
(2012) 04 CAL CK 0038
In the Calcutta High Court
Case No : Writ Petition No. 21948 (W) of 2005

Jagojyoti Roy

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2012) 04 CAL CK 0038

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : M.M. Das and Mr. Partha Chakraborty, for the Appellant; Joydeep Kar, Siddhartha Ghosh, For Respondents Nos. 1 and 2, Mr. A. Chowdhury and Mr. S. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Justice Debasish Kar Gupta

1. This writ application is filed by the petitioners for a direction upon the respondents to implement the scale of pay of the officers and managerial staff of the Britannia Engineering Co., Ltd., (Government of West Bengal Undertaking) (hereinafter referred to as the respondent company) as per of West Bengal Services(Revision of Pay and Allowance) Rules, 1990 (hereinafter referred to as the ROPA, 1990) merging Dearness Allowance at 608 point Consumer Price Index and thereafter fixing the pay as per West Bengal Services(Revision of Pay and Allowances) Rules, 1998 (hereinafter referred to as the ROPA 1998) by merging DA at 1510 point of Consumer Price Index. Britannia Engineering Company Ltd., started its operation in the year 1979 under private management. The above company declared closure in the year 1970. In the year 1973 the above company went into liquidation.

2. The management of Titagarh unit was taken over by the Government of India under industries(Development and Regulation) Act, 1951, appointing M/s.

Westinghouse Saxby Farmer Ltd. to run the management of the above undertaking. The Government of West Bengal acquired the above undertaking on August 1, 1985 and Britannia Engineering Co., Ltd., (Government of West Bengal Undertaking) was created in April 1986 for taking over the assets of the above company. The assets of Titagarh unit of erstwhile Britannia Engineering Co. Ltd., were vested in the respondent company with effect from July 3, 1986 on liquidation. The Board of Directors of the company was appointed by the Government of West Bengal. Out of about 1215 employees of the respondent company 1151 employees approximately were covered under the Tripartite Engineering Wage Settlement. About 64 employees of the level supervisors and above were not covered by the above wage settlements.

3. By a resolution No. 805-F dated June 30, 1987 the Government of West Bengal constituted the third Pay Commission. The above pay commission was entrusted with the study the pay structure and other allowances of the employees of statutory bodies, corporations etc., who were under the administrative control of the State of West Bengal which included the above employees of the respondent company.

4. The aforesaid Third Pay Commission observed in its recommendation that from April 1, 1997 that Britannia was under the management of M/s. Westinghouse Saxby Farmer Ltd. The pay structure of its above employees was similar to that of similar categories of employees of M/s. Westinghouse Saxby Farmer Ltd.. With effect from September 1, 1979 an ad-hoc increment of Rs. 50/- was granted to all categories of employees of the respondent company without the approval of the Government of West Bengal though the management of the respondent company developed on the Government of West Bengal. The Third Pay Commission further observed that with effect from August 1, 1986 the employees of the respondent company were also enjoying Dearness Allowance at Government rates following grant of Dearness Allowance to M/s. Westinghouse Saxby Farmer Ltd. at State Government Rate.

5. After considering the aforesaid aspects, the Third Pay Commission suggested that the pay-scales of the aforesaid employees of the respondent company were required to be adjusted downwards to bring parity or near parity with emoluments of similar employees of other statutory bodies and corporations under the administrative control of the State Government. The Third Pay Commission recommended rectification of the aforesaid anomaly and recommended grant of scale of pay for various classes of employees of the respondent company in recommending the pay-scales of those employees of the respondent company as aforesaid the Third Pay Commission also put on record that the proposed pay-scales were linked to All India Average Price Index for Industrial Workers (1982 = 100) which stood at 193 on March 31, 1991. The Third Pay Commission suggested on April 1, 1991 as the date of giving effect to its recommendation.

6. Accepting the above recommendations, the Government of West Bengal sent it

to the respondent company for implementation. The said company framed Britannia Products & Services (Revision of Pay & Allowances) 4, 1992 which came into force with effect from April 1, 1991.

7. The Government of West Bengal constituted a Fourth Pay Commission by virtue of resolution No. 11831-F dated November 27, 1995 to examine the pay structure and other conditions of service of the State Government Employees as also the employees of undertakings, statutory bodies, corporations etc., under the administrative control of the State Government which included the respondent company. The above Pay Commission recorded in its report that the Pay Commission could not make recommendation in respect of proposed structure of emolument of 21 manufacturing units including the respondent company within December 12, 1999, i.e. the time fixed by the Government, due to time constraint.

8. By a further notification No. 1684-F dated February 21, 2000 the Government of West Bengal constituted a Pay Commission for the aforesaid 21 undertakings which were manufacturing units for the purpose of finalising recommendations in respect of the above employees. The above Pay Commission was also allowed to suggest fresh recommendations on the issues covered by Fourth Pay Commission in volume II of its report, if it was considered necessary. The respondent company was one of the aforesaid 21 undertakings mentioned in the above notification. The above Pay Commission submitted its recommendation in which it was observed, amongst others, that the employees of the respondent company who had been under the purview of the Third Pay Commission did not opt for revised scale of pay and retained their old unrevised scale of pay. But they continued to enjoy government Dearness Allowance and house rent allowance. The Pay Commission recommended revised scales for all the posts of the respondent company as shown in the schedule annexed thereto.

9. The Government of West Bengal accepted the recommendation of the above Pay Commission and forwarded the same to its undertakings including the petitioner company under memo No. 10328-F dated December 12, 2000 with the guidelines contained therein. On the basis of the above recommendation of the Government of West Bengal, the respondent company framed Britannia Engineering Ltd., Employees (Revision of Pay, Allowances) and condition of Service Regulations, 2002. The above regulations were given effect from June 1999 notionally and actually from April 1, 2000.

10. In December 2003 the respondent company floated Early Retirement Scheme, 2003. Petitioner Nos. 1,3,8,10,11 and 12 accepted the above Retirement Scheme and received full benefits as payable to them under the above scheme. Necessary to put on record that the respondent No. 5 also retired during the pendency of the writ application. By an order dated May 6, 2011 the names of petitioner nos.1,3,5,6,8,10 and 12 were expunged from this writ application on the prayer made on their behalf.

11. It is submitted by Mr. M. Das, learned advocate appearing on behalf of the petitioner that the pay-scales of the petitioners were not fixed by the respondent authority under the provisions of Britannia Products & Services (Revision of pay & allowances) Regulation, 1992. According to him, in the event the effect of the above regulation was not given effect to, there was no scope to give effect to the recommendations of the Pay Commission constituted under notification No. 1684-F dated February 21, 2000. Otherwise the petitioners would be chosen their personal pay. It is also submitted by Mr. Das that considering the difficulty in implementing the recommendation of the Pay Commission, interim relief of Rs. 50 per month was granted to the petitioners. Drawing the attention towards the provision of clause(V) of the Britannia Products & Services (Revision of pay & allowances) Regulation, 1992 it is submitted by Mr. Das that though the effect of revision of scale of pay from April 1, 1991 was automatic, the respondent authority had chosen not to fix the scale of pay of the petitioners in terms thereof. It is also submitted by him that the controller of public enterprises and all official Secretary to the Government of West Bengal, public enterprise department observed in his communication issued under memo No. 994/PE/O/ESTT/IF-17/2000 dated December 6, 2001 that amongst others, that stagnation increments allowed to the employees of the respondent company were not remarkable towards determination of existing emoluments. According to him, the above stand of the Government could not be sustained in law. Though a representation dated May 2, 2004 was submitted to the State Government against the above observation, no attention was paid to the above representation for redressal of the grievance of the petitioners.

12. Mr. Joydeep Kar, learned advocate appearing on behalf of the respondent No. 2 submitted that fixation of scale of pay in terms of prayers made in this writ application cannot be sustained in law. It is further submitted by him that the West Bengal Services (Revision of Pay and allowances) Rules, 1992 and West Bengal Services (Revision of Pay and Allowances) Rules, 1998 were framed under the provisions of proviso to Article 309 of the constitution of India. The petitioners are the employees of Government of West Bengal undertaking. Therefore, the scales of pay of the petitioners cannot be fixed on basis of the aforesaid Rules. It is further submitted by him, that accepting the recommendation made by the Third Pay Commission, Government of West Bengal sent it to the respondent company for implementation. The said company framed Britannia Product and Services (Revision of Pay and Allowances) Regulations, 1992 which came into force with effect from April 1, 1991 that was not implemented by the Management for revision of the pay scales of the petitioners by the respondent company. It is also submitted by him that the above regulations as also the propriety of the above regulation is also not under challenge in this writ application.

13. Mr. Kar further submits that the Fourth Pay Commission constituted by the Government of West Bengal did not make any recommendation in respect of structure of 21 manufacturing units including the respondent company.

Consequent thereupon, the Government of West Bengal constituted a Pay Commission for the aforesaid 21 undertakings by virtue of notification No. 1684-F dated February 21, 2000. The above pay commission examined each of the case thoroughly. On the basis of the recommendations of the above Pay Commission, the respondent company framed Britannia Engineering Co. Ltd., Employees (Revision of Pay, Allowances and Conditions of Services) Regulation, 2002. Therefore, the pay scale prescribed in the above regulations for the petitioners should have been implemented.

14. Mr. Kar relies upon the decisions of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, , State of West Bengal and others Vs. Deb Kumar Mukherjee and others, Union of India (UOI) and Another Vs. P.V. Hariharan and Another, , Associate Banks Officers' Association Vs. State Bank of India and Others, , S.C. Chandra and Others Vs. State of Jharkhand and Others, and State of Haryana & Ors. v. Chiranjit Singh & Ors., reported in (2006) 9 SCS 321 in support of above submissions.

15. Mr. A. Chowdhury, learned Advocate on behalf of the respondent company adopted the stand taken by the State Government. It is submitted by him that the petitioners did not exercise option in accordance with the provisions of Britannia Products and Services (Revision of Pay and Allowances) Regulations, 1992. They did not even chose to exercise their option in terms of the Britannia Engineering Co. Ltd. Employees (Revision of pay, allowances and conditions of service) Regulation, 2002. On the other hand, the petitioners enjoyed the interim relief in addition to the old scale of pay fixed by the respondent company while company had been running under the management of M/s. Westinghouse Saxby Farmers Ltd. According to him, the pay structure of the above employees of the respondent company was similar to that of similar categories of officers and employees of M/s. Westinghouse Saxby Farmer Ltd. It is submitted by him that the above pay structure was higher to that of the officers and employees of the State Government.

16. Relying upon the decision S.C. Chandra and Others Vs. State of Jharkhand and Others, t is submitted by him that the fixation of pay scale is the outcome of recommendation of expert body and a court in course of judicial review of the same under article 226 of the constitution of India must be slow to interfere with the same.

17. Having heard the Learned Counsel appearing for the respective parties as also after considering the facts and circumstances of this case carefully I find that the Management of Titagarh Unit of the respondent No. 3 was taken over by the Government of India under the industries (Development and Regulation) Act, 1951 appointing M/s. Westinghouse Saxby Farmer Limited. It is also not in dispute that the Government of West Bengal acquired the above undertaking on August 1, 1985 creating Britannia Engineering Co. Ltd.(Government of West Bengal Undertaking) for taking over the assets of the above company. Consequent thereupon the assets of Titagarh Unit of the erstwhile Britannia

Engineering Co. Ltd. were vested in the respondent company with effect from July 3, 1986 on liquidation. The Board of Directors of the respondent No. 3 was appointed by the Government of West Bengal.

18. From the materials on record it appears that why the resolution No. 895-F dated July 30, 1987, the Government of West Bengal constituted the Third Pay Commission and the above Pay Commission was entrusted with the study of pay structure and other allowances of the employees of the statutory bodies, corporations etc. including that of the respondent No. 3. After considering the recommendation made by the Third Pay Commission, the Government of West Bengal sent it to the respondent company for implementation. The respondent No. 3 framed Britannia Products and Services (Revision of Pay and Allowances) Regulation, 1992 which came into force with effect from April, 1991.

19. Subsequently, the Government of West Bengal constituted Fourth Pay Commission by virtue of resolution No. 11831-F dated November 27, 1995 to examine the pay structure and other conditions of Services of the State Government Employees as also that of the employees of the undertakings, statutory bodies, Corporations etc. under the administrative control of the State Government which included the respondent company also. The above Pay Commission could not make recommendation in respect of proposed structure of amalgamation of 21 manufacturing units including the respondent company with the time schedule due to time constraint.

20. By virtue of further notification No. 1684-F dated February 21, 2000, the Government of West Bengal Constituted a Pay Commission for the aforesaid undertakings of the Government of India for the purpose of finalising the recommendations in respect of the employees of the above undertakings which included the respondent No. 3, amongst others.

21. The Government of West Bengal accepted the recommendation of the above Pay Commission and forwarded the same to the respondent No. 3. The respondent No. 3 framed Britannia Engineering Co. Ltd. Employees (Revision of Pay and Allowances and conditions of Services) Regulation, 2002. The Above Regulations were given effect from June 1999 notionally and actually from April 1, 2000.

22. In view of the aforesaid admitted facts and circumstances the recommendations made by virtue of West Bengal Revision of Pay and Allowances Rules, 1990 or by the West Bengal Services (Revision of Pay and Allowances) Rules, 1998 in connecting with the pay structures of the State Government employees cannot be implemented for revision of scale of pay of the officers and managerial staff of the respondent No. 3. The above rules have no manner of application in respect of the officers or managerial staff of the respondent No. 3. Rather the above rules were framed for revision of the pay structure of the State Government employees and not in respect of the officers or Managerial staff of any of the undertaking of the Government of West Bengal.

23. So far as, the propriety of the recommendations made by the Third Pay Commission or by the Pay Commission constituted by the Government of West Bengal under memo No. 10328-F dated December 12, 2000 are concerned, it is true that when granting or revision of a pay scale is under challenge, it is not enough for the Government to put forward the shield of the Pay Commission recommendation as a defence but if there were materials before the Pay Commission for arriving at a particular conclusion, then the courts would not be justified in interfering with this recommendation. Reference may be made to the decision of State of West Bengal and others Vs. Deb Kumar Mukherjee and others, and the relevant portion of the above decision are quoted below:

8. As mentioned above, the three Pay Commissions during the last three decades examined the revision of pay scales of various cadres in the State of West Bengal, On the basis of the material placed before the Pay Commissions the two grades in respect of Inspectors in the Housing Department were maintained. Similarly the Pay Commissions recommended different pay scales for Inspectors in different Departments of the State Government. The High Court, in its writ jurisdiction, was not justified in reaching the findings different than that of the Pay Commissions.

24. The propriety of the above recommendations are to be considered in course of judicial review in the light of the above settled principles of law.

25. After considering the materials on record I find that the Third Pay Commission observed in its recommendation that with effect from April 1, 1997 the respondent No. 3 was under the management of M/s. Westinghouse Saxby Farmer Ltd. The pay structures of its officers and managerial staff were similar to that of similar categories of employees of M/s. Westinghouse Saxby Farmer Ltd. With effect from September 1, 1979 and ad-hoc implement of Rs. 50/- was granted to that categories of employees of the respondent company without approval of the Government of West Bengal. That apart, the Third pay Commission observed in its recommendation that with effect from August 1, 1986 the officers of the managerial staff of the respondent company were also enjoying Dearness Allowance at government rates following grant of dearness to M/s. Westinghouse Saxby Farmer Ltd. at State Government rate. After taking into consideration the aforesaid facts and circumstances the Third Pay Commission suggested downwards adjustment of the pay scales of the officers and managerial staff of the respondent company to bring parity or near-parity with the emoluments of similar categories of officers and managerial staff of other statutory bodies and corporations which were under the administrative control of State Government. The State Government in its turn accepted the above recommendations and forwarded the same to the respondent company for implementation. The respondent company framed Britannia Products and Services (Revision of Pay and Allowances) Regulation, 1992 which came into force on April 1, 1991. It further appears from the materials on record that in spite of framing the above regulations, the same could not be implemented in support of the

officers and managerial staff of the respondent company due to objections raised from officers of managerial staff of the respondent company. No material is brought on record to show that there was any fault and/or lapses on the part of the respondents to implement the above regulations. After considering the materials I find no cogent reason for interfering with the above recommendations of the Third Pay Commission or the regulations framed on the basis of such recommendations.

26. It further appears from the materials on record that for further revision of the pay structure of the officers of managerial staff of the respondent No. 3 the Government of West Bengal constituted a Fourth Pay Commission by virtue of resolution No. 1183-F dated November 27, 1995. Since the above Pay Commission could not make recommendations in respect of the officers and managerial staff of the respondent company due to time constraint, the Government of West Bengal constituted a Pay Commission under notification No. 1684-F dated February 21, 2000 for finalising the recommendations in respect of the pay structure of the officers and managerial staff of the respondent No. 3, amongst others. The above Pay Commission take into consideration the fact that the officers and managerial staff of the respondent company who had been under the purview of Third Pay Commission did not opt for revise scale of pay and retained their old un-revised scale of pay. But at the same time, those officers and managerial staff continued to enjoy Government Dearness Allowance and house rent allowance. The Pay Commission recommended revised pay structure for the officers and managerial staff of the respondent company as shown in the schedule annexed to its recommendation. Though the above recommendation was accepted by the Government of West Bengal and the respondent No. 3 framed Britannia Engineering Co. Ltd. Employees (Revision of Pay, Allowances and Conditions of Services) Regulation, 2001, the same could not be implemented due to objections raised at various point of time by the officers and managerial staff of the respondent company. After considering the above facts and circumstances I find that the above recommendations were also based on materials considered by the expert body i.e. the Pay Commission for restructuring the pay scale of the officers and managerial staff of the respondent No. 3.

27. It is the settled principles of law that in absence of cogent reasons the recommendations made by Pay Commission should not be upset merely on the basis of the affidavits. Reference may be made to the decision of Union of India and Others Vs. Shri Ram Gopal Agarwal and Others, and the relevant portions of the above decision is quoted below:

11. In fact this distinction is being drawn on the basis of the report of the IVth Central Pay Commission submitted, which is an expert body in this regard. It is not possible for this Court, on the basis of the affidavits filed, to come to a clear conclusion specially in contradiction to the expert body report such as the IVth Central Pay Commission Report, to hold it arbitrary unless there are cogent facts

and reasons brought before us, which is not in the present case. In State of U.P. V. J.P. Chaurasia this Court observed as follows:

The first question regarding entitlement to the pay scaleadmissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not justdepend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, butthere may be difference degrees in the performance. The quantity of work may be the same, but quality may be different that cannot bedetermined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any suchdetermination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with suchequivalence unless it is shown that it was made with extraneous consideration.

28. In view of the discussions and observations made hereinabove the recommendations made by the Pay Commission and the regulations framed the reunder for revision of pay structures of the petitioners cannot be interfered with.

29. This writ application is, thus, dismissed.

30. There will be, however, no order as costs. 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.