

State Of W. B.

Vs

Subal Chandra Das and Others

Civil Appeal No. 11566 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

17.11.1995

ORDER

1. Leave granted.

2. This appeal by special leave arises from the Division Bench judgment dated 3-9-1993 of the Calcutta High Court in Matter No. 6332 of 1988. Admitted facts are that 'Moharrir' in the Collectorate of Nadia etc. was initially a feeder post for promotion to the post of Lower Division Clerk. Subsequently, due to spate of litigations Moharrirs were redesignated as Lower Division Clerks. The First Pay Commission had recommended in this behalf thus :

"The scale of pay of Lower Division Clerk is Rs 125-200 and that of Moharrir Rs 100-140. It has been recommended elsewhere the existing posts of Moharrirs should, as far as possible, be converted into posts of Lower Division Clerks. The revised scale recommended for these posts is the revised scale recommended for Lower Division Clerks in District Offices."

3. Acting thereon, the Government issued two orders. After consideration of order dated 18-1-1988, the Government decided that the pay scale of Moharrirs, working in the Regional Offices under the Irrigation and Waterways Department and in the Regional Offices of the Land and Land Reforms Department, would be revised from Rs 180-350 to Rs 230-425 with effect from 1-4-1970 subject to the condition that there would be no arrear adjustment of salary prior to February 1978 and that their pay in the revised scale of Rs 230-425 would be fixed under the provisions of WBS (ROPA) Rules, 1970.

4. Another order dated 13-12-1989 reads as under :

"The Government has been pleased to decide that all the existing posts of Moharrirs, L.R. Act Moharrirs and Copyists held by a person having passed in School Final or its equivalent as the minimum educational qualification and excepting those of the above-mentioned posts which are held by persons not having the educational qualification of School Final or its equivalent in the Registration Offices will be designated as posts of Lower Division Clerk.

This order takes effect from 1-7-1989 and henceforth all such new posts to be created to the Registration Offices will be designated as Lower Division Clerk."

5. As a consequence, the posts of Moharrirs have been redesignated as Lower Division Clerks. This

is reiterated by the State in paragraph 19 of the SLP as under :

"The petitioners state that the post of Moharrirs have duly been abolished by virtue of the government orders which were issued in compliance with the order of the Court whereby the post of Moharrirs were held to be equal to the post of LD Clerks. Since the post of Moharrirs have been redesignated as LD Clerks, question of post of LD Clerks being a promotional post as that of Moharrirs does not and cannot arise."

6. Thus, it could be seen that the posts of Moharrirs, though initially feeder posts to the Lower Division Clerks, due to Court orders and recommendation made by the Pay Commission, were redesignated as LDCs and were fused into the posts of Lower Division Clerks. Thereby, there is only one cadre, i.e., Lower Division Clerk.

7. Shri M.P. Verma, learned Senior Counsel appearing for the respondents, has placed before us a letter dated 8-5-1995 addressed by the District Magistrate and Collector, North, 24-Parganas, and on its basis he contended that two cadres are still existing. The letter addressed by the Collector is clearly wrong and it is in conflict with the orders passed by the Government. We have seen the statutory rule also placed before us. Rules were corrected up to 15-10-1987. It is seen that aforesaid orders were reissued thereafter, Therefore, the rules are not in conflict with the orders passed by the Government.

8. The question, therefore would be whether the erstwhile direct recruit LD Clerks would be entitled to higher scale of pay than of promoted LDC. In the impugned order the Division Bench of the High Court directed thus :

"The petitioners should succeed in this writ petition. The respondents are directed to revise the pay scales of the petitioners with retrospective effect from 1-4-1970 and 1-4-1974/1-8-1974 in exercise of the powers conferred by Rule 3-A of the West Bengal Service Rules, Part I and/or Rule 13 of the West Bengal Service (Revision of Pay and Allowance) Rules, 1970 or Rule 15 of the West Bengal Services (Revision of Pay and Allowance) Rules, 1981 or by exercise of their inherent powers in a manner as would ensure that the pay scales of the petitioners as Lower Division Clerks and Upper Division Clerks be higher than the pay scales granted to the Moharrirs for the corresponding periods from 1-4-1970."

9. The admitted position is that for the LDC the existing scale of pay as per the recommendation of the First Pay Commission was Rs 230-425, for selection grade LDC the scale is Rs 310-550 and for UDC the scale of pay is Rs 505-670. These scales of pay were not disputed.

10. The question is whether the High Court was justified to create any intermediate scale of pay between LDC and UDC to the erstwhile direct recruit Lower Division Clerks. The contention of Shri Verma is that Moharrirs, who were holding lower scale of pay prior to their being fused into the category as LDC, are getting higher scale of pay as LDCs, while the direct recruit LDCs are stagnated at the same scale of pay. Therefore, the High Court was justified in directing to create intermediate scale of pay. We find no force in the contention. It is seen that once Moharrirs have been redesignated as LDCs and fused into category of LDCs, all become a class. It would appear that in an earlier litigation filed by the parties, inter se promotion between the Moharrirs and LDCs as UDC was considered and High Court in a writ petition had directed the Government to prescribe 1 : 1 ratio between Moharrirs and LDCs for promotion to the posts of UDCs. The state Government

had acted upon and issued rules in that behalf. Therefore each source, until exhausted, has a channel of promotion to the within their respective 50% quota.

11. On the Moharrirs being integrated as LDCs, no further distinction or discrimination in the scale of pay or promotion chances between Moharrirs and the direct recruit LDCs is maintainable. All are now entitled to get the same scale of pay and other service benefits. It would appear that in some instances some of the Moharrirs, due to length of service, are getting higher pay. In fixing their scale of pay as LDCs, their previous higher pay due to increments was needed to be protected as special pay and seems to be the subject-matter of litigation pending before the High Court. Therefore, we need not go into that question. It is also further contended that the direct recruit LDCs are stagnated on account of the entry by the Moharrirs which caused hardships to the promotees. As noted earlier, prescription of the ratio of 1 : 1 has taken care of the hardship, if any. We do not, therefore, think that the High Court was right in giving the impugned directions.

12. The appeal is accordingly allowed. The order of the High Court is set aside. Parties are directed to bear their own costs.