
(2020) 03 CAL CK 0038

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 18361 (W) Of 2001

Ganesh Chandra Samanta & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 309

West Bengal Revision Of Pay And Allowances Rules, 1981 — Rule 5

Limitation Act, 1963 — Section 5

Citation : (2020) 03 CAL CK 0038

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Udayan Chakravarty, Sanjukta Bhattacharya, Nilanjana Dasgupta, Sirsanya Bandopadhyay, Subhendu Sengupta

Final Decision : Disposed Of

Judgement

Tapabrata Chakraborty, J

1. The present writ petition has been preferred by fifteen petitioners, who are employed as Workshop Instructors. Amongst them the petitioner nos.1

to 9 are attached to Ramkrishna Mission Shilpa Mandir being the respondent no.2 and the petitioner nos.10 to 15 are attached to Ramkrishna Mission

Shilpapith being the respondent no.3. The petitioners have inter alia prayed for issuance of necessary direction upon the respondents to grant the scale

of Rs 425 â?" 1050/- with effect from 1st April, 1981, as subsequently revised from time to time, together with all allowances/perquisites as are

admissible under the rules together with all arrears with interest calculated at the enhanced rates prayed for with effect from 1st April, 1981.

2. Records reveal that the present writ petition was affirmed on 3rd December, 2001. The same was finally heard along with a writ petition being WP

3222 (W) of 1998 (Shibu Gopal Sadhu Khan & Ors. vs- State of West Bengal & Ors.) preferred by twenty two petitioners who are employed as

Workshop Instructors. Amongst them the petitioner nos. 1 to 11 were attached to Ramkrishna Mission Shilpa Mandir being the respondent no.2 and

the petitioner nos.12 to 15 were attached to Ramkrishna Mission Shilpapith being the respondent no.3 herein. Both the writ petitions were disposed of

by a judgment delivered on 9th September, 2003 directing the respondents to give proper benefit to the petitioners as to the revised scale of pay of

Rs.425 to 1050 /- w.e.f. 1st April, 1981 and thereafter, in the corresponding scale or scales to which the same has been revised from time to time.

It was also observed that the petitioners are entitled to get arrears from the dates of filing of the respective application. Such arrears should be

given within three months from the date of communication of this order. However, by an order dated 18th November, 2003, the order dated 9th

September, 2003 was modified to the extent that the judgment will govern only WP 3222 (W) of 1998. The said order dated 18th November,

2003 was passed since after 9th September, 2003, the matters were mentioned and the Court was informed that the present writ petition though

disposed of by the combined order dated 9th September, 2003 was dismissed for default earlier on 15th January, 2002. The State respondents

preferred a belated appeal against the judgment dated 9th September, 2003 passed in WP 3222 (W) of 1998 being MAT 4207 of 2006. The said

appeal upon contested hearing was dismissed by a judgment dated 22nd August, 2007. Assailing the said order the State respondents preferred a

Special Leave Petition. In the same an order was passed on 18th January, 2018 which runs as follows:

The Division Bench of the High Court in an intra Court appeal did not think it fit to condone gross delay of 1116 days. According to the High Court, it

was not properly explained and there was no sufficient cause to condone the delay. We find no infirmity in the said order. The special leave

petition is dismissed.

Learned counsel for the petitioner submitted that even on merits, the learned Single Judge as well as Division Bench were wrong in applying

notification which was not applicable to the respondent-employee. In view of the fact that we are dismissing the petition, only on the ground that

Division Bench was not wrong to condone the delay, we express no opinion. That question is left open.

3. In the midst thereof, the present writ petition was again heard afresh and allowed by a judgment dated 4th September, 2006. Thereafter, the State

respondents filed an application for recalling the order dated 4th September, 2006 along with an application for condonation of delay of 292 days. By

an order dated 26th November, 2010 the order dated 4th September, 2006 was recalled. The said respondents, thereafter, used an affidavit-in-

opposition to which the petitioners filed a reply. In the midst thereof, the petitioners in the writ petition being WP 3222 (W) of 1998 preferred a

contempt application and the said respondents ultimately complied with the order dated 9th September, 2003. The documents towards such compliance

have also been brought on record by filing a supplementary affidavit.

4. Mr. Chakravarty, learned advocate appearing for the petitioner submits that the petitioners herein are similarly situated with the writ petitioners in

WP 3222 (W) of 1998. The respondents having already complied with the final order passed in the said writ petition being WP 3222 (W) of 1998 after

dismissal of the Special Leave Petition, cannot take any different stand in respect of the petitioners herein and should extend the similar benefits. In

support of such contention he has placed reliance upon a judgment delivered in the case of Maharaj Krishan Bhatt and Another vs- State of

Jammu and Kashmir and Others, reported in (2008) 9 SCC 24.

5. He reiterates the arguments as recorded in the earlier order passed by this Court on 4th September, 2003 and submits that it would be explicit from

the said order that an identical claim was acceded to by the self-same respondents in a writ petition being CR No.3021 (W) of 1985 (Shri.

Shibnarayan Chakraborty & Others-vs-State of West Bengal & Others) preferred by twenty two Workshop Instructors of Hooghly Institute of

Technology and Malda Polytechnic. The said writ petition was disposed of by an order dated 22nd August, 1990. The said order was complied with

through issuance of a memo dated 30th October, 1995 by the Deputy Secretary, Department of Technical Education and Training. In another matter

being CP No.98 of 1997 with TA No.18 of 1996 direction of the learned Tribunal towards grant of revised scale as indicated in the West Bengal

Revision of Pay and Allowances Rules, 1981 (in short, ROPA Rules, 1981) was

directed to be granted to incumbents similarly situated with the petitioners herein. Thereafter the Deputy Secretary, Department of Technical Education and Training by an order dated 22nd March, 2001 granted the benefit of scale of pay. Such fact was taken note of while the appeal preferred by the respondents against the order dated 9th September, 2003 was rejected by an order dated 22nd August, 2007. In view thereof, no different yardstick can be applied in respect of the petitioners.

6. Per contra, Mr. Bandopadhyay, learned advocate appearing for the State respondents submits that it has yet not been decided as to whether the writ petitioners herein are similarly situated with the writ petitioners in WP 3222 (W) of 1998. The said writ petition was allowed by a judgment dated

9th September, 2003. The State respondents preferred an appeal along with an application under Section 5 of the Limitation Act. The Honâ??ble

Division Bench did not think it fit to condone the gross delay of 1116 days. On the ground of such delay the said appeal was dismissed. The said order

was not an order on merits of the appeal. Such fact would be evident from the order dated 18th January, 2008 passed in the Special Leave Petition

and by the said order though the Special Leave Petition was dismissed it was observed that the Court had not considered the submission of the learned

advocate appearing for the petitioner that the learned Single Judge as well as the Division Bench were wrong in applying notification which was not

applicable to the respondent-employee. In the said order it was also observed that the said question is left open. In view thereof, the entire dispute

stands reopened and the issues need to be considered on merits.

7. Mr. Bandopadhyay argues that except the writ petitioner nos.8 and 13, all the other writ petitioners were appointed under West Bengal Services

(Recruitment to the post of Workshop Instructor/Mistry Instructor in Government and Government Sponsored Polytechnics in West Bengal) Rules

1986 (in short, 1986 Rules), which came into operation on and from 22nd January, 1987. The 1986 Rules were framed under Article 309 of the

Constitution of India and the candidates selected for the posts of Workshop Instructor/Mistry Instructors in terms of the said rules were placed in a

single scale of pay Rs.380-910/-(scale No.9) under the ROPA Rules, 1981. All the petitioners except the petitioner nos. 8 and 13 were initially

appointed in terms of the 1986 Rules and have joined service at different point of

time between 1997 and 2000. In the 1986 Rules it was categorically indicated under Rule 5 that the candidates selected for the post shall be entitled to the scale of Rs.380-910. Having accepted appointment in terms of the said Rules of 1986 the said petitioners cannot turn back and claim the revised scale of Rs.425-1050/-. The said petitioners were appointed and were guided by the 1986 Rules and such fact had been suppressed in the writ petition.

8. He contends that the writ petitioner nos.8 and 13 also cannot claim the benefit of scale no.11 of ROPA Rules, 1981 for Workshop/Mistry

Instructors of Govt. Polytechnics because a separate Pay and Allowances Rule 1981 was introduced for the employees of Govt. Sponsored

polytechnics by the Education Department (Budget Branch) vide G.O. No.372-Edn(B) dated 31st July, 81 which was effective from 1st April, 81

where only one pay scale was allowed for Workshop/Mistry Instructors i.e. Scale No.8 (Rs.360-815/-) and no other pay scale was prescribed as was

done in the ROPA Rules,1981 for Govt. Polytechnics. The said two petitioners also do not have the Diploma qualification to become entitled to the

revised scale of pay of Rs.425-1050/-.

9. He argues that equality is a right, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner.

If illegality and irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the higher or

superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. The provisions of Article 14 cannot be

stretched too far otherwise it would make function of the administration impossible.

10. In reply, Mr. Chakraborty submits that the petitioners in WP 3222 (W) of 1998 and the petitioners herein are Workshop Instructors in

Ramakrishna Mission Shilpamandir and in Ramakrishna Mission Shilpapith. The polytechnics which were sponsored polytechnics were taken over by

government not on single day but by different orders issued from time to time. At the present juncture the respondent nos.2 and 3 are the only two

institutions which remain in the category of sponsored polytechnics. The recruitment and conditions of service in sponsored polytechnics are entirely

controlled by the Government of West Bengal. The respondents are trying to

mislead this Honâ??ble Court by referring to various dates of ROPA

and different pay scales. In the appeal it was argued that the writ petitioners who joined after the 1986 Rules would be governed by the said Rules and

would not be entitled to the scale of Rs.425-1025/- as per ROPA Rules, 1981. Considering such argument and the circular dated 03rd January, 2001,

the Honâ??ble Division Bench did not interfere with the order dated 9th September, 2003.

11. Prior to promulgation of the ROPA Rules, 1981, all the Workshop Instructors attached to the polytechnics owned by the State Government and to

the sponsored polytechnics, were enjoying the same scale of pay. Trouble started when ROPA Rules, 1981 were introduced. The said ROPA Rules

provided for three different scales of pay in State Government owned polytechnics and two different scales of pay in sponsored polytechnics.

Introduction of such different scales of pay gave rise to resentment among the Workshop Instructors and such classification was successfully

challenged by various groups of Workshop Instructors.

12. The main contention of the petitioners is that all the Workshop Instructors of different polytechnics (government and sponsored) are doing same or

similar nature of work and as such no discrimination can be introduced amongst them. The petitioners doing same type of job cannot be placed in a

lower scale of pay than the others on the basis of the settled principles of the proposition â??equal pay for equal workâ??. Barring a few i.e. the

instant writ petitioners, other Workshop Instructors of Government and sponsored polytechnics are getting the scale of Rs.425/-1050/- irrespective of

their qualifications and appointment whether prior to 1987 or thereafter. No distinguishing feature among the petitioners herein and the writ petitioners

in WP 3222 (W) of 1998 has been brought to the notice of this Court.

13. The claim raised by the petitioners is premised on the ground that their duties and responsibilities are same as the duties and responsibilities of the

petitioners in WP 3222 (W) of 1998. In view of such parity, the petitioners are entitled to the same benefits as extended to the petitioners in WP 3222

(W) of 1998. The parameters as regards such equality stands satisfied and as such the petitioners cannot be denied similar benefit. The differentiation

of pay scales for posts having no difference in degree of responsibility, reliability and confidentiality would not fall within the realm of valid

classification. The nature of work of the subject posts is the same and not less onerous than the reference posts. The difference among the petitioners

and the petitioners in the earlier writ petition as sought to be argued by Mr. Bandyopadhyay is not based on any legitimate foundation.

14. The writ petition being Civil Rule No. 3021 (W) of 1985 was preferred by the Workshop Instructors of Hooghly Institute of Technology and Malda

Polytechnic challenging inter alia memoranda dated 12th May, 1983 and 8th July, 1983 issued by the Deputy Secretary, Education Department,

Technical Branch Education and Training clarifying on the eligibility of the revised scale of Rs.380-910/- to the Workshop Instructors (Trade

Certificate Holders) of the government polytechnics. By an order dated 22nd of August, 1990, the said memoranda were set aside commanding the

respondents to give proper benefit to the petitioners as to the revised scale of pay of Rs.425-1050/-. The said order was complied with by State

respondents by issuing a government order no.618 â?" Tet (Poly) S-7195 dated 30th October, 1995. At that juncture the 1986 Rules were in force.

Thereafter in the year 1996 the members of different government polytechnics all over the State of West Bengal approached the State Administrative

Tribunal for fixation of their pay scale at Rs.425-1050/-. The said applicants were non-diploma holders. Similar benefits as was given to others by

G.O. no.618 â?" Tet (Poly) dt.30th August, 1995 were extended by an order dated 11th April, 1997 passed in T.A. 18 of 1996 (S.P. Dey and Others -

vs- State of West Bengal and Others). The said order was complied with through a memo dated 3rd January, 2001 issued by the Assistant Secretary,

Government of Finance (Audit) Department and a memo dated 22nd March, 2001 was issued by the by the Deputy Secretary, Department of

Technical Education and Training. In another application being O.A. No. 1228 of 2002 similar benefits were extended by a memo dated 26th

February, 2007 issued by the Deputy Secretary, Department of Technical Education and Training and the annexure to the said memo reveals grant of

benefits to Instructors engaged after the 1986 Rules came into force and as such the argument that Instructors engaged after commencement of the

1986 Rules are not entitled is not acceptable to this Court. The respondents cannot take different stands in similar applications upon splitting up their

defence.

15. Fairness and reasonableness are paramount issues for administrative action. As a model employer the State Government must conduct itself with

high probity and candour and cannot act arbitrarily by withholding the benefits as extended to similarly situated incumbents. Service jurisprudence

evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly.

16. Accordingly, this Court directs the respondents to grant the benefits of revised scale of pay of Rs.425 -1050/- to the petitioners with effect from

1st April, 1981 and thereafter in the corresponding scale or scales to which the same has been revised from time to time. The respondents are also

directed to disburse in favour of the petitioners the arrears from the date of filing of the writ petition within a period of three months from the date of

communication of this order.

17. The writ petition is, accordingly, disposed of.

18. There shall, however, be no order as to costs.

19. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the

necessary formalities in this regard.