
(1965) 11 CAL CK 0021
In the Calcutta High Court
Case No : A.F.O.O. No. 6 of 1965

K.P. Sen

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 19-11-1965

Acts Referred:

Constitution of India, 1950 — Article 318
West Bengal Public Service Commission (Conditions of Service and Miscellaneous Provisions) Regulations, 1953 — Regulation 4, 5

Citation : AIR 1966 Cal 356 : 71 CWN 622 : (1966) 2 LLJ 861

Hon'ble Judges : H.K. Bose, C.J.; B.C. Mitra, J

Bench : Division Bench

Advocate : B.B. Das Gupta, for the Appellant; Adv.-General and B. Das, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This appeal is directed against a judgment and order of Sinha, J., dated June 3, 1964, by which a rule nisi obtained by the appellant in a petition under Article 226 of the Constitution, was discharged.

2. The appellant who was in the Indian Administrative Service, held the Office of Additional Secretary, Finance Department of the Government of West Bengal. He was confirmed in that Office with effect from September 11, 1961, and his substantial pay was Rs. 2150 per month. He was due to retire from the Indian Administrative Service on October 31, 1961, but his service was extended upto December 31, 1961. He was granted refused leave for a period of four months from January 1, 1962, to April 30, 1962, and thereby his service was further extended by four months upto April 30, 1962.

3. By an order dated December 9, 1961, the appellant was appointed a Member of the Public Service Commission, West Bengal. It is to be noticed that this appointment was made while he was still holding the said Office of Additional Secretary to the Government of West Bengal in the Finance Department. The

Notification by which the appointment was made is the Notification No. 5160-F/FIS-8 (81) 61 dated December 9, 1961. This Notification is expressed to be made by order of the Governor and is signed by K. K. Ray, Secretary to the Government of West Bengal. At the bottom of this Notification is set out the names of five Officers to whom copies of the Notification were forwarded. Immediately below these five names is set out a provision relating to the pay of the appellant, so long he would hold the Office of a Member. Public Service Commission, West Bengal. It is this provision appearing at the bottom of the said Notification which led to a controversy between the appellant, and the State Government, regarding the appellant's pay, and also provided the occasion for the writ petition, out of which this appeal arises. It is to be noticed, however, that the provision relating to the pay of the appellant appearing at the bottom of the Notification is not signed by K. K. Ray, Secretary to the Government of West Bengal, but is signed by a different person, namely, D. B. Biswas, who has put his signature "for Secretary to the Government of West Bengal". The Notification together with the writing at the bottom of it is annexure "A" to the petition and is as follows:

"Government of West Bengal Finance Department. Audit Branch.

No. 5160-F FIS-8 (81) 61

Calcutta,

The 9th December, 1961.

NOTIFICATION.

The Governor is pleased to appoint Shri K. P. Sen, I. A. S., Additional Secretary, Finance Department, Government of West Bengal to be a member of the Public Service Commission, West Bengal with effect from the date he assumes charge.

By order of the Governor.

Sd/- K. K. Ray.

Secretary to the Government of West Bengal.

No. 5160-1(5-F)

Copy forwarded to-

- (1) Secretary, Public Service Commission, West Bengal,
- (2) Secretary to the Governor, West Bengal.
- (3) Home (G. A.) Department, West Bengal.
- (4) Shri K. P. Sen, I. A. S., Additional Secretary,
Finance Department, West Bengal.
- (5) Accountant General, West Bengal.

2. While holding the post of Member, Public Service Commission, West Bengal, Shri Sen will draw a pay of Rs. 2,150 per month.

Sd/- B. B. Biswas.

for Secretary to the Government of West Bengal."

4. Thereafter on or about May 20, 1962, the appellant received a communication from the Finance Department to the Government of West Bengal informing him that he would receive, with effect from the date of his retirement, such pay as together with pension in respect of his service in the I. A. S., would amount to Rupees 2,000 per month as prescribed in Regulation 5 of the West Bengal Public Service Commission (Conditions of Service and Miscellaneous Provisions) Regulations, 1953. The salary of the appellant as a Member of the Public Service Commission was fixed at Rs. 2,000 per month, because of the provision in this Regulation which runs as follows:

"A member, who at the time of his appointment as a Member is in service under the Government of India or under the Government of a State, shall subject to the provisions of regulation 8, continue to be governed during his term of office as such Member, as regards retirement and pension, by the rules applicable to the service to which he belongs. If, under these rules, he is required or permitted to retire or resign from the said service during his term of office as a Member he shall receive, with effect from the date of such retirement or resignation, such pay as together with any annuity or pension which may have been sanctioned in respect of his previous service will amount to Rs. 3,000 a month in the case of the Chairman or Rs. 2,000 a month in the case of any other Member."

5. The receipt of the said communication by the appellant was followed by correspondence between the Chairman, Public Service Commission, and the Chief Minister, West Bengal, and also between the appellant and the Government of West Bengal, in which it was contended that the appellant was entitled to draw a pay of Rs. 2,150 per month. This contention by and on behalf of the appellant having been turned down, the appellant moved the writ petition and obtained a rule nisi which was discharged by the trial Court as hereinbefore stated.

6. The learned advocate for the appellant contended that the said Regulations 4 and 5 were relaxed in the case of the appellant, as the Notification dated December 9, 1961, specifically provided that the appellant, while holding the post of Member, Public Service Commission, West Bengal, would draw a pay of Rs. 2150 per month. It was argued that the provision for a pay of Rs. 2150 per month as set out at the bottom of the said Notification was in effect a relaxation of the Regulations. Regulation 4(b)(i) of the West Bengal Public Service Commission (Conditions of Service and Miscellaneous Provisions) Regulations, 1953, provides that a Member of the Public Service Commission shall receive a pay of Rs. 2,000 per month or if he is in permanent service under the Government of India or under the Government of a State, he would get a pay in the scale of service to which he belongs or Rs. 2,000 per month, whichever is

greater. It was argued that the provisions of Regulation 4(b)(i) could not be invoked and applied in the case of the appellant as this Regulation was relaxed by the State Government under the provisions of a Finance Department Notification dated July 23, 1955, which is set out at the bottom of a letter from the appellant to the Chief Minister, West Bengal, dated September 7, 1962, which is annexure "D" to the petition. This Notification provides that where the State Government is satisfied that the operation of any rule regulating conditions of service of employees causes undue hardship in any particular case, the State Government may in a particular case dispense with or relax the requirement of that rule, to such extent and subject to such conditions as may be necessary.

7. Learned advocate for the appellant submitted that because it was stated at the bottom of the said Notification dated December 9, 1961, (whereby the appellant was appointed a Member of the Public Service Commission), that so long the appellant was a Member of the Public Service Commission he would draw a pay of Rupees 2,150 per month, it must be held that the operation or application of the said Regulation 4(b)(i) was relaxed. It was further argued that the appellant's pay could be fixed at Rs. 2,150 per month only if there was a relaxation of the said Regulation 4(b)(i). It was also contended that this relaxation must have been made as the appellant's pay would have been reduced from Rs. 2,150 per month to Rs. 2,000 per month, if the said Regulation 4(b)(i) applied. It was therefore submitted that the operation of the said Regulation would undoubtedly cause undue hardship to the appellant as contemplated by the said Finance Department Notification.

8. In our opinion there is no force in these contentions of the learned advocate for the appellant. The appellant was a Member of the Indian Administrative Service and as such he was holding the Office of a Secretary to the Government of West Bengal and his pay in this Office was Rs. 2,150 per month. Before he ceased to hold this Office he was appointed a Member of the Public Service Commission, but he continued in the Indian Administrative Service till April 30, 1962, upto which date his employment in the Indian Administrative Service continued, because as he has alleged, of "refused leave". Therefore even though the appellant assumed charge of the Office of a Member, Public Service Commission, on December 29, 1961, he continued to be in the Indian Administrative Service until April 30, 1962. Regulation 4(b)(ii) clearly provides for his drawing the higher pay of Rs. 2,150 per month, that being the pay in the scale of the service to which he belonged. But he retired from the Indian Administrative Service on April 30, 1962, and therefore his scale of pay must be determined according to the terms of Regulation 4(b)(i). No doubt the State Government had the power to relax the operation of Regulation 4(b)(i) in the case of the appellant, but before such relaxation can be made in the case of any employee, the State Government must be satisfied that the operation of a rule would cause undue hardship. There is no evidence that the State Government was so satisfied or that the operation of Regulation 4(b)(i) was relaxed in the case of the appellant.

9. Learned advocate for the appellant relied upon a letter from M. M. Sen, I. C. S., Joint Secretary to the Government of West Bengal to the Accountant General, West Bengal, dated August 27, 1957, which is annexure I to the affidavit-in-reply affirmed by the appellant on April 24, 1963. In this letter it was stated that the Governor was pleased to direct in relaxation of the said Regulation 1 that T. Mitra, I.S.E. (Retired) while holding the post of a Member, Public Service Commission, would draw a pay of Rs. 3,000 per month inclusive of pension or Rs. 3,000 per month less the pension sanctioned to him if shown separately. It was argued that although in the case of the appellant no formal order of relaxation of the operation of the said Regulation 4 was made as in the case of T. Mitra, such a relaxation must be deemed to have been made by the State Government as the appellant's pay was fixed at Rs. 2,150 per month by the note at the bottom of the said Notification dated December 9, 1961. We cannot accept this contention. In order to entitle the appellant to the pay of Rs. 2150 per month even after his retirement from the Indian Administrative Service on April 30, 1962, there must be a determination by the State Government that the operation of the said Regulation 4 is to be relaxed in favour of the appellant. There was no such relaxation as claimed by the learned advocate for the appellant. The note at the bottom of the said Notification dated December 9, 1961, that the appellant would draw a pay of Rs. 2,150 per month cannot be held to be a determination by the State Government that the operation of the, said Regulation 4 is to be relaxed in the case of the appellant.

10. Appearing for the respondents the learned Advocate General contended that the note at the bottom of the said Notification is no part of the order itself and it was signed by one B. B. Biswas who is not even a Secretary to the Government of West Bengal. It was further argued by the learned Advocate General that the letter dated August 27, 1957, from M. M. Sen, I. C. S. to the Accountant General, West Bengal on which reliance was placed by the learned advocate for the appellant, does not support the appellant's contention. On the other hand this letter goes to show that a relaxation of Regulation 4 has to be made by the Governor. He argued that there was no evidence that such relaxation had been made in the case of the appellant and that the appellant's contention that an inference should be drawn from the note at the bottom of the said Notification dated December 9, 1961., and it should be read as an order of relaxation of Regulation 4, has no substance at all. In our opinion this contention of the learned Advocate General is well founded. There is no evidence that a relaxation had been made of the operation of Regulation 4, and the appellant cannot claim the higher pay, namely, Rupees 2150 per month, unless he can satisfy the Court that an order had in fact been made relaxing the operation of the said Regulation.

11. In our opinion, the trial court was right in holding that there was no relaxation of the operation of Regulation 4 in favour of the appellant. The trial Court was also right in holding that the appointment of the appellant as a Member of the Public Service Commission was made subject to the provisions in Regulation 4. The West Bengal Public Service Commission (Conditions of Service

and Miscellaneous Provisions) Regulations, 1953, have been framed under Article 318 of the Constitution. The proviso to that Article requires that the conditions of service of a Member of a Public Service Commission shall not be varied to his disadvantage after his appointment. It was strenuously argued before us by the learned advocate for the appellant, that in so far as the said letter dated May 18, 1962, fixed the pay of the appellant at Rs. 2,000 per month, it was a reduction in his remuneration and for that reason it was a variation of the appellant's conditions of service to his disadvantage, contrary to the terms of the proviso to Article 318 of the Constitution. There is no merit in this contention. The appointment of the appellant as a Member of the Public Service Commission was made subject to the said Regulations which clearly provide that a Member is to get a pay of Rs. 2,000 per month. In the case of the appellant, his employment in the Indian Administrative Service, in which he was getting a pay of Rs. 2150 continued till April 30, 1962, and therefore he was rightly allowed to draw that pay, namely, Rs. 2150 per month so long as he continued to be in the Indian Administrative Service. In order to override the provision of Regulation 4(b)(i), which requires that a Member of the Public Service Commission is to get a pay of Rs. 2,000 per month and no more, a positive order relaxing the operation of the said Regulation has to be made by the State Government as required by the Finance Department Notification hereinbefore mentioned, and before such an order of relaxation can be made, the State Government has to be satisfied that the operation of a rule regarding the conditions of service of an employee would cause undue hardship to him. As I have noticed earlier, no such order relaxing the operation of the Regulations was made, and from the materials before us, it appears that the State Government was far from satisfied that the operation of the Regulation would cause any hardship to the appellant. The note signed by B. B. Biswas at the bottom of the Notification dated December 9, 1961, that the appellant while holding the post of a Member, Public Service Commission, would draw a pay of Rs. 2150 per month must be read subject to the provisions in Regulations 4 and 5. The opinion of an Officer of the State Government, however high his position may be, cannot have the effect of overriding the terms of Regulations framed by the State Government under the Constitution. The said note signed by B. B. Biswas must, therefore be read and construed to mean that the appellant was to get a pay of Rs. 2,150 per month so long as he continued in the Indian Administrative Service and thereafter his pay and emoluments must be in accordance with the said Regulations 4 and 5. The operation of the said Regulations 4 and 5 can be suspended or dispensed with in the case of a particular Member of the Public Service Commission only by an order relaxing such operation. No such order has been made and the appellant's claim therefore, that his pay would not be controlled by Regulations 4 and 5, cannot be sustained.

12. For the reasons mentioned above, this appeal fails and is accordingly dismissed with costs.

Bose, C.J.

13. I agree.

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