

(2010) 10 CAL CK 0005
Calcutta High Court
Case No: F.M.A. 513 of 2004

Debabrata Chakroborty and
Others

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Oct. 1, 2010

Acts Referred:

- Calcutta High Court (Appellate Side and Original Side) Services (Revision of Pay and Allowances) Rules, 1990 - Rule 2, 3, 40(2)
- Constitution of India, 1950 - Article 229, 229(2)

Citation: (2010) 4 CALLT 483

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Md. Abdul Ghani, J

Bench: Division Bench

Advocate: Kishore Dutta, Soumya Majumder and Sumita Shaw, for the Appellant; Tarun Roy, for State, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.

The claims of the appellants herein arise out of a Memorandum dated 20th October 1994 issued by the Finance Department, Government of West Bengal, following the recommendations of the 3rd Pay Commission.

2. Pursuant to the demand of the High Court employees, a Special Committee of the Hon'ble Judges was constituted by the Hon'ble the Chief Justice and the said Committee submitted its report on 21st June, 1999. The then Acting Chief Justice of this Court accepted the recommendation of the said Special Committee on 24th June, 1999 and thereafter, the Registrar General of this Court issued an order on 8th July 1999 to the following effect:

In view of the acceptance of the recommendations of the Special Committee by the Hon"ble the Acting Chief Justice on 13.5.99 for adoption of F.D. Memo. No. 10206-F dated 20th October, 1994 and extension of the benefits thereunder, it is hereby ordered that the benefits of Finance Department (Audit Branch) Memorandum No. 10206-F dated 20th October, 1994 shall apply Mutatis Mutandis to the Officers and Servants of the High Court on its Appellate Side and Original Side in terms of the 2nd Proviso to Rule 2 of the Calcutta High Court (Appellate Side and Original Side) Services (Revision of Pay And Allowances) Rules, 1990, promulgated under the Court's Notification No. 9882-R dated the 15th September, 1990.

3. Mr. Tarun Roy, learned Senior Counsel representing the State-respondents submitted that the Registrar General issued the aforesaid order on 8th July, 1999 extending the benefits to the employees of the High Court without complying with the specific directions of the then Hon"ble Acting Chief Justice for sending the proposal to the State Government.

4. In any event, while implementing the Memorandum dated 20th October, 1994, it was found that the pay of Grade "A" Stenographers became more than that of the Assistant Court Officers. To remove the anomaly, another Special Committee was constituted and the said Special Committee recommended granting of suitable increments to the Assistant Court Officers. The recommendation of the said Special Committee was also accepted and suitable increments were given to the Assistant Court Officers in order to bring their pay at par with Grade "A" Stenographers.

5. Subsequently, the aforesaid proposal was implemented and the Assistant Court Officers including the appellants herein were sanctioned pay and allowances as per revised rate with effect from 1.8.2000.

6. The appellant/writ petitioner herein filed the writ petition demanding release of arrear pay with effect from 1.11.94 till 31st July 2000. The said writ petition was finally disposed of by the judgment and order under appeal passed by the Learned Single Judge whereby the said Learned Judge granted liberty to the writ petitioners namely, the Assistant Court Officers to file appropriate writ application after rules were framed in this regard under Article 229 of the Constitution.

7. During the pendency of the instant appeal, there has been a further pay revision with effect from 1.1.1996 by virtue of the High Court Employees (Revision of Pay And Allowances) Rules, 2007, whereby the Assistant Court Officers became entitled to enjoy even the higher pay scale.

8. According to the Learned Senior Counsel of the State-respondents, arrears on account of enhancement in pay scale, in respect of the Assistant Court Officers, can at best be paid for the period with effect from 1.11.1994 till the actual payment of enhanced pay scales under the aforesaid ROPA Rules, 2007.

9. The Learned Counsel for the appellants submitted that the benefits claimed by the appellants arise out of Memorandum dated 20.10.1994, which confers the benefits following the recommendation of the 3rd Pay Commission.
10. Calcutta High Court (Appellate Side and Original Side) Services (Revision of Pay And Allowances) Rules, 1990 have been approved under Article 229(2) of the Constitution of India. The second proviso to Rule 2 of the said Rules confers power on the Hon"ble Chief Justice to grant benefits and amenities connected with the report of the 3rd Pay Commission which may be awarded to the State Government Employees by the Governor of State of West Bengal and that such benefits shall apply mutatis mutandis to the officers and servants of the Hon"ble High Court.
11. The second proviso to Rule 2 of the said Calcutta High Court (Appellate Side and Original Side) Services (Revision of Pay and Allowances) Rules, 1990 is set out hereunder:
2. ...Provided further that the Chief Justice may, by order, direct that other benefits and amenities connected with the report of the Third Pay Commission that may be awarded from time to time to the employees under the rule making control of the Governor of West Bengal shall apply mutatis mutandis to the officers and servants of High Court on its Appellate and Original Sides.
12. Referring to the aforesaid Rules, learned Counsel of the appellants submitted that the said Rules framed under Article 229 of the Constitution of India already empowered the Hon"ble Chief Justice to grant benefits arising out of 3rd Pay Commission to the High Court employees and, therefore, separate rules are not required to be framed each time, specially in view of second proviso to Rule 2 of the Rules of 1990. The Learned Counsel of the appellants referred to and relied on a decision of the Supreme Court in this regard in the case of [State of U.P. and another Vs. C.L. Agrawal and another, etc.](#), Page 1 wherein the Hon"ble Supreme Court observed:
8. The second proviso to Sub-rule (2) of Rule 40 is of importance for a more fundamental reason. It states that the powers which are exercisable by the Governor under the rules and orders of the Government in respect of matters regarding conditions of service not provided for by the 1976 Rules shall be exercised by the Chief Justice or by such officer as he may direct. Insofar as officers and servants of the High Court are concerned, therefore, the Chief Justice or his delegate exercises the powers exercisable by the Governor under such rules and orders of the Government. Insofar as officers and servants of the High Court are concerned, it is enough that the Chief Justice exercises the powers conferred upon the Governor under such rules and orders of the Government; no further approval by the Governor is required.
13. Mr. Soumya Majumder, Learned Counsel of the appellants submitted that the Assistant Court Officers are higher in rank than Grade "A" Stenographers. The pay

of the Assistant Court Officers, therefore, according to the Learned Counsel of the appellants, cannot be less than that of the Grade "A" Stenographers. Mr. Majumder further submitted that in order to remove the anomaly created while implementing the Memorandum dated 20th October, 1994, the then Hon"ble Chief Justice had power to issue appropriate order and for this purpose no fresh rule is required to be framed under Article 229(2) of the Constitution of India. It has been submitted on behalf of the appellants that during the pendency of the litigation there have been some developments with regard to the pay and allowances of the High Court Employees.

14. Mr. Majumder also submitted that pursuant to the direction of the Hon"ble Supreme Court, the Calcutta High Court (Appellate Side and Original Side) Services (Revision of Pay And Allowances) Rules, 1998 were framed under Article 229(2) of the Constitution of India. Pursuant to the said Rules of 1998, existing pay scale of the Assistant Court Officers was upgraded to Rs. 2200-4000/- taking into consideration the three additional increments. The aforesaid additional increments granted to the Assistant Court Officers have been duly accepted by the State Government and, therefore, according to the appellants, State Government cannot deny such benefits at this stage under any circumstances.

15. Mr. Majumder, Learned Counsel for the appellants urged before this Court that the benefits granted to the employees in terms of Memorandum dated 20th October, 1994 are to be made applicable equally to the appellants herein. Mr. Majumder submitted that the Memorandum dated 20th October, 1994 is itself an outcome of the Rules framed under Article 229(2) of the Constitution of India.

16. It has been submitted by the Learned Counsel of the appellants that the pay scale recommended by the 3rd Pay Commission has already been implemented in respect of the appellants, but the benefits of the increments were not granted. Mr. Majumder further submitted that the recommendation of the Fourth Pay Commission was also implemented in respect of the appellants in the year 2007 and the same benefits with arrears have, however, been paid to the other Assistant Court Officers, which has not been disputed by the Learned Counsel of the State-respondents.

17. The Learned Counsel representing the State-respondents urged before this Court that the appellants herein cannot lawfully base the claim for payment of arrear salaries in terms of existing pay @ Rs. 2200-4000/- with effect from 1.11.1994, simply because the grant of such higher pay to the appellants herein i.e. the Assistant Court Officers, is not permissible in the absence of any Rule framed by this Hon"ble Court and approved by the Governor under Article 229(2) of the Constitution of India.

18. Mr. Tarun Roy, Learned Senior Counsel of the State-respondents submitted that the second proviso to Rule 2 of the Rules of 1990 does not have any bearing on the

revised pay scales specified for different categories of High Court Employees under Rule 3 thereof. Mr. Roy further submitted that under the said second proviso to Rule 2 the Chief Justice may by order direct that other benefits and amenities connected with the report of the Third Pay Commission and awarded to the State Government Employees shall apply mutatis mutandis to the High Court Employees.

19. According to Mr. Roy, the expression "other benefits and amenities" can only refer to different perquisites and fringe benefits like House Rent Allowance, Medical Allowance, Leave Travel Concession etc. and cannot have the effect of altering any specified pay scale of any category of employees of the High Court.

20. Mr. Roy specifically submitted before this Court that the enjoyment of the higher pay scale of Rs. 2200-4000/- both by the Schedule "A" Stenographers and the Assistant Court Officers is unlawful as the same has no sanction under the mandatory requirement of the Constitution. Mr. Roy also submitted that the very basis of the enjoyment and drawal of the higher pay scale is not supported by any Rules framed by the High Court and subsequently approved by the Governor. Mr. Roy therefore, submitted that the appellant herein cannot make any further claim for arrears of pay on such unauthorized higher pay scale as a matter of right and such claim being unlawful the writ petition was rightly dismissed.

21. It has been submitted by the Learned Senior Counsel of the State-respondents that previous enjoyment of an unlawful benefit in respect of the higher pay scale cannot operate as an estoppel against the State Government only because the Pay and Accounts Department disbursed the amount requisitioned by the High Court without objection. The Learned Senior Counsel of the State-respondents also submitted that the benefit of higher pay scale already enjoyed by the appellants herein is an unlawful gain.

22. Mr. Roy argued that the decision cited by the Learned Counsel of the appellants in the case of State of U.P. v. C.L. Agarwal (Supra) has no manner of application in the facts of the present case as, according to Mr. Roy, the aforesaid decision does not lay down the principle that the Chief Justice of the High Court can enhance the pay scale of any section of employees, without framing or amending the Rules under Article 229 of the Constitution of India with the approval of the Governor.

23. Mr. Roy cited the following decisions of the Supreme Court in support of his arguments:

- 1) [State of Maharashtra Vs. Association of Court Stenos., P.A., P.S. and Another,](#) (Paragraph 5)
- 2) [Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others,](#) (Paragraph 9)
- 3) [State of U. P. and others Vs. Harish Chandra and others,](#) (Paragraph 10)

24. Mr. Roy finally submitted that only because a section of the Stenographers of the High Court were unlawfully granted the benefits of the higher pay scale, the Assistant Court Officers cannot lawfully claim the same benefit in violation of the provisions of Article 229(2) of the Constitution of India.

25. In the present case, there is no dispute that the appellants herein have already enjoyed the benefits of enhanced pay scale from July, 2000 in terms of the Notification dated 20th October, 1994 issued by the Finance Department, Government of West Bengal. We fail to understand why the arrear dues cannot be sanctioned to the appellants herein specially when the same benefits have already been sanctioned to the other similarly placed employees.

26. On examination of the Notification dated 15th September, 1995 we find that in terms of the second proviso to Rule 2 of the Rules of 1990, the Chief Justice of the High Court has power to direct sanction of the benefits and amenities connected with the report of the 3rd Pay Commission.

27. Mr. Roy argued that such other benefits may be restricted to fringe benefits like House Rent Allowance, Medical Allowance, Leave Travel Concession etc., which, in our opinion, cannot be a proper interpretation of the aforesaid Rule.

28. The Three Judges' Committee categorically examined the issue relating to the implementation of the Memorandum dated 20th October, 1994 and made necessary recommendations. Subsequently, another Special Committee of Three Hon'ble Judges of this Court was constituted to remove the anomalies with regard to the pay scale of the Assistant Court Officers and the recommendation of the Special Committee was accepted by the then Hon'ble Acting Chief Justice with regard to the adoption of the aforesaid Memo dated 20th October, 1994. Thereafter, a specific order was issued by the Registrar General on 8th July, 1999 extending the benefits of the pay scale to the Assistant Court Officers of this Court in terms of the Memorandum dated 20th October, 1994.

29. The powers conferred by the second proviso to Rule 2 of the Calcutta High Court (Appellate Side and Original Side) Services (Revision of Pay And Allowances) Rules, 1990 has been rightly exercised by the then Acting Chief Justice and appropriate direction with regard to enhancement of benefits of higher pay scale was granted to the Assistant Court Officers, which have been specifically mentioned in the Order dated 8th July, 1999 issued by the Registrar General of this Court.

30. The Assistant Court Officers including the appellants herein have been admittedly granted the benefits of higher scale of pay with effect from August, 2000. There is no valid reason to deny the benefits of arrear pay to the appellants herein in terms of the aforesaid Memorandum dated 20th October, 1994 with effect from 1.11.1994.

31. The Learned Single Judge, in our opinion, has failed to appreciate the real issues raised by the appellants herein.

32. In terms of second proviso to Rule 2 of the aforesaid Rules of 1990, the Chief Justice has every power to issue appropriate order awarding the benefits and amenities connected with the report of the Third Pay Commission and, therefore, in the present case, the then Hon"ble Acting Chief Justice had duly exercised the aforesaid power and specific order was issued by the Registrar General on 8th July, 1999 extending the benefits of higher pay scale to the Stenographers including the Assistant Court Officers of this Court in terms of the Memorandum dated 20th October, 1994.

33. There is no illegality and/or irregularity in the decision of the Hon"ble Chief Justice in exercise of authority under the second proviso to Rule 2 of the aforesaid Rules of 1990 to extend the benefits to the Stenographers of this Court in terms of the Memorandum dated 20th October, 1994, accepting the recommendation of the Special Committee of Hon"ble Judges of this Court. The State Government, most unfortunately, raised objection questioning the authority of the Hon"ble Chief Justice in this regard, without appreciating the specific authority given to the Hon"ble Chief Justice under the second proviso to Rule 2 of the said Rules of 1990.

34. The Learned Single Judge unfortunately did not appreciate the aforesaid provision of the Rules in an appropriate manner.

35. For the aforementioned reasons, we are unable to approve the stand taken by the State Government and decline to affirm the decision of the Learned Single Judge. Accordingly, the impugned judgment and order under appeal passed by the Learned Single Judge is set aside.

36. We direct the State-respondents to release all the admissible arrears of pay and allowances to the appellants within six weeks from date as per recommendations contained in the Memorandum No. 10206-F dated 20th October, 1994 issued by the Finance Department, Government of West Bengal with effect from 1.11.1994 till 31st July 2000, since the said benefit was subsequently available to the appellants with effect from 1.8.2000.

37. This appeal thus stands allowed.

38. In the facts and circumstances of the present case, there will be, however, no order as to costs.

39. Let urgent xerox plain copy of this judgment and order, duly countersigned by the Assistant Registrar (Court), be given to the learned Advocates of the parties on usual undertaking.

Md. Abdul Ghani, J.

40. I agree.