(1999) 10 CAL CK 0004

In the Calcutta High Court

Case No : A.P.O.T. No. 610 of 1999

Principal, Regional Engineering College — APPELLANT

Vs

Ashok Kumar Mahapatra — RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:

West Bengal Services (Revision of Pay and Allowances) Rules, 1981 — Rule 11

Citation : (2000) 1 ILR (Cal) 104

Hon'ble Judges : Satyabrata Sinha, Acting C.J.;M.H.S. Ansari, J

Bench : Division Bench

Advocate : Sengupta, for the Appellant; Malay Basu, for the Respondent

Final Decision : Allowed

Judgement

Satyabrata Sinha, A.C.J.

1. This appeal is directed against a judgment and Order dated June 29, 1999 passed by a learned Single Judge of this Court whereby and whereunder the writ petition filed by the Respondents herein was allowed.

2. The basic fact of the matter is not much in dispute.

3. The writ Petitioners were working as Stenographers. According to the writ Petitioners a question arose as regard grant of certain benefit to the Stenographers and Personal Assistants. The matter was referred to the Standing Committee (Management) this Regional Engineering College, Durgapur and certain recommendations were made.

4. Pursuant to or in furtherence of such recommendations, an order was passed by the Appellant herein being dated April 21, 1977. Thereafter, an audit of the accounts was held and pursuant thereto, and in terms of the objection raised therein the impugned letter dated June 20/26, 1997 was issued, whereby and whereunder benefits granted to the writ Petitioners by an order dated April 21, 1989 was sought to be withdrawn and they were directed to refund the amount.

5. On or about November 16, 1981 an office order was issued to the effect that ROPA Rules, 1981 as adopted by the State of West Bengal be accepted. Item No. 1 and Item No. 26 of AnnEx. ''A'' to the said Office Order read thus:

Designation Total S/Str. Existing Scale Page No. Unit Designation Revised Scale Remark

1. Personal Asst. 1 450-675 1922 7(A) (iii) BE Common posts Personal Grade-C) 425-1050 whier- 49

26. Stenographer 12 330-550 330-580 (PS for 2 only) 1922 7(B) BE Common post Personal Asst. (Stenographer Schedule-B 380-910

6. Grade-C just after personal Assistant Steno is referable to page 1922 of the recommendations of the Pay Revision Committee which is Part-C thereof. Item No. 7 of the said recommendations reads thus:

Personal Assistant (Stenographer)-

(A) Schedule ''A'' :

(i) Grade A ... 450-1,050 ... 550-1,470

(ii) Grade B ... 600-860 ... 470-1,230 with higher initial start at 650.

(iii) Grade C ... 450-675 425-1,050 start at 490.

(iv) Grade D ... 330-550 ... 380-910

(B) Schedule ''B'' ... 330-550 380-910.

7. Grade-C ''Personal Assistant'', therefore, come within the purview of Schedule ''A''. However, from the aforementioned chart it would appear that the scale of pay of Grade ''D'' of Schedule ''A'' Personal Assistant (Stenographer) and the Stenographer placed in Schedule B were recommended to have the same scale of pay being Rs. 330-550.

8. On or about October 19, 1984 a resolution was adopted by the Standing Committee (Management) Regional engineering College in its 86th meeting held on 18th and November 19, 1984,

Clause 15(a) where of reads thus:

Schedule ''B'' stenographer to be appointed as Schedule ''A'' Stenographers.

The Committee agreed to the recommendation that benefit admissible to the Schedule ''A'' Stenographers attached to the Secretariat pool under the Finance Department cannot be extended here.

9. The aforementioned resolution had never been questioned by the writ Petitioners.

10. It may be noticed that the statements made in the Office Orders dated

November 16,1987 to the effect that there was only one post of Personal Assistant and 12 posts of Stenographer being referable to Item No. 7(a)(iii) and Item No. 7(b) of page 1922 of the gazetted dated July 31, 1981 wherein the Memorandum on the West Bengal Services (Revision of Pay and Allowances) Rules, 1981 had been published had also not been questioned.

11. It further appears that in a meeting held on December 26, 1988 and February 4, 1989 the questioned of Stenographers'' allowing NISG scale on personal scale enjoyed by the Employees had been taken into consideration. Clause (V) of refers to the Stenographers'' case which reads thus:

The decisions of the State Government regarding Schedule ''B'' Stenographers communicated in various Government Orders issued from time to time should be implemented with effect from the same dates on which the Government Orders we''re given effect to in Government Offices.

12. All the aforementioned documents, therefore, show that the benefits were required to be given in relation to Schedule ''B'' Stenographers. However, while granting such benefit in the Office Order dated April 21, 1989 it was stated:

The Standing Committee (Management) in its 115th meeting held on the 26th December, 1988 and 4th February, 1989, vide resolution No. 115.15, inter alia, resolved as under:

115.15(v) - The decisions of the State Government regarding Schedule ''B'' Stenographer communicated in various Government Orders issued from time to time should be implemented with effect from the date on which the Government orders were given effect to Government Offices.

2. Accordingly, in operation of the provision contained in CD No. 3356-F dated the 21st April, 1977 issued by the Government of West Bengal, Finance (Audit Br.) Deptt., it is directed that such Stenographers as had completed 10 years of service as ''Schedule B'' on 1st April, 1977 or on any subsequent date be permitted to draw the pay in the ''Grade-C'' scale of ''Schedule A'' Stenographers, viz. Rs. 450-20-550-25-675/- as persons to them.

13. According to the Appellant, Schedule ''A'' Stenographer had been mentioned therein by mistake as would be evident from the fact that Schedule ''B'' Stenographers are the feeds posts for Schedule ''A'' Stenographers. The Memorandum dated April 21, 1977 reads thus:

For sometime past, Government have been considering the question of encouraging the Schedule ''B'' Stenographers for being considered for promotion to Schedule ''A'' posts of Stenographers and giving some benefits to the Basic Grade (Rs. 330-550/-) (Grade-D) Schedule Stenographers (Personal Assistants), who have been appointed on promotion as such from Schedule ''B'' post of Stenographers borne in the identical scale of Rs. 330-550/- . After careful consideration of all aspects Government have been pleased to decide as follows:

a. The personal Assistants in the Basic Grade (Grade-''D'') of Schedule ''A'' who have completed on 1.4.77 or will complete thereafter, 10 years satisfactory service either in Schedule ''B'' or in Schedule ''A'' or in Schedule ''A'' and Schedule ''B'' taken together, shall be allowed to draw pay in the Grade ''C'' scale of Rs. 450-20-550-25-675/- as personal to them.

b. ...

14. The aforementioned Memorandum is clear on the point that Stenographers from Schedule ''B'' posts can be appointed on promotion to the post of Schedule ''A'' Stenographers. The benefit was sought to be granted as regards reckoning of service in Schedule ''B'' Stenographers by reason of the aforementioned circular letter dated April 21, 1989 keeping in view the fact that no person would become interested in being promoted from Schedule ''B'' to Schedule ''A'' as the scale of pay of Grade ''D'' Schedule ''A'' Stenographer and Schedule ''B'' Stenographer, as noticed hereinbefore, was the same.

15. Mr. Sengupta, the Learned Counsel appearing on behalf of the Appellant submitted that despite the aforementioned clear cut position in law, a benefit granted by mistake is sought to be taken advantage of. The Learned Counsel pointed out that an interim order had been passed by the learned trial Judge to the effect that in the event the writ petition is dismissed, the excess amount drawn may be recovered from them including from terminal benefits.

16. Mr. Malay Basu, the Learned Counsel appearing on behalf of the Respondents, on the other hand, submitted that the writ Petitioners had been granted the said benefit from 1989 and, thus, the same could not have been curtailed by a notification published 9 years thereafter. The Learned Counsel submits that before the learned trial Judge all the documents had not been, produced, it had been submitted that the sub-committee appointed by the Standing Committee came to a specific finding that there had been no Schedule ''A'' and ''B'' post although there were posts of Stenographers and Personal Assistants. It was submitted that the Appellant himself having satisfied that the Petitioner are entitled to the said benefit which had been approved by the Board of Governors. According to Mr. Basu, only on the basis of an audit objection such a benefit could not have been taken away after a long time. The Learned Counsel has drawn our attention to the fact that the subcommittee was constituted not only in respect of the Stenographers but in respect of all types of staff and recommendations had been made by the said subcommittee upon taking into consideration all aspects of the matter. It was submitted that in any event the cases of the Stenographers had been considered in the reports wherein it was stated:

Recently, the Finance Department, Govt. of West Bengal, in their Memo No. 12065-F dated 7.11.87 read with No. 12066-F dated 7.11.87 intimated that Stenographers under Schedule ''A'' or under Schedule ''B'' as the case may be, are to be allowed three different scales of pay and the distribution of the posts should be in the ratio 4:3:3 in scale No. 9 (Rs. 380-910/-), scale No. 13 (Rs. 470-1230)-with higher initial start at Rs. 650/- and scale No. 16 (Rs. 550-1470/-). The distribution of the scales in the above mentioned ratio shall have to be made separately for English Stenographers and Bengali Stenographers.

If a Schedule ''A'' P.A new drawing pay in personal scale of Rs. 425-1050/- with higher initial start at Rs. 490/- cannot be fitted in scale No. 13 (Rs. 470-1230/- with higher initial start at Rs. 650/-) and they shall continue to draw their pay in the same scale (Rs. 425-1050/- with higher initial start at Rs. 490/-) as personal to them till they are fitted in scale No. 13 (Rs. 470-1230/- with higher initial start at Rs. 650/-). The fitment in the above mentioned higher scales according to the above ratio shall be treated as promotion and the pay of the incumbents on such promotion shall be fixed in terms of the provisions of Rule 11 of the WBS (ROPA) Rules, 1981. The College is yet to implement this decision of the State Government regarding pay scales of Stenographers.

The College never classified its Stenographers under Schedule ''A'' and Schedule ''B''. Still, for all practical purposes the College utilised them either as Grade-C or Grade-D under Schedule ''A'' Stenographers. The Committee recommends that the benefit extended to the Stenographers under Schedule A of the State Governments 1977 should also be allowed to the College Stenographers. The Committee further recommends that the benefit allowed by the State Government to the Stenographers under Schedule-A and Schedule-B with effect from April 1, 1981 should also be extended to the Stenographers of the College.

17. From bare perusal of the aforementioned recommendation it appears that the said sub-committee did not consider the office resolution dated November 16, 1981 and the schedule appended thereto.

18. It appears that while considering Item No. 86.4 of the meeting held on 17.1.81 only comments made against Item No. 116.7 were noted without any application of mind or without approving the same.

The Petitioner in affidavit-in-reply stated:

I say that the Standing Committee (Management) is the Off-Spring of the Board of Governors authorised to deal with all matters and also make resolution, subject to approval/ratification of the Board of Governors.

19. It had further been stated:

The resolution being some what in consistent, as it was, the then Principal of the College in his capacity as Member-Secretary of the SC(M) and also of the Board of Governors, (the supreme authority in all matters relating to administrative and financial control of the Regional Engineering College represented by both the State and Central Governments,) sought to bring about conformity with the existing Rules in the aforesaid background and had issued the Administrative Order No. DEC/IP-15 dated 21 April, 1989 and thereafter placed the action taken report before the Board of Governors in its 86th Meeting held on 6.2.1990 and the said action of the then Professor in-charge was duly ratified by Board of Governors, the apex body of the College. Therefore, any statement of the Respondents after so many years of Committing an alleged bona fide mistake by issuing the aforesaid order No. DEC/IP-15 dated 21 April, 1989 is not at all tenable.

20. The learned trial Judge, in our opinion, rightlying held that Schedule ''A'' (Grade-D) Stenographer on promotion is entitled to become Schedule ''A'' (Grade-C) Stenographers. The learned trial Judge further observed:

There possibly cannot be any quarrel as to the first proposition so urged by the Learned Counsel for the Respondent college but then for the purpose of this writ petition I need not decide that.

21. The learned trial Judge appears to have proceeded only on the presumption that the Petitioners are Schedule ''A'' Grade-D Stenographer stating:

It would not be normal to presume that the posts of Schedule-A Grade-D Stenographers are not available and, thus, the Promotion Rules permit Schedule-B Stenographer to be promoted to the posts of Schedule A, Order C Stenographers.

22. The learned trial Judge sought to fortify such presumption on the basis of the report of the subcommittee. However, the learned trial Judge appears to have failed to take into consideration that the decision of the Finance Department of the State of West Bengal as conveyed in their Memo No. 12065-F dated January 7, 1987 whereby and whereunder a distinction had been made between Schedule ''A'' and Schedule ''B'' Stenographers and the scales of pay relating thereto.

23. The report submitted by the Committee constituted to examine the cases of disputes was considered at the 115th meeting-of the Standing Committee, the following resolution was passed:

The decision of the State Government regarding Schedule ''B'' Stenographers communicated in various Government Orders issued from time to time should be implement with effect from the same date on which the Government were given affect to in Government Offices.

24. The learned Judge, in our opinion, committed a mistake in arriving at a conclustion that in ail the resolutions reffered to hereinbefore, Schedule ''A'' should have been read as Schedule ''B''. The learned Judge only on that basis came to the conclusion:

The mistake, If any, was using the word ''8'' instead of the word ''A'' in the orders, reports and resolutions as indicated above.

25. The learned Judge also, inter alia, held that the impugned order dated June 20/26, 1997 did not have the sanction of the Board of Governors.

26. It is now a trite law that nobody gets any legal right on the basis of a bona fide mistake, it is true that in same cases the question as to whether a bona fide mistake has been committed or not must be determined after giving an opportunity of hearing to the parties. But such an opportunity had been granted to the parties by the learned trial Judge. All the documents had been produced and as such it is not difficult for this Court to come to a definite finding as to whether a genuine and a bona fide mistake had been committed by the Appellants herein while issuing the order dated April 21, 1989 as contained in Annexure ''D'' to the writ application.

27. For the purpose of finding out as to whether a genuine or bona fide mistake had been committed or not the couch is required to look into the matter keeping in view the sequence of events. The Office Order dated November 16, 1981 whereby and whereunder ROPA Rules, 1981 for the first time was made applicable clearly show that there had been one post in Grade-A whereas; there were 12 posts of Stenographers. The designation of Personal Assistant was mentioned at Serial No. 26. The number of sanctioned post as also the number of page of the Gazette had clearly been mentioned at the said annexure which was a part of the Resolution. It was on that basis the Board of Governors had passed the aforementioned order dated October 19, 1984. The Petitioners were aware of the aforementioned position. They did not dispute the factual basis at that point of time. The resolutions of the Board of Governors dated November 16, 1981 and October 19, 1984 are contemporaneous documents. Such documents should be preferred in comparison to recent documents. Furthermore, the learned trial Judge, in our opinion, despite acceptance of the factual basis, proceeded to rely upon the recommendation of the sub-committee alone ignoring the basic documents. The report of the sub-committee was recommendatory in nature. The same had never been accepted. The purport and object of grant of benefit in terms of the aforementioned circular letter dated April 21, 1989 is evident. Even, Schedule ''B'' Stenographers had been mentioned at the top. Reference therein had also been made to the Government Memorandum No. 3356-F dated April 21, 1987 which has been quoted hereinbefore. The said circular was, thus, incorporated by reference in the aforementioned Office order dated April 21, 1989. If the writ Petitioners had already been working as Grade-D, Schedule ''A'' Stenographers, the question of their being pro/notion would not arise and as such the reference to the Memorandum dated April 21, 1977 becomes redundant.

28. It is a well settled principles of law that while construing document, the same must be read in its entirety and a mistake occurring therein, if any, must be found out upon reading the entire documents as a whole and the circumstance attending thereto. The circumstances read with the relevant documents as referred to hereinbefore, lead only to one conclusion that a mistake had been committed and the Office circular dated April 21, 1989 and not in the earlier circulars as has been held by the learned trial Judge.

29. For the reasons aforementioned, the impugned judgment and order cannot be sustained. Keeping in view the facts and circumstances of this case we are of the opinion that any excess amount paid to the writ Petitioners upto the date of filing of the writ application should not be recovered.

30. However, keeping in view the fact that the Petitioners had given an unconditional undertaking despite the said mistake as in terms of the order of the court, on the aforementioned undertaking the Appellants herein proceeded to pay to the writ Petitioners, they shall be entitled to recover and the writ Petitioners shall be liable to refund any excess amount that has been paid from the date of the filing of the writ application. It is accordingly so directed. The appeal is allowed with the aforementioned directions. But in the facts and circumstances of this case there will be no order as to costs.

M.H.S. Ansari, J.

31. I agree.