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(2023) 11 CAL CK 0019

Calcutta High Court (Appellete Side)

Case No: WPA No. 8997 Of 2016

Uday Sankar Das

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

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**Date of Decision:** Nov. 20, 2023

**Acts Referred:**

- West Bengal Service Rules, Part-I - Rule 55(4)

**Hon'ble Judges:** Partha Sarathi Chatterjee, J

**Bench:** Single Bench

**Advocate:** Arup Lahiri, Pantu Deb Roy, Subrata Guha Biswas

**Final Decision:** Disposed Of

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### Judgement

Partha Sarathi Chatterjee, J

1. The present writ petition has been preferred primarily for the following relief:

“A writ of or in the nature of mandamus commanding the Respondents to forthwith to step up the pay of the petitioner as par with the pay of the Respondent no. 4 and to re-fix the pay of the petitioner after stepping up the pay of the petitioner from the date when the Respondent no. 4 started receiving pay higher than the pay of the petitioner and to act accordingly.”

2. Facts as unfurled in the writ petition, in brief, are that the petitioner was appointed as ‘Night Guard’ on 13.02.1974 by the then learned District Judge, 24 Parganas. He was promoted to the post of ‘Process Server’ w.e.f. 20.07.1976 and on attaining the age of superannuation, he retired from service on 31.07.2012.

3. The respondent no. 4 was appointed as ‘Process Server’ in the same Judgeship on 28.05.1981 and consequently, the respondent no. 4 happened to be junior to the petitioner in service. The respondent no. 4 retired from service on 30.06.2012 on attaining the age of superannuation. The petitioner’s last drawn basic pay was Rs. 26, 361/- p.m. whereas the respondent no.4 drew Rs. 29,748/-p.m. as basic pay at

the time of his retirement. The petitioner has been drawing pension to the tune of Rs. 11,556/- p.m.

4. The respondent no. 4 was extended the benefit of career advance scheme after completion of his 10 years' of service but such benefit was not granted to the petitioner on the plea that the petitioner was promoted to the post of 'Process Server'.

5. One identically circumstanced candidate namely, Kamalesh Manna who also was drawing less pay than his junior namely, Kashinath Patra approached his appointing authority being the learned District Judge, Howrah with a prayer for stepping up of his pay at par with the pay of his junior by making a representation. The representation of Mr. Manna was forwarded to the Secretary, Judicial Department, Govt. of West Bengal for consideration but the prayer of Mr. Manna was turned down by the Deputy Secretary, Judicial Department, Govt. of West Bengal by an order vide. no. 16472-J dated 31.08.1994.

6. Mr. Manna assailed the order dated 31.08.1994 by taking out one writ petition being C.O. no. 20804(W) of 1995 in the Hon'ble High Court at Calcutta. The above writ petitioner being C.O. no. 20804(W) of 1995 was disposed of by a coordinate Bench of this Court by an order dated 25.02.2002 whereby the order dated 31.08.1994 was set aside and the Secretary, Judicial Department, Govt. of West Bengal was directed to reconsider the prayer of Mr. Manna.

7. In compliance with the order dated 25.02.2002, a reasoned order was passed by the Secretary, Judicial Department holding that Mr. Manna was entitled to draw his salary at par with Mr. Patra and accordingly, pay of Mr. Manna was re-fixed by the learned District Judge, Howrah. Mr. Manna was granted pay scale no. 06.

8. Three other similarly situated candidates namely, Sri Gourango Dey, Prasanta Seth and Pratap Chandra Ghosh also preferred a writ petition being W.P. no. 9868(W) of 2005 which was disposed of by an order dated 17.04.2006 directing the concerned authorities to re-fix the pay of the aforesaid writ petitioners at par with the pay of Mr. Patra and the pay of the aforesaid writ petitioners was re-fixed accordingly.

9. By an order vide. no. 3-P dated 28.02.2007, the learned District Judge, South 24 Parganas granted benefit of stepping up of pay to a group of similarly circumstanced 'Process Servers' namely, Amanur Rahaman, Biswanath Chatterjee etc. at par with the pay of their juniors but since despite being senior in service, the writ petitioner drew less pay than his junior being the respondent no.4, the petitioner has been constrained to prefer this writ petition seeking a direction upon the concerned respondents to step up his pay at par with the pay of the respondent no. 4. The parties hereto have exchanged their affidavits, as directed.

10. Mr. Lahiri, learned advocate for petitioner contends that admittedly, the respondent no. 4 happened to be junior to the petitioner in service but the respondent no.4 all along drew higher pay than the petitioner and hence, there was an anomaly and accordingly, to remove such anomaly, the petitioner's pay is required to be stepped up at par with the pay of the respondent no. 4 in terms of Rule 55(4) of the West Bengal Service Rules, Part-I.

11. Drawing my attention to the reasoned order passed by the Secretary, Judicial Department, Govt. of West Bengal in compliance with the order dated 25.02.2002 passed in C.O. no. 20804(W) of 1995 (Annexure- P/3), the order dated 17.04.2006 passed in W.P. no. 9868(W) of 2005 and the order vide. no. 3-P dated 28.02.2007 passed by the learned District Judge, South 24 Parganas, Alipore, Mr. Lahiri strenuously contends that the pay of umpteen numbers of identically circumstanced candidates, who were also drawing less pay than the pay of their juniors, have been stepped up at par with the pay of their juniors and consequently, the pay of the petitioner is also required to be stepped up at par with the pay of the respondent no.

4. To invigorate his submission, he places reliance upon a judgment delivered in case of Union of India &Ors. -vs- Shri C.R. Madhava Murthy &Anr. , reported in 2022 (4) Supreme 435.

12. In response, Mr. Deb Roy, learned advocate for State respondents vehemently opposes the prayer of the petitioner. He contends that the petitioner is not similarly circumstanced with the candidates referred in the writ petition and consequently, the petitioner cannot claim benefits of stepping up of his pay but the petitioner is entitled to get benefits under the Modified Career Advance Scheme, 2001. However, Mr. Deb Roy submits that petitioner may be granted liberty to submit a comprehensive representation before the competent authority and if such representation is made by the petitioner, his grievance will be addressed.

13. For better appreciation of the dispute involved in the writ petition, it would be profitable to reproduce the Rule 55(4) of West Bengal Service Rules, Part-I which reads thus:

"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 re-fixed 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 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 also identical.

The benefit of this rule shall not be admissible in case where a senior Government employee exercise his option to retain un-revised scale 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”

14. In case of Union of India &Ors. –vs- Shri C.R. Madhava Murthy & Anr. (supra), it was ruled that if the senior employee due to any reason draws less pay than his junior, then scale of pay of the senior is required to be stepped up at par with the pay of his junior to remove the pay-anomaly.

15. From the order dated 21.08.2002 passed by the Secretary, Judicial Department, Govt. of West Bengal, it is explicit that One Kamalesh Manna was appointed as peon in the office of the learned District Judge, Howrah on 16.6.1976 and on 01.06.1997, he was promoted to the post of ‘Process Server’ and one Kashinath Patra was appointed as ‘Process Server’ on 1.2.1978. Despite being junior to Mr. Manna, Mr. Patra was drawing higher pay. The Secretary concerned in his order held that Mr. Manna is entitled to have his pay re-fixed at par with the pay of Mr. Patra in terms of Rule 55(4) of West Bengal Service Rules, Part-I. I am informed that the order of the Secretary dated 21.08.2001 was implemented.

16. In W.P. no. 9868(W) of 2005, same benefits were directed to be extended to the similarly situated candidates. From the order vide. no. 3-P dated 28.02.2007 passed by the learned District Judge, South 24 Parganas, it reveals that the pay of some Senior Process-Servers who were drawing less pay than their juniors were directed to be stepped up at par with the pay of their juniors. Hence, the settled legal position is that if it is found that any junior employee draws higher scale of pay than his senior of same cadre for any reason, then to remove pay-anomaly, the pay of such senior employee is required to be stepped up at par with the pay of his junior from the date his junior started drawing such higher pay. The State of West Bengal and the learned District Judge, Howrah and even the learned District Judge, South 24 Parganas accepting such legal position have stepped up the pay of such senior employees at par with the pay of their juniors and the pay of such senior Process-Servers were re-fixed accordingly.

17. Though the petitioner has pleaded that despite being senior to the respondent no. 4, the petitioner drew less pay than the respondent no. 4 but no documents relating to their services have been placed.

18. Hence, in view of such sequence of facts, the writ petition is disposed of by granting liberty to the petitioner to submit a comprehensive representation before the learned District Judge, South 24 Parganas disclosing his grievances within two weeks from date. If such representation is made, the learned District Judge shall consider and dispose of the same after affording an opportunity of hearing to the petitioner. If it is found that despite being senior to respondent no. 4 the petitioner was drawing less pay than respondent no. 4, the necessary order for stepping up the pay of the petitioner as par with the pay of the Respondent no. 4 and re-fixation of the pay of the petitioner after stepping up the pay of the petitioner from the date

when the Respondent no. 4 started receiving pay higher than the pay of the petitioner, shall be passed. It is clarified that if it is found that petitioner's claim is not tenable, the learned District Judge shall pass a reasoned order and copy of such order must be communicated to the petitioner. The petitioner shall be at liberty to produce all the documents including the copy of the writ petition with its annexures in support of his claim at the time of hearing. The entire exercise shall be done within 8(eight) weeks from the date of receipt of such representation from the petitioner.

19. With these observations and order, the writ petition stands disposed of, however, without any order as to costs.

20. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

21. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.