

(2013) 02 CAL CK 0052

Calcutta High Court

Case No: W.P.S.T. No. 755 of 2005

State of W. Ben.

APPELLANT

Vs

Dipankar Dey

RESPONDENT

Date of Decision: Feb. 26, 2013**Citation:** (2013) 3 CHN 574**Hon'ble Judges:** Tarun Kumar Gupta, J; Jayanta Kumar Biswas, J**Bench:** Division Bench**Advocate:** Pranab Kumar Dutta, Seba Roy and Chaitali Bhattacharjee, for the Appellant; Milan Chandra Bhattacharjee, for the Respondent**Final Decision:** Allowed

Judgement

Jayanta Kumar Biswas, J.

The petitioners in this WPST under Art. 226 of the Constitution of India dated November 29, 2005 are questioning an order of the W. Ben. Administrative Tribunal dated July 30, 2004 (WPST p. 78) allowing the first-twenty-seventh respondents' OA No. 1228 of 2002. The twenty-seven private respondents filed an OA No. 1468 of 2001 claiming the Rs. 425-1050 scale contending that similarly situated Workshop Instructors had been given the scale pursuant to orders of this Court and the Tribunal. By an order dated January 16, 2002 the Tribunal disposed of the OA directing the Director of Technical Education and Training, Government of W. Ben. to give a decision. The Director gave a decision dated April 12, 2002 (WPST p. 65).

2. The Director held that the petitioners appointed under the W. Ben. Services (Recruitment to the post of Workshop Instructor, Mistry Instructor in Government and Sponsored Polytechnics in W. Ben.) Rules, 1986, being not similarly situated with the persons who were given the Rs. 425-1050 scale pursuant to orders of this Court and the Tribunal, were not entitled to the scale.

3. In his decision the Director pointed out that the persons getting the scale pursuant to orders of this Court and the Tribunal had been appointed before the W.

Ben. Services (Revision of Pay and Allowance) Rules, 1981 came into force. Making this distinction the Director held that the private respondents not getting the scale and the Workshop Instructors getting the scale did not constitute one class.

4. The private respondents questioned the decision of the Director of Technical Education and Training dated April 12, 2002 by filing the OA No. 1228 of 2002 that was allowed by the impugned order dated July 30, 2004.

5. The petitioners (they were the respondents in the OA) contested the OA without filing any reply. Under the circumstances, the Tribunal did not examine the case stated in the OA in detail. It accepted the case of the private respondents that they were similarly circumstanced with the Workshop Instructors getting the Rs. 425-1050 scale on the basis of orders of this Court and the Tribunal.

6. Mr. Dutta appearing for the petitioners has argued that the Tribunal did not say why the Director of Technical Education and Training was wrong in recording the finding that the petitioners were not similarly circumstanced with the Workshop Instructors who were given the Rs. 425-1050 scale pursuant to orders of this Court and the Tribunal.

7. Mr. Bhattacharjee appearing for the private respondents has strongly relied on the case stated in para. 6(j)(i) of the OA. The relied on part of para. 6(j)(i) of the OA is quoted below:-

The aforesaid statement in the said impugned order is not correct for the reason that, The respondent authorities vide their No. 7A-2T-87, 5009 (T) dated 2nd November 1987, duly appointed 40 workshop instructors in terms of aforesaid Rule, 1986, and most of them have already been granted the benefits of higher pay scale by the authorities in terms of order of the Hon"ble Court.

8. The order dated November 2, 1987 under which the forty Workshop Instructors mentioned in para. 6(j)(i) of the OA were appointed was produced with the OA, and a copy thereof is at p. 71 of the WPST. In support of the case stated in para. 6(j)(i) of the OA the private respondents also produced Government Orders dated March 22, 2001 and May 10, 2000 (WPST pp. 55 and 59 respectively).

9. Faced with the above-noted case stated in the OA, Mr. Dutta has argued that the order dated November 2, 1987 cannot automatically entitle the private respondents to the benefit of the Rs. 425-1050 scale; and that the petitioners not questioning the order of the Tribunal accepting which the benefit of the scale was given to those forty persons are not estopped from questioning the validity of the impugned order granting the private respondents the same benefit.

10. It seems to us that the issue whether the private respondents were entitled to the same benefits that were given to the forty Workshop Instructors appointed under the order dated November 2, 1987 was the most important issue that ought to have been decided by the Tribunal. We do not think it will be appropriate on our

part to decide the issue while judicially reviewing the order of the Tribunal that did not express its opinion on the issue.

11. In our opinion, it will be appropriate to ask the Tribunal to hear the OA afresh and decide this issue specifically. At this stage Mr. Bhattacharjee has submitted that during pendency of the WPST the authority concerned granted the private respondents the scale in question pursuant to the order of the Tribunal. To this, Mr. Dutta has pointed out that the scale was given subject to the result of the WPST.

12. It is evident that the benefits were given subject to the result of the WPST. While we are of the view that it will be appropriate to say that the benefits already given shall abide by the result of the OA, we do not think it will be appropriate to pass an interim order directing the authority to give the private respondents the benefit of the scale during pendency of the OA. For these reasons, we dispose of the WPST ordering as follows. The order dated July 30, 2004 is set aside. The petitioners will be free to file reply to the OA. After the pleadings are complete, the Tribunal shall hear the parties, frame the issues and decide all of them expeditiously. Benefits already given shall abide by the result of the OA. No costs. Certified xerox.

Tarun Kumar Gupta, J.

I agree.