

Municipal Commissioner, Calcutta Municipal Corporation and Others

Vs

Pijush Kanti Das and Another

Civil Appeal No. 2202 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

22.01.1996

JUDGEMENT

G. B. PATTANAİK, J.:-

1. Leave granted.

2. This appeal is directed against the Judgment of the Calcutta High Court in Letters Patent Appeal arising out of the Judgment of the single Judge in Writ Petition No.10421 (W) of 1988. The question that arises for consideration is whether the principle of 'equal pay equal work' has at all got any application to the case in hand following which principle the High Court has directed that respondent No.1 would be entitled to the pay scale of 660-1600, which is the pay scale of the Education Officer under the Calcutta Municipal Corporation ?

3. The Calcutta Municipal Corporation was constituted under the provisions of Calcutta Municipal Corporation Act, 1980 with effect from 4-1-1984. Prior to the constitution of the aforesaid Corporation, there was in existence the Calcutta Corporation under the Calcutta Municipal Act, 1951 and three other Municipalities called Jadhavpur Municipality, South Suburban Municipality and Garden Reach Municipality which had been constituted under the Bengal Municipal Act. By Notification dated 21st of December, 1983 the Governor in exercise of power conferred upon him by sub-section (2A), read with sub-section (2) of Section 120 of the Bengal Municipal Act, 1932 made arrangement for the employees of the erst while Garden Reach Municipality. Admittedly the respondent was serving as 'Education in charge' on a pay scale of 380-910. In the Notification dated 21st of December, 1983, it was clearly stated that for continuing civic services employees of the Commissioner of the Garden Reach Municipality shall, on and from the said date, be taken over by the Corporation and shall continue to serve, on the same terms and conditions of service as in force in the said municipality immediately before the said date under the Corporation until further orders. In other words, the service conditions of employees of Garden Reach municipality including that of the respondent remained unaltered under the Calcutta Municipal Corporation. Notwithstanding the constitution of the Calcutta Municipal Corporation and the merger of all the four municipalities referred to earlier, in view of the disparity in the staffing pattern and the distinction in the functioning of the erstwhile municipalities, the merged municipal units of Jadhavpur. South Suburban and Garden Reach continued to be identified as 'Units' under the Corporation until framing of appropriate rules and regulations. Under the Calcutta Municipal Corporation there were 4 categories of Education Officers namely (1) Asst. Education Officer in the pay scale of 610-1270, (2) Deputy Education Officer in the pay scale of 550-1470 (3) Education Officer in the pay scale of

660-1600 and (4) Senior Education Officer in the pay scale of 1100-1900. Since the respondents as 'Education Incharge' of Garden Reach Municipality was in the pay scale of 380-910 which is much less than the pay scale of Asstt. Education Officer 610-1270, he was given the said pay scale with the designation Education Officer 'Unit'. The said respondent, however, filed the writ petition claiming that he is entitled to the pay scale of 660-1600 meant for Education officer of the Corporation since he is also Education Officer. The said writ petition having been allowed and the appeal against the same to the Division Bench having been dismissed, the present appeal has been preferred.

4. The learned counsel for the appellant apart from bringing it to our notice the Notification of the Governor dated 21st of December, 1983 to which reference has already been made also brought to our notice two circulars namely Circular No.31 of 1985-86 as well as Circular No.35 of 1985-86 which squarely deals with the dispute with regard to the fixation of pay scales. Under Circular No.31 dated 29th June, 1985 it has been clearly indicated that the officers and the employee including the labour staff of the three units viz. Jadhavpur, South Suburban and Garden Reach (erstwhile municipalitiesties) who were in service of the municipalities on 3-1-1984 and also those who have been appointed thereafter in the pay scales of the Units and are continuing in service till date be placed in the comparable posts and pay-scales under Calcutta Municipal Corporation as indicated by designations and pay scales under Annexure-A, B and C respectively for Jadhavpur, South Suburban and Garden Reach Units with effect from 1st day of July, 1985 subject to exercising option by individual employee to come under the recommended designations and pay scales shown in the Annexure A, B and C. So far as the respondent is concerned who was earlier serving as 'Education Incharge' under Garden Reach Municipality approved designation was Education Officer 'Unit' and his pay scale fixed at 610-1270. The Circular No.35 of 1985-86 which was issued on 7th August, 1985 pursuant to the order of the Administrator had been issued as there had been certain changes in designation and/or pay scales in respect of certain posts under the Calcutta Municipal Corporation between the period from 4-1-1984 to 30-6-1985. Even in that Circular while fixing of pay of employees in comparable posts, so far as the post of erst while 'Education In charge' in Garden Reach Municipality, the same has been notified and pay scale of 500-1360 has been given with the designation of Education Officer 'Unit'. But the learned single Judge being of the opinion that the Education Officer 'Unit' discharges the same functions and duties as Education Officer of the Municipal Corporation had directed the Corporation grant him the pay scale of 660-1600 as it admissible to the Education Officer of the Calcutta Municipal Corporation. The Division Bench has also affirmed the said decision having examined the matter on record and after hearing the counsel for the parties. We unhesitatingly come to the conclusion that both the learned single Judge as well as the Division Bench of the High Court have committed gross error in directing the Corporation to grant the pay scale of 660-1600 to the respondent. There is no manner of dispute that before the merger, the respondent as Education Incharge under the Garden Reach Municipality was drawing the pay scales of 380-910 which was much less than the pay scale of Asst. Education Officer under the Calcutta Municipal Corporation. After the merger of the Garden Reach Municipality with Calcutta Municipality Corporation the question arose for posting the employees of the erstwhile municipality against any comparable post. Circular No.31 had been issued and rightly the respondent had been granted the pay scale with the designation as Education Officer 'Unit'. In complete ignorance of the aforesaid Circular the High Court appears to have granted the pay scale of 660-1600 to the respondent which is admissible to the post of Education Officer under the Calcutta Municipal Corporation. By such direction not only the respondent has been given promotion by two hierarchy but also would march over the other Deputy Education Officers under the Corporation. Taking into account the pay which the respondent was getting in the erstwhile

Garden Reach Municipality and his nature of duties, fixing of his pay comparable to the Asst. Education Officer by application of Circular No.31 can neither be said to be arbitrary nor irrational, on the other hand the decision contained therein must be held to be wholly justified. The High Court on the other hand failed to consider the pay scale which the respondent was drawing in the erstwhile Garden Reach Municipality and the duties discharged by him thereunder and merely from the designation of Education Officer jumped to the conclusion that the respondent should be entitled to the same pay scale as is admissible to the Education Officer under the Corporation. The aforesaid conclusion of the High Court on inaccurate premises, and on non-consideration of the relevant materials as well as the Circular No.31 of 1985-86 is thus vitiated and the judgment of the learned single Judge as well as that of the Division Bench has become vulnerable. In the circumstances we set aside the judgment of the Division Bench of the High Court as well as that of the learned single Judge and the writ petition filed by the respondent stand dismissed. This appeal is allowed. No costs. Appeal allowed.