
(1992) 08 CAL CK 0031
In the Calcutta High Court
Case No : Matter No. 2228 of 1992

Dulal Kumar Das and Others	Vs	APPELLANT
Hon'ble Chief Justice, High Court and Others		RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

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

Citation : (1993) 1 CALLT 242

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Murari Mohan Das, Samar Rudra, for the Appellant; Alok Kr. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present writ application has been filed by the petitioners No. 1-3 all are working as Stamp Reporter and Addl. Stamp Reporter under the judicature of the High Court, Calcutta Appellate Side and the petitioner No. 4 as an Assistant Registrar of the Appellate Side of this aforesaid Court seeking reliefs, inter alia:-

(A) A writ of and/or in the nature of mandamus should not be issued commanding the respondents, their men, agents, servants and subordinates to award the Special Pay of Rs. 300/- per month to the petitioners from the date of their respective appointment to the post of Stamp Reporter or Addl. Stamp Reporter as the case may be as has been granted to the Assistant Registrar (Court), Asstt. Registrar, Superintendent Gr. I and Special Officer and other superior cadres on the Appellate Side of this Hon'ble High Court, Calcutta.

(B) A writ or and/or in, the nature of mandamus should not be issued directing the respondents their men, agents, servants and subordinates to award the special pay of Rs. 300/- to the petitioners forthwith.

(C) A writ of and/or in the nature of Certiorari be issued directing the

respondents to transmit the entire records of this case including the records about awarding the special pay of Rs. 300/- to the Assistant Registrar (Court), Asstt. Registrar, Superintendent Grade I and Special Officer, after certifying the same to this Hon"ble Court so that a conscionable justice may be administered by directing the respondents to award the special pay of Rs. 300/- to the petitioners from the date on which the said pay has been granted to the other non-selected post i.e. Asstt. Registrar (Court), Dy. Registrar (Court), Supdt. Grade I and Special Officer.

(D) Rule Nisi in terms of prayer (A), (B) and (C) above if no cause or insufficient cause has been shown to make the rule absolute.

(E) An injunction do issue directing their men, agents, servants, and subordinates to award the special pay of Rs. 300/- to the petitioners immediately as has been granted to the other non-selected like Asstt. Registrar (Court), Asstt. Registrar, Superintendent Grade I and Special Officer from the date on which the said pay has been granted the said non-selected posts.

(F) An order of injunction issue directing the respondents their men, agents, servants and subordinates to award the special pay of Rs. 300/to the petitioners immediately from the month of January, 1992 at present with an undertaking that if the writ petition fails then the petitioners will refund the same and the respondents also be given liberty to realise the said amount from the petitioner either from their pay or from their pensionary benefits.

(G) Ad interim order in terms of prayer (E) and (F) till the disposal of Rule.

(H) Pass such other or further order or orders direction or directions, as your Lordships may seem fit and proper ; Cost, Costs.

2. It is stated in detail that the grievance of the petitioners is for withholding the special pay of Rs. 300/- per month. It is placed on record that post of the Stamp Reporters, and Addl. Stamp Reporters are of Merit-GumSelection posts and for such selection the minimum qualification and requirement is that the incumbent should hold the post of Superintendent Cadre and must possess the law degree. It is further placed on record that according to the High Court Service Rules, 1960 as amended, the posts of Stamp Reporter, Supdt. Grade I and Bench Clerk are under the non-Gazetted Ministerial Class III category and their respective scales of pay. The post of Stamp Reporter is above the post of the Bench Clerk as well as Supdt. Grade I. "The designation of Bench Clerk has since been changed and it has been redesignated as Assistant Registrar (Court) with the same scale of pay. It is claimed that the post of Stamp Reporter and the Addl. Stamp Reporter is superior and the persons are selected for such posts on the basis of Merit-cum-Selection and by means of written test followed by viva voce. The requisite qualification for sitting in the written examination for the post of Stamp Reporter and he Addl. Stamp Reporter, the candidate must possess the degree of law.

3. According to the Calcutta High Court Appellate Side Service Rules 1986, the superior cadre comprised of Supdt. Grade I Stamp Reporter, Assistant Reporter and Special Officer but in case of selection and/or appointment to the post of Stamp Reporter the law degree is the prerequisite condition for appointment and selection. But the degree of law is not necessary and/or is not a pre-requisite condition for appointment and/or selection to the post of Supdt. Grade I, Special Officer and Assistant Registrar. It is claimed, inter alia, that the Stamp Reporters have not been given the higher scale nor they have been even given the special pay of Rs. 300/- which has been awarded to the Assistant Registrar and Assistant Registrar (Court). It is further mentioned that the Asstt. Registrar (Court), and the post of Asstt. Registrar is of the superior service cadre under the technical stream as to the incumbent is promoted from the Asstt. Court Officer and law degree is neither a pre-requisite condition nor it is necessary. Only knowledge of stenography and typewriting are the essential conditions but under the ROPA Rule 1990 the said Assistant Registrar (Court) gets special pay of Rs. 300/- and they are enjoying the benefit since 1986 under ROPA Rule 1990. The Special Officer and the Supdt. Grade I are also enjoying the benefit of Special Pay as awarded by last pay commission. Elaborating all these points the present petition has been filed since the petitioners are found aggrieved and dissatisfied with the purported acts and actions of the respondents by not awarding the special pay of Rs. 300/- in spite of the fact that they are holding selection posts.

4. The writ petition is finally heard in presence of the learned lawyer for the High Court administration and for the State respondents. Mr. Akok Kumar Ghosh, learned advocate for the High Court administration, submitted, inter alia, that on principle the High Court Administration does not oppose the writ petition inasmuch as there is a recommendation of High Court administration for grant of reliefs to the petitioners. The attention of this Court has been drawn to the communication made by the then Registrars both the Original Side and the Appellate Side of the High Court to the Joint Secretary, Finance Department and Audit Branch, Govt. of West Bengal. It is further submitted that the High Court administration does not oppose the writ petition, upon effective adjudication by this Court, if the petitioners are found to be entitled to reliefs as prayed. In the affidavit sworn by Shri Moloy Sengupta, the Addl. Registrar No. II of the Appellate Side of the High Court it has been placed on record in paragraph 5 of the affidavit-in-opposition that the petitioners have claimed for grant of the benefit of Special Pay of Rs. 300/- on the facts and reasons stated therein and the claims of the petitioners were duly considered by the High Court administration and the decision in this regard is taken as under: -

"Gross injustice has been done to this category of post though the responsibility shouldered by the Stamp Reporters has received appreciation of the Pay Commission. Court recommended for equating this category of posts to the posts of Assistant Registrar. We did never insist on upgradation of the post in respect of the scale as has been stated. What we pressed for was a special pay as available to Asstt. Registrar. Therefore a special pay of Rs. 200/- at least as has been

granted to the Superintendent Grade I should be allowed".

5. The aforesaid remark was forwarded to the Govt. of West Bengal vide cross letter No. 2701-R, dated 23rd March, '89. It is learned, as alleged that the Government set up a review committee but no further decision from their end as yet been received by the Office of the High Court.

6. The learned advocate for the State Respondents has submitted, inter alia, that the third Pay Commission has considered all the aspects of the matter and there is no further scope of payment in the special pay and the petitioners are not entitled to reliefs as prayed for. It is, further, submitted that the petitioners are actually working with special qualification and there is no sufficient merit in the recommendation of the High Court administration to award this Special Pay to the petitioners. True, a decision was not taken nor the records are readily available.

7. Having heard from the learned lawyer of the petitioners, from the High Court administration and from also the State Respondents, it appears that admittedly the petitioners are working after being selected as per their special qualification and for merit. There is sufficient force in the recommendation made by the High Court Administration as there is a scheme for the petitioners for the special pay of Rs. 300/- as indicated above. This Court does not appreciate as to why an appropriate decision has not been taken from the Government end in this regard. Nothing has been produced before this Court as to why the claim as made by the petitioners could not be entertained and the stand taken to negative the claim of the petitioner on the basis of the third Pay Commission report is found to be not justified. The points raised by the petitioners have not been controverted nor there is anything on record which is otherwise contrary to and inconsistent with the claim of the petitioners. Upon careful scrutiny of the materials on record this Court is of the view that there is no bar and/or impediment to allow the writ petition and be grant the reliefs to the petitioners by issuing an appropriate writ to command, the State Respondents to take effective step to award the Special pay to the petitioners in terms of the recommendation of the High Court administration within a period of 3 (three) months from the date communication of the order.

There will be no order as to costs.

All parties to act on a signed copy of the operative part of this Judgment on the usual undertaking.