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State of West Bengal and Others Vs Deb Kumar Mukherjee and Others and The D.M. 24 - Parganas and Others

Appeal No. 16A of 1991 and Matter No. of 1985

Court: Calcutta High Court

Date of Decision: July 20, 1992

Acts Referred:

Constitution of India, 1950 â€" Article 14, 15, 16, 39(d)

Citation: 97 CWN 658

Hon'ble Judges: Shyamal Kr. Sen, J; Ajit Kumar Sengupta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Shyamal Kumar Sen, J.

This appeal is directed against an order of the Learned Single Judge whereby the Learned Judge made the Rule

absolute in the writ petition filed by the respondents. Learned Judge also passed, inter alia, the following directions :

The respondents are directed to revise the Pay Scale of the petitioners in the Scale of Rs. 425-1050/- after unifying and abolition of the two grades

in the post of Inspectors of Housing Department with effect from the 1st April, 1981. Respondents are directed to pay to the petitioners all arrears

of salaries and allowances within four months from the date of communication of this order

The facts, inter alia, leading to this appeal are that the post of Inspectors were created in or about March, 1956 in the Development Department

under the Government of West Bengal. For the purpose of appointment to the said post of Inspectors, the Government prescribed recruitment

regulations and according to the said regulations graduates working in the Government offices were eligible for selection and appointment. For the

purpose of appointment to the said post of Inspectors knowledge of Civil and Criminal Law and their application were essential, apart from the

fact that they should be well conversant with the office procedures and accounts matters. Though the said posts were originally created for the

Development Department with the said posts were transferred to the Housing Department and the Inspectors were to look after the Middle

Income Group Housing and Low Income Group Housing and the scale of pay prescribed for the said post of Inspector was Rs. 100-200.

Originally the posts were created on temporary basis.

2. By a notification issued by the Department of Finance Government of West Bengal being Notification No. 5472-F dated 27th December, 1961

published in the Calcutta Gazatte Extraordinary dated 2nd January 1962 the said department amended the West Bengal Service Rules 1961. by

prescribing and/or reviving the scale of pay of the employees under the Government of West Bengal notwithstanding the fact that the respondents

as Inspectors were employees under the Government of West Bengal and notwithstanding the fact that as inspectors were employees under the

Government of West Bengal and the cadre of Inspector was borne in the cadre of Civil servant, the said pay Commission kept silent with regard to

scales prescribed for the said post of Inspectors and though the said revision in the scales of pay was for abolishing the different scales of pay for

the same post carrying and similar nature of responsibilities recommended the scale of pay Rs. 150-250/- for the Inspectors of the Housing

Department. As a matter of fact this revision in the scale of pay and fixation of the scale of payment Rs. 150-250/- was challenged in the writ

petition as wholly arbitrary and the said fixation was alleged to have been made without making any assessment, without considering the

responsibilities and the performances attached to the said post. It is significant to note that the said scale of pay was prescribed for the Lower

Division Clerk. It is further contention of the respondent (sic) petitioners in the writ petition that from the very beginning i.e. (sic) post of Inspectors

in the Housing Department were included in the proper cadre and the status of the Inspectors were not at all maintained and therefore, the posts of

Inspectors were even lower in status than the Upper Division Clerk. It is the further case of the writ petitioners that for the purpose of appointment

as a Lower Division Clerk the required qualification was Matriculate and, the nature of job is sterotyped and completely clerical. From the

recruitment regulations and prescription of eligibility criteria it would reveal that post of Inspector could in no way be equated with Upper Division

Clerk even not to speak of Lower Division Clerk. As a matter of fact the nature of job of Inspectors was prescribed by the Government Order

No. 1990-I K-87/55 dated 2.3.1956 and from the said Government Order it would reveal that the duties and responsibilities of the Inspectors are

verification of income of the applicants and that of the surety by examining the trade licence and various other licences and examination of books of

accounts and verification of pay certificate and verification of title deeds and documents in the matter of agricultural land for ascertaining the income

from the source of agriculture. Secondly to varify the title to the land where the proposed building was to be errected and mortgated to the

Government.

3. It is the further contention of the writ petitioners/respondents that it would be crystal clear that duties and responsibilities of the Inspectors do not

only in office but also in the field in the nature of inspection. From the said Government order it would also reveal that if on any occasion the Head

Clerk is absent. Inspectors are to take the charge of the work of the Head Clerk and in absence of Officer-in-Charge of the department to meet

the visitors. In the said government order the official works were also prescribed. It is very unfortunate that the pay Commission which prescribed

the scale of pay on the basis of duties and responsibilities attached to the said post revised the scales of pay and on that basis recommended a

scale of pay which is wholly unwarranted for the post of Inspector of Housing Department. It is further significant to note that the said pay

Commission recommended the scale of pay at Rs. 175-325/- for Inspectors of other departments who possess less academic qualification and

perform less duties and responsibilities. Therefore, the recommendation of the pay Commission with regard to the scale of pay for inspectors was

made not on any objective and/or rational materials but the said was made on some subjective and on imaginary grounds.

4. That against the aforesaid arbitrary fixation of pay of the Inspectors of the Housing Department the writ petitioners/ respondents submitted

representation before the appropriate authority and the appropriate authority could well realise the contention and/or grievances of the Inspectors

of the Housing Department and in order to meet the grievances of the Inspectors instead of abolishing the discrimination, the respondents further

reiterated their discriminatory action by creating gradation among the same grades of Inspectors. As a matter of fact by Government Order No.

2044 dated 4th June, 1965 the post of Inspectors were graded one as Inspector grade - I in the scale of pay Rs. 175-325/- and another as

Inspector Grade -II in the scale of pay Rs. 150-250/-.

5. It is the further contention of the writ petitioners/respondents that the said gradation of the post of Inspectors as Grade- I and Grade - II and

prescribing a higher scale of pay for grade-I has no rational nexus between the performance, duties and responsibilities and this scale of pay

attached to the said post and as such this Government order is on the face of it arbitrary, devoid of any reason and capricious. It has been alleged

that there was and there is no intelligible differential amongst the Inspectors for the purpose of enabling the Respondents to make a rational

discrimination amongst the Inspector. The writ petitioners/respondents submitted that the Inspectors performing same and identical nature of job

cannot be discriminated with regard to fixation of scale of pay. It is the case of the respondents/writ petitioners that the Inspectors of the Housing

Department are a class by themsleves and there is no difference between the work of Inspectors Grade -I and Inspector Grade - II and, therefore,

the fixation of higher scale of pay for a particular group of Inspectors and fixation of pay in lower scale for another group are highly discriminatory

and violative of rights guaranteed under Articles 14 and 16 of the Constitution of India. The writ petitioners/respondents submitted that the

respondents as Inspectors of Housing Department are performing the same and identical nature of job and as such the respondents according to

their accepted principles have issued different notifications in similar circumstances the discrimination, distinction, difference among the same class

of Government employee, should be abolished and one scale of pay should be introduced for Inspectors of Housing Department as they are

engaged in similar same and identical nature of job.

6. It is the further contention of the writ petitioners/respondents that the respondents submitted a memorandum to the Chairman of the pay

Commission of 1961 and the Commission alter persuing the record and going through the memorandum was prima facie (sic) that the scales of pay

fixed for the Inspectors Grade-I and Grade - II axe discriminatory and also realised that the scale of pay that was prescribed in 1961 for all the

inspectors as Rs. 150-250/ is also not commensurate with the work and/or duties and responsibilities attached to the said post of Inspector and as

such the Commission recommended revised scale of pay of 350 - 600/ - and also they further recommended to abolish the artificial gradation that

was made purporting to mitigate the grievances of the Inspectors of Housing Department.

7. It is very significant to note that though the Government could well realise that the Inspectors of the Housing Department have been deprived of

scale of pay commensurate with their duties and responsibilities and notwithstanding the fact that the Chairman of pay Commission, 1970 clearly

recommended the scale of pay of the Inspectors as Rs. 350-600/- and abolition of gradation by the West Bengal Services Rules, 1970, the scale

of pay for the Inspectors of L.I.C.G.H. Scheme, Howrah, Collectorate was equated with the scale of pay of the Lower Division Clerk, i.e. Rs.

230/- -405/- later on the Housing Department allowed the Inspectors Grade- I the scale of pay of Rs. 350-600/- and the Inspectors Grade-II

were kept in the cadre of Lower Division Clerk by forcing them to draw scale of pay of Rs. 230-425/-. The writ petitioners/respondents submitted

that the discrimination that was started from 1961 was reaffirmed by the 2nd pay Commission and /or Second revision of the scales of pay in

1981. It has further been submitted that by this fixation of scale of pay for Inspectors of the Housing Department and keeping gradation alive the

respondents authorities have violated the constitutional provisions guaranteed under Articles 14 and 16 of the Constitution of India. That this

fixation of scale of pay in 1970 for Inspectors Grade-I AND Grade-II has no relevant connection between the pay and performance of duties and

obligations of respective offices and that such fixation of the scale of pay is wholly arbitrary devoid of any reason and on the facts of it capricious.

The writ petitioners/respondents contended that there was no reason and there cannot be any reasonable ground and/or any intelligible diffentia in

keeping alive the discrimination among the same catagories of persons and making an artificial differentia among the same catagories of persons by

grading Grade - I and Grade- II posts of Inspectors carrying different scales of pay but the duties and responsibilities remaining same and identical.

The writ petitioners/respondents further contended that this prescription of higher scale of pay for some Inspectors and lower scale of pay for

some other Inspectors though they were appointed on same basis and same qualification and for performing the same and identical nature of job,

amounted to unreasonable and irrational classification and treated equals as unequals. Whatever be its activity the Government is still the

government and is subject to restrain inherent in its position in a democratic society. Constitutional power conferred on the Government "cannot be

exercised by it arbitrarily or capriciously or in unprincipled manner. The case of the writ petitioners/respondents is that the powers conferred on the

government or public authority were to be exercised for the public good and that every activity of the Government must have a public element in it

and it must, therefore, be with reasons and guided by public if interest. Every action taken by the Government must be in public interest and

government cannot act arbitrarily without any reason. In the instant case the fixation of scale of pay of the Inspectors as was observed by the

Chairman, pay Commission of 1961 and from his recommendation it would reveal that the gradation among the Inspectors and fixation of separate

scale of pay for each grade is wholly arbitrary and therefore, recommended one single scale of pay i.e. Rs. 350-600/- but the Government in

refusing to accept the said recommendation did not assign any reason and on the contrary, the respondents reiterated their discriminatory action

and equated a group of Inspectors with the Lower Division Clerk and kept alive the gradation which is the artificial gradation without any

intelligible differential and therefore, this fixation of scale of pay which is artificial gradation created among the same categories of persons is wholly

unconstitutional and invalid.

8. It is the further contention of the writ petitioners/respondents that the fixation of scale of pay of Inspectors and their gradation amounts to

treating equal as unequals. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification

must satisfy the twin test of classification being founded on intelligible differential which distinguishes persons from things that are group and that

such differential must have a rational to the object sought to be achieved by the gradation. The respondents submitted that the privilage of the scale

of pay of Rs. 350-600/- given by the Government to Inspectors Grade- II keeping other Inspectors out of the said cadre has destroyed the bed of

equality as enshnised in Article 14 of the Constitution of India. The writ petitioners/respondents further submitted that gradation among the same

the categories of persons and fixation of the same scale of pay according to the gradation without keeping in mind the duties and responsibilities

and the jobs performed by the Inspectors affects the interest relating to public employment and it is violative of Article 16 of the Constitution of

India and the same is violative of well settled principle and/or concept of equal pay for equal work. It has been submitted that when it was found

that there cannot be any differentia between the Inspectors, they should have acted fairly and should have given equal treatment to all Inspectors of

the Housing Department who perform the same and identical nature of job. The writ petitioners/respondents further submitted that Articles 39D of

the Constitution of India imposes upon the respondents and obligation to see that the constitutional goal as enshrined in the said Article i.e. equal

pay for equal work is maintained. The respondents stated that, where all relevant considerations are same persons performing same and identical

nature of job cannot be treated differently in the matter of their pay merely because they belong to different officers.

9. It is further contention of the writ petitioners/respondents that when the 3rd pay Commission was set up, it was expected that in order to

rationalise the scale of pay among the public servant the said pay Commission would definitely abolish the discrimination in fixation of pay which

was made earlier but unfortunately by the Revision of pay and Allowances Rules. 1981 the scales of pay of Grade-1 Inspectors have been revised

in the scale of Rs. 380-910/- and whereas the scale of pay of the Inspectors Grade-II has been revised as Rs. 340-750/-. This revision in the

scale of pay is nothing but revising and/ or keeping alive the discrimination which was started since 1971. The writ petitioners/respondents

submitted that from instance given, below it would be crystal clear that the Inspectors of the Housing Department have been deprived of their

legitimate claim and the scale of pay which is commensurate with the position status and duties and responsibilities of the same post.

10. Inspectors, Animal Husbandary and Dairy Department whose scale of pay was revised as Rs. 200-400/- in 1961, was given Rs. 300-600/- in

1971 and Rs. 425-1050/- was given in 1982 though the qualification for the said post is intermediate.

11. From the chart mentioned in the writ petitioner it appears that the Inspectors attached to the Housing Department were and are always

discriminated from the Inspectors of other department in as much as Inspectors of Housing Department were and are discriminated among

themselves with regard 10 fixation of their scales of pay. The writ petitioners/respondents further submitted that there cannot be gradation among

the same categories of persons and there cannot be any discrimination in fixation of pay of same categories of persons. The categorisation of

Grade -I and Grade - II is nothing but manifestation of the bureaucratic autocracy in order to create a division among the same categories of

persons. As stated herein before there cannot be any reasons and/or ground for categorising the Inspectors into two categories when all

considerations are the same. It has been submitted on behalf of the respondents that the Inspectors as Grade I and Grade II is violative of Article

14 and 16 of the Constitution of India as it makes a discrimination among the same categories of Inspectors of the Housing Department were

appointed alike on the basis of the same qualification and experience and eligibility and the said Inspectors formed an integrated cadre, no

discrimination could thereafter be made in favour of some Inspectors. It was submitted that this fixation of scale of pay and the gradation among

the same categories of persons is wholly arbitrary and as such perse amounts to denial of protection of law.

12. It is the further contention of the writ petitioners/respondents that all the respondents formed one single integrated category i.e. inspectors of

Housing Department as such the scale of pay of the respondents should be fixed in the scale of Rs. 200-400/- from 1961, Rs. 350-600/- in 1971

and Rs. 425-1050/- from 1981 and non-granting of the said scale of pay is wholly arbitrary. The respondents/writ petitioners submitted that as

Inspectors of Housing Department formed one integrated category there cannot be two scale of pay among the same categories of employees.

13. The writ petitioners/respondents further submitted that the respondents/writ petitioners were represented before the pay Commission set up in

1977 by the Association to which they belong but without any affect.

They demanded justice but justice has not been done.

Under such circumstances, they moved the aforesaid writ petition and succeed therein.

14. It has been submitted on behalf of the appellants that in the Housing Department and under its control, there are in all seven posts of Inspectors

and out of the said seven posts the respondents Nos. 1 and 2 are Grade -I, Inspectors and they are senior in service to respondents Nos. 3,4,5

and 6 who are Grade II Inspectors of the said Department. Respondents Nos. 3, 4, 5 and 6 entered into service much later than the respondents

Nos. 1 and 2. The respondents Nos. 1 and 2 are now in the scale of Rs. 380-910/- whereas the scale of respondents No. 3 to 6 who are grade -

II Inspectors, have been placed in the scale of Rs. 340-750/- It has alleged that initially in the Department in the cadre of Inspector there was no

scope for any promotion. In 1965, the authorities by Government Order dated 4.6.1965 as contained in Memo No. 2044 H.K. decided that a

few posts of Grade-I Inspectors would be created for giving promotion on the basis of seniority. It has been submitted that the Grade I and Grade

II Inspectors of the same cadre was made just only to open promotional benefits to the members belonging to the said cadre.

15. It has further been submitted that the recruitment Rules for the posts of the Inspectors were framed in 1988. In the said Rules it has been

provided that the method of recruitment to Inspectors Grade I is by way of promotion from the cadre of Inspectors Grade - II. But the method of

recruitment to the said cadre of Inspector is by way of Selection or by transfer from the cadre of Lower Division Clerk. But the qualification for the

said direct recruitment to the cadre of Inspector is Higher Secondary or its equivalent but for recruitment to the cadre of Inspector by way of

transfer is equivalent to the qualification of a lower Division Clerk. It may be mentioned that Lower Division Clerks did not require Higher

Secondary pass Certificate or its equivalent. Only Graduate in Government service is considered for appointment to the post of Inspector is not the

correct fact. It is further pointed out that the Inspector. Grade - II can also avail themselves of Promotion of the next higher post. It may be pointed

out that Grade - II Inspectors already continue their lien in the post of Lower Division Clerks and accordingly, they get promotion to the Upper

Division Clerks. To be more clear it has been submitted that in the Housing Department Inspectors Grade- II are transferred from Lower Division

Clerks with lien in the said clerical post. Thereafter those Grade- II Inspectors get promotion to the Upper Division Clerks when their turn comes.

This practice has been continuing in the said department for the last more than 20 years.

16. It has also been contended that regarding the nature of job of the Inspectors of both the groups there is nothing peculiar. According to the

appellants the contention of the writ petitioner respondents as made in the writ petition regarding the nature of their job is not correct and the same

has been rather exaggerated. The duties of higher officers in the department have been shown to be discharged by the respondents but this

contention of the respondent is far from the truth. To be more clear the nature of duties of the Inspectors is of general nature. There is nothing

about any technical, legal or any other specified branch of knowledge.

17. It has further been submitted that in the Housing Department the recruitment to the posts of Upper Division Clerk is generally made from the

Lower Division Clerks. The employees get promotion to various channels including Grade - II, Inspectors wherefrom an employee may either be

promoted to Grade-I or to Upper Division Clerk. Thus the weigh (scale) status of Inspector Grade -I and Upper Division Clerk is same. The

claim of the writ petitioners/respondents is that they discharge higher duties, better responsibilities and have got higher qualification than the clerks

though they should be treated as a separate class and they should be given higher monetary benefit by way of higher scale of pay cannot have any

basis. It has further been submitted that the recruitment to the posts of Inspector purely an affair of the regional office of the Housing Department.

Their appointments and thereafter promotion either to the Inspector or to the clerical line is purely a policy of the government and these

qualifications have been brought only just to have better and more classified allotment of duties. This classification as Inspectors from the clerical

staff is only meant for the qualification as well as allotment of duties of the Housing Department. It has been submitted on behalf of the appellant

that the claim of the respondents is that they belonged to a higher cadre, consequently they can claim higher scale of pay is not correct.

18. It has also been submitted that impugned judgment and order if given effect to will create serious administrative troubles and there will be

financial burden on the State Government.

19. It appears to that firstly the Government order dated June 4, 1965 by which the Government has created two grades i.e. Inspector Grade-I

and Inspector Grade-II only in so far as the Housing Department is concerned providing two different scales as mentioned above, even though the

qualifications, the nature of duties are same and that there is no basis for making of providing two scales in the facts and circumstances of the case.

20. Secondly, it has been urged that when the Inspectors of other department have been given the pay scale of Rs. 450-1050/- the respondents

should also give that pay scale to the writ petitioners on the principles of equal pay for equal work.

21. It was further submitted by the Learned Advocate for the writ petitioner that in the instant case the respondents refused to pay equal pay for

equal work in respect of the Housing Department Inspectors among themselves as well as in comparison with the other Inspector of other

department under the Government of West Bengal. It was submitted by the writ petitioners that the action in this behalf taken by the respondent

State Government, was highly illegal, arbitrary, discriminatory and violative of Article 14 and 15 of Constitution. It was further submitted that there

was no rational basis for making classification of Inspectors into two Grades-Grade-1 and Grade-11 ignoring the principle of equal pay scale for

equal work and inspile of the fact that they all perform the same nature of duties and take up similar responsibilities. In this connection reference

was made to the case reported in Budhan Choudhry and Others Vs. The State of Bihar, wherein the Supreme Court held that Article 14 only

forbids class legislations.

It does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible-classification two

conditions must be fulfilled (Twin Test) viz.

(i) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others

left out of the group and (ii) that the differentia must have a rational relations to the object sought to be achieved by the status in question. What is

necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established

by the decision of the Hon"ble Supreme Court that Article 14 condemns discrimination not only by a substantive law but also by a law of

procedure.

22. Further reference was made from time to time to the case of D.S. Nakara and Others Vs. Union of India (UOI), where the Supreme Court

considered the scope of ""equal pay for equal work"". Supreme Court observed in that case as follows :-

In that case, the writ petitioner before the Supreme Court was a driver cum Constable in the Delhi Police Force and he demanded that his scale of

pay should at least be the same as the scale of pay of other drivers in the service of the Delhi Administration. There, the Supreme Court held as

follows:- ""We conclude that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the

pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the

same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different

departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by

them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the

same.

23. ""It is true that the principle of ""equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly

is a Constitutional goal. Art. 39(d) of the Constitution proclaims equal pay of equal work" for both men and women as a Directive Principle of

State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the nexus.

Directive principle as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of

interpretation. Construing Articles 14 and 16 in the light of the preamble and Articles 39(d), we are of the view that the principle "Equal pay for

equal work" is deductible from those Articles and may be properly applied to cases of in equal scales of pay based on no classification or irrational

classification though those drawing the different scales of pay do identical work under the same employer.

24. The Supreme Court also observed in that case that ""the respondents in their affidavit did not explain how the case of driver in the Police Force

was different from that of the drivers in the other departments and what special factors weighed in fixing a lower scale of pay for them.

25. ""In the case of P.K. Ramachandra lyer and Others Vs. Union of India (UOI) and Others, the Supreme Court followed the decision of

Ranadhir Singh (Supra) and held that ""equal pay for equal work" is deductible from Articles 14, 16 and 39(d) and may be property applied to

cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical

work under the same employer. The Supreme Court held in that case there is no attempt was made to sustain the scales of pay of professor on the

doctrine of classification because the classification of existing incumbents as being distinct and separate from newly recruited hands with flimsy

change in essential qualification would be wholly irrational and arbitrary. The Supreme Court, therefore, issued a writ of Mandamus directing the

Government to put the petitioners in the revised scale of pay where all relevant considerations are the same the persons holding identical post and

discharging similar duties cannot be treated differently.

26. Supreme Court observed as follows in the case of Dhirendra Chamoli & Anr. vs. State of U.P. reported in (1986) S.C.C. 637.

It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Vuvak Kendras knowing fully

well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for

it is an all two familiar argument with the expliting class and a welfare state committed to a socialist pattern of society cannot be permitted to

advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of the

people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted

employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other

Class IV employees, cannot provide as escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the

Constitution. This article declares that there shall be equality before law and equal protection of the law and should not be permitted to challenge

the validity of the same on the ground of inordinate delay. On this question it was submitted by the learned Advocate for the petitioner that the

delay should not debar the petitioner from obtaining any relief when it established that the impugned action violates the fundamental rights

guaranteed under the Constitution of India. Further, the Affidavit-in-opposition is totally silent on the question why the Inspectors of other

departments have been paid higher scale of pay of Rs. 425-1025/- without giving the same to the Inspectors of the Housing Department.

27. Learned Advocate for the State Government stated that the Inspectors of the Housing Department are performing the same duty as that of

Clerks. We have considered the records and it appears to us that the Inspector cannot be equated with the Clerks and, as such the contention of

the appellants they cannot get same pay as that of the Inspector of other departments can not be accepted. It appears from the proposed

amendment to the recruitment Rules for the posts of Inspector on 6th August, 1986 that the Inspector Grade -I to be appointed by promotion

from the cadre of Inspector Grade- II is to be appointed by selection on the basis of merit-cum-seniority from the cadre of Lower Division Clerks

of the respective district/house building loan office having at least five years experience in departmental work, and they should have as minimum

qualification a degree of an Indian University in the event of direct recruitment by selection. A xerox copy of the letter addressed from the Deputy

Secretary to the Government of West Bengal, the Secretary, Public Service Commission regarding proposed recruitment rules have been

produced in court. The same proposed rules were subsequently incorporated and accepted by the Government. The said rules are set out herein

below:-

"A" Inspector Gr. I by promotion from the cadre of Inspector, Gr. II "B" Inspector G. II (i) By selection on the basis of merit-cum-seniority from

the cadre of Lower Division Clerks of the respective district/house building loan office having at least live years experience in departmental work.

- (ii) By direct recruitment through selection :
- a) Qualification: A degree of an Indian University.
- b) Age: Not more than 35 years on the first day of January of the year of recruitment.
- 28. That apart, it does not appear to us that there is any scope for promotion from the post of Inspector Grade-I whereas from the Upper Division

Assistants there are promotions to the post of Section Officer etc. Under such circumstances, the contention of the Learned Advocate for the State

Government that the post of Inspector Grade-I is identical with that of grade of Upper Division Assistants can not have any basis. Their duties are

different from that of Clerks. They are discharging duties and functions similar in nature to Inspector of other departments.

29. Accordingly, we do not find any reason to interfere with the judgment and order under appeal.

The appeal is, accordingly, dismissed.

There will be no order as to costs.

Ajit Kumar Sengupta, J.

I agree.