

(2006) 12 CAL CK 0033

Calcutta High Court

Case No: W.P.S.T. No. 86 of 2005

Siddhanath Chatterjee and
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Dec. 22, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- West Bengal Services Rules - Rule 55(4)

Citation: (2007) 4 CHN 66 : (2007) 1 ILR (Cal) 570

Hon'ble Judges: Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Animesh Mookherjee, for the Appellant;None, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya , J.

This writ application under Article 226 / 227 of the Constitution of India is at the instance of applicants before the West Bengal State Administrative Tribunal and is directed against the order dated December 15, 2004 passed by the State Administrative. Tribunal in T.A. No. 250 of 2001 arising out of C.O. No. 15740 (W) of 1986 by which the Tribunal has rejected the application filed by the petitioners.

2. The writ petitioners are seven in number and out of them, four have already retired from service and the others were serving under the Collector of Birbhum. The petitioner No. 3 has died during the pendency of the present writ application and on his death, his heirs and legal representatives have been brought on record by allowing an application for substitution.

3. The case made out by the writ petitioners may be summed up thus:

(a) All the seven writ petitioners were appointed as Lower Division Clerk during the years 1965-1969 as direct-recruits and all of them were promoted to the post of Upper Division Clerk in the year 1981. The respondent No. 7, on the other hand, was initially appointed as a Muharrir in the year 1959, was appointed as Lower Division Clerk in the year 1972 by way of promotion and subsequently, was further promoted to the post of Upper Division Clerk in the year 1985.

4. The State Government upgraded the pay scale of the Muharrir by making the same identical with that of the Lower Division Clerk with effect from April 1, 1970, as a result, the respondent No. 7, who was junior to the writ petitioners on the date of amalgamation of the pay scale, had been enjoying higher scale of pay by violating Rule 55(4) of the West Bengal Service Rules, Part-I.

5. In a view of such illegality, the writ petitioners filed an application under Article 226 of the Constitution of India before this Court thereby giving rise to C.O. No. 15740(W) of 1986 and a learned Single Judge of this Court passed an interim order to the effect that pay protection should be granted to the petitioners and pursuant to such order, the petitioners had been enjoying the pay protection under Rule 55(4). Subsequently, after the constitution of the Tribunal, the said writ application was transferred to the Tribunal below and was renumbered as T.A. No. 250 of 2001.

6. The aforesaid application was opposed by the State-respondent before the Tribunal and according to the State-respondent, the writ petitioners were not entitled to the benefit of Rule 55(4) in view of the decision of the Supreme Court in the case of [State of W.B. Vs. Subal Chandra Das and Others](#), .

7. The learned Tribunal by the order impugned herein accepted the contention of the State-respondent and thus, rejected the application filed by the writ petitioners.

8. Being dissatisfied, the writ petitioners have come up with the present application.

9. Mr. Mookherjee, the learned Advocate appearing on behalf of the writ petitioners has vehemently contended before us that the learned Tribunal erred in law in applying the decision of the Supreme Court mentioned above to the fact of the present case by totally overlooking the fact that the said decision cannot have any application to the facts of the present case. Mr. Mookherjee contends that on the date of amalgamation of the post of Muharrir with that of the Lower Division Clerk, all the petitioners were senior to the respondent No. 7. Mr. Mookherjee contends that even all the writ petitioners were promoted to the post of Upper Division Clerk earlier to the promotion of respondent No. 5 to the post of Upper Division Clerk and as such, the learned Tribunal below misapplied the decision of the Supreme Court to the fact of the present case.

10. None appears on behalf of the State-respondent to oppose this application in spite of repeated given to the Government Pleader.

11. Therefore the only question that arises for determination in this writ application is whether the writ petitioners are entitled to the benefit of Rule 55(4) of the West Bengal Service Rules, Part I.

12. In order to appreciate the aforesaid question involved herein Rule 55(4) is quoted below:

55(4). If a Government servant 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 normal rules, or due to revision of pay scales, the pay of the Government servant 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 both 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 identical.

The benefit of this rule shall not be admissible in case where a senior Government servant exercise his option to retain unrevised 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.

13. After hearing the learned Counsel for the petitioners and after going through the materials on record as well as the Supreme Court decision relied upon by the learned Tribunal, we find that all the writ petitioners were direct-recruits Lower Division Clerk and the respondent No. 7 was initially appointed as a Muharrir and was promoted to the post of Lower Division Clerk and was far below the writ petitioners in the gradation list. Even the writ petitioners were promoted to the post of Upper Division Clerk prior to the promotion of the respondent No. 7 to that post. But as the initial entry of the respondent No. 7 in the service as a Muharrir was prior to the direct appointment of the writ petitioners in the post of Lower Division Clerk, he is enjoying higher scale of pay due to longer length of service. In such a situation, we find substance in the contention of Mr. Mookherjee that Rule 55(4) comes into play and as such, the scale of the petitioners should be protected in the way indicated in the said Rule.

14. In the case of *State of West Bengal v. Subol Chandra Das* (supra), relied upon by the Tribunal, all that was decided by the Supreme Court was that on the Muharrirs being integrated as Lower Division Clerks, there is no further distinction or discrimination in the scale of pay or in the chances of promotion between the Muharrirs and the direct-recruit Lower Division Clerk. According to the Supreme Court, all were entitled to get the same scale of pay and other service benefits. The Supreme Court, however, in paragraph 11 of the judgement, specifically pointed out that in some instances, some of the Muharrirs, due to length of service, were getting higher pay and in fixing their scale of pay as Lower Division Clerk, their previous

higher pay due to increment was needed to be protected as special pay and those were the subject-matter of pending litigation before the High Court and the Apex Court did not go into that question. Therefore, the Supreme Court in the said decision did not decide the question which is involved in the present litigation and specifically kept such question out of consideration.

15. In our view, as indicated earlier, Sub-rule (4) of Rule 55 is clearly attracted in the present case and as such, the writ petitioners should be given benefit of the said sub-rule. This is not a case where the writ petitioners exercised their option to retain a revised scale of pay nor is it a case where the pay drawn by the senior officer in the lower post before promotion to the highest post was less than that of his juniors.

16. We, therefore, set aside the order passed by the Tribunal and issue a mandamus directing the State-respondent to fix the scale of pay of the writ petitioners by giving benefit of Rule 55(4) of the Rules. Such relief of fixation of scale of pay of the writ petitioners be made within one month from today. All arrears and the consequential benefit to the writ petitioners who have already retired also given within two months from the date of communication of this order to the respondent.

17. As the writ petitioner No. 3 has died, the benefit accrued to the said petitioner be given to his heirs and legal representatives who have already been substituted in this application. The arrears should be paid with interest at the rate of eight per cent per annum from the date of accrual of the benefit in their favour.

18. The writ application, thus, succeeds to the extent indicated above. In the facts and circumstances, there will be however no order as to costs.

Kishore Kumar Prasad, J.

I agree.