
(2018) 10 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No.5157 (W) Of 2018

Bibhas Chandra Saha and Another @APPELLANT@Hash State of West Bengal and Others

Date of Decision : 01-10-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2018) 10 CAL CK 0006

Hon'ble Judges : D.r. Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Soumya Majumder, Atasi Ghosh

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.

The petitioners are working on contractual basis as Bench Clerks in the Fast Track Courts under the learned District Judge, Murshidabad, i.e., the

respondent no. 2. The case of the petitioners is that on August 25, 2006, a notification was issued by the State of West Bengal regarding recruitment

and fixation of pay of staff of the Fast Track Courts in West Bengal. As per the said notification, the pay of directly recruited personnel on contractual

basis would be the minimum of scale of pay for the respective posts. Subsequently, by another notification, dated August 14, 2008, the earlier

notification was partially modified to the extent that the employees directly appointed on contractual basis in the Fast Track Courts in West Bengal

would be entitled to draw the emoluments viz., a) initial basic pay equal to minimum scale of pay of their respective posts,

b) dearness pay, c) dearness allowance, d) medical allowance, and

e) house rent allowance. By another notification, dated September 16, 2009 the employees directly appointed on contractual basis in the Fast Track

Courts of West Bengal were allowed to draw emoluments per month of the initial Basic Pay, revised rate of dearness allowance, house rent allowance, medical allowance.

In the year 2013, 24 Fast Track Courts were abolished and 24 regular courts of Additional District Judge with 24 posts of bench clerk were created

which was specifically mentioned in the relevant notification that the posts of Bench Clerks, Stenographers and Peon (Group-D) of the discontinued

Fast Track Courts would continue to function in the newly created regular courts. 24 posts of Bench Clerks and Group-D employees were to be filled

up on contract basis from among the retired employees for a period of one year. The consolidated monthly remuneration for the post of Bench Clerk

was Rs. 10,000/- for the retired employees, not for the regularly selected employees like the petitioners. Subsequently, the respondent no. 1 accorded

its approval for the continuation of 88 Fast Track Courts and creation of 63 Bench Clerks in the Courts of the District Judge (entry level).

On July 15, 2013 an employment notification was issued from the office of the learned District Judge, Murshidabad for recruitment of three steno-

typists and four bench clerks in the Fast Track Courts on contractual basis upto March 31, 2014, if not extended further, on a fixed remuneration. On

February 3, 2014 the respondent no. 3 issued appointment orders whereby the petitioners were appointed as bench clerks on contractual basis in the

Fast Track Courts under the respondent no. 3 with effect from February 7, 2014 for a period upto March 31, 2014 or until further order whichever

was earlier subject to satisfactory Police Verification Report.

The grievance of the petitioners is that they have been drawing a consolidated pay of Rs. 10,000/- per month without any allowance from the date of

their appointment. Similarly situated bench clerks in other Fast Track Courts are getting all their allowances in terms of the notification, dated August

14, 2008. The petitioners mentioned the cases of two bench clerks appointed in the year 2015 on contractual basis under the judgeship of Nadia who

are getting their salaries and allowances in accordance with the said notification.

By a representation, dated February 5, 2016 the petitioners brought this disparity to the notice of the respondent no. 3. The respondent no. 3 by a

letter, dated March 15, 2016 sought clarification from the State of West Bengal as to whether the petitioners were entitled to get the benefits as

mentioned in the notification, dated August 14, 2008. The said letter further mentioned that other staff members who were now getting all the benefits

like earned leave, casual leave, commuted leave and allowances such as dearness allowance, house rent allowance, medical allowance etc., were

appointed at the time of inception of the Fast Track Courts. The petitioners made another representation on September 20, 2016 and the respondent

no. 3 by a letter, dated December 17, 2016 again sought clarification as no instruction had been received by him from the respondent no. 1 in response

to his earlier letter.

By a letter, dated December 6, 2017 the respondent no 1 informed the respondent no. 3 that the Finance Department, Government of West Bengal

had recommended an enhancement of 9% of the consolidated remuneration of Rs. 10,000/- payable with perspective effect to the petitioners. In this

connection, the petitioners have mentioned that as per the employment notification, dated November 10, 2017 issued by the respondent no. 3 for filling

up the posts of bench clerks on contractual basis, the posts carry a scale of pay with fixed emoluments as such initial basic pay, grade pay, dearness

allowance, medical allowance and house rent allowance.

It has been the case of the petitioners that they are similarly situated like the other bench clerks of other Fast Track Courts which had been abolished

and also those which have been merged or converted in the courts of the District Judge and the appointments of the petitioners have been made

following the same procedure and method of selection. But they have been discriminated against in the matter of granting pay and other allowances.

The petitioners have inter alia prayed for a writ in the nature of mandamus commanding the respondents to pay such remuneration and other

allowances to the petitioners from the respective dates of their initial entry into service in accordance with the notification, dated August 14, 2008 and

for other ancillary reliefs. When this writ petition was initially moved on June 7, 2018, the Court directed the learned District Judge, i.e., the respondent

no. 3 to file a report in the form of an affidavit in response to the allegation made in the writ petition on the next date of hearing. The matter was

directed to appear as a listed motion in the combined monthly list of July 2018.

When the matter was taken up on July 6, 2018 none appeared on behalf of the respondents. No accommodation had been prayed for and no report in

the form of affidavit has also been filed from the respondent no. 3. Consequently the allegations made in the writ petition entirely remain

uncontroverted. The short question that calls for a decision in this writ petition is whether the petitioners who have been rendering their duties as

bench clerks attached to the judgeship of Murshidabad should get the same pay and allowances equal to the other bench clerks who are similarly

circumstanced and are discharging the same duties.

That the petitioners are not getting the monetary benefits in terms of the notification, dated August 14, 2018 is not in dispute. It is also not in dispute

that the other employees holding similar posts have been borne in the scale of pay with other allowances. This will be reflected from the letter, dated

March 15, 2016 written by the then District Judge, Murshidabad to the Secretary, Judicial Department. The District Judge mentioned that the other

staff members were getting all the benefits like enjoyment of earned leave, casual leave, commuted leave and other allowances as such dearness

allowance, house rent allowance, medical allowance etc. on the basis of the Government Order, dated August 14, 2018. But the petitioners were

appointed with consolidated pay of Rs. 10,000/-. She expressed her dilemma to take any decision about the entitlement of the petitioners in terms of

the said Government Order.

Subsequently by another letter, dated December 17, 2016, the then learned District Judge, Murshidabad again requested the Judicial Secretary to send

necessary instruction so that the representations of the petitioners could be disposed of. She very specifically mentioned the benefits received by the

other contractual staff members attached to Fast Track Courts under the judgeship of Murshidabad. She further mentioned that in spite of the said

Government Order, her predecessor in office appointed the petitioners at a consolidated pay of Rs. 10,000/-.

In response thereto the Judicial Secretary communicated the decision of the Finance Department to allow enhancement of 9% of the consolidated

remuneration of Rs. 10,000/- in respect of the petitioners and two other employees with prospective effect. Subsequently, the learned District Judge,

Murshidabad invited application by a notification, dated November 10, 2017 inter alia for the posts of bench clerks on contractual basis where it has

been mentioned that the selected candidates would get the benefits of initial

basic pay, grade pay, dearness allowance, medical allowance and house rent allowance.

The petitioners have annexed to the writ petition an appointment letter, dated August 28, 2015 issued by the learned District Judge, Nadia to a

candidate who had been selected for appointment as a bench clerk on contractual basis. There also the scale of pay with grade pay and other

allowances as per the relevant Government Orders were allowed. The petitioners have also produced the pay slip of two bench clerks of the Fast

Track Court in the district of Murshidabad who are getting a net pay of Rs. 19,176/- per month and doing the same work. They have also produced in

court a notification issued by the learned District Judge, Howrah inviting application for bench clerks. There also the scale of pay, grade pay and other

permissible allowances has been mentioned.

This brings out one thing very clearly that not only in the district of Murshidabad itself there are bench clerks appointed on contractual basis and

attached to the Fast Track Courts who are receiving higher monthly emoluments than the petitioners, in other districts also the same practice is being

followed. All the bench clerks appointed on contractual basis are getting a far higher emolument than that of the petitioners. It is not understood why

the then District Judge, Murshidabad fixed the remuneration of the petitioners at a consolidated pay of Rs. 10,000/- per month without any other

allowance in spite of the Government Order, dated August 14, 2008. It is true that in the notification, dated January 8, 2013 the remuneration of the

bench clerk was fixed at a consolidated pay of Rs. 10,000/- per month but that notification was issued to sanction the creation of 24 regular courts of

the Additional District Judges upon abolition of 24 Fast Track Courts in 24 sub-division. 24 posts of bench clerks were also created. But the

notification specifically said that the posts of bench clerks would be filled up on the contractual basis from amongst the retired government employees

for a period of one year on consolidated monthly remuneration of Rs. 10,000/-.

Assuming that the learned District Judge had followed this notification he failed to appreciate that it had no application inasmuch as the petitioners are

not the retired government employees and the employment notification pursuant to which the petitioners applied also did not keep it restricted to the

retired employees. The petitioners are very justified in alleging that they are

victims of discrimination. The fresh employment notification, dated November 10, 2017 as mentioned, earlier, for the similar post also promises to grant the remuneration of pay scale and other allowances to the proposed employees and the right of the petitioners to claim higher remuneration with revised allowances has been practically recognized.

It is a settled principle of law that equal pay for equal work is considered to be a part of the right to equality before law as guaranteed by Article 14 of the Constitution of India. This is a cherished constitutional goal to remove all inequalities in the matter of payment of remuneration of persons doing the same work and for holding the same post. There cannot be any discrimination in the pay and allowances of employees holding the same post without any reasonable classification for the same. Not only Article 14, Article 16 of the Constitution of India also ensures equal opportunity in the matter of public employment. In between the members of the same class of employees there must be equality in matters concerning service benefits. Depriving the petitioners of the remuneration enjoyed by the other bench clerks holding the similar nature of employment in the district of Murshidabad itself is an instance of invidious discrimination practiced by the State in paying different remunerations to two employees.

The Supreme Court in the case of Supreme Court Employeesâ?? Welfare Association Vs. Union of India, reported in AIR 1990 SC 334, held that if the classification of pay scale is unreasonable or unequal pay is based on no classification Article 14 will be attracted. If unequal pay is discriminatory, court will direct equal pay. This is a case where there is not only similarity in duty and function discharged by the petitioners on the one hand and other bench clerks appointed on contractual basis on the other, there is no qualitative difference in respect of their duties, functions and responsibilities.

Thus, the petitioners can be held to be equally placed in all respects with those bench clerks who are getting a monthly remuneration almost twice than that drawn by the petitioners.

It is pertinent to mention that the petitioners are not seeking parity in total remuneration with the regular employees. It is true that the doctrine of equal pay and equal work has no application to persons employed on contractual basis vis-à-vis the regular employees. But the petitioners are the victims of gross discrimination between the members of the same classes of employees

holding the same nature of employment i.e. bench clerks appointed on contractual basis. Although the consistent view of Supreme Court as well as various High Courts is that when there is equality of work without any reasonable qualification, the pay of the employees should also be equal certain criteria for deciding the equal work have been laid down from time to time.

The Supreme Court in more recent time in the case of State of Punjab and Others Vs. Jagjit Singh and Others, reported in 2017(1) SCC 148 has reiterated that the sole factor that requires determination is whether the concerned employees were rendering similar duties and responsibilities as were being discharged by the regular employees holding the same or corresponding posts. With reference to the fact of that case the Supreme Court held that the duties and responsibilities discharged by the employees in the present set of appeals were the same as were being discharged by the regular employees. The Supreme Court observed that the principle of equal pay for equal work would be applicable to all the concerned temporary employees so as to vest in them the right to claim wages at par with the minimum pay scale of the regularly engaged government employees holding the same post.

The petitioners discharging the same duties and responsibilities with the same qualification and holding the same post without any distinction with the same nature of employment cannot be allowed to continue with a consolidated sum of Rs. 10,000/- irrespective of whether it was mentioned in the concerned employment notice and whether they had accepted it at the time of joining the relevant posts. There cannot be any waiver of any fundamental right. There may be many circumstances requiring an employee to accept an employment under certain circumstances with certain terms and conditions. That does not prevent them from asking the State to remove the inequality. Neither can the State deny the same merely because once it was accepted by the petitioners.

In such view of it, I hold and declare that the petitioners are entitled to get the remuneration and other allowances from the respective dates of their initial entry into the service in terms of the notification, dated August 14, 2008. I direct the respondent no. 3 to pay to the petitioners the pay and other allowances as has been promised to the candidates in terms of the notification,

dated November 10, 2017.

The District Judge is directed to take all possible steps with the appropriate authorities so that the remuneration at par with the other bench clerks

engaged on contractual basis can be paid from the month of December 2018 which falls due for payment in January 2019 and he shall also continue to

pay the same remuneration month by month thereafter. The respondent no. 3 is further directed to take all possible steps with the appropriate

authorities so that the arrear in salary in respect of both the petitioners may be liquidated in six equal monthly installments starting from April, 2019.

With the directions as above the writ petition is allowed. There shall be no order as to the costs. Urgent Photostat certified copy of this order, if

applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.