

(2012) 07 CAL CK 0075

Calcutta High Court

Case No: C.O. No. 3594 (W) of 1992

Ashim Kumar Paul and Another

APPELLANT

Vs

West Bengal State Electricity
Distribution Company Ltd. and
Others

RESPONDENT

Date of Decision: July 25, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2012) 135 FLR 457

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Niranjana Ganguly and Mr. Nandalal Prodhan, for the Appellant; Sumit Kumar Panja and Mr. S.S. Koley for State, for the Respondent

Judgement

Debasish Kar Gupta, J.

This writ application is filed by the petitioner for issuing a writ in the nature of mandamus commanding the respondent authority to fix the pay scale of the petitioner no. 1 above the pay scale of the respondent nos. 5 and 6 from the date of promotion to the post of Assistant Accountant under the respondent no. 1. Let it be recorded that the claim of the petitioner no. 2 has not been praised by the learned counsel appearing for him. The petitioner no. 1 was appointed in the post of Lower Division Clerk under the respondent no. 1 with effect from October 21, 1963 at a scale of pay of Rs.125-200 per month. The respondent nos. 5 and 6 were also appointed in the post of Lower Division Clerk on October 29, 1964 and November 6, 1963 respectively at the same pay scale of Rs. 125-200 per month. The initial pay of the respondent no.6 was fixed at Rs. 134 under officer order no.968 dated June 23, 1962. It is necessary to mention here that though the date of appointment of the respondent no.6 was mentioned in this writ application as on November 6, 1963, no material is brought on record in support of the aforesaid statement made in this

writ application.

2. The petitioner was promoted to the post of Assistant Accountant with effect from April 6, 1977 carrying a scale of pay of Rs. 550-944 per month. The respondent nos. 5 and 6 were promoted to the post of Assistant Accountant under the respondent no.1 on and from November 30, 1978 and April 21, 1977 respectively at the scale of pay of Rs. 550-944 per month. The names of the petitioner no. 1 and respondent nos. 5 and 6 appeared in the gradation list of assistant accountant under the respondent no. 1 against serial nos. 75,149 and 78 respectively.

3. According to the petitioner no. 1, his name was appearing above those of the respondent nos. 5 and 6 in the gradation list for the post of Assistant Accountant under the respondent no.1 but he was getting lesser amount of pay than those of the respondent no. 5 and 6.

4. It is submitted by Mr. Niranjana Ganguly, learned advocate appearing on behalf of the petitioner no. 1 that the conditions of service of the petitioner as also the respondent nos. 5 and 6 are guided by the provisions of the West Bengal Electricity Board Employees Service Regulation (hereinafter referred to as the said Regulation). According to him, the pay of the respondent no.5 and 6 could not be fixed at a higher rate in comparison the pay of the petitioner no.1 under the said regulations. According to him such an action on the part of the respondent authority was arbitrary discriminating and violative of articles 14 and 16 of the constitution of India.

5. On the other hand, it is submitted by Mr. Sumit Kr. Panja, learned advocate on behalf of the respondent nos. 1 to 4 that the date of initial appointment of the respondent no. 6 was June 2, 1962 and his pay was fixed at Rs. 134 per month under officer order no.96 dated June 23, 1962 at a scale of pay of Rs. 125-200 consequent upon awarding three additional increments to him from the date of appointment. According to him he was senior to the petitioner no. 1 considering his date of appointment in the post of Lower Division Clerk. It is also submitted by Mr. Panja that the difference of pay of the petitioner no. 1 with that of the respondent nos. 5 and 6 was increased further because the petitioner had enjoyed extraordinary leave on considerable period of time during the tenure of his service in accordance with the provisions of Regulations 78(A and F) and 114(2) of the said regulations and employee remaining on extraordinary leave was not entitled to annual increment in respect of his pay.

6. It is further submitted by Mr. Panja that the dates of promotions of the petitioner no. 1, respondent no.5 and 6 to the post of Assistant Accountant under the respondent no. 1 were April 6, 1977, November 30, 1978 and April 21, 1977 respectively. Though their scale of pay in the above promotional post was Rs. 550-944 per month. The pay of the petitioner was fixed at Rs.586 per month taking into consideration the fact of enjoying extraordinary leave without pay and

non-granting of annual increment during his service tenure for fiddler post. According to him, the monthly pay of the respondent nos. 5 and 6 were fixed at Rs.664 and 624 respectively. Relying upon the calculation sheet prepared for showing the monthly pay of the petitioner no. 1 and the respondent nos. 5 and 6 Mr. Panja submitted that the only reason for different in pay was availing of extraordinary leave without pay by the petitioner no. 1 during his service tenure in the fiddler post.

7. I have heard the learned counsel appearing for the respective parties and I have given my anxious consideration to the facts and circumstances of this case it is not in dispute that the petitioner was appointed in the post of lower division clerk before the respondent nos. 5 and 6. The monthly scale of pay of all of them was Rs.125-200 I find substance in the submissions made on behalf of the respondents that consequent upon enjoying extraordinary leave without pay by the petitioner, annual increment was not given to him in the post of clerk.

8. So far as the fixation of scale of pay of the petitioner, respondent nos. 5 and 6 consequent upon their promotion to the post of Assistant Accountant is concerned I find that the scale of pay to the aforesaid post was Rs. 550-944 per month. After considering the dates of promotions of the petitioner no. 1, the respondent nos. 5 and 6 I find that the writ petitioner was promoted before the respondent nos. 5 and 6. I do not find any reason for fixing his monthly pay at a lower amount than that of the respondent nos. 5 and 6, though the scale of pay was one and same. An employee/officer loses his benchmark in the fiddler post consequent upon his promotion to the higher post.

9. It is a case of the appointment to a post on promotion having no nexus with the seniority, his scale of pay and/or the monthly pay in the fiddler post. Fixing of monthly pay of a promotee at a lower amount than that of his junior promotees. Taking into consideration the factors for getting lesser amount of pay in the fiddler post is not permissible in law. Reference may be made to the decision [R. Madhavan Assari Vs. Kerala State Small Industries Development and Employees Corporation Ltd. and Others](#), and the relevant portions of the above decision are quoted below:

5. The concept of equal pay for equal work is an aspect of the doctrine of equality enshrined in Arts. 14 and 16 of the Constitution and is deducible therefrom. The principle of equal pay for equal work is not declared to be a fundamental right, but it is certainly a Constitutional goal. It is not an abstract doctrine but one with life and soul intended to be given effect to under Arts.14 and 16. Where all things are equal, that is, where the relevant considerations are the same, persons holding identical posts cannot be treated differentially in the matter of pay (Randhir Singh V. Union of India,(1982 I LLJ 334). Any classification of employees in the same rank, but with differential pay, has to be founded on a rational basis, either on the basis of their functions, powers, duties or responsibilities, or otherwise. If there is a rational and intelligible differentia between the employees justifying their classification, the

doctrine of equal pay for equal work will not be attracted and the court will uphold differential scales of pay. The policy of the doctrine is to prevent exploitation of labour, and eradicate irrational and unscientific methods of payment of wages or pay to employees. The necessary consequence is that if the employees are engaged in similar work and there is identity between them in all respects, the differentiation resulting in inequality in the wages will not be upheld by the court.

10. In view of the above the fixing of monthly pay of the petitioner no.1 at a lower amount than that of the respondent nos. 5 and 6 cannot be sustained in law and the same is quashed and set aside. The respondent authority is directed to re-fix monthly pay of the petitioner for the post of Assistant Accountant vis-à-vis that of the respondent nos. 5 and 6 taking into consideration their respective position in the gradation list prepared for the post of Assistant Accountant at a scale of pay of Rs. 550-944 per month, without taking into consideration any factors relating to the fixation of his scale of pay in the fitter post of clerk and in doing so the respondent authority is directed to give him pay protection in accordance with law taking into consideration the pay of his juniors. The respondent authority is also directed to pay the amount which will be due and payable to the petitioner consequent upon re-fixation of his pay in terms of the aforesaid direction within three months from the date together with an interest at the highest rate payable by a nationalised bank on fixed deposit.

11. This writ application is, thus, disposed of.

12. There will be, however, no order as to costs. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.