

**(1995) 04 CAL CK 0022****Calcutta High Court****Case No:** Matter No. 4429 of 1993

Jagannath Jana and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision:** April 21, 1995**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226, 309

**Citation:** 99 CWN 816**Hon'ble Judges:** Nikhil Nath Bhattacharjee, J**Bench:** Single Bench**Advocate:** Kashikanta Moitra, G.C. Dey and C.K. Saha, for the Appellant; Prasanta Banerjee, for the Respondent**Judgement**

Nikhil Nath Bhattacharjee, J.

This matter arises out of an application under Article 226 of the Constitution of India filed jointly by 10 petitioners who are supervisors/statistical supervisors/investigators and posted at Manpower and Evaluation branch under the Development and Planning Department, Government of West Bengal, Raj Bhavan, Calcutta. They were appointed during the period from May 1975 to February 1977 as investigator/computer. The minimum basic qualification for appointment in the said posts is B.A./B.Sc with statistics, economics, mathematics and physics. In addition to the minimum qualification each one of them petitioners acquired higher qualification, namely M.Sc. in Mathematics, M.A. in Economics, M.A. in Rural Economics and Cooperation. M.Sc in Mathematics, MA, in Economics, M.A. in Rural Economics and Cooperation, M.Sc in Physics or M.Sc in Statistics on various dates, mostly prior to their appointment. It is their case that by circular No. 10035-A dated 21st Oct. 1974. the Government of West Bengal in the Finance (Audit) Deptt. ordered that to attract, talent and to avoid frustration six incremental benefits may be given to those who possess post graduate degree at the time of their entry into the service or obtained afterwards. The petitioners' further case is that by a circular no.

3780-F dated 11th April 1980 the respondent authority instead of advance increments granted one time incremental benefit, called qualification-pay up to Rs. 200/- p.m. for possessing higher qualification than the basic qualification. It is their case that the petitioners were entitled to the said qualification-pay but they were deprived of the same. By a notification no. 5371-F dated 7th June, 1985, the Governor was pleased to frame rules, called the West Bengal Services (Qualification Pay) Rules, 1985, regulating the admissibility of qualification pay for the services and posts under the administrative control of the Government of West Bengal. It came into effect on 1st day of August, 1974 and accordingly the qualification pay that was previously being available came to be abolished with effect from the date of enforcement of the said rules. Of the ten petitioners herein, seven were appointed in the post of investigator and three were appointed in the post of computer. There were separate recruitment rule for the post of investigator and computer at the time of their appointment but following the order dated 4th June 1977 passed by the Hon'ble Mr. Justin Mohitosh Majumdar in Civil Rule no. 15369(W) of 1980 a single cadre of investigator and computer was constituted and a single recruitment rules for the said posts was made vide notificated dated 23rd July 1990 and 19th March, 1992. The petitioners state that they came to know about the said orders sometime in the month of January, 1988 and immediately submitted representations before the respondents no. 2, 3 and 4 for obtaining six incremental benefits and qualification pay. The applications were submitted separately. After waiting for several months in vain the petitioners approached various authorities and inquired about the fate of their applications when they were informed that a file had been opened with their applications and placed before the higher authorities with favourable recommendations. Sometime in November, 1992, the petitioners came to know that although their claim for six incremental benefits and qualification pay had been accepted, approved and upheld by the respondents no. 2, 3 and 4 and recommended to the respondent no. 5 for accepting the claims as bonafide and valid and accordingly to sanction the amounts to them. But respondent no. 5, Finance Deptt. did not grant the sanction. The petitioners maintain that they were entitled to the six incremental benefits and qualification pay for the reasons that the qualifications are specialized and technical in nature, the qualifications are added qualifications which are used for more efficient discharge of their official duties and that the recruitment rules do not require such added qualification as the minimum qualification for entry into the service. By denying the benefits to the petitioners, the respondents acted illegally, malafide, with arbitrariness and in violation of statutory rules. Moreover, the respondents have granted the financial benefits of advance increments and qualification pay to one Smt. Sabita Guha, Senior Research Officer (Evaluation) posted at Development and Planning Department. Besides, the Schedule Casts and Tribal Welfare Department, Government of West Bengal have also granted six increments and qualification pay. vide SC and TW Deptt. order no. 2310-TW to 2317 dated 26th July, 1984 and no. 194 TW dated 29th January, 1985 with the concurrence of the Finance Department, vide their unofficial no. 63 Group

"J" dated 10th July, 1984, on the self same ground to the Research Investigators. The respondents are thus guilty of indulging in discrimination. A demand notice dated 23rd December, 1992 through their learned advocate was served but the petitioners continue to be deprived of their lawful financial benefits. Hence by filling this writ application the petitioners have prayed for Issuance of a writ in the nature of mandamus commanding the respondents to give effect to the order dated 21st October, 1974 and 11th April, 1980 in favour of the petitioners granting them increments as admissible up to 30th April, 1977 with effect from their date of joining the respective posts and qualification pay @ Rs. 200/- p.m. each with effect from 1st May, 1977 and accordingly to fix up their pay and to pay all their benefits of pays and arrear salaries. The State of West Bengal contest this writ application by affirming an affidavit. It has been stated that in terms of memorandum dated 20th October, 1974 incremental benefits for post graduate qualification are admissible only in those cases where possession of post graduate qualification of a specialized and technical nature are considered as added qualification for more efficient discharging of official duties. The representations of the petitioners were received and duly examined and referred to the Finance Deptt. but the said department did not approve of the proposal. It is stated that the court is not the authority to grant any relief to the petitioner. It is the administrative deptt. which in consultation with the Finance Department can only give such relief to the petitioners and the petitioners having failed to make out a case as to how the added qualification could be of advantage in due discharge of their official duties, the question of granting them financial benefits in the form of six advance increments and qualification pay cannot and should not arise.

2. The relevant portion of memorandum no. 10035-F dated 21st October, 1974, is quoted below :

2. The Committee submitted their reports containing their recommendations in June, 1974. These recommendations have been carefully considered and the Governor is pleased to decide as, follows :

a) These incremental benefits for Post Graduate qualifications shall be admissible only in such cases where possession of those Post Graduate qualifications of a specialized and technical nature would be considered as an added qualification for the due discharge of their official duties and not otherwise.

b) These incremental benefits due to Post Graduate qualifications of a Specialized nature would not be admissible in respect of posts whose recruitment rules require swell Post Graduate Qualifications of a technical nature as the minimum qualifications.

3. Thus to attract the aforesaid provision, the following ingredients are necessary-

(a) The added qualifications must be obtained before or after entry into the service:

(b) The added qualification must be of a specialized and technical in nature; (c) the added qualification is required for more efficient discharge of official duties and (d) such benefits are not admissible in respect of posts whose recruitment rules require such added or post graduate qualification as minimum qualification.

4. Mr. Kashikanta Moitra, learned senior advocate assisted by Mr. G.C. Dey and Mr. C.K. Saha on my request prepared and submitted a chart showing basic qualification required and post graduate qualification obtained by each of the incumbents and served a copy upon the learned State Advocate. It appears therefrom that whereas the minimum educational qualification as per recruitment rules is B.A./B.Sc with statistics, economics, mathematics and physics, the petitioners possessed post graduate degree in Mathematics or Economics or Rural Economics and Cooperation or Physics or Statistics even at the time of their entry into the service. The question for consideration is whether the post graduate qualifications acquired by the petitioners are of specialized and technical in nature and may be considered as added qualification for more efficient discharge of official duties. It is beyond comprehension how the post graduate degree in Economics, Mathematics, Statistics, Rural Economics and Cooperation, or of Physics could not be considered as specialized and technical in nature. Whoever has some academic attainment may very well visualize that an M.Sc in Mathematics or Statistics or Physics or Economics is really having special and practical knowledge. According to Merriam Webster. "technical" means special and practical knowledge, especially of a mechanical or scientific subject. Economics, Physics, Mathematics and Statistics etc. are no doubt scientific subjects and there can be no denying that a post graduate degree holder in any of such subjects should be considered as having special or practical knowledge.

5. Regarding whether the said post graduate qualification could be treated as added qualification for more efficient discharge of official duties, the representation of Md. Siddique, a petitioner submitted before the Director of Evaluation, Monitoring and Manpower, and Ex officio Joint Secretary, Development and Planning Deptt. on 9th November, 1988, made Annexure C to the writ petition, may be gone into. The assertions made therein have not been controverted or denied by the respondent authority in their Affidavit-in-opposition.

6. It appears from the said representation which has been attached as a Specimen as each of the other petitioners also submitted similar representation, that what the petitioners are to perform in their day to day work is to make survey of different schemes said to have been executed by the technical agencies of the departments like. Power, Irrigation, Health and Family Welfare, Education, Agriculture, Hill Affairs, Public Health, Engineering, Rural Development, Rural Energy, Animal Husbandry, Solar Energy, Fishery, Seri Culture, Tea Gardens, Forest, PWD (roads), Town and Country Planning etc. and the results of their survey are published in reports which are very useful to the concerned technical departments of the State Government as

well as the Central Government. The petitioners represented, as also as it being not controverted seems to me, that the nature of their duties require special scientific method to facilitate the survey work, collection of data from the field and analysis and evaluation of the information as to claims both technical and non-technical, of the Department concerned. It is further stated that the investigators are required to be technically oriented and specially trained as otherwise their whole approach and purpose will be of no consequence. The distribution and projection of facts and figures also require specialized knowledge and experience. The evaluation activities as carried on by the petitioners help in programme planning by assessment of community needs and programme monitoring in terms of reaching the target for examining whether delivery services are in consonance with the programme and design. Successful programme evaluation require not only adequate understanding of programme objectives, scope and targets to be achieved but also require scientific research skill in planning and executing evaluation studies. The petitioners further represented that on the basis of their reports on shallow tubewell in West Bengal (I) and (II), on seed farms, on T.C.P.C. for Schedule Tribes in West Bengal on rural water supply on river lift irrigation schemes, on fisheries projects at Mahajangon on rural electrification programme, on family planning programme, minor irrigation schemes in Hooghly and Nadia districts on drinking water supply and housing schemes for Scheduled Tribes of Malda, on tank improvement scheme in the district of Purulia and Bankura under drought prone area programme, sericulture development schemes in hill areas of Darjeeling, on Social Forestry in West Bengal, on rural energy programme in Kaliampung block, on shortage of qualified pharmacists in hospital and dispensary etc. were of immense help to the development and planning department. It was asserted that their job being of technical in nature there is a proposal for the creation of the post of Additional Director (technical) for Evaluation, Monitoring and Manpower Directorate. This being the position in my view the nature of jobs carried on by these petitioners must be treated to be of technical in nature requiring specialized knowledge and skill.

7. The basic minimum qualification for entry into the cadre is B.A./B.Sc degree and each of the petitioners having acquired the post graduate degree in M.A. or M.Sc. in various specialized subjects of technical nature, there is no doubt that this post-graduate qualification would be an added advantage to each of the petitioners for more efficient discharge of his official duties.

8. In this view of the matter, there can be no denying that the provision of the circular dated 21st October, 1974 is wholly attracted to the case of the petitioners and accordingly they are entitled to get the benefit of advance increments as provided therein. It appears that the administrative department accepted the said position and recommended to the Finance Dept. (Respondent no. 5) for according approval for grant of the said financial (sic) fit to the petitioners.

9. Surprisingly however, a high official in the Finance Department noted that as the job may very well be done by an I.SC or I.A., the same cannot be treated as technical and specialized in nature and accordingly the proposal does not warrant the grant of incremental benefits vide. Annexure A of the affidavit of Jagannath Jana dated 24th November, 1993. The notes and orders in the original office file no. EV/7E-3/88 on the subject: qualification pay for Investigations/Computers of the Dept. of Development and Planning. Evaluation. Monitoring & Manpower Branch. 3 Middleton Row, Calcutta-71, bears testimony to the authenticity of the said remark. But on the face of it. It is difficult to conceive of a more fallacious approach. Whereas the minimum qualification prescribed for the post of investigator being B.A./B.Sc. as per notification dated 23rd October, 1975 and 19th January, 1970. Annexure B to the writ petition which must have been approved by the West Bengal Cabinet before it was issued, it seems to be the height of audacity for any officer, however high he may be to say that the job of the investigator can be carried on with educational qualification of I.SC or I.A. Mr. Moitra learned senior advocate in his written note branded such arbitrariness on the part of the respondent authority by quoting, "be you ever so high, the laws are above you."

10. Words fail to denounce such practice of making wreckless comments show hollowness and self-conceit. I.A/I.SC. means passed H.S. Examination, can one with such educational background evaluate the progress made in the fields of various plans and programmes undertaken and executed? If that was possible why did not you make such qualification the minimum qualification for entry into such service? The duty of evaluation is onerous and with post graduate degree in the fields as possessed by the petitioners, their day to day jobs are bound to be more efficiently done. Such higher qualification is an added advantage for due discharge of official duty.

11. Qualification pay is a one time financial benefit given in place and stead of advance increments for possessing post graduate qualification of a specialized and technical in nature as added qualification. Whoever is entitled to the advance increments is also entitled to the qualification pay. The applicability of the circular dated 11th April, 1980 is also automatic. The Government in the Finance Department subsequently framed Rules, called West Bengal Services (Qualification Pay) Rules, 1985 under Article 309 of the Constitution of India wherein qualification pay has been defined as advance incremental benefits available with effect from 1st August, 1974 upto 30th April, 1977 or the monetory benefit in absolute amounts sanctioned with effect from 1st May, 1977 for post graduate degree or diploma which is not the basic minimum educational qualification for entry into the service. In Rule 3 (d) it is laid down that qualification pay should be admissible only if it is declared by the administrative department concerned with prior consultation with the Finance Dept. that a particular educational qualification is an added qualification of technical and/or specialized nature which is useful for the efficient discharge of official duties by the concerned government employee or government servant and

not otherwise.

12. In the instant case the administrative department accepted the post graduate qualification of the petitioners herein as added qualification of a technical and specialized nature and recommended for being declared as useful for efficient discharge of official duties. But the government in the Finance Department practically pooh poohed the proposal with the remark that their job is such which can be done by any person having I.A. or I.SC as an educational background.

13. In the writ petition itself petitioners have stated the case of Smt. Sabita Guha. Sr. Research Officer (evaluation) posted at Development and Planning Department. 3. Middleton Row, Calcutta-700 071 and S.C. and T.W. Deptt Order No. 2310-T.W. to 2317-T.W 26th July 1984 and 194 T.W. dated 29th January. 1985 which had the concurrence of the Finance Deptt. vide their unofficial no. U/O-663 Group J dated 10th July. 1984 wherein six advance increments and thereafter qualification pay was allowed. If a "cultural officer" obtaining M.Sc. in Anthropology can be treated to have acquired an additional qualification of specialized and technical in nature which would help him in carrying on his official duty more efficiently, denial of the said benefit to the present petitioners almost on the self-same ground is highly discriminatory and violative of Article 14 of the Constitution.

14. Mr. Prasanta Banerjee, learned advocate appearing for the State on the other hand argued that grant of advance increments or qualification pay is an absolute discretion of the authority concerned and further that the same yardstick applicable to certain orders of the S.C. and T.W. Deptt. cannot be made applicable to the case of the petitioners as every case is to be judged on its own merit. His point is that since the administrative department could not satisfy the Finance Deptt. the necessity of granting the financial benefits to the petitioners by the Finance Deptt. could not at all arise. But with due respect to Mr. Banerjee I must say I am unable to agree with his contention.

15. In denoting such refusal to the petitioners being arbitrary, irrational, unreasonable and in violation of statutory rules and in gross violation of all principles of fair play and natural justice. Mr. Moitra for the petitioners referred to the following judgments:

(1) S.G. Jaisinghani Vs. Union of India (UOI) and Others, there Lordships observed as follows:

In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law. discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules, and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle

or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (Sec. dicey. "Law of the Constitution" - Tenth Edn.. Introduction CX). "Law has reached its finest moments stated Douglas. J. in *United States v. Wunderlinch* (1951)-342 US 98. "when it has freed man from the unlimited discretion of some ruler.....Where discretion is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes*, (1770) 4 Bum. 2528 at page 2539 "means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful.

(2) Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, of the said judgment the Appex Court observed "It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity.....

In paragraph 36 of the said judgment it was held

.....The question, whether an impugned act is arbitrary or not is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so does it satisfy the test of reasonableness. Where a mode prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose am discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being.....

16. Mr. Moitra pointed out that denial of the financial benefit to the petitioners violated the petitioners" legitimate expectation and in this respect relied on the decision reported in Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, of the said judgment, their Lordships held "It may be indicated here that the doctrine of "legitimate expectation" imposes in essence a duty on Public authority to act fairly by taking into consideration all relevant factors relating to such "Legitimate expectation".....

17. He further relied on a division Bench judgment of this court reported in *Collector of Nadia v. Subir Kumar Ghosh*, Vol. 99 CWN 298 and a single judgment of Patna High Court reported in *Sachindra Kumar v. Patna Regional Development Authority* AIR 1994 Pat 123 to highlight the application of the doctrine of legitimate expectation in circumstances as in the present one.

18. In the instant case, denial of the financial benefits to the writ petitioners by the respondent authority in accordance with their own circulars dated 21st October, 1974 and 11th April, 1980 and provisions of statutory rules as referred to above is arbitrary, capricious, unreasonable and in violation of statutory rules and principles, as also violative of Article 14 of the constitution. Having regard to the facts and circumstances of the case and the decisions cited on behalf of the petitioners, which are applicable to the instant case. I hold that the petitioners have made out their case.

19. Accordingly the writ petition succeeds with the following reliefs granted to the petitioners. Let a writ in the nature of mandamus do issue commanding the respondents and/or their servants to take such steps as may be necessary in order that all the financial benefits as are admissible under the rules and circulars and in the light of my observations above be made available to the writ petitioners within a period of 3 months from the date of communication of this order.

There shall be no order as to costs.

All parties to act on the operative part of this judgment countersigned by an officer of this court.