
(1992) 02 CAL CK 0047
In the Calcutta High Court
Case No : Matter No. 3296 of 1991

Dr. Bimalendu Dasgupta

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 17-02-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1992) 2 CALLT 224

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—It is not appreciated by this Court as to why the State respondent has not appeared in this court in spite of proper notice. The petitioner has filed an affidavit of service indicating, inter alia, that the copy of the writ petition has been served. It is submitted by Mr. Moitra, learned Counsel appearing for the petitioner that pursuant to the order of M.R. Mallick, J. (as His Lordship then was) a copy of the notice and an intimation have particularly been served upon the Secretary, Finance, Government of West Bengal for necessary appearance and for production of papers for effective adjudication of the matter in dispute. Unfortunately, in spite of such notice, none has appeared for the respondents and also for and on behalf of the Secretary, Finance. The allegations of the writ petitioner remain uncontroverted. There is no production of the records also to enable this Court to appreciate the matter contrary to the contentions made by the petitioner.

2. It is stated in detail that the petitioner having several scholastic attainments obtained the degree in Mechanical Engineering from Jadavpur University and thereafter obtained M. Tech., Ph.D., degree from I.I.T. in 1976 and in 1984. The petitioner was appointed as a Superintendent of Workshop in Jaipaiguri Engineering College on 9.12.64 in the then scale of pay of Rs. 600-1300/-. The petitioner obviously improved in his qualifications by obtaining study leave after

his initial appointment. Said Jalpaiguri Engineering College was taken over by the State Government with effect from 15.2.68 and the same has been treated as a full-fledged Government College. It will appear from the Government order dated 15.2.68 under Memo No. 102-Edn./40-48/67 (Technical) that the teachers in engineering and technical staffs included Principal, Professors, Assistant Professors, Lecturers, Assistant Lecturers and also the Superintendent of Workshop. From the Government order dated 19.11.70, under Memo No. 988-Edn.(T)/4-C106/69/70 the designation of Superintendent of Workshop was bracketted with Assistant Professor to receive the scale of Rs. 700-1350/-. It will appear from the materials on record that at all relevant and material points of time the petitioner has been treated as a teaching staff of the said college and he was allowed to function even as Professor-in-Charge in the absence of the Principal of the College. For all other practical purposes, he has also been treated as a teaching staff to receive all the service benefits as admissible in law. It is brought to the notice of the court that for all teaching staff the ordinary age of superannuation is 60 whereas in the case of non-teaching staff it is 58. The petitioner after crossing the age of 58 years is allowed to function being treated as a teaching staff and for all practical purposes the post of Superintendent of Workshop is treated at par with the post of Assistant Professor. The petitioner participated in all the matters of teaching discipline and he was even nominated as a Member of the Board of Studies.

3. Stating all these facts in detail the petitioner has come to this Court seeking reliefs by praying, inter alia, that a writ of Mandamus be issued, commanding the respondents to grant pay to the petitioner in the scale of Rs. 1200-1900/- with effect from 1.1.73 and then in the scale of Rs. 3700-5700/- on and from 1.1.86, treating the petitioner as a member of the West Bengal General Service in Engineering and Technical subjects in the same manner and to the same extent as of Assistant Professor and in terms of G.O. No. 1996 dated 11.12.76 and G.O. No. 842 dated 20.12.89 being; Annexure "D" series in the writ petition. The grievance of the petitioner is that there is no reason for non-implementation of the pay scale for Assistant Professor in respect of the post of Superintendent of Workshop as held by the petitioner. Since the petitioner has been serving as a teaching staff and at all relevant and material points of time the post of Superintendent of Workshop "was treated at par with the post of Assistant Professor there is no reason for making any discrimination in the revision of pay scale of Superintendent of Workshop in the same line as that of Assistant Professor. The petitioner has further prayed that the respondent concerned should be directed to grant promotion to the petitioner under the merit promotion scheme as envisaged in the rules referred to in Annexure "H" to the writ petition retrospectively from 1983 and revise the petitioner's pay in the previous scale of Rs. 1500-2500/- from 1.1.83 and then in the scale of Rs. 4500-7300/- from 1.1.86 onwards.

4. Mr. Moitra, learned Counsel for the petitioner has taken this Court to various portions of the annexures to the petition and the averments made by the

petitioner in depth. He has tried to convince this court that the petitioner having reasonable qualifications has served the engineering college as a successful teacher. In other universities the post of Superintendent of Workshop is always treated as that of a Reader and, in fact, by Government orders the State of West Bengal also has treated the post of Superintendent of Workshop as a teaching staff. While the post of Superintendent of Workshop is treated as a teaching staff there is no bar or impediment for the petitioner to obtain the Assistant Professor's scale in terms of the Government orders made from time to time. Any step to deny the petitioner to obtain the scale of Assistant Professor as stated in the petition would be denial of justice and the same would be unfair and unjust. It is also highlighted on behalf of the petitioner that since the petitioner has discharged his duties and obligations as a teaching staff there is no earthly reason to deny the claim of the petitioner in view of the objections of the Finance Department.

5. With great anxiety this Court has considered the matter in depth. This court finds sufficient merit in the contention of the writ petitioner that the post of Superintendent of Workshop is a teaching one and is at par with the post of Assistant Professor. If the post of Superintendent of Workshop is treated as that of an Assistant Professor there is no reason to deny the benefit of the revision of pay scale of the Assistant Professor. There is no reason to deny the right of the writ petitioner to obtain the relief by way of getting pay in the scale of Rs. 1200/1900/- with effect from 1.1.73 and then in the scale of Rs. 3700/5700/- with effect from 1.1.86 by treating the petitioner as a teaching member in the W.B.G.S. in engineering and technical subjects in the same manner and to the same extent as that of an Assistant Professor in terms of G.O. No. 1996 dated 11.12/76 and G.O. No. 842 dated 20.12.89.

6. Accordingly the writ petition is alleged by issuing an appropriate writ to grant such relief to the petitioner within a period of 8 (eight) weeks from the date of communication of the order.

7. This court has also considered the petitioner's prayer for granting relief by way of a writ to command the respondents to grant promotion to the petitioner under the scheme of merit promotion. Promotion cannot be claimed as a matter of right and no court should grant any relief of merit promotion unless the petitioner is considered in the appropriate perspective and by the proper expert and/or authority. Considering this aspect, this prayer of the petitioner is refused but this judgment will not prevent the petitioner to make an appropriate representation while his post is considered as a teaching post and to obtain relief of Assistant Professor there should be consideration of merit promotion by giving an opportunity of hearing and by passing a speaking order within three months from the date of such communication. For the foregoing reasons, the writ petition is! allowed in part to the extent indicated above. There will be no order as to costs.