
(1990) 08 CAL CK 0010
In the Calcutta High Court
Case No : C.O. No. 10645 (W) of 1982

Kumar Kamalesh Naryan

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : 95 CWN 524

Hon'ble Judges : Mitra, J

Bench : Single Bench

Advocate : Indrajit Mondal, for the Appellant; Samarendra Nath Dutta for the State, for the Respondent

Final Decision : Allowed

Judgement

Mitra, J.—Heard Mr. Mondal for the petitioners and Mr. Dutta for the State of West Bengal. None appears to the private respondents inspite of service of notices upon them as would appear from the order of Hon"ble Mr. justice Suhas Chandra Sen on 16th May, 1984. It is the case of the petitioners that they were originally appointed as LOWER Division Clerks in the scale of 230/- 425/- in different N.C.C. Offices under Education Department, Government of West Bengal during the years 1963-1965. Subsequently, the petitioners joined as Lower Division Clerks off deputation in the Calcutta Pay and Accounts Office during September and October, 1978. Thereafter, the petitioners were absorbed in the regular posts of Lower Division Clerks in the said Calcutta Pay and Accounts Office in the revised scale of Rs. 300-685/- with effect from 1st of April, 1981. The private respondent nos. 6 to 67 also joined the Calcutta Pay and Accounts Office on deputation from other offices and they were also absorbed therein on the same terms and conditions as the petitioners. On or about 31st December, 1981 a gradation list of the State Government Employees Group- "C" in the Calcutta Pay and Accounts Office under the Finance Department (Audit) Branch was published by the Respondent nos. 1 to 3 and in the said list the

petitioners were shown against Sl. nos. 77, 78, 79 and 80 respectively, while the respondent nos. 6 to 67 had been shown against Sl. nos. 14 to 75 although according to the petitioners the said respondents were all juniors to the petitioners no. 1 and respondent nos. 13 to 67 were juniors to the petitioner no. 2, the respondent nos. 22 to 67 were juniors to the; petitioner no. 3 and the respondent nos. 35 to 67 were juniors to the petitioner no. 4 so far as the length of their respective services from the date of their initial appointments prior to such absorption, were concerned.

2. It is the contention of the petitioners that in the seniority list the respondent nos. 6 to 67 were wrongly shown as seniors to the petitioners on the erroneous computation of their length of services from the day when they joined the Calcutta pay and Accounts Office without, however, taking into account their respective total length of services starting from their initial appointments. The petitioners made several representations to the respondent no. 3 for restoration of their positions in the gradation list according to their length of services under the Government from their initial appointments. Subsequently, the respondent nos. 6 to 38, though juniors in service to the petitioner no. 1 were given Intermediate Selection Grade Rs. 330 -- 535/- and later on they were promoted to the post of Junior Accountants in the revised grade of Rs. 380-915/- ignoring the legitimate claims of the petitioners. The petitioners have challenged such illegal acts on the part of the respondents in this present Civil Order on various grounds.

3. The main contention of the petitioners' learned Advocate, Dr. Mondal, inter alia, is that since the petitioners were initially appointed prior to the initial appointments of the private respondent nos. 6 to 67 in most cases, the disparity made in the gradation list of the State Government Employees Grade "C" of the Calcutta Pay and Accounts Office published on 31st December, 1981 and the subsequent promotion of the respondent nos. 6 to 38 to the Intermediate Selection Grade and allowing them the benefits of the revised pay, scale because those respondents had joined the Calcutta Pay and Accounts Office on deputation and were absorbed therein prior to the petitioners, ignoring the legitimate claims of the petitioners, cannot be sustained in law and should be quashed, as according to Dr. Mondal, deputation may be regarded as a transfer from one government department to another as there is not much difference between deputation and transfer and it will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or equivalent post in another government department, the period of his service in the rest before his transfer is not taken into consideration in computing his seniority in the transferred post, because the transfer cannot wipe out his length of service in the post from which he has been transferred. Thus, according to Dr. Mondal, the petitioners, who were initially appointed prior to most of the private respondent nos. 6 to 67 before they joined the Calcutta Pay and Accounts Office on deputation and subsequently were absorbed therein, should have been placed above most of the said private respondents in the gradation list as seniors to

them in service and should have been granted the Intermediate Grade Scales and the revised pay scale prior to them. In support of his contention, Dr. Mondal has relied upon two decisions of the Supreme Court in the case of S.B. Patwardhan and Another Vs. State of Maharashtra and Others, and K. Madhavan and Another Vs. Union of India (UOI) and Others, .

4. Mr. Dutta, learned Standing Counsel, appearing on behalf of the State respondents, however, has contended referring to the affidavit-in-opposition filed on behalf of the State respondents that the respondent nos. 6 to 67 were absorbed on temporary basis in the Calcutta par and Accounts Office with a effect from 12th of September 1978 and hence their services were regularized in the new office with effect from that date while the petitions were temporarily absorbed in the said office with effect from 1st of April, 1979 and their services were regularized in the new office with effect from that date and the date of absorption of service is the date for determining the seniority of the employees in the new office as per law, irrespective of the terms and conditions for such absorption, and according to Mr. Dutta, since the petitioners were absorbed subsequent to the absorption of the private respondent nos. 6 to 67, the said private respondents were rightly shown as seniors to the petitioners in the annexure - "H" to the writ application and they were also rightly given the Intermediate Selection Grade and the Revised Pay Scale prior to the petitioners. Mr. Dutta also contends that the State Government in publishing the impugned gradation list (Annexure "H") did not act arbitrarily nor had it shown any favoritism to the respondent nos. 6 to 67 in the matter and it had published the said gradation list and paid the subsequent revised scales to the said private respondents nos. 6 to 67 in accordance with law without showing any basis against the petitioners. Mr. Dutta in support of his contention also refers to the Supreme Court decision in the case of K.S. Vora and Others Vs. State of Gujarat and Others, to lay emphasis on the contention that the Rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority, if the rules were made bonafide and to meet exigencies of the service, no entertainable grievance could be made.

5. Having heard the learned Advocates for the parties and going through the writ application as well as the affidavit, it is, however, crystal clear that the State Government had not acted correctly or legally in putting the private respondents nos. 6 to 67 above the petitioners in the impugned gradation list published on 31st December, 1981 (Annexure - "H") and also granting the intermediate pay scale to the private respondents before granting the same to the petitioners in as much as the State Government had acted upon a total misconception of law that the date of absorptions of an employee in a new office after joining the same on deputation should be treated to be the starting point for determining the seniority of the employees in the new office completely overlooking the settled legal principle that deputation should be treated as a sort of transfer from one government department to another and in computing the seniority of a

government employee on transfer from one department to another even by way of deputation, the length of his service in the post from which he had been so transferred, cannot be wiped out and that it is a just and wholesome principle commonly applied where persons from various sources drafted to serve in a new service, that their pre-existing total length of service in the parent department should be respected and preserved by taking the same into account in determining their ranking in the new service cadre and it will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. Reference on this point may be made to the Supreme Court decisions in the cases of K. Madhavan and Anr. Vs. Union of India and Ors. (supra), R.S. Makashi and Others Vs. I.M. Menon and Others, and J. Kumar v. Union of India, AIR 1982 SC 1064

6. Secondly, the State Government also had acted illegally in fixing the seniority of the petitioners and the private respondent nos. 6 to 67 depending upon the mere incident of absorption in the new department without considering the total length of service in their original department before their absorptions to the new department because if there is any such rule regarding seniority depending upon the fortuitous circumstances of absorption or confirmation in the new department only, without considering the total length of service of the incumbent, the vice of such rule is that it leaves the valuable right of the seniority to depend upon the mere accident of absorption or confirmation in the new department and that under Article 14 and 16 of the Constitution is impermissible and therefore should be struck down being unconstitutional. No doubt, the Supreme Court in the "cast of K.S. Vora and Ors. Vs. State of Gujarat and Ors. (supra) has held inter alia that rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority, if the rules were made bona fide and to meet exigencies of the service, no entertainable grievance could be made, but in that case too it was held by the Supreme Court in discussing the Rule 4 of the Gujarat Subordinate Secretariat Service (Seniority of Assistants) Rules (1977) that the change brought in the said Rule about the inter se seniority by adopting the date of initial recruitment and the total length of service as the basis for re fixing seniority, cannot be held to be arbitrary as the total length of service for such purpose is a well-known concept. Secondly, the rules of seniority are to be assessed on the touch stone of bona fide and the concept of fair play and on that ground too, the impugned gradation list (Annexure - "H") published by the authority concerned putting the private respondent nos. 6 to 67 higher up in the list than the petitioners without, however, considering the total length of service of the petitioners, cannot be sustained in law because of the reasons as aforesaid, and is thus quashed and so also the impugned order of promotion made in favour of the private respondents before giving such promotion to the petitioners. The Civil Order is accordingly allowed. The respondents are now

directed to re-arrange the gradation list be giving the petitioners their due seniority taking into account their respective total length of service from their initial appointments in the different N.C.C. Offices under Education Department, Government of West Bengal and to pay the revised pay scales to the petitioners accordingly maintaining their such seniority, with all dues, as early as possible but in any case within December, 1990 positively.