
(2015) 08 CAL CK 0075
In the Calcutta High Court
Case No : W.P.S.T. No. 167 of 2012

Ramananda Paitandi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Citation : (2015) 3 ESC 1678

Hon'ble Judges : Nishita Mhatre and Asha Arora, JJ.

Bench : Division Bench

Advocate : Sourav Banerjee and Sariful Islam Mallick, for the Appellant; Tapan Kumar Mukherjee and Rabindra Narayan Dutta, for the Respondent

Final Decision : Allowed

Judgement

Asha Arora, J.—The petitioner retired from service on 31.10.2003 as Sub-Assistant Engineer (for short referred to as SAE). He filed Original Application No. 2942 of 2005 before the West Bengal State Administrative Tribunal praying inter alia for an order directing the respondents to refix the scale of pay in terms of G.O. No. 6075-F dated 21.6.1990 and G.O. No. 3015-F dated 13.3.2001 in respect of Career Advancement Scheme (for brevity referred as CAS) and pay all arrears including interest and further directing the respondents to issue fresh pension payment order after giving the benefit of such CAS Scheme, 1990. It is the petitioner's contention that he is a diploma holder in engineering. He joined as Amin under the Settlement Officer, Murshidabad and Birbhum on 8.4.1974. The Finance Department, Government of West Bengal issued a notification No. 10303-F dated 19.11.74 which stated that all diploma holder engineers were entitled to be termed as SAE to get the benefit including pay and allowances of the said post. The aforesaid benefit having not been extended to the petitioner, he filed a writ petition being C.R. No. 2244 (W) of 1980 in the High Court and the same was allowed on 16.12.1987 directing the respondents to take immediate steps for treating him as SAE and paying him all the service benefits to which he would have been entitled had he been treated as SAE in terms of the said

notification. vide Memo dated 14.8.91 the petitioner was redesignated as SAE and the pay of SAE was allowed with initial fixation at Rs. 330/-. In the meantime the petitioner retired from service on 31.10.2003 and clearance to Accountant General in his favour was issued on 21.7.2003. It is the further contention of the petitioner that the Accountant General issued pension payment order (for short referred as PPO) but the copy was not handed over to him. Not having received pension and commuted value of pension, petitioner filed O.A. No. 1356 of 2004 before the West Bengal Administrative Tribunal on 23.9.2004 which was disposed of by the Tribunal by directing the respondents to release his pensionary benefits within a specified period. Accordingly, the pensionary benefits of the petitioner were released in the grade and scale of SAE but the benefit of Career Advancement Scheme was not given to him. According to the petitioner, since he did not get any promotion during his service, under the CAS he is entitled to get benefit on completion of 10 years of service with effect from 1.4.1989 and 20 years of service with effect from 1.4.1994 as well as on completion of 25 years of service with effect from 1.4.2001.

2. The State Administrative Tribunal by its order dated 26.4.2011 dismissed the petitioner's application with the following observation:

"The basic scale in this case is the scale that he had received on joining that is, the scale of Amin. It is true that he was redesignated in terms of the judgment of the Hon'ble Court but his initial appointment as Amin cannot be disregarded and it cannot also be contested that he received advancement far higher than what he could have received under CAS benefit, had he continued as Amin. Therefore, he is not entitled to any further benefit under CAS in terms of the order dated 21.6.90 and 13.3.2001."

3. Aggrieved, the petitioner brought the matter before this Court by filing the instant writ petition.

4. Assailing the impugned order Mr. Samar Banerjee, the learned Counsel for the petitioner submitted that the Tribunal failed to consider that the post of SAE is direct recruitment post and not a promotional one and it has erroneously been held that the petitioner's initial appointment as Amin cannot be disregarded. In support of such submission Mr. Banerjee relied upon the judgment of the Supreme Court in Civil Appeal No. 1196 of 1986 (State of West Bengal and others v. Debdas Kumar and others) with Civil Appeal No. 830 of 1991 (State of West Bengal and others v. Kamal Kumar Bhadra and others) wherein it has been held that under the rules the post of sub-assistant engineer is not at all a promotional post for any categories of employees in the State. On the contrary, it is a direct recruitment post. Learned Counsel for the petitioner also referred to the judgment of a Single Bench of this Court in C.R. No. 2244 (W) of 1980 wherein the Court ruled in favour of the petitioner by directing the respondents "to take immediate steps for treating him as Sub-Assistant Engineer and to pay all the service benefits to which he would have been entitled had he been treated as sub-assistant engineer in terms of the notification dated November 19, 1974."

5. Mr. Banerjee further contended that since the petitioner did not get any promotion during his service he was entitled to the benefit of CAS in terms of the G.O. dated 21.6.1990 and G.O. dated 13.3.2001.

6. Mr. Tapan Kumar Mukherjee, appearing for the respondents countered that though the petitioner did not get any promotion, he received the higher scale or enhancement. He is therefore not entitled to the benefit of CAS.

7. The crucial point for determination is whether the petitioner is entitled to the benefit of Career Advancement Scheme as per the G.O. dated 21st June, 1990 and G.O. dated 13th March, 2001. It is not in dispute that the petitioner was appointed as Sub-Assistant Engineer vide memo dated 14.8.1991 and he retired from service on 31.10.2003. It is also an admitted fact that he joined as Amin on 8.4.1974. According to the petitioner he retired from service while working as a Sub-Assistant Engineer without being granted any promotion, so he is entitled to the benefit of CAS. The Tribunal treated the post of Sub-Assistant Engineer as a promotional post and rejected his claim. The question whether the Sub-Assistant Engineer's post in the State of West Bengal is a promotional post or a direct recruitment post has been considered by the Apex Court in Civil Appeal No. 1196 of 1986 (State of West Bengal and others v. Debdas Kumar and others). In the said judgment the Supreme Court held as follows:

"Under the Rules, the post of Sub-Assistant Engineer is not at all a promotional post for any categories of employees in the State, on the contrary, it is a direct recruitment post."

8. Evidently the Tribunal did not consider the aforesaid decision of the Apex Court while dismissing the claim of the applicant/petitioner. The judgment dated 16th December, 1987 of the learned Single Judge of this Court in C.R. No. 2244 (W) of 1980 relied upon by the learned Counsel for the petitioner was also not taken into consideration by the Tribunal. In the judgment referred it has been held that "the petitioner is entitled to the benefit of being treated as Sub-Assistant Engineer in terms of notification No. 10303-F dated November 19, 1974. The State is under obligation to treat the petitioner as Sub-Assistant Engineer and pay to the petitioner the pay and allowances attached to the post of Sub-Assistant Engineer in recognition of his qualification of Diploma in engineering."

9. Pursuant to the aforesaid judgment the petitioner was redesignated as Sub-Assistant Engineer. It is abundantly clear that the petitioner did not get any promotion during the period of his service. Therefore the petitioner is entitled to get the benefit of CAS 1990. As per provision xxiii of G.O. No. 6075-F dated 21st June, 1990 "this Career Advancement Scheme will be effective from 1st April, 1989." Accordingly the petitioner is entitled to get the benefit of CAS 1990 with effect from 1st April, 1989 on completion of 10 years of service and with effect from 1st April, 1994 on completion of 20 years of service. In view of G.O. No. 3015-F dated 13th March, 2001 the petitioner is entitled to the benefit of CAS

2001 with effect from 1st April, 2001 having completed 25 years of service.

10. Consequently the impugned order dated 26th April, 2011 passed by the West Bengal Administrative Tribunal in O.A. No. 2942 of 2005 is liable to be set aside and we accordingly do so.

11. The writ petition being W.P.S.T. No. 167 of 2012 is accordingly allowed without any order as to costs.

12. The respondents are directed to take necessary steps for granting to the petitioner the benefit of Career Advancement Scheme in terms of G.O. No. 6075-F dated 21st June, 1990 and G.O. No. 3015-F dated 13th March, 2001 subject to the fulfilment of any other norms for such benefit within eight weeks from today. Urgent photostat certified copy of this judgment if applied for, shall be given to the parties subject to compliance of requisite formalities.