(2001) 1 ILR (Cal) 1

Calcutta High Court

Case No: F.M.A. No. 231of 1992

University of Burdwan		APPELLANT
	Vs	
Monitory Sengupta		RESPONDENT

Date of Decision: Jan. 7, 2000

Acts Referred:

- Customs Tariff Act, 1975 - Section 27(8)

Citation: (2001) 1 ILR (Cal) 1

Hon'ble Judges: Satyabrata Sinha, J; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Biman Kumar Basu, A. Ganguli and M. Sen, for the Appellant;Swadesh Bhushan Bhunia, for the Respondent

Judgement

Satyabrata Sinha, J.
This appeal is directed against a judgment and order dated April 20, 1990, passed by a learned single Judge of this Court, whereby and whereunder the writ application filed by the private Respondents herein were disposed of with the following directions:

From this it appears that while refixing the pay before the revision of pay in terms of the Rule 6 (P.A.) the authority concerned are to take the merged pay as the basic pay and add to that the Dearness Allowances, Additional Dearness allowances, the Special pay of any, and the ad-hoc pay or the booster. The pay thus arrived at would be the basis for the consideration of introduction and application of the revised scales of pay with effect from April 1, 1975.

In the circumstances, the University Authorities are directed first to refix the pay on the lines indicated above and then arrive at the refixed scales of pay in terms of the aforesaid two Government orders. Such revision and refixation is to be made within 3 months from the date of communication of this order and the resultant arrears are to be paid within three months from the date of such refixation.

2. This appeal really centers around the interpretation or Rule 6(P.A.) vis-a-vis notifications issued by the Governor of West Bengal dated October 13, 1977, and June 30, 1979 in exercise of his power u/s 3 of the West Bengal Universities (Control of Expenditure) Act, 1976. Clauses 2 of both the said notifications read thus:

3. After careful consideration the Governor in exercise of the power u/s 3 of the West Bengal Universities (Control of Expenditure) Act, 1976 is now pleased to sanction with effect from the 1st April; 1975, the revised scale of pay as shown in Annexures I and II for the posts of-

(i) Registrar, Inspector of Colleges, Controller of Examinations and Finance Officers of the above Universities (vide Annexure I); and

(ii) Libraian/Chief Librarian, Director/Inspector of Physical Education, Deputy Registrars and other equivalent posts, and Assistant Registrars and other equivalent posts of the above Universities (Vide Annexure II).

2. After careful reconsideration and in modification of this Government Order No. 1544(7)-Edn (U) dated 31.10.77 on the subject mentioned above, the Governor in exercise of the power u/s 3 of the West Bengal Universities (Control of Expenditure) Act, 1976, has been pleased to sanction with effect from the 1st April, 1975, the revised scales of pay as shown in Annexure-1 against each subject to the conditions that the academic and professional qualifications are to be prescribed for the new entrants by the State Government. The said order will be issued separately.

5. It is not in dispute that Rule 6 (P.A.), interpretation whereof fell for consideration before the learned Trial Judge reads thus:

When an employee holding a post in substantive, temporary or officiating capacity, is promoted or appointed to any higher posts in a substantive, temporary or officiating capacity, his initial pay in the higher post shall be fixed in the following manner;

The employee''s pay in the lower posts will be first increased by one increment in the lower posts and then fixed in the time-scale of the higher posts at the stage next above the national pay so arrived at;

Provided that this Rule shall not be applicable in case where the pay drawn by an employee in the lower posts is at the maximum of the time-scale ;

In such cases the employees pay shall be fixed in the time-scale of the higher posts at the stage next above the pay drawn by him.

6. It is also not in dispute that in terms of the aforementioned notification the concerned employees were entitled to get Booster at the rate of 5% of the pay fixed. The question which has been raised before us as to how Dearness Allowance has to be calculated. We

have been taken through various calculations arrived at by the authorities and in particular the calculation which was annexed to the affidavit-in-opposition affirmed on behalf of the Appellant herein.

7. Having heard the learned Counsel for the parties, we are of the opinion that Rule 6 (P.A.) does not brook two interpretations. A bare perusal of the said provisions makes it abundantly clear that an increment has to be given to the pay to which the employee was entitled in the lower post and then the same was to be fixed in the time-scale of the higher post at the stage next above the notional pay so arrived at. As it is not in dispute that at the relevant time scale of pay became integrated one after merger of Dearness Allowance. Such integrated pay shall have to be considered as basic pay. Rule 6 (P.A.) as also the Booster rule will have to be applied keeping in view the fact there had been no element of Dearness Allowances in the integrated pay. Once fitment in the higher scale is fixed in compliance of Rule 6 (P.A.) and if thereafter any Dearness Allowance or additional Dearness Allowance has to be paid in terms of any resolution made by the State of West Bengal which becomes applicable to the University situate in this State including the Appellant herein, such Dearness Allowance has to be calculated on that basis. If this principle is applied, we are of the opinion that no confusion should arise as regards interpretation of the aforementioned notifications.

8. Keeping in view the fact that there had been a bona fide element in the matter of calculation by the Appellant authority, we are of the opinion that three months further time should be granted to them to make requisite calculation in terms of our observations made hereinbefore and within one month thereafter requisite payment be made.

9. The appeal is disposed of accordingly.

10. Xerox certified copy may be given on priority basis.

M.H.S. Ansari, J.

11. I agree.