

Ashok Banerjee (Dead) through Legal Representatives

v.

Secretary, Municipal Affairs Department & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V.
GOPALA GOWDA HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

Civil Appeal No. 7375-76 Of 2005 | 19-09-2013

These appeals, are directed against judgment dated 28-8-2003 of the Division Bench of the Calcutta High Court whereby the appeals filed by the parties questioning the order (Ashok Banerjee v. Calcutta Municipal Corpn., WP No. 4919 (W) of 1998, order dated 30-3-1998 (Cal) passed by the learned Single Judge of the High Court were disposed of and the direction issued for giving effect to the option exercised by the appellant on 24-9-1985 for the posts of Conservancy Sub-Overseer and Conservancy Overseer of Calcutta Municipal Corporation (for short “the Corporation”) was set aside.

The appellant, who is now represented by his legal representatives, joined service in 1971 as Road Sarkar in the Conservancy Department of South Suburban Municipality. In 1973, he was transferred to the post of Tax Collecting Sarkar in the Collection Department. After five years, he was brought back to the Conservancy Department and was posted as Conservancy Assistant Inspector. Till 1981, the pay scales prescribed for the posts of Tax Collecting Sarkar and Conservancy Assistant Inspector were identical. By virtue of the Revision of Pay Scales and Allowances Rules, 1981 (for short “the Rules”), this parity was disturbed and a lower pay scale was prescribed for the post of Conservancy Assistant Inspector. South Suburban Municipality gave an opportunity to the appellant to exercise option for the pay scale of Rs.300-685 w.e.f. 1-4-1981. However, before a decision could be taken on his option, South Saburban Municipality merged with the Corporation. Garden Reach and Jadavpur Municipalities were also merged with the Corporation.

The staff of three Municipalities was proposed to be absorbed on the terms and conditions specified in Circular No.31 dated 29-6-1985, the relevant portions of which are extracted below:

“THE CALCUTTA MUNICIPAL CORPORATION

FINANCE & ACCOUNTS DEPARTMENT

Dated 29-6-1985

Circular No.31 of 1985-1986

The issues relating to (1) bringing the officers and employees of Jadvpur, Garden Reach and South Suburban Units of Calcutta Municipal Corporation under the service condition and also other benefits as are enjoyed by the employees of CMC and (2) determination of comparable posts and pay scales under CMC and placement of the employees of three units in the Corporation pay scales were under active consideration of the authorities for some time past.

The Administrator, Calcutta Municipal Corporation, has been pleased on 28-6-1985 to pass the following orders on the issues stated below:

IssuesOrder

No.1: To bring the officers and employees of Jadavpur, Garden Reach and South Suburban units of CMC under the service conditions and also other benefits as are enjoyed by the employees of CMC(i) That all regular officers and employees including labour staff of the three units (erstwhile Municipalities) who were in service of the Municipalities on 3-1-1984 and appointed thereafter under the units and are continuing till date, be brought under the identical service condition and also other benefits, namely, leave regulation, group insurance, house building advance, etc., as are enjoyed by the employees of Calcutta Municipal Corporation in different categories with effect from 1-7-1985 subject to their exercising individual option in the prescribed form to come under similar service conditions.

(ii) As regards pensionary benefits to the employees of the three units, the order of the Administrator dated 18-5-1985 may remain in force.

No.2: To determine the comparable posts under CMC and to place the employees of three units in the Corporation pay scales. That all the officers and the employees including labour staff of the three units viz. Jadavpur, Garden Reach and South Suburban (erstwhile Municipalities) 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 CMC as indicated by designations and pay scales under Annexures A, B and C respectively, for Jadavpur, South Suburban and Garden Reach units with effect from 1-7-1985 subject to exercising option by individual employees to come under the recommended designations and pay scales shown in the Annexures A, B and C.

Date of option

The last date of forwarding individual option in the prescribed form is fixed up to 31-7-1985.

Annexure D (Option Form)

Employees failing to exercise option within target date will be deemed to have opted for continuing in existing pay scale and designation and service conditions of the erstwhile Municipality.

Option shall be simultaneous and from same date in respect of service conditions and pay scale both and not in parts.

3. Fixation of pay in the comparable posts and pay scales of CMC'

(i) While placing the offices and employees under the comparable designations and pay scale (as per Annexures A, B and C) they may be allowed one increment in the former pay scale or in other words in their existing pay scale and then their basic pay be fitted in the next stage of the recommended pay scale where such pay scale is higher than the pay scale currently enjoyed.

(ii) In the process of fixation, where the grant of one increment in the former pay scale fits in a stage of the recommended higher pay scale.

(iii) In case of employees enjoying special pay, such special pay, first of all, be merged with the basic pay of the existing pay scale and thereafter his pay be fixed at the next stage of the existing pay scale and subsequently, his pay be fitted in the recommended higher pay scale, in the manner as under 3(i) & (ii) above.

(iv) Where by grant of one increment in the former pay scale, the employees falls short of initial pay of the recommended pay scale, of such employees will be fitted at the initial of the recommended pay scale.

(v) Where the existing pay scale and the recommended pay scale of the officers and the employees are identical irrespective of the fact of any change in designation, the basic pay of such employees be advanced one stage upward in such pay scale.

In all cases as mentioned in (i) to (v) above, the subsequent annual increment will be the 1st Day of July, each year.

4. * * *

5. Distribution of certain posts in different pay scales in parity with CMC.

(i) * * *

(ii) Posts of Bailiff: The posts of Bailiff should be distributed in three pay scales, namely:

BailiffRs.300-685(50%)

Senior BailiffRs.360-815(25%)

Sub-InspectorRs.380-910(25%)

in the ratio of 50:25:25 respectively,. Such placement shall take place under a common gradation list for the unit as whole.

Proviso: Action on the recommendation at 5(i) and (ii) above only be taken after completion of option for the recommended pay scales and designations in the posts of Junior Assistant and Bailiff through specific proposals.”

The appellant exercised option for absorption in the Conservancy Department. The option of the appellant was considered by the Joint Municipal Commissioner, who submitted the following proposal:

“In pursuance of the order dated 3-5-1994 of the Municipal Commissioner, relevant option papers as stated at (2) prepage have been obtained from the Borough. These papers are flagged ‘A’, ‘B’ and ‘C’ in the linked file.

The option form at Flag ‘A’ relates to the option exercised by Sjhri Banerjee with effect from 1-4-1981. It bears the signature of the Head of Office/Department dated 3-1-1984. Here he has opted for the scale of Rs.380-685 which is the corresponding scale for the post of Tax Collecting Sarkar. This scale at the relevant point of time was higher than that of the Conservancy Inspector (Rs.245-455). This was before merger with the CMC.

The option form as Flag ‘B’ relates to the option for coming under CMC pay scales and service conditions. Here Shri Banerjee has opted by the designation of Sub-Overseer under the Conservancy Department w.e.f. 4-1-1984 (i.e. the date of merger with CMC). The option form was signed by Shri Banerjee on 24-9-1985, and accepted by the officer in charge of S.S.. Unit. The option could be exercised up to 31-10-1985 as per Circular (35) on 20-5-1996. As the CMC authorities allowed the employees of the added area to exercise fresh option at the time of merger so they may take into account this option arising in ‘B’ for this purpose. This post of Sub-Overseer (4-1-1984) in the pay scale of Rs.360-816 was subsequently upgraded to the post of Conservancy Overseer in the scale of Rs.380-910 vide Circular No. 42 of 1985-1986 dated 6-9-1985 of the CMFA.

The option form at Flag ‘C’ cannot be taken into consideration as it is almost blank.

Therefore, if the option at the time of merger is considered Shri Banerjee’s posting should be considered as Sub-Overseer (Conservancy) w.e.f. 4-1-1984 and as Conservancy Overseer w.e.f. 6-9-1985.

Submitted for favour of orders.

Sd/-

Jt. Municipal Commissioner.”

However, no order was passed by the competent authority on the recommendation of the Joint Municipal Commissioner. The appellant filed Writ Petition No. 4919 of 1998 for implementation of the proposal contained in the note of the Joint Municipal Commissioner. The same was disposed of by the learned Single Judge of the High Court vide order dated 30-3-1998 and a direction was given to the Commissioner of the Corporation to her the appellant and pass a reasoned order.

In compliance with the direction given by the High Court, the Commissioner passed an order dated 12-5-1998 and rejected the option exercised by the appellant for the posts of Conservancy Sub-Overseer and Conservancy Overseer. The order of the Commissioner reads as under:

“Upon hearing the writ petition (Ashok Banerjee v. Calcutta Municipal Corpn.), the Hon’ble Pinaki Chandra Ghose, J. passed an order (Ashok Banerjee v. Calcutta Municipal Corpn., WP No. 4919 (W) of 1998, order dated 30-3-1998 (Cal) to give a hearing to the petitioner and to pass a reasoned order in the matter aftr taking into consideration of the order passed by the Joint Municipal Commissioner dated 25-5-1994 being Annexure ‘E’ in the writ petition within a period of 6 (six) weeks from the date of communication of this order. The writ application was also disposed of.

Heard the petitioner on 4-5-1998 at my Chamber. The petitioner represented through his lawyers Shri Ajit Kr. Barat and Mrs. Keya Banerjee.

Contents of Annexure ‘E’ is that Shri Ashok Banerjee was first appointed a Road Sarkar in the year 1971 and then promoted to the post of Tax Collecting Sarkar in the year 1973. At the time pay scale of Tax Collecting Sarkar and Assistant Conservancy Inspector was same. He was transferred from Tax Department to Conservancy Department in 1978. When the pay scale was

revised in 1981, the post of Assistant Conservancy Inspector was renamed as Conservancy Inspector. The post of Conservancy Inspector was again renamed as Sub-Overseer.

As an Overseer he gave option on 24-5-1994 for the post of Assistant Inspector (Conservancy). The then Joint Municipal Commissioner recommended for consideration of the option form which was effective from 4-1-1984 as a Sub-Overseer (Conservancy) and as Conservancy Overseer with effect from 6-9-1985.

The option form dated 24-5-1994 for the post of Assistant Inspector was submitted by himself having no endorsement of the Head of the Department and thus it was not valid. In the revision of pay scale (1981), pay scale of Tax Collecting Sarkar was higher than that of pay scale of Conservancy Supervisor. Shri Banerjee prayed on 24-6-1982 for placing him in the post of Tax Collecting Sarkar in view of avoiding lower pay scale and the same was accepted in accordance with Order No. 215 dated 26-8-1982.

The option form he has exercised for the post of Assistant Conservancy Inspector is not valid for want of acceptance of the competent authority. Besides, the post of Assistant Conservancy Inspector was not sanctioned one under the reorganization scheme of the department. Both the option forms exercised at the time of revision of pay scale in 1981 and at the time of coming of erstwhile S.S. Municipality under CMC pay scale and service condition with effect from 4-1-1984 bear acceptance of the competent authority. While bringing the said Municipality in the pay scale and service condition with the Calcutta proper, post of tax Collecting Sarkar was fitted against comparable post of Bailiff and in tieral promotion as Senior Bailiff.

Examined the observation and recommendation of Joint Municipal Commissioner dated 25-5-1994, considered also the option form with effect from 4-1-1984 as Sub-Overseer, Conservancy, and I find that there is no reason to change the option as he exercised for the post of Tax Collecting Sarkar.

Hence, it is ordered that exercise of option for the post of Sub-Overseer, Conservancy from 4-1-1984 and Conservancy Overseer from 6-9-1985 is not accepted.”

The appellant challenged the order of the Commissioner in Writ Petition No. 12309 of 1998. The learned Single Judge of the High Court allowed the writ petition and directed the authorities of the Corporation to implement the proposal contained in the note of the Joint Municipal Commissioner and notionally treat the appellant as Conservancy Sub-Overseer w.e.f. 1-1-1984 and Conservancy Overseer w.e.f. 6-9-1985. The learned Single Judge also directed that the arrears be given to the appellant w.e.f. 31-10-1995.

Both, the appellant and the Corporation challenged the order of the learned Single Judge of the High Court by filing appeals. The Division Bench of the High Court noted that at the time of merger of South Suburban Municipality with the Corporation, the appellant was enjoying the pay scale of Rs.300-685 and after merger, he was given the comparable pay scale prescribed for the post of Bailiff. In the opinion of the Division Bench of the High Court the action taken by the Calcutta Municipal Corporation was consistent with the Policy Circular dated 29-6-1985 and the learned Single Judge of the High Court committed an error by ordering absorption of the appellant as Sub-Overseer and Overseer respectively in the Conservancy Department.

The arguments in these appeals were heard on 21-9-2011 and the cases were adjourned (*Ashok Banerjee v. Municipal Affairs Deptt.*, Civil Appeal No. 7375 of 2005, order dated 21-9-2011 (SC), (2014) 14 SCC 685 (F2), wherein it was directed:

“Arguments heard. During the midst of dictation, it was noticed that vide letter dated 24-9-1985, the appellant had claimed fixation of his pay in the grade of Rs.380-915. In order to ensure that no injustice is done to the appellant on account of lack of proper pleadings and the relevant documents, we deem it proper to adjourn the case for two weeks with a direction to the counsel representing the respondent to produce the service book of late Ashok Banerjee along with the relevant records including the file in which the options exercised by late Ashok Banerjee as also the representations made by him were dealt with

and decided.”) with a direction to the counsel for the respondents to produce the service book of the appellant along with the relevant records including the file containing the option exercised by him. Since the matter could not be heard for the next two years, we again gave opportunity to the learned counsel for the legal representatives of Shri Ashok Banerjee and Calcutta Municipal Corporation. Both the learned counsel made arguments on behalf of their respective clients.

Shri Ranjan Mukherjee, learned counsel for the respondents also produced the service book of Shri Ashok Banerjee and the file containing the option exercised by him. A perusal of the service book shows that after merger of South Suburban Municipality with the Corporation, the appellant had exercised option and his pay was fixed in the scale prescribed for the post of Senior Bailiff i.e. Rs.360-815, which was higher than the pay scale of the post held by him in the South Suburban Municipality. Unfortunately, while seeking intervention of the High Court and this Court, the appellant concealed the fact that after merger he had exercised option and his pay was fixed in the pay scale prescribed for the post of Senior Bailiff. If he had disclosed this fact, the High Court and this Court may have non-suited him at the threshold.

Be that as it may, in the absence of any challenge to the fixation of his pay in the scale prescribed for the post of Senior Bailiff which, as mentioned above, was higher than the pay scale of the post held by him prior to merger of South Suburban Municipality, we do not find any merit in his challenge to the impugned judgment. With the above observation, the appeals are dismissed.