
(2008) 03 CAL CK 0025

In the Calcutta High Court

Case No : A.P.O. No. 325 of 2007, A.P.O.T. No. 417 of 2007 and W.P. No. 1407 of 2005

Pradip Kumar Bose

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Citation : (2008) 2 CHN 866 : (2008) 119 FLR 905

Hon'ble Judges : Subhro Kamal Mukherjee, J; Kalidas Mukherjee, J

Bench : Division Bench

Judgement

Subhro Kamal Mukherjee, J.—The writ petitioner, namely, Pradip Kumar Bose, was appointed on November 27, 1971 as a group "D" staff in the University of Calcutta in the pay scale of Rs. 80-115/-. The said scale of pay was revised to Rs. 300-525/-.

2. Nirmal Kumar Mukherjee, the private respondent, was appointed on October 27, 1976 in the post of Literate Daftaree on a leave vacancy. The post of Literate Daftaree carried the pay scale of Rs. 325-600/-. Nirmal Kumar Mukherjee could not be confirmed in the post of Literate Daftaree as that was a promotional post. The request of Nirmal Kumar Mukherjee was accepted by the authorities and the Council of the University, by adopting a resolution dated April 8, 1982, appointed Nirmal Kumar Mukherjee as a group "D" staff with effect from June 22, 1980 in the scale of pay Rs. 300-525/- on usual terms and conditions.

3. As we have indicated hereinabove, Pradip Kumar Bose was appointed as a group "D" staff on November 27, 1971 and Nirmal Kumar Mukherjee was offered an appointment as a group "D" staff in the University of Calcutta with effect from June 22, 1980. Therefore, Pradip Kumar Bose was senior in the cadre.

4. Pradip Kumar Bose was getting, as on June, 1980, Rs. 318/- as his pay in the scale of Rs. 300-525/-, but the pay of Nirmal Kumar Mukherjee, who was junior to Pradip Kumar Bose, was fixed at Rs. 340/- as on June, 1980 pursuant to the

said resolution dated April 8, 1982.

5. This discrepancy was not known to Pradip Kumar Bose. When Pradip Kumar Bose came to know about said discrepancy, he started making representations, inter alia, indicating that he, being senior in the cadre, is entitled to pay protection, that is, entitled to at least the same pay as that of Nirmal Kumar Mukherjee.

6. His request was not granted by the university authorities. His writ petition was, ultimately, dismissed by the Hon''ble Single Bench. Being aggrieved, Pradip Kumar Bose preferred this appeal.

7. The writ petitioner and the private respondent were in the single cadre and they were discharging the same duties of group "D" staff under the same situation and under the same employer. There was no difference in duties and in the quality of works and their functions. Nothing, also, appears from the records as to why such special favour was shown to the private respondent by fixing his pay at a higher pedestal when he was initially appointed as a group "D" staff in the scale of pay of Rs. 300-525/-. He was working as Literate Daftaree on leave vacancy and on ad hoc basis is an irrelevant consideration for giving him such higher pay than his senior in the cadre. There is no justifiable reason to give higher pay to a junior in the cadre. When Pradip Kumar Bose is senior in the cadre, a junior to him cannot get higher pay. Therefore, the grievance of Pradip Kumar Bose that his pay should be fixed at least at par with Nirmal Kumar Mukherjee is genuine.

8. However, Mr. Arunabha Ghosh, learned Advocate appearing on behalf of the writ petitioner/appellant, submits that his client will be happy if the scale of pay is notionally fixed as that of Nirmal Kumar Mukherjee with effect from June, 1980; his client only claims actual payment from the date of filing of the first writ petition, that is, March, 2005.

9. In view of such contention of Mr. Ghosh, we allow the appeal in part with the following directions:

a) University authorities shall fix the pay of Pradip Kumar Bose, writ petitioner herein, as equivalent to the pay of Nirmal Kumar Mukherjee as on June, 1980, that is, when Nirmal Kumar Mukherjee was appointed in the group "D" cadre. Such fixation shall be notional.

b) University authorities shall, however, pay the difference of pay of the writ petitioner, Pradip Kumar Bose, with effect from the date of filing of his first writ petition, that is, March, 2005. Such payments must be made upon proper calculation, in consultation with the writ petitioner, within 3 (three) months from this date.

10. The order impugned passed by the Hon''ble Single Judge is, thus, modified.

There will be no order as to costs.

11. Mr. Biswarup Bhattacharyya, learned Advocate appearing on behalf of the University authorities, prays for stay of the operation of this order. We have considered the prayer of Mr. Bhattacharyya and the same is refused.

12. All parties are to act on a signed copy of the minutes of this order on their usual undertakings.

Kalidas Mukherjee, J.

I agree.