
(1971) 06 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. 570 of 1970

Radha Kanto Chatterjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-06-1971

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1972 Cal 174

Hon'ble Judges : Ghose, J

Bench : Single Bench

Advocate : Ghosh, for the Appellant;

Final Decision : Allowed

Judgement

Ghose, J.—This application has been made by the petitioner who is a cashier in the office of the respondent No. 2, Director of Industries, Government of West Bengal, inter alia, for the issue of a Writ in the nature of mandamus commanding the respondents Nos. 1 to 3 to withdraw or cancel the orders dt. June 16/20 and July 27, 1970 and refrain from giving any effect thereto and for commanding them to act according to law. inter alia, in fixing or revising the pay-scale and grade of the petitioner; and also for a Writ in the nature of mandamus commanding the respondents 1 to 3 to place and fix the petitioner in the grade or scale of pay of Rs. 300-450 or Rs. 250-400 as set forth in the annexures "K" and "M" to the petition. This application also seeks for the issue of a writ in the nature of Certiorari for quashing the appointment of the respondent No. 4 to the post of the cashier in the grade or scale of pay of Rs. 250-400/- under the respondent No. 3 in supersession of the petitioner.

2. On or about November 30, 1948. the petitioner after completing the probationary period of 2 years was confirmed in the post of cashier in the office of the respondent No. 2 in the scale of Rs. 80-5-105. In or about 1958 the petitioner's grade was enhanced to Rs. 105-5-210/-. The said grade was enhanced to Rs. 200-5-250 on March 1, 1959.

3. On December 12, 1960 the petitioner was charged with having misappropriated a cheque for Rs. 3388/-and was suspended on that ground. The petitioner was prosecuted on the aforesaid criminal charge before the Chief Presidency Magistrate, Calcutta and was acquitted on November 28, 1961. The petitioner was not allowed to join his duties thereafter. Departmental proceedings on the basis of the aforesaid charge was commenced against the petitioner on or about August 18, 1962. As a result of the said departmental proceedings the petitioner was dismissed from his service as such cashier on or about January 26, 1963. On or about September 7, 1964, the petitioner instituted a suit being suit No. 1676 of 1964 in this Court against, inter alia, the State of West Bengal inter alia, for a declaration that he continued to be in the employ of the State of West Bengal.

4. By judgment and decree passed in the said suit on March 21, 1967, the petitioner was directed to be reinstated to the substantive post held by him with backlog of all his claims for salaries and other emoluments. On or about July 22, 1967 the petitioner was reinstated to the former substantive post held by him in the office of the respondent No. 2. In the meantime, with effect from April 1, 1961 or from the date of option to be exercised by an employee as contemplated in the said Rules West Bengal Services (Revision of Pay and Allowance) Rules, 1961 came into force. The said Rules revised the previous scales of pay of employees in the different categories under the State of West Bengal.

5. Prior to April 1, 1961, the petitioner was holding the substantive permanent post of cashier in the office of the respondent No. 2 and was in the grade of Rs. 200-5-250. By a letter dated July 27, 1967 the Deputy Director of Industries (Administration) asked the petitioner as to whether he would exercise his option under the said West Bengal Services (Revision of Pay and Allowance) Rules, 1961. The petitioner exercised his option under protest and was fixed in the revised scale of pay Rs. 200-300. The petitioner times without number, requested the respondent Nos. 1 to 3 to fix him in the grade of either Rs. 300-20-400-25-450 or Rs. 250-15-400, the scales of pay allowed to all other employees of the same grade to which the petitioner belonged in the same department as well as other departments of the respondent No. 1. The petitioner submitted memorandum even to the Governor of the State of West Bengal. But nothing was done by the authorities to redress the grievances of the petitioner. By a letter dated 16/ 20th June, 1970 the Secretary to the Department of Commerce and Industries informed the petitioner that the pay-scale of a particular post should not be considered at that stage and advised the petitioner to await the recommendations of the Pay Commission which had been holding deliberations at that time. By a letter dated June 24, 1970 the petitioner asked the Director of Industries for refixation of his pay as already prayed for but was again by a letter dated 27th July, 1970 asked to wait until the recommendations of the Pay Commission, was submitted.

6. The petitioner moved this Court in its Constitutional writ jurisdiction on

September 28, 1970 when rule Nisi was issued in the matter. The petitioner challenges the Rule fixing his revised scale of pay as violative of the provisions of Article 14 on the ground as follows :

7. All employees in his department like the head clerk as well as in other departments who were in the same scale of pay and therefore in the same grade have been allotted scales of pay Rs. 360-450 or Rs. 250-400 but the pay of the petitioner has only been kept in the scale of Rs. 200-10-300. Thus the said rule fixing the said scale for the petitioner only is discriminatory, without any reasonable basis and is violative of the provisions of Article 14 of the Constitution.

8. Formerly there was no Directorate of Cottage and Small Scale Industries under the Government of West Bengal. The Department of Cottage and Small Scale Industries was a part of the Department of Industries. The cashier in the said new Department of the respondent No. 3 is entitled to the scale of Rs. 250-400. The said new department was made separate and distinct in June, 1966 only.

9. In paragraph 35 the petitioner has alleged as follows :--

"35. That your petitioner further states and contends that the said Rules are also equally bad, illegal, mala fide and void inasmuch as by the said Rules a clear path of hostile discrimination and/ or differentiation between the self-same grade and/or scales of pay have been opened up under the self-same common employer by the instrumentation of uncontrolled and unguided discretionary power and/or executive whims and arbitrariness in the matter of application of the said Rules, and in particular, the said Rule XI (i) (b). touching upon the fixation of revised pay scale and/or structure. As for Instance, the said items Nos. 1, 9 and 14 can be cited in this context, moreover, the said Rules are clearly bad, illegal and void because of violation of the provisions of Article 14 of the Constitution of India inasmuch as in the self same grades and/or scales of pay 5 different classes have been set up and created by the selfsame employer e.g., items Nos. 1. 9 and 14. the enclosure to the said annexure "I" and 2 Classes of Head Clerks, all of which were enjoying and posted in the self-same grades and/ or scales of pay. similarly and identically situate and placed with your petitioner, as on the 31st March, 1961."

10. It appears from Annexure I to the petition filed herein that all persons in the employ in different departments or offices of the State of West Bengal who were in the pay scale of Rs. 200 5-250 before revision have been allotted and placed in the revised pay scale of Rs. 250-15-400 without any exception save and except the petitioner in the instant case. The petitioner has stated in his petition that all the said employees were and are placed in similar circumstances. The State has not filed any affidavit in opposition to the petition even within the extended periods of time which were successively granted by this Court. Only on the last day of the hearing viz., on 11th June 1971 Mr. Chakraborty appearing on behalf of the State wanted to file an affidavit in opposition. Before that date this

matter was part-heard once before me on 21st April, 1971. Even then the State did not want to file any affidavit. In that view of the matter I refused to grant any further indulgence to the State and refused to admit the affidavit sought to be filed by the State.

11. Thus there is no denial to the facts stated in the petition. In particular there is no denial of the fact as stated in the petition that the petitioner and all other employees belonging to the grade of Rs. 200-5-300 and Rs. 200-10-300 prior to April 1961 were placed in similar circumstances and had no difference in between them. It is true that the State has the power of classifying persons for legitimate purposes and on reasonable basis. But here there does not seem to me that any such differentiation exists in between the employees mentioned above unloving the scales of pay of Rs. 200-5-300 or Rs. 200-10-300 formerly.

12. Mr. Ghosh appearing on behalf of the petitioner cited the decision of the Delhi High Court in *Union of India v. Shanti Swaroop*. 1969 Lab IC 1265 (1267) (Delhi). But the said case seems to have decided that Number Takers employed by the Railways in its different Divisions were given a scale which was better than one given to the Number Takers employed In the : Delhi Division of the Railways. The Number Takers in the Delhi Divison of the Railways became entitled to the revised pay scale from 1st January 1947 or 16th August 1947 as per option exercised by them under Rule 6 of the Railways Services (Revision of Pay) Rules 1947. The said Rules were framed u/s 241(2) of the Government of India Act. 1935 and were of statutory character. The same were preserved by Article 313 of the Constitution as the law of he land and applicable to the employees governed by them. The benefits of the revised pay scale under the said statutory Rules were sought to be denied to the Number Takers of the Delhi Division. The denial of the benefits of the said revised scale of pay was held to be discriminatory in the case of the Number Takers of the Delhi Division of the Railways and struck down. It should be noted that in the said case the rights and benefits conferred upon the said employees by the aforesaid Statutory Rules framed u/s 241(2) of the Government of India Act. 1935 were enforced. In the instant case, also it appears that the applicant has been treated differently from other employees similarly circumstanced without any reasonable basis.

13. In the case of *Kishori Mohanlal Bakshi Vs. Union of India*, , it was contended on behalf of Class II Income Tax Officers that there was discrimination in between them and Class I Income Tax Officers in regard to their respective scales of pay even though both the Class I Income Tax officers and Class II Income Tax Officers had to do and in fact did the same kind of work. The said contention was repelled by the Supreme Court with the following observations :--

"The only other contention raised is that there is discrimination between Class I and Class II Officers inasmuch as though they do the same kind of work their pay scales are different. This it is said, violates Article 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an Officer's service. The abstract doctrine of equal

pay for equal work has nothing to do with Article 14. The contention that Article 14 of the Constitution has been violated, therefore, also fails."

14. But that observation, it seems, was based really on reference to difference in pay scale on the basis of difference in duration of service and does not, in my opinion, apply to the facts and circumstances of the instant case. In the instant case, the employees who were similarly circumstanced and enjoying similar scales of pay have been allotted and fixed in different scales of pay by the aforesaid order. The same seems to be discriminatory and violative of the principles of Article 14 of the Constitution.

15. The other part of the application which challenges the appointment of respondent No. 4 as the cashier of respondent No. 3 must fail in my opinion. The said appointment was made in June, 1966. At that time the petitioner was removed (although held later as wrongfully removed) and was not acting as the cashier under respondent No. 3. The appointment of respondent No. 4 who was junior to the petitioner at that time as cashier of respondent No. 3 did not militate against the provision of Article 16. The only right of a Government employee is to be considered for promotion. At the time when the respondent No. 4 was appointed as the cashier of respondent No. 3, the petitioner could not be considered for that appointment and the appointment of the respondent, No. 4 was not vitiated for not considering the petitioner for that appointment at that time.

16. In the premises, this application must succeed. A writ in the nature of mandamus shall issue commanding the respondent Nos. 1 to 3 and each of them and their servants and agents to place and fix the petitioner in the grade or scale of pay of Rs. 250-15-400. The petitioner shall receive all arrears of pay and other emoluments on the basis of that scale with effect from 28th September, 1967. The Rule is made absolute to the extent as aforesaid. In the facts and circumstances of the case each party shall pay and bear his costs of and incidental. So, the application.