

(2011) 12 CAL CK 0097

In the Calcutta High Court

Case No : F.M.A. 224 of 2009 With C.A.N. 5093 of 2008

Mayor-in-Council. Howrah Municipal Corporation

APPELLANT

Vs

Sujit Kumar Das and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 4 CHN 324

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Mrinal Kanti Sinhaa, J

Bench : Division Bench

Advocate : Ashok De and Ms. Smritikana Mukherjee, for the Appellant;Bidyut Kiran Mukherjee, Susanta Mukherjee and Ms. Sonali Bhar, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—The then Howrah Municipality (Now Howrah Municipal Corporation) issued an advertisement in the English Newspaper "The Statesman" inviting applications for the post of Superintendent of Motor Vehicles in the scale of pay of Rs. 470 1230 plus usual Dearness Allowance and other allowances as admissible to the employees of the then municipality. The text of the said advertisement is set out hereunder :-

HOWRAH MUNICIPALITY NOTICE

Applications are invited for the post of a Superintendent of Motor Vehicles in the revised Scale of Pay of Rs. 470-20-550-25-750-30-870-40-1230 plus usual D.A. and other allowances as admissible to the Employees of the Municipality and on usual terms and conditions. Total emolument at the start will be around Rs. 900/- p.m.

Qualification required - B.E. in Mechanical Engineering of any recognised University with special subject on Automobile and a minimum 2 years experience in a reputed Automobile Workshop. Upper age limit 35 years.

Applications with complete bio-data of the candidate addressed to the undermentioned must reach him on or before 29.1.83.

2. Although the respondent/writ-petitioner had no Bachelor Degree in Mechanical Engineering even then he was selected and empanelled along with others. Since the empanelled Degree-holder Engineer did not join in the said post, the writ petitioner was appointed in the said post of Superintendent of Motor Vehicles.

3. Pursuant to the recommendation of the third pay commission, the scale of pay of Rs. 470-1230 was revised to Rs. 1500-3410. However, the pay scale of Rs. 470-1230 for the post of Motor Vehicles Superintendent was revised to Rs. 2200-4000 subject to fulfillment of the required essential qualifications which are set out hereunder :-

Degree in Automobile/Mechanical Engineering & 5 years experience in servicing, maintenance and repairs of motor vehicles and power driven machineries.

4. The appellant Corporation however, initially granted the aforesaid benefit of higher revised pay scale of Rs. 2200-4000 to the respondent/writ-petitioner and the said respondent/writ-petitioner at the time of receiving the benefit of the aforesaid higher revised scale of pay gave a solemn undertaking to the effect that if on final checking any over payment is detected on account of making payment to the said respondent/writ-petitioner in revised higher scale of pay then such over payment would be recovered forthwith.

5. Subsequently, the appellant Corporation found that the respondent/writ-petitioner was not entitled to enjoy the benefit of higher revised scale of pay of Rs. 2200-4000 and therefore rejected the prayer of the respondent/writ-petitioner for sanctioning the benefit of higher revised pay scale of Rs. 2200-4000 due to non-fulfillment of the requisite qualifications and fixed the pay of the said respondent/writ-petitioner in the revised pay scale of Rs. 1500-3410. The appellant Corporation also decided to recover the excess amount paid earlier to the said respondent/writ-petitioner on account of drawing the salary in the higher revised pay scale of Rs. 2200-4000 and accordingly passed an order for recovery of the excess amount from the respondent/writ-petitioner by way of deduction of Rs. 1000/- per month from his salary.

6. The respondent/writ-petitioner by filing the writ-petition only challenged the action of the appellant Corporation with regard to recovery of the over payment by way of deduction of Rs. 1000/- from the monthly salary of the said respondent/writ-petitioner and undisputedly did not challenge the other specific decision of the said appellant Corporation with regard to rejection of the prayer for sanctioning the benefit of higher revised scale of pay of Rs. 2200-4000 to the said respondent/writ-petitioner.

7. The learned counsel representing the respondent/writ-petitioner however, submitted that the aforesaid benefit of higher pay scale of Rs. 2200-4000 was granted to two other employees of the said Corporation namely, Water Works Superintendent and Water Mains Superintendent even without fulfillment of the

required essential qualifications.

8. Mr. Bidyut Kiran Mukherjee, learned senior counsel of the respondent/writ-petitioner submitted that the competent authority of the appellant Corporation allowed the aforesaid higher pay scale of Rs. 2200-4000 to the respondent/writ-petitioner upon considering the academic career and all other relevant aspects and therefore, the same cannot be altered subsequently at the whims of the employer.

9. The learned Single Judge finally decided the writ petition by the judgment and order under appeal and granted the benefit of the higher revised scale of pay of Rs. 2200-4000 to the writ petitioner for holding the said post of Superintendent, Motor Vehicles Department in Howrah Municipal Corporation upon considering the fact that the Superintendent, Water Works and Superintendent, Water Mains being Diploma Holder Engineers are enjoying the benefit of scale of pay of Rs. 2200-4000.

10. Assailing the aforesaid judgment and order passed by the learned Single Judge in the writ petition filed by the respondent no. 1 herein, instant appeal has been preferred on behalf of the Howrah Municipal Corporation.

11. Mr. Mukherjee submitted that the State cannot treat similarly situated employees differently and it cannot implement order for some employees and refuse to do the same for others. Mr. Mukherjee referred to and relied on a decision of the Supreme Court in the case of Purnendu Mukhopadhyay & Ors. Vs. V. K. Kapoor & Anr., reported in 2008 (14) SCC 403. Mr. Mukherjee also referred to and relied on the following decisions in support of his arguments on behalf of the respondent/writ-petitioner :-

1. Food Corp. of India and Others Vs. Ashis Kumar Ganguly and Others,

2. Kashi Nath Bose & Ors. Vs. State of West Bengal, reported in 2011 (1) CLT 495.

12. Mr. Mukherjee further submitted that there cannot be different scales of pay for the degree holder and diploma holder in respect of a particular post and therefore, the respondent/writ-petitioner is entitled to enjoy the higher revised pay scale of Rs. 2200-4000 being the Motor Vehicles Superintendent of the Corporation.

13. Mr. Mukherjee also submitted that the respondent/writ-petitioner has the right to the scale which has been assigned to the Motor Vehicles Superintendent and qualification cannot be a bar in this regard. Mr. Mukherjee submitted that reduction in the pay scale at the subsequent stage would mean demotion in service and therefore, the benefit of higher pay scale granted earlier to the respondent/writ-petitioner cannot be recalled at the subsequent stage since the same would mean demotion in service. Mr. Mukherjee relied on a decision of the Supreme Court, reported in Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others, in this regard.

14. Mr. De, learned counsel of the appellant Corporation admitted that the Water Works Superintendent and Water Mains Superintendent were diploma holder engineers and did not fulfil the required qualifications like the respondent/writ-petitioner herein although they were granted the benefit of higher revised pay scale of Rs. 2200-4000 which was denied to the respondent/writ-petitioner. Mr. De submitted that the Water Works Superintendent and Water Mains Superintendent were promotees and in order to avoid any discrimination in allotting scales of pay to directly recruited Assistant Engineers and promotee Assistant Engineers, aforesaid benefit of higher revised scales of pay was granted to the Water Works Superintendent and Water Mains Superintendent. Mr. De invited our attention to Clause 7.9 of the recommendation of the pay commission in respect of the Howrah Municipal Corporation which is set out hereunder :-

It has been alleged that in Howrah Municipal Corporation promotee Assistant Engineers, i.e. promoted from Sub-Assistant Engineers in the scale of pay of Rs. 1390-2970, are not allowed the benefit of scale of pay of Rs. 2200-4000 which is being allowed to Graduate Engineers directly recruited as Assistant Engineers. In our view there should not be any discrimination in allotting scales of pay to directly recruited Assistant Engineers and promotee Assistant Engineers, provided there are sanctioned posts of Assistant Engineers in the scale of pay of Rs. 2200-4000 and there is provision for promotion of diploma holder Engineer to the post.

15. Mr. De further submitted that the Mayor-in-Council of the Howrah Municipal Corporation took a decision in the meeting held on 28th January, 2000 for fixation of the salary in the revised scale of pay of Rs. 2200-4000 in accordance with the recommendation of the pay commission in respect of the Sub-Assistant Engineers, who have been appointed subsequently by promotion to the post of Assistant Engineers or similar other posts.

16. Mr. De also referred to the written communication of the Personnel Officer of the Howrah Municipal Corporation dated 12th May, 2000 in this regard which is set out hereunder :-

Howrah Municipal Corporation Office (Emblem) Personnel Department, 4, Mahatma Gandhi Road, Howrah - 711 101

No. 46 (4) - PD / 2000-2001

From : Sri Somnath Das, Personnel Officer,

To 1) Sri Deb Kumar Chatterjee, Superintendent, Water Supply Howrah Municipal Corporation.

2) Sri Sanat Mitra, Superintendent, Survey, Howrah Municipal Corporation.

3) Sri Ashis Banerjee, Assistant Engineer Boro 4, Howrah Municipal Corporation.

4) Sri Sanjit Ray, Ex Assistant Engineer Howrah Municipal Corporation

Dated Howrah the 12.5.2000

Sir,

In accordance with the resolution no. 37, dated 28.1.2000 of the Mayor-in-Council you are informed that under Order no 425/PD/Commissioner/1999-2000 your salary has been fixed regularly in the revised scale of 2200-4000 as per ROPA 1991.

Yours faithfully, S. Das Illegible (Somnath Das) 12.5.2000

Personnel Officer Personnel Officer

Sd/- Secretary Howrah Municipal Corporation

Certified to be the correct English Translation of a letter, an order and a decision taken by Mayor-in-Council, all in Bengali.

Undisputedly, Sri Deb Kr. Chatterjee and Sri Sanjit Roy started their career in the said Corporation as Sub-Assistant Engineer and were permanently promoted to the post of Superintendent. The respondent/writ-petitioner was directly recruited in the post of Motor Vehicles Superintendent. Therefore, the principles mentioned in Clause-7.9 of the pay commission recommendation in respect of the Howrah Municipal Corporation Employees cannot apply to the respondent/writ-petitioner.

17. The respondent/writ-petitioner herein was not entitled to enjoy the benefit of higher revised pay scale of Rs. 2200-4000 for non-fulfillment of the required essential qualifications. The pay scale of Rs. 470-1230 was initially assigned to the post of Motor Vehicles Superintendent. The respondent/writ-petitioner was assigned the scale no. 13 wherein the pay scale of Rs. 470-1230 was revised to the higher pay scale of Rs. 1500-3410.

18. The appellant Howrah Municipal Corporation Authorities took a specific decision for granting the benefits of revised higher scale of pay of Rs. 2200-4000 to those Sub-Assistant Engineers, who have been appointed by promotion in the post of Assistant Engineers or similar posts. Pursuant to the specific decision of the Howrah Municipal Corporation, aforesaid benefits of higher revised pay scale are available to the Sub-Assistant Engineers who have been appointed subsequently by promotion to the post of Assistant Engineers or similar posts and therefore, the said benefits of revised higher pay scale of Rs. 2200-4000 cannot be enjoyed by the respondent/writ-petitioner as he was directly recruited to the post of Motor Vehicles Superintendent. It is true that the appellant Corporation relaxed the qualification at the time of appointment of the respondent/writ-petitioner to the post of Motor Vehicles Superintendent and therefore, the said appellant Corporation did not interfere with the right of the respondent/writ-petitioner to hold the post of Motor Vehicles Superintendent subsequently and only denied the benefit of revised higher pay scale of Rs. 2200-4000 for want of required essential qualifications.

19. Holding of the post concerned is one thing and right to claim the benefit of

higher pay scale is a different thing. The learned Single Judge failed to appreciate that awarding of the benefit of higher revised pay scale of Rs. 2200-4000 to the Motor Vehicles Superintendent in the present case is directly linked with the essential qualifications.

20. Since essential qualifications required for enjoying the benefit of higher pay scale of Rs. 2200-4000 has been mentioned, the respondent/writ-petitioner has no legal right to demand the fixation of salary to the aforesaid higher revised pay scale of Rs. 2200-4000. The respondent/writ-petitioner herein has been denied the benefit of higher pay scale for want of essential required higher qualifications.

21. Mr. De relied on the following decisions of the Supreme Court where classification based on educational qualifications for the purpose of grant of pay has been allowed:-

1. T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others,

2. The State of Mysore and Another Vs. P. Narasing Rao,

22. In the case of The State of Mysore and Another Vs. P. Narasing Rao, Constitution Bench of the Supreme Court held :-

4...In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Arts. 14 or 16 of the Constitution.

23. In the case of M. P. Rural Agricultural Extension officers Association Vs. State of M. P. & Anr. (supra), Hon"ble Supreme Court observed :-

22. Furthermore, as noticed hereinbefore, a valid classification based on educational qualification for the purpose of grant of pay has been upheld by the Constitution Bench of this Court in P. Narasinga Rao.

24. The aforesaid decisions are very much relevant for the purpose of deciding the issues raised in this appeal. However, the decisions cited by Mr. Mukherjee have no manner of application in the facts of the present case.

The learned Single Judge granted the benefit of higher revised scale of pay of Rs. 2200-4000 to the appellant for holding the post of Motor Vehicles Superintendent since the Superintendent Water Works and the Superintendent Water Mains being diploma holder engineers were granted the said benefit of the higher pay scale. The learned Single Judge held that the Respondent/writ petitioner was the victim of discriminatory treatment.

25. We however, do not find any discriminatory treatment in respect of the respondent/writ-petitioner. The learned Single Judge failed to appreciate that the

respondent/writ-petitioner being a directly recruited Superintendent cannot be equated with the other Superintendents who were promoted to the post of Superintendent after serving the appellant Corporation for a considerable period. Furthermore, the Mayor-in-Council of the appellant Corporation took a specific decision pursuant to the recommendation of the pay commission to grant the benefit of higher pay scale of Rs. 2200-4000 to those Sub-Assistant Engineers who have been subsequently promoted to the post of Assistant Engineers or in Similar Post. The aforesaid decision of the Mayor-in-Council of the appellant Corporation dated 28th January, 2000 was also not challenged by the respondent/writ-petitioner. As a matter of fact the respondent/writ-petitioner also did not challenge the specific order of the Howrah Municipal Corporation regarding rejection of the prayer to sanction the benefit of higher revised pay scale of Rs. 2200-4000.

26. The revised higher scale of pay of Rs. 2200-4000 was assigned to the Motor Vehicles Superintendent subject to the fulfillment of the requisite qualifications which the respondent/writ-petitioner did not fulfil and therefore, the benefit of the higher scale of pay cannot be granted to the respondent/writ-petitioner. The Howrah Municipal Corporation Authorities were therefore, justified in rejecting the prayer for sanction of the benefit of higher scale of pay of Rs. 2200-4000 to the respondent/writ-petitioner and rightly granted the benefit of the revised pay scale of Rs. 1500-3410 like other employees who were earlier placed in the pay scale of Rs. 470-1230. The Howrah Municipal Corporation Authorities are entitled to recover over payment already made to the respondent/writ-petitioner pursuant to his own undertaking and we find no illegality and/or irregularity in the aforesaid decision of the Howrah Municipal Corporation.

27. For the aforementioned reasons, the judgment and order under appeal passed by the learned Single Judge cannot be sustained in the eye of law and the same is accordingly dismissed. This appeal therefore, stands allowed.

In view of the disposal of the appeal, no further order is required to be passed in connection with the application being C.A.N. 5093 of 2008 and the same is accordingly, disposed of.

28. In the facts of the present case, there will be however no order as to costs.

29. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Mrinal Kanti Sinha, J.

30. I agree.

LATER :

31. After pronouncement of the judgment, the learned Counsel of the respondent/writ petitioner prays for stay of the operation of the said judgment and order. We find no reason to grant such stay.

32. Accordingly, the prayer for stay is refused.