
(2012) 01 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 26952 (W) of 2006

Haradhan Mahato

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39

Citation : (2012) 01 CAL CK 0047

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : S. Bhattacharjee, Mr. Ananda Mohan Panja, for the Appellant; Sipra Mazumder, Swapan Kr. Pal, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.

W.P. No. 26952 (W) of 2006

1. The petitioner was a Group-D staff under the Judicial Department, District Judge, Purulia. Subsequently Judicial Department, Government of West Bengal sanctioned Four Fast Track Courts in Purulia for the speedy disposal of the cases for which certain post were created temporarily to facilitate the smooth functioning of the said Fast Track Courts. By an office order No. 169 dated 29th August, 2002 issued by the District Judge, Purulia, it was indicated that the post of the Lower Division Clerk in Group-C category may be filled by giving promotion to a Group-D staff but such promotion shall be given on seniority-cum-merit basis. The petitioner was ranked 9th in the selection post for being promoted to the post of Lower Division Clerk in Group-C category. Such promotion was given to the petitioner vide office order No. 282 of 2002 which mandates that the same would be purely a temporary and adhoc promotion which may be cancelled at any time without giving any notice to the said temporary and adhoc promotee who may be reverted back to the Group-D Post if

found incompetent for working to the said promotional post. The said order further postulates that the said promoted employees will get their pay and allowances from the date of the notification of the Judicial Department concerning the said Four Fast Track Courts, until such notification is made. Till then the adhoc and temporary promotees will draw pay and allowances of their previous posts.

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2. The petitioner who was holding a post of peon was initially promoted to the post of Lower Division Clerk vide office order no. 322 of 2002 dated 23.12.2002 but was thereafter reverted to the post of Group "D" category vide office order no. 41 of 2003 dated 1.2.2003. Subsequently vide office order no. 121 of 2004 dated 24.6.2004 the petitioner provisionally was promoted to the post of Lower Division Clerk subject to the approval of an appropriate authority. The said office order further mandates that the said appointment on promotion is purely temporary, ad hoc and on trial basis and does not confer any right to such post. The said order further provides that the petitioner shall get his pay and allowances of a Group "D" employee till the receipt of the approval from the government.

3. Ms. Sipra Majumder, learned Advocate appearing for the respondents submits that the original affidavit-in-opposition has been misplaced and pressed for filing the Photostat copy of the said opposition and to permit him to rely the same. The learned Advocate appearing for the petitioner did not oppose such submission and as such the Photostat copy of the affidavit-in-opposition filed in course of the writ petition was treated to be relied upon by the respondents at the time of hearing of the instant writ petition. From the said affidavit-in-opposition it appears that the opposite party No. 2 has taken a categorical stand that the promotion to the post of Lower Division Clerk of the Group-D staff was purely contractual, temporary and on adhoc basis. It is further stated that the contractual and adhoc promotees shall not claim any right to the post and shall draw the pay and allowances applicable to the original post until the Judicial Department, Government of West Bengal duly notified such posts concerning the said Four Fast Track Courts. It is further stated that after the resumption of an office, the matter has been referred to the Government for taking an appropriate steps in this regard but no response has been made as yet.

4. Mr. S. Bhattacharjee, the learned Advocate appearing for the petitioner in both the writ petitions submits that although the petitioner claimed the permanent absorption upon regularization to the post of a Lower Division Clerk, but the petitioner is not pressing the same at the present but claims for parity in pay and allowances to the post of a Lower Division Clerk on and from the date of its promotion. He further submits that the contractual promotees cannot claim a right to the post but he should be paid the pay and allowances as has been paid to a regular promotees to the said post and placed reliance upon the judgment of the Supreme Court in case of Selvaraj Vs. Lt. Governor of Island, Port Blair and

Others, and in case of 1999 SCC (L and S) 941 titled M.C. Misra vs. Union of India

5. By contending that non-payment of the pay and allowances to the adhoc appointees in parity with the regular appointees amounts to discriminatory act and is violative of Article 14 of the Constitution of India, he placed reliance upon a judgment of this Court in case of West Bengal State Government Homeopathic Officers Association and Ors, Vs. State of West Bengal and Ors. reported in 1986 Lab I.C. 844 and a judgment of the Supreme Court in case of State of West Bengal and Others Vs. Pantha Chatterjee and Others,

6. Ms. Sipra Majumdar, the learned Advocate appearing for the state submits that the promotion to the post of Lower Division Clerk was purely temporary, contractual and adhoc basis and does not confer any right to the post. She further submits that it was indicated in the office order by which the appointment as adhoc promotee was given that he will be entitled to the pay and allowances of the previous posts unless a Government of West Bengal duly notifies concerning the said Four Fast Track Courts. Lastly she submits that the promotion is purely on contractual basis and as such the petitioner cannot take a contrary stand.

7. Having considered the respective submissions it is undisputed that the petitioner was promoted to the post of Lower Division Clerk from a Group-D staff on the basis of the selection conducted by the selection committee. By Government Order No. 6716 J dated 14.09.2001 issued by the Judicial Department, Government of West Bengal, Fast Track Courts at Purulia was created as a stop gap measures for speedy disposal and thus was never intended that those court would be constituted permanently. It was further clarified therein that in the event such courts are not continued the ad hoc/contractual appointees shall be reverted back to their previous substantive posts without giving any notice or without giving any chance of hearing. It would be pertinent to reproduce the extract of the officer order No. 282 dated 13.12.2002 relating to the petitioner in WP No. 26952 (w) of 2006 by which he was promoted to the post of a Lower Division Clerk.

Hence, the following Gr. "D" employees are promoted to the post of the L.D.C. on purely, temporary and ad-hoc basis and on conditional that their promotion may be cancelled at any time without giving any notice to them unless permanent vacancies in the regular establishment arises :-

- 1). Sri Chittaranjan Gain.
- 2). Sri Smiritimoy Pathak.
- 3). Sri Ghantakarna Dhattaraj.
- 4). Sri Haradhan Mahato.

Promotion to Sri Haradhan Mahato to the post of L.D. Clerk is given only on trial basis. If he fails to satisfy about his competency for working as L.D. Clerk then

he will revert to his Gr. "D" post at any time without giving any chance of hearing and without serving any notice.

The aforesaid promoted U.D. Clerks will be counted against the permanent vacancies for the post of L.D. Clerks of the permanent establishment. The appointments of the said promoted Gr. "D" employees will be against the purely temporary vacancies of 4 Fast Track Courts of this district. Therefore, if the courts are not continued then and there the promoted L.D. Clerks will be reverted to their permanent Gr. "D" posts and the aforesaid 4 promoted U.D. Clerks will be reverted to their permanent L.D. Clerk posts. Those promoted employees will have no any right against such posts.

If the promoted U.D. clerks are not considered as competent and fit persons for the Bench Clerks of the Fast Track Courts ten senior-most competent and experienced U.D. Clerks may be posted as Bench Clerks of the Fast Track Courts temporarily and their vacant posts may be filled up by the aforesaid 4 promoted U.D. Clerks.

Issue promotion orders and posting orders accordingly. However, all the said promoted employees will get their pay and allowances from the date of notification of the Judicial Department, Govt. of West Bengal, concerning the said 4 Fast Track Courts. Prior to the date of such notification those employees will draw pay and allowances of their previous posts. If any such promoted employee has got any objection to accept that term he will have every liberty to forgo the promotion in writing so that chance may be given to the next competent employee.

8. It would be relevant to quote the office order no. 121 of 2004 dated 24.6.2004 relating to the petitioner in WP NO. 26953 (w) of 2006 whereby and where under the promotion to the post of a Lower Division Clerk was given which reads thus :

Consequent to the absorption of Shri Ghanta Karna Chattaraj in the regular and resultant vacancy of Lower Division Clerk caused on the promotion of Sri Falguni Banerjee to the post of Upper Division Clerk, Sri Babulal Mahato, office Peon, Civil Judge (Junior Division), Purulia, who was provisionally promoted to the post of Lower Division Clerk vide this office order no. 322 of 2002 dated 23.12.2002 and subsequently reverted to the post of Group "D" category vide this office order no. 41 of 2003 dated 1.2.2003, is provisionally promoted to the post of Lower Division Clerk, subject to the approval of the Government like other 3 (three) provisionally promoted Lower Division Clerks, ad he is deputed to work as Additional Clerk of the court of Sub-Divisional Judicial Magistrate, Purulia, vice Sri Pran Gobinda Rakshit, transferred, till the functioning of Fast Tack Courts of this judgeship.

The appointment on promotion of Sri Babulal Mahato is on ad hoc, purely temporary and on trial basis on condition that he will not have any right to such post. If the function of the Fast Track Courts is discontinued, Sri Mahato will be

automatically reverted to his permanent post of Group "D" without giving any notice therefore. The appointment of Sri Mahato is given as per the terms of GO NO. 10408(17)-J dated 27.11.2001 and GO NO. 1403(19)-J dated 15.2.2002 issued by the Judicial Department of the Government of West Bengal.

The salary of Sri Mahato will be drawn from the establishment of the Sub-Divisional Judicial Magistrate, Purulia, as a Group "D" employee till the receipt of approval from the government.

This order will take effect from 1.7.2004.

Inform all concerned accordingly.

9. The submission of the petitioner is essentially on the concept of equal pay for equal work which according to the petitioner offends Article 14 of the Constitution of India if not followed. It is undisputed that the petitioner while accepting the promotion does so with open eyes and its consequences flowing there from, the concept of equal pay for equal work is not applicable in case of a contractual appointment and does not offend Article 14 and 16 of the Constitution that has been held by the Five Judges Bench of Supreme Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, in these words:

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The

arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

(Emphasis Supplied)

10. In case of Mahendra L. Jain and Others Vs. Indore Development Authority and Others, the supreme court held that the doctrine of equal pay for equal work as adumbrated in Article 14 and Article 39(d) of the constitution cannot be invoked unless it is expressly and clearly demonstrated relating to the nature of work and responsibilities attached to the posts but not when their services are not regularized and continued on a consolidated pay on adhoc basis.

11. Whether the High Court in exercise of power vested under Article 226 of the Constitution can issue mandamus and compel the state and its instrumentality to regularize the service of the temporary/ adhoc/daily wager/casual/contract employees to prescribe or give similar pay scale to the employees appointed through different modes with different conditions of service and different sources of payment came up for consideration before the Supreme Court in case of Official Liquidator Vs. Dayanand and Others, it is held:

93. The respondents' claim for fixation of pay in the regular scale and grant of other monetary benefits on a par with those appointed against the sanctioned posts has been accepted by the High Courts on the premise that their duties and functions are similar to those performed by regular employees. In the opinion of the High Courts, similarity in the nature of work of the company-paid staff on the one hand and regular employees on the other hand, is by itself sufficient for invoking the principle of equal pay for equal work. In our view, the approach adopted by the High Courts is clearly erroneous and directions given for bringing about parity between the company-paid staff and regular employees in the matter of pay, allowances, etc. are liable to be upset.

94. The principle of equal pay for equal work for men and women embodied in Article 39(d) was first considered in Kishori Mohanlal Bakshi v. Union of India and it was held that the said principle is not capable of being enforced in a court of law. After 36 years, the issue was again considered in Randhir Singh v. Union of India, and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.

95. The ratio of Randhir Singh Vs. Union of India (UOI) and Others, was reiterated and applied in several cases Dhirendra Chamoli and Another Vs. State of U.P., Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, , Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, , The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., and Jaipal and Others Vs. State of Haryana and Others, and it was held that even a daily-wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in Federation of All India Customs and Central

Excise Stenographers (Recognised) and others Vs. Union of India and others, , Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, , V. Markendeya and Others Vs. State of Andhra Pradesh and Others, , Harbans Lal and Others Vs. State of Himachal Pradesh and Others, , State of U.P. and Others Vs. J.P. Chaurasia and Others, , Grih Kalyan Kendra Workers" Union Vs. Union of India and others, , Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, , State of Haryana and Others Vs. Jasmer Singh and Others, State of Haryana Vs. Surinder Kumar and others, , Union of India (UOI) and Others Vs. K.V. Baby and Another, , State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., , Utkal University and Another Vs. Jyotirmayee Nayak and Others, State of Haryana and Another Vs. Tilak Raj and Others, , Union of India (UOI) Vs. Tarit Ranjan Das, , Apangshu Mohan Lodh and Others Vs. State of Tripura and Others, State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, , Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another, and Canteen Mazdoor Sabha Vs. Metallurgical Engg. Consultants (I) Ltd. and Others, , the Court consciously and repeatedly deviated from the ruling of Randhir Singh Vs. Union of India (UOI) and Others, and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need, etc.

96. In State of Haryana v. Jasmer Singh the two-judge Bench laid down the following principle:

8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. this Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted.

97. In Harbans Lal v. State of H.P. the Court held that the claim of carpenters employed by an incorporated company for parity in wages payable to their counterparts in government service is unsustainable.

98. In Jawaharlal Nehru Technological University v. T. Sumalatha it was held that

the respondents who were employed under a scheme known as National Technical Manpower Information System, which was sponsored by the then Ministry of Education and Culture, cannot claim parity with the regular government employees in the matter of pay scale.

99. In *Canteen Mazdoor Sabha v. Metallurgical & Engg. Consultants (India) Ltd.* another two-judge Bench held that simply because some employees of a contractor of the alleged head employer are performing the task or duties similar to the employees of the head employer, it will not entitle such employees to claim parity.

(Emphasis Supplied)

12. On the anvil of law enunciated in the above reports it is beyond any reasonable doubt that the petitioner being a contractual promotee cannot get pay and allowances in parity with the other regular promotees and or appointees.

13. There is another aspect which is relevant to be recorded herein is that it is clearly stipulated in the order of appointment that so long a Government of West Bengal makes a notification concerning the aforesaid Four Fast Track Courts to be made permanent, the petitioner cannot draw the pay scale of the promotional post but shall be paid in accordance with the original post held by him. From the definite stand taken by the Respondent No. 2 in his opposition that such notification has not been made by the Government and a representation in this regard has already been made. Therefore, till such notification as envisaged in the said office order is made by the Government of West Bengal, the petitioner cannot claim the parity of pay and allowances with the regular appointees of the said posts. The judgment cited by the petitioner were delivered by the Apex Court and this Hon''ble Court prior to the judgment rendered by the Apex Court in case of *Uma Devi (3) (supra)* and as such does not have a binding precedent.

14. Therefore I do not find any merit in the above-mentioned writ petitions.

15. Both the writ petitions are hereby dismissed.

16. There shall have no order as to costs.

17. Let urgent Photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.