those for whose recruitments qualification of being Engineers was essential there was no necessity to indicate that they should henceforth be termed as Sub-Assistant Engineers. They are Engineers, Sub-Assistant or otherwise, before they were called by the deeming provision of the amended notifications referred to hereinbefore."

6. In construing sub-para (ii) of Para IV of the said notification, the learned Judge said thus :

"The aforesaid clause in the notifications can only mean, in my opinion, that even though the persons who come within the purview of this amended clause of the notification will for the limited purpose of their pay, allowances and other financial emoluments be termed from the date of coming into operation or from the mentioned in the Notification of 1974 that is to say from March 1, 1974 as Sub-Assistant Engineers though they are, in fact, not Engineers. That in my opinion, is clear from the language used."

7. The learned Single Judge noticed that the history preceding the notification supported the clear

language used and persons holding different positions became by virtue of the notification entitled to be termed as Sub-Assistant Engineers irrespective and independent of whether by fortuitous circumstances some of the incumbents who got the benefits of the said notification are also qualified Engineers. Accordingly, it was held that the writ petitioners come within the purview of the notification for the purpose of the pay scale and the rule was made absolute.

8. The State Government carried the matter in appeal. The Division Bench of the High Court vide judgment and order dated April 19, 1985, however, affirmed the judgment while holding that sub-para (ii) of Para IV of the Notification dated November 19, 1974 cannot be constructed to include the Operator-cum-Mechanics/Electricians who are holders of diploma in Engineering and drawing the scale of pay of Rs. 230-425. The appeal was dismissed with the observation that the writ petitioners should have been admitted to the benefit of the scale of pay of Rs. 300-600 with higher initial start long before others holding the same position as the writ petitioners have been granted the benefits and that great injustice had been done to the writ petitioners by keeping them in the panel since 1974 without taking any steps for their appointments to the post of Sub-Assistant Engineers although others have been appointed to the said post in implementation of the impugned notification.

9. Being aggrieved by the appellate judgment, the State has moved this Court under Article 136 of the Constitution. Leave is granted in SLP (C) No. 5298 of 1987.

10. The main contention urged on behalf of the appellants is twofold. It is contended that the Division Bench having come to the specific conclusion that the notification in question is not applicable to the respondents herein, the writ petitions ought to have been dismissed. The further contention is that the appointment of 17 other persons without considering the case of the respondents even if irregular cannot be the basis for making the notification applicable to the respondents.

11. Before considering these propositions put forward by Mr. Hegde, Additional Solicitor General, appearing for the appellants, we shall dispose of the preliminary objection raised by Mr. P.P. Rao, counsel for the respondents it was pointed out that no appeal has been preferred by the State of West Bengal against the judgment dated June 25, 1982 in the case of Ranjit Kumar Ghosh v. State of W.B., being C.R. No. 923(W) of 1980, granting similar relief and that the rule of law has become final so far as that matter is concerned. Relying on the decision of this Court in Chief Secretary to Govt. of A.P. v. V.J. Cornelius [(1981) 2 SCC 347 : 1981 SCC (L&S) 394 : (1981) 2 SCR 930], it was argued that the State cannot agitate the case of only few others. It is not disputed that the judgment against which no appeal has been preferred is only based on the judgment in the main case which is now pending before us for consideration. This Court in State of Punjab v. Joginder Singh [1963 Supp 2 SCR 169 : AIR 1963 SC 913], where a similar objection was raised overruled the same observing at pages 177-78 thus :

"In our opinion, the true position arising, if the present appeal by the State Government should succeed, would be that the finality of the orders passed in the other three writ petitions by the Punjab High Court would not be disturbed and that those three successful petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed. That however would not help the present respondent who would be bound by our judgment in this appeal and besides, so far as the general law is concerned as applicable to everyone other than the three writ petitioners (who would

be entitled to the benefit of decisions in their favours having attained finality), the law will be as laid down by this Court. We therefore overrule the preliminary objection."

12. It appears that this pronouncement was not noticed in Cornelius case [(1981) 2 SCC 347 : 1981 SCC (L&S) 394 : (1981) 2 SCR 930] where the facts were also not identical. We have, therefore, no hesitation in overruling the preliminary objection.

13. The appellants, in our opinion, cannot however, succeed on the merits. The basis of the respondents' claim is that they are diploma holder Engineers who are to be designated as Sub-Assistant Engineers for the purpose of the revised pay scale by virtue of the Notification dated November 19, 1974. The learned Single Judge had construed the expression 'other diploma holder Engineers' in clause (ii) of Para IV of the said notification as covering persons like the respondents who are holders of diploma in Engineering. The Division Bench in holding a contrary view overlooked the fact that the posts of Overseers, Estimators and Sub-Overseers were already covered under the category of Sub-Assistant Engineers even under the unamended rules and were in the pay scale of Rs. 300-600 whereas the respondents holding the post of Operator-cum Mechanics/Electricians were diploma holder Engineers in the scale of pay of Rs. 230-425. As noticed by the learned Single Judge, the reasons for amending the 1970 Rules by the Notifications dated March 11, 1974 and November 19, 1974 was the decision of the government to remove the anomalies in the existing rule so as to attract men of quality and also with a view to remove frustration among those having specialised knowledge of a technical nature. This factual background was not considered by the Division Bench while considering the scope of the amended provisions. The appellants admitted that in 1970 the pay scale of Overseers and Sub-Overseers was revised and both Overseers and Sub-Overseers were brought within the scale of Rs. 300-600. The Division Bench has recorded a finding to the effect that the Overseers, Estimators and Sub-Overseers were already included in the categories of Sub-Assistant Engineers under Schedule I Part B of the 1970 Rules even before the same was amended by the notification.

14. The persons brought under the category of 'other diploma holder Engineers' can only be the persons like the Operator-cum-Mechanic/Electrician with diploma in Engineering and working in various departments in the Engineering Service. It is to be noticed that the respondents have been absorbed in the posts of Operator-cum-Mechanics after having attended to the training sponsored under the scheme 'Training of Educated Unemployed Youths' in the operation of river lift, deep tubewells and shallow tubewells etc. Clause (iv) of Para IV of the notification which states that gazetted status is conferred on the members of the Subordinate Engineering Services and all Sub-Assistant Engineers also relates to these two categories, that is, the Overseers, Sub-Overseers and Estimators who are already members of the Sub-ordinate Engineering Service and the 'other diploma holder Engineers' now termed as Sub-Assistant Engineers.

15. It has been contended for the appellants that by construing the notification as including Operators-cum-Mechanics in the lower time scale as Sub-Assistant Engineers and giving them a higher scale, there would be a division amongst the Operators-cum-Mechanics in the matter of their pay scale and such an anomaly would not have been contemplated by the rule makers. There is no force in this contention. It is well settled that difference in pay of employees belonging to the same cadre post or educational qualification is constitutionally valid and permissible and is not violative of Articles 14 and 16 of the Constitution. The post of Sub-Assistant Engineer is a direct recruitment post. It appears that the Division Bench assumed that the post of Sub-Assistant Engineers were ultimately a promotional post for the Operators-cum-Mechanics through intermediary promotions in

intermediary grades. This is incorrect. Under the Rules, the post of Sub-Assistant Engineer is not at all a promotional post for any categories of employees in the State, on the contrary, it is a direct recruitment post. It is not contested that 17 other employees similarly placed as the respondents herein were given the benefits of the said amended notifications and were conferred both status of Sub-Assistant Engineers and also the pay scale thereof for the reason that they were also diploma holder Engineers though they were not in the pay scale of Rs. 300-600. This a concurrent finding that these respondents have been discriminated and the State Government had acted arbitrarily without any rational basis by conferring benefits of the notification to 17 other employees in other departments while denying the said benefits to the said respondents in the Agriculture Department.

16. It had been brought to the notice of the court that the Operators-cum-Mechanics would be absorbed in the existing vacancies in the category of Sub-Assistant Engineers since injustice had been done to the respondents by keeping them in the panel since 1974 without taking any steps for their appointments as Sub-Assistant Engineers along with others when such appointments were made and the assurance made before the court. The fact that in implementation of the judgment of the learned Single Judge, the respondents have already been admitted to the benefits of the amended rule, is an additional reason for this Court not to interfere with the impugned judgment.

17. We are, therefore, of the view that both the civil appeals have only to be dismissed. We do so accordingly. The parties are directed to bear their respective costs.

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