
(2015) 04 CAL CK 0010
In the Calcutta High Court
Case No : WP 11066 (W) of 2002

Barindra Nath Sarkar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 04 CAL CK 0010

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Amal Baran Chatterjee and Saidur Rahaman, Learned Advocates, for the Appellant

Final Decision : Allowed

Judgement

Samapti Chatterjee, J.—The petitioner filed the instant writ petition praying inter alia to fix the petitioner's pay scale in Scale No. 12 instead of Scale No. 9 as per ROPA 1998 as the said benefit has been already extended in respect of the other incumbents working under the same organisation namely Central Valuation Board (hereinafter referred to as the said Board), barring the petitioner.

2. On 3rd June, 1996 the petitioner was appointed as Law Assistant of the said Board in Scale No. 9 i.e. Rs. 1260-2610/-. Since by virtue of the ROPA 1998 the petitioner's pay scale was not fixed in Scale No. 12, though vide Finance Department's Order dated 15th September, 1995 the Law Assistants of Entry Tax Department were allowed to enjoy the Scale No. 12, not only that vide order dated 12th August, 1988 passed in C.O. No. 9035(W) of 1988 by this Hon'ble Court the Law Assistant attached to the Land Acquisition Collectors office were also allowed to enjoy the Scale No. 12, therefore, the petitioner made a representation on 6th April, 2001 to the Member Secretary of the said Board, ventilating his grievances for upgradation and fixation of his pay scale from Pay Scale No. 9 to Pay Scale No. 12. It was also mentioned there that the 4th Pay Commission after considering the duties and responsibilities of the post of Law

Assistant, has recommended that the Pay Scale of Law Assistants should not be less than Pay Scale No. 12.

3. It was also contended that the Government of West Bengal had accepted the report of the 4th Pay Commission and had decided to implement the said recommendation, the same was reflected in the Press Note dated 6th April 2000 which is quoted below:-

"The Fourth Pay Commission constructed by the Government of West Bengal submitted Vol.II of its Report on 7.1.2000. In this the Commission furnished its recommendations regarding pay-scales and other benefits of the employees of 52 Statutory Bodies, Corporations, State Government Undertakings covering about 50,000 employees. A list of these organisations is given in Annexure I.

The State Government, after considering the recommendations contained therein, has decided to implement the recommendations with certain modifications and the Government Order bearing No. 3402 (75) F dated 6.4.2000 has been issued to that effect. A summary of the Government decisions is given below:-

(1) The recommendation of the Pay Commission in regard to scales of pay, Dearness Allowance and House Rent Allowance shall be accepted.

(2) As regards medical and other allowances, the incumbents will continue to draw the same amounts as were being drawn in unrevised scales prior to this revision, until further orders.

(3) The principle of fixation of pay in the revised scales as recommended by the Pay Commission shall be accepted.

(4) Pay will be fixed in the revised scales notionally with effect opts to come over to revised scale of pay. An employee may opt to come over to the revised scale of pay with effect from any date between 1.1.96 and 1.1.97 (both days inclusive).

(5) Actual payment on the basis of fixation in the revised scales of pay will, however, be made with effect from 1.4.2000. But the arrears for the period from 1.4.97 to 31.3.2000 will be paid in 5 annual instalments, the first instalment being payable not before 1.11.2002, along with interest to be calculated from 1.4.2000 at the same rate as admissible in respect of the accumulation in the General Provident Fund Account.

Regarding the revision of pay-scales and other benefits of about 10,000 employees of the remaining 21 State Government Undertakings, the Government will take an appropriate decision shortly."

In the said list of 52 Organisations under Serial No. 51 the Central Valuation Board (CVB) was appearing.

4. It is contended by Mr. Amal Baran Chatterjee, learned Senior Counsel appearing for the petitioner that the West Bengal Central Valuation Board Act,

1978 has been amended by the West Bengal Central Valuation Board (Amendment) Act, 2002, as published in the Calcutta Gazette on 19th August, 2002. By that amendment the word "Central" has been struck down. Therefore, by virtue of the said amendment the West Bengal Central Valuation Board is to be now read as "West Bengal Valuation Board."

5. Mr. Chatterjee also relied on the Paragraph 3 of the affidavit used by respondent No. 4, where it is stated that the Board after accepting the recommendation of the 4th Pay Commission has moved the Government inter alia seeking approval for upgradation of pay scale of Law Assistant to the Pay Scale No. 12 (Rs. 4800-10950/- since revised), as per ROPA 1998. The said Paragraph-3 of the affidavit of the said Board is set out herein below:-

"3. That it is also stated therein the said letter inter alia that "in view of the observation and recommendation of the Fourth Pay Commission, the Board moved the Government seeking approval for upgradation of scale of pay of Law Assistant to Scale No. 12 (Rs. 4800-10950/-), since revised, as per ROPA 1998, in place of existing Pay Scale No. 9 (Rs. 4000-8850/-) since revised as per ROPA 1998." 6. Mr. Chatterjee also drew my attention to the letter dated 12th May, 2004 written by the Member Secretary of the said Board to the Member Secretary, (WBCS) and the Joint Secretary, Principal Affairs Department, Writers' Buildings, Kolkata-1 (Annexure R4 of the affidavit-in-opposition filed by the respondent No. 4). Some extract of the said letter is quoted below:-

"It is note worthy to mention once again that 4th Pay Commission already suggested that the pay scale for the post of Law Assistant should be not less than the Pay Scale No. 12, i.e. Rs. 4800-175-10925/- (revised)". Therefore, finally Mr. Chatterjee vehemently urged that the Government should be directed to fix the petitioner's pay scale in Scale No. 12 as recommended by the ROPA 1998, instead of keeping the petitioner in Scale No. 9.

7. Mr. Sridhar Panja, learned Advocate appearing for the respondent No. 4, after adopting the submission advanced by Mr. Chatterjee submitted that the Government should be directed to fix the petitioner's pay scale in Scale No. 12 as per ROPA 1998 instead of Scale No. 9.

8. Despite direction for filing affidavit-in-opposition no affidavit-in-opposition has been filed by the State respondent and no one appeared for the State respondent.

9. Having heard the submissions of the learned Advocates appearing for the respective parties and after perusing the records it is evident from the Press Note dated 6th April, 2000 of the Finance Department of Government of West Bengal (Annexure P7. Page-39 of the main writ petition and Page-8 to 11 of the supplementary affidavit filed by the petitioner) that the Government after accepting the recommendation of the 4th Pay Commission, has taken decision to extend the benefit regarding pay scale and other benefits to the employees of 52 Statutory Bodies including Corporations, State Government Undertakings,

covering about 50,000 employees. A list of 52 organisations was also enclosed to the said decision taken by the Government dated 6th April, 2000 where under the Serial No. 51 the Central Valuation Board (CVB) was appearing and the petitioner has been working since 1996 as a Law Assistant in the said Board.

10. It is also evident from the records that the other Law Assistants who were attached to the Land Acquisition Collector's Office, the Entry Tax Department etc have been allowed to enjoy the Scale No. 12 thus depriving the petitioner who has been discharging his duties as a Law Assistant in the said Board since 1996.

It is also not disputed that the Respondent No. 4 the said Board also recommended that the petitioner should be allowed to enjoy the Pay Scale No. 12 as recommended by the 4th Pay Commission and as the said benefit has already been extended by the Government in respect of other employees of the said Board save and except the petitioner which is a single cadre post without having any promotional avenue.

11. I also find from the extract of ROPA 1998 of the 4th Pay Commission (Page-36, Vol. I of the writ petition) where it is stated that "After considering the duties and responsibilities of the post of Law Assistant the Commission suggested that the scale of pay of that post should be not less than Scale No. 12". Therefore, keeping the petitioner in Scale No. 9 instead of Scale No. 12 as per ROPA 1998 is highly discriminatory, irregular and at the same time very much contrary to Articles 14 and 16 of the Constitution of India, as the Law Assistants attached to some other Government Undertakings or Government Departments have been allowed to enjoy the benefit of Pay Scale No. 12 thus depriving the petitioner from his legitimate claim. Undisputedly, the Law Assistant's post is a single cadre post without having any promotional avenue therefrom and the petitioner is a Master Degree holder and also having a degree in Law and he was appointed in the year 1996. In this backdrop the Hon'ble Apex Court's decision reported in Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, was relied on by Mr. Chatterjee and the same is quoted below:-

"It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See Principles of Personnel Management, Flipo, Edwin B., 4th Edn., p.246). Every management must provide realistic opportunities for promising employees to move upward. The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." Where it is observed by the Hon'ble Apex Court that every employee should be given an opportunity to

advance his career.

12. I also wonder as to why the petitioner being the Law Assistant was not placed under Scale No. 12 when in other Government Departments/Government Undertaking Organisations the Law Assistants have been placed in Scale No. 12. The Court cannot shut its eyes on such unfair, unjust, irregular discrimination exercised by the authority in respect of the petitioner which clearly hits the rights granted to the citizens under Articles 14 and 16 of the Constitution of India. State cannot escape from its constitutional obligation as adumbrated in Articles 14 and 16 of the Constitution of India.

13. Therefore, I direct the concerned respondent authorities specifically the Finance Department to consider the petitioner's prayer for granting Pay Scale No. 12 as per 4th Pay Commission (ROPA 1998) and if the petitioner is granted the said Scale No. 12 as per ROPA 1998 then the respondent authorities will fix the salary in appropriate stage of the said Scale No. 12 and pay the same with arrears thereof.

14. Since a considerable time has already been elapsed therefore I further direct the respondent authorities to complete the entire exercise within 8 (eight) weeks from the date of communication of this order.

15. With this above directions, the writ petition is allowed without any order as to costs.

16. Urgent xerox copy of this Judgment and Order be supplied to the parties, as applied for.