

Manish Gupta and Others

Vs

Gurudas Roy

Civil Appeal No. 1467 of 1995

(S. C. Agrawal, Faizanuddin JJ)

09.02.1995

JUDGEMENT

S. C. AGRAWAL, J. :-

1 .Leave granted

2. We have heard learned Counsel for the parties

3. This appeal is directed against the order dated September 7, 1993 passed by the Calcutta High Court in Civil Rule No. 2650 of 1990 whereby the appellants have been guilty of Contempt of Court for having failed to comply with the directions contained in the order dated September 20, 1989 passed by the Division Bench of Calcutta High Court in F. M.A.T. No. 1120 of 1988 dismissal the said appeal against the judgement and order dated March 10, 1988 passed by a learned single judge in Civil Rule No. 561 (W) of 1984. By the impugned order the learned judges of the High Court, after holding that the appellants are guilty of Contempt of Court, have directed:

"However before punishing the contemnors for wilful violation of the order dated 20-9-1989 we wish to give an opportunity to the respondents to purge themselves of their contumacious conducts and accordingly direct the respondents (i) to fix the basic pay of the petitioner as on 26-7-1980 at Rs. 475/- in keeping with the basic pay accorded to Hrishikesh Roy : (ii) calculate the petitioners pay thereafter in keeping with the pay given to Hrishikesh Roy; (iii) grant the petitioner the benefit of the revised scales of pay under the 1990 ROPA Rules and; (iv) pay to the petitioner the amount of pay on such basis within six weeks from the date of this order."

4. The High Court also directed the appellants to pay a sum of Rs.5,000/- to the respondent to be adjusted against the entitlement of the respondent in accordance with the impugned order.

5. The facts giving rise to the filing of the Contempt Petition by the respondent are briefly as under :

The respondent was appointed as a Lower Division Clerk in the pay scale of Rs. 125.200/- in the Office of the Director, Public Vehicles Directorate on September 1, 1965. On May 27, 1969 he joined the Ghosh commission of Enquiry as a Lower Division Assistant in the pay scale Rs. 150-250/-. The said appointment was by way of deputation. On his release from deputation the respondent joined the Home

Department as a Lower Division Assistant on June 4, 1971. He was regularised on the post of Lower Division Assistant with effect from June 4, 1976 by order dated March 21, 1977. In the draft gradation list of Lower Division Assistants of the Home Department as on January 1, 1982 his seniority was shown on the basis of his having been appointed as Lower Division Assistant on June 4, 1971. Feeling aggrieved by his placement in the said gradation list the respondent filed a Writ Petition (Civil Rule No. 361 (W) of 1984) which was allowed by learned single Judge of the High Court by judgement dated March 10, 1988. It was held that the seniority of the respondent on the basis of Lower Division Assistant should be computed with effect from May 27, 1969 when he was sent on deputation to the Ghosh Commission of Enquiry as a Lower Division Assistant. The learned single Judge while allowing the said Writ Petition gave the following directions :-

"The draft gradation list is set aside and quashed. The respondents are directed to determine the seniority of the petitioner on the basis of continuous length of service from 27th May, 1969 and confer upon the petitioner all consequential benefits."

6. The Letter Patent Appeal (F.A.M.T. 1120 of 1988) filed against the said judgement of the learned single judge was dismissed by a Division Bench of the High Court by judgement dated September 20, 1989.

7. During the pendency of the said writ petition of the respondent before the High Court he was appointed as Upper Division Assistant on officiating basis with effect from April 1, 1981. After the decision of the Division Bench of the High Court dated September 20, 1989 order dated January 22, 1990 was passed whereby the pay of the respondent as Upper Division Assistant was refixed. On January 30, 1990 was circulated wherein the position of the respondent was fixed as if he had joined as Lower Division Assistant on June 4, 1971. By order dated July 24, 1990 the respondent was promoted on the post of Upper Division Assistant with effect from July 26, 1980. The said order was passed by antedating the seniority of the respondent on the basis that he was working on the post of Lower Division Assistant with effect from May 27, 1969. By another order dated October 23, 1990 the common Gradation List of Secretariat Upper Division Assistants was revised.

8. Feeling aggrieved by the fixation of his pay the respondent, on August 9, 1990, filed the contempt petition (giving rise to this appeal) in the Calcutta High Court wherein the respondent's complaint was that by order dated January 22, 1990 the pay scale of the respondent had been reduced to a level lower than what he was enjoying prior to order dated September 20, 1989 passed by the Appellate Bench. During the pendency of the said Contempt petition order dated November 8, 1990 was passed whereby the pay of the respondent on the post of Upper Division Assistant was fixed under the pre-1990 scales of pay. This fixation was done pending his exercising the option under West Bengal Services (Revision of Pay and Allowances) Rules, 1990, hereinafter referred to as 'the 1990 Rules'. By another order dated December 27, 1990 relaxation was given under Rule 5 of the 1990 rules to the respondent to exercise his option within 30 days from the date of the issue of the said order. The respondent, however, did not exercise his option and, therefore, his pay was not fixed as per the revised rules. On December 17, 1992 order was passed in the contempt proceedings by the High Court whereby it was recorded that the respondent had exercised his option for the new pay scales and the appellants were directed to recalculate the benefit on the basis of the option exercised. After the passing of the said order dated December 17, 1992, an order dated January 6, 1993 was issued whereby the pay of the respondent was refixed and a sum of Rs. 16,508/- towards arrears for the period from April 1, 1989 to December 31, 1992 was paid to the respondent on

January 15, 1993.

9. The grievance of the respondent in the contempt proceedings was in respect of the following matters :-

- (i) He should have been given promotion on the post of Upper Division Assistant from an earlier date because one Hrishikesh Roy, who admittedly joined the department as Lower Division Clerk several months after the respondent, was promoted as Upper Division Assistant on the same date as the respondent, i.e., July 26, 1980 :
- (ii) There was delay in effecting the promotion;
- (iii) The draft gradation list updated up to March 31, 1989 circulated on January 30, 1990 was in contravention of the order of the Appellate Bench dated September 20, 1989 and the correction in the said gradation list was made after the contempt notice was issued :
- (iv) The basis pay of the respondent, as on May 1, 1991, was fixed at Rs. 2070/- whereas Hrishikesh Roy who was junior to the respondent, was drawing the basic pay of Rs. 2135/- at the time his retirement on March 31, 1991 : and
- (v) The respondent would have been given the benefit of special pay of Rs. 30/- which he had been drawing when he was sent on deputation.

10. The High Court has not accepted the contention urged on behalf of respondent that he should have been promoted as Upper Division Assistant from a date earlier to July 26, 1980 and has held that in the absence of particulars of any employee junior to the respondent being promoted earlier the choice of the same date of promotion as Upper Division Assistant for Hrishikesh Roy and the respondent could not, without more, be faulted. As regards the complaint about delay in the promotion the High Court has observed that though there was about one year's delay from the date of the Appellate Bench's order in effecting the promotion, but the delay in this regard is not so unreasonable as to be contumacious inasmuch as the order of promotion was issued before the Contempt Rule was issued. The contention of the respondent regarding special pay of Rs.30/- was also not accepted and it has been held that the said special pay was withdrawn after the respondent returned from deputation and he had accepted the basic pay from 1979 without such special pay and he could not insist on the addition of special pay now. The appellants have been found guilty of contempt of Court on following grounds :-

- (1) The gradation list corrected up to March 31, 1989 circulated on January 30, 1990 was in contravention of the order of the Appellate Bench inasmuch as in the said gradation list the seniority of the respondent was fixed as if he had joined on June 4, 1971 whereas the direction of the Court was that the respondent should be treated as in service from May 27, 1969. The correction in the gradation list was made after the Contempt Rule was issued and thus the appellants had violated the first direction given by the learned single Judge in the earlier Writ Petition which was upheld by the Division Bench in appeal.
- (2) The second direction given by the Appellate Bench which required the appellant to confer consequential benefit on the respondent was not correctly implemented

because in view of the provisions of Rule 55(4) of the West Bengal Service Regulations, Part I, the respondent was entitled at least to the same pay as Hrishikesh Roy and no reason and explanation had been offered for denying the same to the respondent. The High Court was also of the view that by issuing the order dated January 22, 1990 the appellant had violated the mandate to grant to the respondent consequential benefit which he was enjoying before he was declared successful in the litigation.

11. Before we proceed to examine whether the conduct of the appellants constitutes contempt, we consider it necessary to point out that for the purpose of Civil Contempt it is necessary that there should be wilful or deliberate disobedience of orders of the Court. It has also to be borne in mind that the Appellate Bench has not provided any period for complying with the directions given in the order dated September 20, 1990.

12. As regards violation of the first direction regarding the fixation of seniority of the respondent in the cadre of Upper Division Assistant it may be stated that it is not disputed that the said seniority has been correctly determined by order dated October 23, 1990. All that has happened is that this correction was made after the rule was issued in the Contempt Petition and that the gradation list updated up to March 31, 1989 that was circulated on January 30, 1990 did not give effect to the order of the Appellate Bench dated September 20, 1989 because in the said gradation list the position of the respondent was fixed as if he had joined on June 4, 1971 whereas the direction of the Court was that he should be treated as in service on May 27, 1969. In our opinion, the said conduct of the appellants in circulating the said gradation list on January 30, 1990 cannot be construed as wilful or deliberate disobedience of the order dated September 20, 1989 passed by the Appellate Bench dated September 20, 1989. In order to give effect to the order of the Appellate Bench dated September 20, 1989 the matter of promotion of the respondent as Upper Division Assistant had to be reviewed on the basis of his being treated in service since May 27, 1969. This was done by order dated July 24, 1990 whereby the respondent was promoted as Upper Division Assistant with effect from July 26, 1980. On January 30, 1990 when the gradation list was circulated the date of promotion of the respondent had not been revised and, therefore, the said gradation list was prepared on the basis of the date of his promotion that was operative on January 30, 1990. After the issuance of the order dated July 24, 1990 revising the date of promotion of respondent the seniority of the respondent in the gradation list was corrected by order dated October 23, 1990 on the basis of the revised date of promotion as per order dated July 24, 1990. The fact that during this period between July 24, 1990 and October 23, 1990 the respondent had filed the Contempt Petition and the High Court had issued the rule on the said petition cannot lead to the inference that there was an intention to wilfully disobey the directions given by the Appellate Bench in its order dated September 20, 1989 in the matter of fixation of the seniority of the respondent. In this context, it cannot be ignored that the process of implementation of the directions given by the Appellate Bench had commenced before the filing of the Contempt Petition and the order dated July 24, 1990 revising the date of promotion of respondent to the post of Upper Division Assistant had been passed prior to the filing of the Contempt Petition by the respondent. In these circumstances, it cannot be held that by circulating the gradation list on January 30, 1990 the appellants had violated the first direction given by the Appellate Bench.

13. As regards implementation of the second direction given by the Appellate Bench the High Court has found fault with the order dated January 22, 1990, whereby the pay of the respondent as Upper Division Assistant was fixed after the order of the Appellate Bench dated September 20, 1989. The High Court has observed that by the said order the basic pay of the respondent on the post of Upper

Division Assistant was fixed at a level lower than the basic pay which he was drawing prior to the passing of the order of the Appellate Bench. On behalf of the appellants it was pointed out before the High Court that on his opting for the revised scale of pay under the West Bengal Service (Revision of pay and Allowances) Rules, 1981 with effect from May 2, 1981 the respondent began drawing pay at the rate of Rs. 445/- per month as Lower Division Assistant, but this was subject to verification and correction of the pay statement by the Finance Department and that subsequently the Finance Department fixed his pay at Rs. 430/- per month with effect from May 2, 1981 in the revised scale of pay of Lower Division Assistant. By order dated January 22, 1990 the pay of the respondent was fixed having regard to his officiating promotion as Upper Division Assistant with effect from April 1, 1981 vide order dated June 13, 1988. In the Contempt Petition the respondent has stated:

"By reason of such purported refixation the basic pay of your petitioner will be reduced to Rs. 600/- which is even less than the basic pay of Rs. 600/- which your petitioner has been drawing in May 1989."

14. If the pay as refixed was Rs. 600/- which was also the pay drawn by the respondent in May 1989, it is difficult to appreciate how it can be said that the basic pay of the respondent was reduced as a result of such refixation. The said refixation was done on the basis of the officiating promotion of the respondent as Upper Division Assistant and not on the basis of the order passed by the Appellate Bench on September 20, 1989. Moreover, in the order dated January 22, 1990 it was expressly mentioned -

"This is a provisional fixation of his pay and final fixation will be made as per refixation of the seniority in the U.D. Cases by common cadre wing."

15. The pay of the respondent was, thereafter, refixed in the light of the orders dated July 24, 1990 and October 23, 1990 revising date of his promotion as Upper Division Assistant and his seniority in the cadre of Upper Division Assistant on that basis. In these circumstances, it cannot be said that the order dated January 22, 1990 reflects an intention on the part of the appellants to wilfully or deliberately disobey the directions given by the Appellate Bench in the order dated September 20, 1989.

16. As regards the subsequent refixation of the basic pay of the respondent the High Court has held that the direction given by the Appellate Bench had been disobeyed by the appellants for the reason that his pay was not fixed at the same level as that of Hrishikesh Roy even though Hrishikesh Roy had become junior to the respondent by reason of order dated September 20, 1989 passed by the Appellate Bench. In this connection, the learned Judges have referred to Rule 55(4) of the West Bengal Service Rules, Part I (hereinafter referred to as 'the Rules').

17. Shri G. L. Sanghi, the learned senior counsel appearing for the appellants, has submitted that the High Court has not correctly appreciated the provisions contained in Rule 55(4) and has failed to take note of the proviso to the said Rule which reads as under : -

"55(4) If a Government employee while officiating in a higher post draws pay at a rate higher than his Senior Officer either due to fixation of his pay in the higher post under the normal rules, or due to revision of pay scales, the pay of the Government employee senior to him shall be refixed at the same stage and from the same date his junior draws the higher rate of pay irrespective of whether the lien in the lower post

held by the Senior Officer is terminated at the time of re-fixation of pay subject to the conditions that both the Senior and Junior Officers should belong to the same cadre and the pay scale of the posts in which they have been promoted are almost identical.

The benefit of this rule shall not be admissible in case where a senior Government employee exercises his option to retain unrevised scales of pay, or where the pay drawn by the Senior Officer in the lower post before promotion to the higher post was also less than that of his junior."

18. The main part of Rule 55(4) lays down that in cases where a government employee is drawing pay at a rate higher than his senior officer either due to fixation of his pay in the higher post or due to revision of pay scales the pay of the government employee senior to him shall be re-fixed at the same stage and from the same date his junior draws the higher rate. But in the proviso to the said sub-rule (4) of Rule 55 it has been provided that the benefit of the said rule shall not be admissible in cases where a senior government employee exercises his option to retain un-revised scale of pay of where the pay drawn by the senior officer in the lower post before promotion to the higher post was also less than that of his junior.

19. On behalf of the appellant it has been submitted that in the present case the proviso was applicable because the pay drawn by the respondent on the lower post of Lower Division Assistant before this promotion to the post of Upper Division Assistant was less than that drawn by Hrishikesh Roy and, therefore, the respondent could not claim fixation of his pay on the post of Upper Division Assistant at the same level as enjoyed by Hrishikesh Roy. It has been pointed out that Hrishikesh Roy joined service on the post of typist on July 28, 1958 much prior to the respondent who joined as Lower Division Clerk in the same pay scale as Hrishikesh Roy, i.e., Rs. 125-200/- on September 1, 1965 and that the basic pay of Hrishikesh Roy on the post of typist on April 1, 1968 was Rs. 137/- per month while the basic pay of the respondent when he joined service on September 1, 1965 was Rs. 125/- per month and that on July 26, 1980 when the respondent and Hrishikesh Roy were promoted as Upper Division Assistant the basic pay that was drawn by Hrishikesh Roy as Lower Division Assistant was Rs. 460/- while the basic pay of the respondent on May 1, 1980, prior to his promotion as Upper Division Assistant on July 26, 1980, stood at Rs. 380/- per month.

20. We do not propose to go into the question of interpretation of Rule 55(4) of the Rules. But, at the same time, we cannot say that there is no merit in the submission of Shri. Sanghi that in view of the proviso to Rule 55(4) the respondent cannot claim the fixation of his basic pay on the same level as the basic pay drawn by Hrishikesh Roy. In our view the appellants could reasonably proceed on the basis that in view of the proviso contained in Rule 55(4) of the Rules the pay of the respondent cannot be fixed at the same level as that of Hrishikesh Roy and, therefore, in fixing the basic pay of the respondent it cannot be said that the appellants had wilfully and deliberately disobeyed the directions given by the Appellate Bench in its order dated September 20, 1989. On that view of the matter the learned Judges of the High Court were, in our opinion., not justified in holding the appellants guilty of contempt of court for not complying with the direction of the Appellate Bench regarding fixation of basic pay of the respondent. If the respondent feels that the re-fixation of his pay not been made in accordance with the relevant rules he may, if so advised, pursue the remedy available to him in law for enforcing his rights.

21. The appeal is, therefore, allowed, the order dated September 7, 1993 passed by the Division Bench of the High Court holding the appellants guilty of contempt of court is set aside and Civil

Rule No. 2650 of 1990 filed by the respondent, is dismissed. It is made clear that the dismissal of the Contempt Petition would not preclude the respondent from pursuing any remedy which may be available to him in law in relation to fixation of his pay on the post of Upper Division Assistant. The sum of Rs. 5000/- Paid to the respondent in pursuance of the order of the High Court dated September 7, 1993 , will have to be refunded by the respondent. No Order as to costs.

Appeal Allowed.

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