
(1983) 05 CAL CK 0001
In the Calcutta High Court
Case No : C.R. No. 2657 (W) of 1982

Paritosh Paruk and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-05-1983

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Citation : 86 CWN 747

Hon'ble Judges : G.N. Roy, J

Bench : Single Bench

Advocate : Kashikanta Moitra and Adyanath Ghosh, for the Appellant; Ashutosh Ganguli and Kanak Kumar Chatterjee, for the Respondent

Judgement

G.N. Ray, J.—In the instant Rule the petitioners are challenging the pay scales now being given to the petitioners as Milk inspector (E & V). The petitioners are also asking for a writ of Mandamus directing the respondents to revise the pay scale of the petitioners with retrospective effect from 1st April, 1970 in exercise of the powers conferred by Rule 3A of the West Bengal Service Rules Part 1 and/or Rule 15 of the West Bengal Services (Revision of Pay and Allowance) Rules, 1981 in such a manner that the pay of the petitioners be higher than that of the Assistant Supervisors (Milk Distribution). The petitioners are at present holding the post of Milk Inspectors (Enforcement & Vigilance and the petitioners were directly recruited to the said post. The petitioners contend that out of the said posts of Milk Inspectors (Enforcement and Vigilance), 20 posts were sanctioned by the Government under the designation of Supervisors in the scale of Rs. 200-10-400/- in terms of the Government Order of Animal Husbandry and Veterinary Services Department dated 31st March, 1967 for the purpose of enforcing the West Bengal Milk Products Control Order, 1965 and the other 20 posts were sanctioned under the designation of Milk Inspectors in the same scale of Rs. 200-10-400/- for the purpose of enforcing West Bengal Milk Trade Control Order, 1965. Subsequently by the Government Order dated 12th June 1967, the said 20 posts of Supervisors were abolished and 20 posts of

Milk Inspectors were created in place of Supervisors. Ultimately, the said 20 posts were redesignated as Milk Inspectors (Enforcement & Vigilance).

2. The petitioners contend that prior to 1970 the scale of pay of the post of Milk Inspectors (Enforcement and Vigilance) was Rs. 200-10-400|-. Under the West Bengal Services (Revision of Pay and Allowance), Rules, 1970, the pay scale for the said posts of Milk Inspectors (E & V) was revised to Rs. 300-600/- and the said revised payscale was made effective from 1st April 1970. The said 1970 scale of pay viz. Rs. 300-600/- has since been revised to Rs 380-910/- by the West Bengal Services (Revision of Pay and Allowance) Rules, 1981. The petitioners contend that the rules for recruitment to the post of Milk Inspector (E & V) were framed by the Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and the said Recruitment Rules were promulgated by Government Order dated 3rd April, 1970. The Government Notification enforcing the said Recruitment Rules has been made an annexure to the writ petition being Annexure "B". It appears from the aforesaid Rules for recruitment that 50% of the posts of Milk Inspector (Enforcement & Vigilance) are to be filled up by direct recruitment and the remaining 50% should be filled up from amongst the posts of Assistant Supervisors (Milk Distribution) and three other categories of posts. The petitioners contend that it is therefore evident that the posts of Milk Inspector (Enforcement and Vigilance) has been declared by the State Government as a promotional post and the post of Assistant Supervisor (Milk Distribution) is one of the feeder post to the said promotion post. The petitioners also contend that the duties and responsibilities attached to the post of Milk inspector (E & V) were specifically laid down by Government Order dated 3rd May, 1973 and a copy of the said Government Order has been made annexure to the writ petition being Annexure "C". After the aforesaid post of Assistant Supervisor (Milk Distribution) was declared a feeder post for the promotion to the post of Milk Inspector (E & V), the Milk Directorate, by its Notification dated 30th May, 1973 raised the pay scale of the Assistant Supervisor (Milk Distribution) to Rs. 300|- to Rs. 600|- with a higher initial start of Rs. 400|- per month subject to the condition that the said payscale would be admissible to those employees who would possess degree in Veterinary Science and who had been appointed prior to 1st April, 1970. In the said notification, it was also stated that the payscale of Rs. 300-600|- with higher initial start of Rs. 400|- would not be admissible to persons appointed after the commencement of the West Bengal Services (Revision of Pay and Allowance Rules, 1970).

3. The petitioners contend that although the post of Milk Inspector (E & V) was declared as a promotion post but no revision of pay scale of the Milk Inspector (E&V) was made along with the revision of the pay scale of the Assistant Supervisors (Milk Distribution). The petitioners contend that as a result of the said Government Notification issued on 30th May, 1973 giving retrospective effect from 1st April, 1970 to the enhanced pay scale of the Assistant Supervisor (Milk Distribution), the scale of pay of the promotional post viz. the post of Milk Inspector (E & V) and the scale of pay of the Assistant Supervisor (Milk

Distribution) which is a feeder post were made identical.

4. The petitioners submitted a representation on 3rd July, 1973 to the Milk Commissioner, West Bengal, through the Field Officers' Association of the Directorate of Dairy Development, West Bengal which is a registered Association under the Societies Registration Act, 1961 against unjust, unreasonable and inequitable payscale of Rs. 300-600/- for the post of Milk Inspector (Enforcement and Vigilance) and the petitioners prayed for an upward revision of the payscale of the Milk Inspector (Enforcement & Vigilance) to a scale of Rs.- 400-750/-and it was pointed out that in view of the upward revision of the scale of a feeder post viz. the post of Assistant Supervisor (Milk Distribution) to Rs. 300-600/- a further- upward revision of the payscale of the Milk Inspector (Enforcement & Vigilance) to Rs. 400/- to Rs. 750/-was essentially necessary. The petitioners contend that the said prayer of the petitioners to revise the payscale of the Milk Inspector (E&V) has not yet been acceded to. After the publication of the Second Pay Commissions Report, the petitioners again submitted a representation on 25th February, 1981 to the Deputy Secretary to the Government of West Bengal, Finance Department through the General Secretary of the said Field Officers Association praying for upward revision of the proposed payscale of the Milk Inspector (E & V) in such a manner so as to make the said payscale at par with the payscale of comparable posts having identical payscale from before 1970.

5. The petitioners contend that the petitioners and or the General Secretary of the said Association did not receive any communication to the said representation made in February, 1981. The petitioners, therefore, again submitted a representation on 9th September, 1981 through the General Secretary of the said Association to the Milk Commissioner, West Bengal and the petitioners contended that the revised payscale for the post of Milk Inspector (E & V) at Rs. 380-910/- under the West Bengal Services (Revision of Pay & Allowance) Rules, 1981 was unjust and discriminatory. The petitioners also submitted that for other posts having identical scale of pay of the Milk Inspector (E&V) prior to 1970 there has been upward revision to a scale of Rs. 425/- to Rs. 1050/- and in some cases to Rs. 440/- to Rs. 1170/-and the petitioners contended that the petitioners should be given similar upward revision.

6. The petitioners contend that the Milk Commissioner also recommended to the Government by his Memo dated 24th September, 1981 that the revision of the payscale of the Milk Inspector (E & V) to Rs. 380/- to Rs 910/- under the West Bengal Services (Revision of Pay and Allowance) Rules. 1981 should be further revised to the payscale of Rs. 425/- to Rs. 1050/-.

7. As no action was taken by the Respondents to make further upward revision of the payscale of the Milk Inspector (E & V), the petitioners made further representation from time to time and the Milk Commissioner also requested the Secretary, Department of Animal Husbandry and Veterinary Services Department to take up the issue with the Finance Department. As the respondents failed to make upward revision of the payscale of the petitioners the instant writ petition

was moved.

8. The petitioners contend in the instant Rule that the "Respondents should have considered the repeated representations of the petitioners made through their Association and also the recommendations made by the Milk Commissioner. The petitioners contend further that as a result of the identical payscale for both the promotional post and the feeder post, the persons who are juniors to the petitioners in the post of Milk Inspector (E & V) after getting promotion from the post of Assistant Supervisor (Milk Distribution) are drawing higher basic pay than the petitioners who are senior in length of service as Milk Inspectors as direct recruits. The petitioners contend that under the West Bengal Service Rules, the pay of a senior Government employee in a grade can never be less than the pay of a junior in the grade, but by unjustly giving the same scale of pay to the feeder post and the promotional post and by not revising upwardly the pay scale of the Milk Inspector (E & V), a grave injustice has been caused to the petitioners.

9. Mr. Moitra, the learned Counsel appearing for the petitioners has contended at the hearing of this Rule that the petitioners were directly recruited to the post of Milk Inspector (E & V) and it is quite apparent and evident that the post of Assistant Supervisor (Milk Distribution) is a feeder post for the departmental candidates to the extent of 50% and the pay scale of the feeder post cannot be the same to the payscale of the promotional post. For this contention, Mr. Moitra has referred to a decision of the Supreme Court made in the case of Lalit Mohan Deb v. Union of India reported in 1972 S.L.R page 411. It has been held in the said decision that a promotional post is a higher post with a higher pay and a selection grade is a grade in the same post and is intended to give special monetary benefit in the same grade. Mr. Moitra has contended that under the West Bengal Service Rules, in a particular grade or cadre, the pay of a senior employee in the said cadre cannot be less than the pay of a junior in the same cadre. Mr. Moitra has contended that admittedly the petitioners are direct recruits to the post of Milk Inspectors (E & V) and such they are holding a post in the Superior cadre of Milk Inspector (E & V) from the very beginning and there is no manner of doubt that they are senior in the said cadre to the persons who have been promoted to the said cadre from other posts including the post of Assistant Supervisors (Milk Distribution). In the circumstances, the respondents are bound to remove the said anomaly and to give higher salary to the petitioners so that their pay is not less than the pay of their juniors in the same cadre. Mr. Moitra has also contended that as the promotional post cannot have a lesser payscale than the payscale of a feeder post and as the payscale of the feeder post was revised with retrospective effect from 1st April, 1970 in 1973, the payscale of the post of Milk inspector (E & V) should be also upwardly revised with effect from 1st April, 1970. Mr. Motra has contended that reasonableness of the claim of the petitioners made through their Association was appreciated by the Milk Commissioner and as a matter of fact he had also recommended for up ward revision of the scale of pay of the Milk Inspector (E & V) and to remove anomalies so far as the pay of the petitioners and their juniors in the same cadre

are concerned, but the respondents unjustly and in violation of the principles of equality as enshrined in Articles 14 and 16 of the Constitution have not removed the anomalies. In the circumstances, the Court should direct the respondents to remove such anomalies and to give proper payscale to the petitioners without any further delay.

10. Mr. Ganguli, the learned Counsel appearing for the respondents, has submitted that by the Government Order dated 30th May, 1973 the payscale of the Assistant Supervisor (Milk Distribution), Assistant Supervisor (Indent & Despatch), Assistant Supervisor (Cold Store), Milk Inspector, Permit Inspector under the Milk Directorate had been devised to Rs. 300-600|-. The post of Assistant Supervisor carries its own scale of pay and an Assistant Supervisor may reach a scale of pay before his promotion to the post of Milk Inspector which may be higher than the initial lower pay fixed for the Milk Inspector (E & V). In such circumstances, the pay of a Milk Inspector (E & V) who is a direct recruit may be less than the actual pay packet of the Milk Inspector (E & V) who has been promoted to the said post after long service in the post of Assistant Supervisor and in such circumstance it cannot be contended that discrimination is being made to the direct recruit Milk Inspectors (E & V) and/or they are unjustly given a lesser pay packet compared to a promotee Milk Inspector (E & V). So far as the allegation of a discriminatory scale of pay given to the Assistant Supervisor (Milk Distribution), Assistant Supervisor (Indent & Despatch), Assistant Supervisor (Cold Store), Milk Inspector and Permit Inspector under the said Government Order dated 30th May, 1973 is concerned, Mr. Ganguli has contended that after considering the responsibility and the nature and duties of the incumbents of the said posts, an upward revision of the said scale was made by the Government order dated 30th May, 1973 and the benefit of the said upward revision was given from 1st April, 1970. No injustice was done by making an upward revision of the scale of pay of the said posts. He submits that even assuming that the post of Milk Inspector (E & V) being a promotional post was entitled to a higher scale than the scale of the feeder province upgraded by the said Government Order dated 30th May, 1973. such revision of the scale of pay of the feeder post having been made in 1973 giving a retrospective operation from 1970 cannot be undone in 1982 the writ petition was moved. Mr. Ganguli has contended that there has been a gross and inordinate delay in the instant case and because of such inordinate delay employees in the other categories referred to hereinbefore have been allowed to enjoy a higher scale of pay with effect from 1st April, 1970 and their pay has also been fixed even in the promotional post with reference to payscale enjoyed by such promotee Milk Inspectors (E & V) when they were in other categories. Mr. Ganguli has also contended that after equating the payscale of the feeder post with the promotional post by the said Government Order dated 30th May, 1973, the feeder post practically merged with the promotional post and under the West Bengal Service (Revision of Pay and Allowance) Rules 1981 the said equal scale also got statutory recognition and it should therefore be held that the post of Assistant Supervisor (Milk Distribution) or similar posts having

the same scale of pay cannot be any further treated as the feeder post to the promotional post of Milk Inspector (E & V). Mr. Ganguli has contended that in any event, the revised pay scale given to the Assistant Supervisor (Milk Distribution) and similar other posts introduced in 1973 with retrospective effect cannot be challenged today and a Milk Inspector (E & V) coming from the said post of Assistant Supervisor (Milk Distribution) and similar other posts cannot but get a higher pay packet than the Milk Inspectors (E & V) who are direct recruits and in such circumstances their length of service in that particular grade will be of little consequence. Mr. Ganguly has referred to a Bench decision of this Court made in the case of Pratap Kumar vs. Union of India reported in 73 CWN page 176. It has been held in the said decision that the Court will refuse relief if for laches or delay on the part of the petitioner in filing the application, the rights of other parties have accrued. Unless there is reasonable excuse for delay, the rights of other parties should not be affected. In service matter, the Court has taken a harder line and has held that utmost expedition on the part of the Government servant is essential. Mr. Ganguli has, therefore, contended that no interference at the present stage is called for.

11. In reply to the aforesaid contention of Mr. Ganguli, Mr. Moitra has contended that the post of Milk Inspector (E & V) still remains a promotional post although the scale of pay of the feeder post was changed by an executive order and the scales of pay of the feeder post and the promotional post were bracketed in 1973 by an executive order. As the said executive order was illegal and unjust and as the same cannot prevail over the statutory Rules, the Court should strike down the said executive order and subsequent upward revision of the payscale introduced by the illegal executive order. Mr. Moitra has contended that the petitioners through their Association raised objections demanding that the scale of pay of the Milk Inspectors (E & V) should be revised upwardly making the same higher than the scale of pay of the feeder post, but the respondents did not dispose of the objections of the petitioners. As the discriminatory payscale has affected the fundamental right of the petitioners of equality, the delay should not operate as bar in getting the relief as prayed for by the petitioners in the instant Rule.

12. After considering the respective submissions made by the learned Counsels appearing for both the parties it appears to me that the post of Milk Inspector (E & V) has always been treated as a promotional post and the post of Assistant Supervisors (Milk Distribution) and similar other posts have been treated as feeder posts. There is no manner of doubt that a promotional post cannot but be treated as a higher post and the scale of pay of a higher post cannot be less than the scale of pay of a feeder post.

13. Even assuming that the State Government had made an upward revision of the payscales of the feeder posts by the said Government Order dated 30th May, 1973 on consideration of the duties and responsibilities of the said feeder post, it cannot be held that duties and responsibilities of the promotional post being a

higher post are less onerous. In my view, it will not be correct to contend that since the payscale of the feeder post was equated with the payscale of the promotional post, the promotional post no longer remains as promotional post as contended by Mr. Ganguli.

14. There is no Government Order declaring that the post of Milk Inspector (E & V) is no longer a promotional post vis-?-vis the said feeder posts and the executive order cannot supplant the statutory rules framed under Article 309 of the Constitution. It is also not correct to contend that simply by making an upward revision of the scale of pay of a feeder post and thereby making the scale of pay of the feeder post equal with the scale of pay of a promotional post, the promotional post automatically ceases to be a promotional post. By an appropriate order or amendment of a statutory rule as the case may be, it is necessary to declare that the feeder post has been equated with the promotional post and the same no longer remains a feeder post. So long a post remains a promotional post the pay scale of the promotional post cannot by hypothesis be less than the feeder post. In the instant case, the post of Milk Inspector (E & V) has been treated as a promotional post and as a matter of fact, some of the employees of the feeder post have since been promoted to the post of Milk Inspector (E & V). In my view, Mr. Ganguli is however justified in his contention that the petitioners, not having taken appropriate legal steps earlier, cannot make any claim of upward revision of the pay scale of Milk Inspector (E & V) with effect from 1st April, 1970 at such a belated stage. The petitioners also cannot ask for striking down the pay scale given to the said feeder posts with effect from 1st April, 1970 at this stage. In the circumstances, the pay packet of the promotees from the feeder post may be higher than the pay packet of the petitioners who were directly recruited to the promotional post although the length of service of the petitioners may be longer than the promotee officers in the same grade and in such circumstances, the petitioners are not entitled to claim higher salary than the promotee officers. But as the post of Milk Inspector (E & V) remains a higher post than the said feeder post, there is no manner of doubt that the pay scale of the promotional post must be higher than the payscale of the feeder post. In the circumstances, the respondents are directed to revise the scale of pay of the Milk Inspector (E & V) prospectively with effect from 1st April, 1981 viz. when the revised pay scales under the West Bengal Services (Revision of Pay and Allowance) Rules, 1981 have been given effect to. In revising the scale of pay of the post of Milk Inspector (E&V) the respondents should take into consideration the relevant factors including the revised scale of the other posts which had similar scale of pay prior to 1970. The Rule is accordingly disposed of There will be no order as to costs.