

Calcutta Metropolitan Development Authority

Vs

Ilip Kumar Banerjee and Others

Civil Appeal No. 5270 of 1993

(S. B. Majmudar, M. Jagannadha Rao JJ)

29.04.1997

JUDGMENT

M. JAGANNADHA RAO, J. –

1. This appeal has been preferred by the Calcutta Metropolitan Development Authority (hereinafter called "the CMDA") against the judgment of the Division Bench of the Calcutta High Court in appeal from Original Order No. 1164 of 1988 dated 22-12-1992. Dismissing the appeal the learned Judges confirmed the judgment of the learned Single Judge dated 13-3-1987 in Civil Order No. 466(W) of 1985. The learned Single Judge came to the conclusion that the writ petitioners who were working as Programme Officers under the CMDA and were given the scale of Rs. 470-1230 were entitled to the scale of Rs 660-1600. The said scale was directed to be given with effect from the respective dates of a promotion of the writ petitioners. It was also held that they would be entitled to 50% of the arrears on the basis of such fixation. In this appeal filed by the CMDA, the said view of the Calcutta High Court is challenged on the ground that the Programme Officers working under the CMDA were permitted to draw the scale of a Section Officer namely Rs. 470-1230 and there was no resolution of the CMDA permitting them to draw the scale of Rs. 660-1600. It is also contended for the CMDA that the learned Single Judge as well as the Division Bench were not right in holding that the concession of the learned counsel for the CMDA was to the effect that the writ petitioners were entitled to the scale of Rs. 660-1600.

2. The learned counsel for the appellant CMDA referred to us, among others, the following facts and resolutions of the CMDA : The CMDA was created by the Calcutta Metropolitan Development Authority Act, 1970 which Act was replaced by a subsequent Act of 1972 (12 of 1972). The CMDA provides for the establishment of the statutory authority for the formulation and execution of plans for development of the Calcutta Metropolitan Area, for the coordination and supervision of the execution of such plans and for matters connected therewith or incidental thereto. The terms and conditions of the service of the writ petitioners under the CMDA are governed by the CMDA (Service) Regulations, 1975 framed by the CMDA. The writ petitioners were appointed as Samaj Sevaks/Sevikas and Junior Samaj Sevaks/Sevikas. When the writ petition was filed the petitioners were working as Programme Officers. In the writ petition, they claimed the scale of Rs. 660-1600 instead of Rs. 470-1230 which the CMDA gave them. We shall refer to the relevant resolutions of the CMDA chronologically in this behalf. The agenda for the 74th meeting of the CMDA proposed the creation of posts for implementation of the S. S. B. Programme under CUDP-III with World Bank Aid. For the implementation of the said programme, as suggested by the World Bank, it was proposed to sanction new posts with new scales of pay. The entire area of operation was to be grouped into six zones. The staffing pattern of the Zonal Officer was to comprise of six Zonal Officers with the scale of pay of Rs. 660-1600, two Programme Officers with scale of Section

Officer, 16 Planning Assistants/Programme Assistants with scale of pay of Rs. 425-1050. So far as Zonal Officers were concerned, they were to be filled, as the posts were new, on deputation from Junior WBCS Officers. So far as the two posts of Programme Officers were concerned, they were to be filled by promotion of the existing planning assistants serving in the unit. It may here be noted that the revised scale of pay of Section Officers was Rs. 470-1230. On the basis of the said agenda, the 74th meeting of the CMDA took place on 15-12-1982 and the resolution passed at the said meeting disclosed in para 22 that the authority had approved the proposal for creation of posts for implementation of the S. S. B. Programme under CUDP-III subject to the amendment that the posts in the subordinate offices (Zonal Offices) would be filled up only after the Scheme IDA-II was negotiated successfully with the World Bank. Initially sanction of two posts of Programme Officers was granted by the order dated 15-1-1983 by the CMDA. The agenda for the 76th meeting of the CMDA was then prepared and it shows that the number of posts of Programme Officers were increased from 2 to 23 and the scale of pay was shown as Rs. 470-1230 while the scale of pay of the six Zonal Officers was shown as Rs. 660-1600. The supplementary agenda consisted of four Annexures I to IV. Annexure I dealt with the set-up, Annexure II with the scale of pay, Annexure III with the sanctioned strength of the staff proposed to be sanctioned while Annexure IV contained the financial statement. The agenda also stated that the approval of the CMDA to the administrative set-up and the other annexures pertaining thereto was solicited. The 76th meeting of the Board of CMDA took place on 23-3-1983. Para 7.1 of the resolution at their meeting stated that the CMDA approved the administrative set-up proposed in the agenda with details noted in Annexures I to IV to the supplementary agenda and that the authority had decided to pay the pay scales of the posts only after the Finance Secretary had considered them. Separate approval was given to the supplementary agenda at this 76th meeting on 23-3-1983. After referring to Annexures I to IV of the supplementary agenda, the resolution mentioned that there were 23 posts of Programme Officers in the scale of Rs. 470-1230. Pursuant to Resolution 7 on the supplementary agenda, the CMDA stated on 7-4-1984 that the said resolution was being sent to the Finance Secretary for obtaining his views on the scales of pay proposed for the two categories of posts. The financial implications in respect of the 23 posts of Programme Officers in the scale of pay of Rs. 470-1230 were also communicated. On 25-5-1983 the Finance Department accepted the above pattern of pay scales except in regard to the special pay recommended by the CMDA to the officers at various levels. As regards the pay scales it was stated that the Finance Department had no objection inasmuch as they were in accordance with the pattern of pay scales prescribed in the West Bengal Services (Revision of Pay and Allowances) Rules, 1981 (hereinafter called "the ROPA Rules"). Thereafter, the CMDA passed final orders on 26-3-1984 for creation of 21 posts of Programme Officers in the scale of Rs. 470-1230.

3. It is the case of the writ petitioners in the writ petition that they are entitled to the pay scales of Rs. 660-1600. They rely upon an earlier resolution of the CMDA dated 13-12-1981 by which the CMDA accepted in principle the "adoption" of the West Bengal Services (Revision of Pay and Allowances) Rules, 1981 (the ROPA Rules). The above resolution of the CMDA dated 13-12-1981 requires that the pay scales of CMDA be accordingly revised in line with the West Bengal Services (Revision of Pay and Allowances) Rules, 1981, applicable to West Bengal Government employees and also that the revised pay scales should be deemed to have come into force from 1-4-1981. Relying on the said resolution of the CMDA dated 13-12-1981 the petitioners contend that the pay scale of Programme Officers in the West Bengal Government service (which was governed by the said ROPA Rules) is Rs 660-1600 and, therefore, the petitioners who are also Programme Officers in the CMDA are entitled to the same pay scale of Rs. 660-1600. On the other hand, it is contended for the appellant CMDA that the posts of Programme Officers in the State Government are not a comparable to the corresponding posts of Programme Officers in the CMDA and, therefore, the

petitioners are not entitled to the scale of Rs 660-1600. The learned Single Judge, however, came to the conclusion that in view of the budget estimate appended to the supplementary agenda for the 76th meeting of the CMDA wherein the average monthly pay was taken as Rs 1931 for Programme Officers, it must be presumed that the CMDA accepted the scale of Rs. 660-1600 inasmuch as the same average of Rs 1931 per month was computed for the Zonal Officers whose pay scale was admittedly Rs. 660-1600. The learned Single Judge also referred to an admission made by the learned counsel for the CMDA, Mr. Bagchi, before him to the following effect.

"It is contended by Mr. Bagchi that the Recruitment Rules have not been framed and accordingly the Programme Officers are not entitled to the scale even if such scale was approved. It is however admitted that the pay scale of Rs. 660-1600 was adopted by the CMDA but the approval of the State Government was not obtained."

4. The learned Single Judge then referred to a note in the office file which raised an objection to the grant of scale of Rs. 660-1600 to the Programme Officers of the CMDA on the ground that if such a scale was given to the Programme Officers, then their scale would be equivalent to the scale of their controlling officers, namely, the Zonal Officers. The learned Single Judge then proceeded on the basis that CMDA had admittedly approved the scale of Rs 660-1600 for Programme Officers in the CMDA and that the office note put up thereafter could not affect the position. The learned Judge noted that the corresponding posts of Programme Officers in the Government were entitled to the scale of Rs. 660-1600 as per the ROPA Rules, 1981 and that in view of the CMDA resolution dated 13-12-1981 already referred to wherein the CMDA adopted the scales of the corresponding posts in the Government, the Programme Officers of the CMDA were entitled to the scale of Rs. 660-1600. The learned Single Judge, therefore, allowed the writ petition and granted 50% of the back wages w. e. f the respective dates of their promotion.

5. The appeal preferred by the CMDA before the Division Bench, against the abovesaid judgment, was dismissed. The learned Judges referred again to the admission of the counsel before them to the following effect.

"It appears that CMDA approved the pay scale of Rs. 660-1600 for the Programme Officers and prepared its supplementary budget. Accordingly, the petitioners claim that since CMDA has approved the scale, their pay scale should be Rs. 660-1600. This ought to have been granted to them. The CMDA has submitted that this suggested scale was to be approved by the State of West Bengal. Since that has not been done, the scale cannot be implemented or that the petitioners cannot claim the same scale."

6. The learned Judges then stated that they had gone through the material on record and had found that inasmuch as the CMDA itself had proposed the pay scale of Rs. 660-1600 to Programme Officers, the learned Single Judge was right in directing the CMDA to grant the same. They held that there was no question of approval of the scale by the State Government because the State was also a party to the proceedings at the various meetings of the CMDA, and that the State had not disclosed why such a pay scale should not be granted. In the result the appeal was dismissed.

7. In this appeal, it is contended by the learned counsel for the appellant that the assumption made by the learned Single Judge as well as by the Division Bench that the CMDA had approved the scale of Rs 660-1600 for Programme Officers of the CMDA was factually incorrect and that in fact there was no such resolution. He, further contended that if in fact any such concession was made by the

counsel for the CMDA who appeared before the learned Single Judge or by the other counsel who appeared before the Division Bench, then the said concession could not be relied upon by the writ petitioners unless there was proof that there was in fact a resolution to that effect. The learned counsel referred to the various resolutions of the CMDA made from time to time and pointed out that the CMDA merely approved the scale of a Section Officer i.e. Rs. 470-1230 to be paid to the Programme Officers and that there was no resolution approving the pay scale of Rs. 660-1600. It may be that the scale of Rs 660-1600 was being paid to Programme Officers working in the Government because they are governed by the ROPA Rules but the counsel contended that the duties and functions of the Programme Officers in CMDA are nowhere comparable to the duties and functions of the Programme Officers working in government service. It was pointed out that in the relevant Annexures I to TV to the supplementary agenda of the 76th meeting held on 23-3-1983 by the CMDA, the scale that was approved in Annexure II was the scale of Rs. 470-1230 but that while the budget estimates were being prepared as per Annexure IV of the said supplementary agenda, the multiplicand showing the average monthly pay of Programme Officers was wrongly computed as Rs. 1931 which was, in fact, the multiplicand applicable to the scale of Zonal Officers of Rs. 660-1600. The relevant multiplicand applicable for the scale of Rs. 470-1230 was far less than Rs 1931 per month. It was argued that basing on a mistake in the computation of the budget as shown in Annexure VI to the agenda, the writ petitioners could not claim the scale of Rs. 660-1600. One has to go by Annexure II which dealt with the scales of pay as approved by the CMDA and the said annexure referred to the pay scale of Rs. 470-1230 as applicable to Programme Officers.

8. On the other hand, the learned counsel for the respondents (the writ petitioners) contended that when the learned Single Judge as well as the Division Bench recorded that the counsel for the CMDA had made a concession that the scale of Rs. 660-1600 was approved for Programme Officers, it was not open to the CMDA to file an appeal and contest the said admission recorded in the judgments. The proper remedy for the appellant was to file a review application before the learned Single Judge or the Division Bench inasmuch as this is a dispute as to what had happened in the Court. The proper remedy was not to file an appeal in this Court but to file a review application in the High Court. The learned counsel for the respondents also submitted that the budget estimates adopted an average of Rs. 1931 per month which was applicable to the scale of Rs. 660-1600 and when the budget estimate was so prepared and submitted by the CMDA, it must be taken that the CMDA had approved the scale of Rs 660-1600 for Programme Officers. He also submitted that CMDA being an autonomous statutory authority, there was no question of its seeking the approval of the Finance Department of the State Government. The money for the project was being given by the World Bank and there was no need to seek government sanction. He also submitted that the Finance Secretary was present at the meeting of the CMDA. The learned counsel for the respondents-writ petitioners also relied upon the ROPA Rules and the resolution of the CMDA dated 13-12-1981 and contended that once the CMDA had, by virtue of a resolution, decided to adopt the corresponding scales available for similar posts in the State Government, then the scale of pay mentioned in the said ROPA Rules for Programme Officers namely Rs. 660-1600 was automatically attracted to the posts of Programme Officers in the CMDA.

9. The learned counsel for the appellant as well as for the respondents submitted before us, on 8-4-1997, that the observations of the learned Single Judge and Division Bench recording an admission or concession of the counsel for the CMDA may be set aside and that the matter may be remitted to the Division Bench of the Calcutta High Court for a fresh disposal of the issues involved in the case. In view of this submission made by the counsel on both sides, it has not become necessary for this Court to go into the merits of the case. We have already extracted the relevant portions of the admission or concession made by the counsel for the CMDA before the learned Single Judge and

the Division Bench of the High Court. We, therefore, set aside the observations of the learned Single Judge as well as the Division Bench, in regard to the said admission or concession and the consequential inferences drawn therefrom which resulted in the grant of the scale of Rs. 660-1600 to these Programme Officers. The matter is remitted to the Division Bench of the Calcutta High Court for disposal on the merits of the dispute on the basis that there is no concession of the counsel for the CMDA in regard to the existence of an approval by the CMDA of the scale of Rs. 660-1600 to Programme Officers. Pending disposal of the matter before the Division Bench, there shall be stay of grant of the government scale of pay to Programme Officers in the CMDA. Appeal allowed accordingly, as stated above.

10. In view of the fact that the dispute is an old one, it would be appropriate if the appeal is disposed of expeditiously by the Division Bench, preferably within four months. We should not be understood as having expressed anything on the merits of the dispute between the parties. There shall be no order as to costs.