

(1998) 02 CAL CK 0028
In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction Matter No. 3874 of 1994

Ranjit Kumar De Majumder

APPELLANT

Vs

The Secretary, Higher Education, Government of West Bengal
and Others

RESPONDENT

Date of Decision : 05-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 CALLT 432

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Mr. Bikash Bhattacharya and Mr. H.N. Sahu, for the Appellant; Mr. N. Bhattacharya and Mr. Akman Khan, for the Respondent

Judgement

1. The Court : The petitioner claims to be in the employment of the Regional Engineering College, Durgapur, as a "Draftsman" in the department of Applied Mechanics and drawing salary and other benefits as per the scales of the State Government in accordance with the provisions of the Scheme of Establishment for Regional Engineering Colleges.

2. According to the petitioner, the Regional Engineering College, Durgapur, hereinafter referred to as the "College", has a Standing Committee (Management), which in its meeting of 20th November, 1977, recommended acceptance in principle of the New Intermediate Selection Grade for employees of the College in accordance with the norms laid down by the State Government.

3. It is the petitioner's case that there are two scales of pay for draftsman in the College, namely,

(i) Rs. 230 - 424/- (Basic grade).

(ii) Rs. 300 - 600/- (For ITI Certificate holders).

4. It appears that after a decision was taken to award the New Intermediate Selection Grade to the employees of the College, one Selection Grade post was created against four posts of Draftsman with a scale of pay of Rs. 370-535 in relation to the scale of pay available to Draftsman in the basic grade. However, on the basis of seniority, Shri D.M. Saha, the added respondent No.7 was offered the New Intermediate Selection Grade, but he refused to accept the same as he was receiving the higher, scale of Rs. 300-600 purportedly on account of qualification pay. Consequently, the new Intermediate Selection Grade was offered to the petitioner as the next senior Draftsman and on his acceptance of the same, the then Principal of the College issued an order in the petitioner's favour on 7th February, 1981, appointing him in the New Intermediate Selection Grade scale of Rs. 370-535/-, corresponding to the basic grade scale of Rs. 230-425/-, as was being enjoyed by the petitioner. As provided for under the Rules, the petitioner duly submitted his option for his upgradation to the new scale of Rs. 370-535/- from his earlier scale of Rs. 230-425/- and the benefit of the new scale was given to him with effect from 1st August, 1974.

5. It appears that after the petitioner was given the New Intermediate Selection Grade, hereinafter referred to as "NISG", and he was enjoying the same for about seven years, the Standing Committee (Management) held a meeting on 29th April, 1988, extending the benefit of the revised NISG scale of Rs. 560-825/- to Shri Saha in the group of Draftsman and revoking the benefit of the NISG scale given to the petitioner with effect from the date of his appointment thereto and directing that the overdrawal on account of such benefit having been given to him be recovered from him from the said date.

6. The decision of the Standing Committee (Management) was incorporated in Office Order dated 9th June, 1988, which is the subject matter of challenge in the instant writ petition.

7. Appearing in support of the writ petition, Mr. Bikash Bhattacharya firstly contended that the petitioner could not be deprived of a benefit which he had been enjoying over a period of 14 years on a unilateral decision taken by the Standing Committee (Management) merely by pleading erroneous conferment of such benefit to the petitioner. It was urged that even if the benefit of the NISG scale had been erroneously given to the petitioner, it could not be taken away after the same had been given effect to for about 14 years, much less could a decision have been taken to recover the monetary benefits which the petitioner had enjoyed over the said period even if the benefit was withdrawn.

8. Mr. Bhattacharya submitted that the aforesaid decision was taken in violation of the principles of natural justice as the petitioner was not even given a hearing before such decision was arrived at, having particular regard to the fact that the NISG scale had been awarded to the petitioner after the same had been offered to and refused by the added respondent, Shri D.M. Saha.

9. Mr. Bhattacharya urged that the question of erroneous conferment of the NISG

scale to the petitioner does not arise since after Shri D.M. Saha the petitioner was the next seniormost draftsman who was entitled to receive the said scale once the same was refused by Shri Saha. Mr. Bhattacharya submitted that at the relevant point of time, Shri Saha may have had reason to refuse the NISG scale offered to him, since he was enjoying the higher qualification pay scale, but any subsequent revision or increase in the NISG scale did not entitle him to receive the NISG scale, as revised, upon such benefit being withdrawn from the petitioner, as the same had been lawfully extended to the petitioner.

10. Mr. Bhattacharya urged that even if it was conceded that the NISG scale had been erroneously given to the petitioner, in a situation such as the present one, such mistake could be rectified only by creation of a supernumerary post and not by revoking such benefit and taking steps to recover the monetary benefits received by the petitioner for a period of 14 years.

11. In support of the first branch of his submissions that even if the NISG scale had been erroneously given to the petitioner, the amounts paid to him on account thereof could not be recovered from him, Mr. Bhattacharya firstly relied on the decision of the Hon"ble Supreme Court in the case of Sahib Ram Vs. State of Haryana and Others, wherein the Supreme Court was considering the decision of the State of Haryana to withdraw the upgraded scale given to the appellant on the basis of a recommendation made by the University Grants Commission, on the ground that the same had been wrongly given to him. Holding that the upgraded scale had been wrongly given to the appellant, the Hon"ble Supreme Court also held that since the upgraded scale had been given to the appellant not on account of any misrepresentation on his part, but because of a wrong construction of the Commission's directions by the Principal, he could not be said to be at fault and the amounts already paid to him on the basis of the upgraded scale could not be recovered from him.

12. In this regard, Mr. Bhattacharya also relied on another decision of the Hon"ble Supreme Court in State of Orissa and Others Vs. Adwait Charan Mohanty and Others, where the same principle has been reiterated.

13. In this regard, Mr. Bhattacharya lastly relied upon the decision of the Supreme Court in The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, where the Hon"ble Supreme Court held that since the incumbent in the post of Secretary of the Society had been allowed to function for 13 years, it was not open to the Registrar to set aside his appointment.

14. Mr. Bhattacharya then urged that having taken a decision, the competent authority could not review the same to the petitioner's detriment, since no power of review had been vested in him under the statute. Mr. Bhattacharya submitted that being a creature of statute, the competent authority could not exercise powers not vested in it by the statute.

15. In support of his aforesaid contention, Mr. Bhattacharya referred to and relied on the decision of the Privy Council in the case of AIR 1937 27 (Privy

Council) to which I shall advert later if necessary.

16. Mr. Bhattacharya lastly pointed out that at the 64th meeting of the Standing Committee (Management) held on 5th September, 1960, it had been clarified and resolved that the NISG scale was being offered on the basis of the Basic Grade and not on the basis of Qualification Pay Scale. Mr. Bhattacharya urged that, although, the NISG scale had been offered to Shri Saha by virtue of such resolution he did not qualify for the NISG scale as he was enjoying the higher Qualification Pay Scale of Rs. 300-600/-.

17. Appearing for the Principal of the College, Mr. Narayan Bhattacharya urged that the writ petition was not maintainable in the Original Side of this court, inasmuch as, no part of the cause of action had arisen within the original Jurisdiction of this court and none of the respondents, save the respondent No.2, who was not also a necessary party, had any office within the Ordinary Original Jurisdiction of this court.

18. In support of his submission Mr. Bhattacharya referred to two decisions of this court in (1) The University of Calcutta v. Sri Shyamal Kumar Das & Ors. (1985 (I) CHN 187) and in (2) University of Calcutta v. Subrata Mukhopadhyay & Ors. (1986 (1) CHN 169).

19. In the first of the said two cases, a Division Bench of this court, while interpreting Rules 4, 5 and 6 of the writ rules framed by this court, held that since no part of the cause of action for the writ petition had arisen within the appellate jurisdiction of the court, the writ application ought to have been moved and entertained in the Original Side. In the second case, another Division Bench of this court held that when the office of even one of the respondents was situated outside the Ordinary Original Jurisdiction of this court, Rule 4 of the writ rules was inapplicable and the matter would have to be dealt with on the Appellate Side in terms of Rule 7.

20. Mr. Bhattacharya urged that since no part of the cause of action for this case had arisen within the Ordinary Original Jurisdiction of this court, the writ application was not maintainable on the Original Side and should have been filed on the Appellate Side.

21. Mr. Bhattacharya then submitted that for draftsman there were two Basic Grades. The scale enjoyed by Mr. Sana, namely, Rs. 300-600/- was his Basic Grade and not Qualification Pay Scale, as contended on behalf of the petitioner. Since the NISG scale offered to him was lower than the scale he was already enjoying, he declined to accept the same. Mr. Bhattacharya submitted that the existence of the two Basic Grades for draftsmen would be clear from Memo No. 10035-F dated 21st October, 1974, issued by the Finance Department, Government of West Bengal, being annexure "X" to the Affidavit-in-Opposition affirmed by Shri Durga Mohan Saha. from which it would appear that those employees in the scale of Rs. 300-600/- would be entitled to NISG scale of Rs. 425-825/-. which was amended to Rs. 560-825/-.

22. Mr. Bhattacharya urged that the error which had been committed was the computation of the NISG on the Basic Grade of Rs.230-425/-, which the writ petitioner was enjoying and not on the Basic Grade of Rs. 300-600/- which Shri Saha was enjoying when the NISG scale was introduced in the College.

23. Mr. Bhattacharya submitted that since Shri Saha was not offered the NISG scale of Rs. 560-825/-. he made a re-presentation to the authorities demanding such higher scale. In view of the anomalies existing over grant of the NISG scale to the employees of the College, the Standing Committee (Management) at its meeting held on 10th October, 1983, constituted a Committee to submit a report with regard to grant of Selection Grade to the petitioner. The said Committee considered the matter after giving a hearing to the parties concerned and/or their representatives and came to the conclusion that Shri Saha had a genuine grievance as he was not offered the NISG scale of Rs. 560-826/- in spite of enjoying the Basic Grade of Rs. 300-600/- at the relevant point of time. The Committee recommended that the benefit of the NISG scale be given to Shri Saha and such benefit given to the writ petitioner be accordingly revoked.

24. The report of the Committee was, thereafter, referred to the Finance Department, Government of West Bengal, for its approval. By its letter dated 10th September, 1986, addressed to the Principal of the College, the Government gave its approval to conferment of the benefit of the NISG scale to Shri Saha from the date of his entitlement, subject to the condition that the said benefit which had been given to the petitioner be cancelled from the date of his appointment and overdrawals be recovered from him.

25. Mr. Bhattacharya submitted that after considering the report of the Committee and the views expressed by the State Government, the Standing Committee (Management) at its meeting held on 20th April, 1988, decided to correct the mistake whereby the NISG scale had been awarded to the petitioner in lieu of Shri Saha. and directed that the said benefit extended to the petitioner be revoked and the excess amounts drawn by him be recovered.

26. Mr. Bhattacharya submitted that since the NISG scale had been wrongly given to the petitioner on account of the aforesaid error, the same was subsequently revoked and since amongst draftsmen there could be only one NISG post against four posts of draftsmen, two persons could not be given the benefit at the same time, and the College Authorities had no option but to direct recovery of the amounts paid to the petitioner in excess of the salary which he had enjoying before being provided with the benefits of the NISG scale.

27. Mr. Bhattacharya then urged that the actual decision of the College authorities had not been challenged by the writ petitioner, as the subject matter of challenge herein is the internal communication of 18th April, 1994, which merely contains instructions that the decision of the College authorities be implemented immediately. Mr. Bhattacharya submitted that the writ applicable was liable to be dismissed on such score also as the decision of the College

authorities to revoke the benefit of the NISG scale granted to the petitioner and recovery over-drawn amounts on account thereof remained unchallenged.

28. Mr. Bhattacharya urged that in its writ jurisdiction, the High Court could not act as an appellate authority over the acts and deeds of the College in its administrative capacity. Furthermore, the College authorities had taken a decision in the matter only after giving all concerned a fair and reasonable opportunity of hearing.

29. In support of his aforesaid submissions, Mr. Bhattacharya referred to the decision of the Hon''ble Supreme Court in the case of Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others, wherein it was observed that certain directions given by the Municipal Commissioner, Bombay, for demolition of certain unauthorised structures, being administrative in nature, the same were not liable to be interfered with.

30. Reference was also made to the decision of the Hon''ble Supreme Court in the case of Tata Cellular Vs. Union of India, where the above principle has been reiterated, though in a different context.

31. Mr. Bhattacharya submitted that it was not the petitioner's case that his pay had been reduced by the College authorities or that such order was passed behind his back. On the other hand, such order was passed after the petitioner was given an opportunity of hearing by the Committee appointed for the said purpose and on considering the report of the said Committee wherein Shri Saha's grievance was found to be genuine. Mr. Bhattacharya urged that in the case of Bhagwan Shukla Vs. Union of India and others, it was observed by the Hon''ble Supreme Court that before the reduction of basic pay of an employee with retrospective effect, such employee should be given an opportunity to show cause against the action proposed to be taken. Mr. Bhattacharya submitted that in the said case the Hon''ble Supreme Court was considering a situation where because of administrative lapse the basic pay of the petitioner which had been fixed at a higher rate since 1970 was sought to be reduced in 1991 retrospectively with effect from 1970. Mr. Bhattacharya submitted that in the said case, although, the appellant was being visited with civil consequences, he had not been given an opportunity to show cause before reduction of his basic pay. He was not even put on notice before his pay was reduced by the Department and the order was made behind his back without following any procedure known to law. In such circumstances, the said decision, which was not interfered with by the Central Administrative Tribunal, was set aside by the Hon''ble Supreme Court.

32. Mr. Bhattacharya submitted that since the petitioner in this case had been given an opportunity of hearing before the decision was taken to revoke the benefit enjoyed by him on account of being awarded the N1SG scale, the decision of the College authorities could not be faulted.

33. Mr. Bhattacharya urged that since the petitioner had suppressed the fact that

he had been given a hearing by the Committee appointed by the Standing Committee (Management), his conduct disentitled to him to ask for any relief in the writ application.

34. In support of his said submission, Mr. Narayan Bhattacharya referred to the decision of the Hon"ble Supreme Court in the case of Mala Singh Vs. Financial Commissioner and others, .

35. Mr. Bhattacharya reiterated that since the Selection Grade could not be given to more than one person in the category of draftsman, the College authorities had no option but to revoke the grant already made in favour of the petitioner in order to correct the injustice done to the added respondent No.7 who had been and would continue to be deprived of the benefit of the NISG scale to which he was rightfully entitled and which had been denied to him owing to an administrative error on the part of the College authorities. Mr. Bhattacharya submitted that the ratio of the decision in Sahib Ram's case (supra) could not be applied to the facts of this case having regard to the above fact and the same would find support from the decision of the Hon"ble Supreme Court in the case of State of Orissa v. Adwait Charon Mohanty (supra) where it had been held by the Hon"ble Supreme Court that each case must be considered on its own set of facts.

36. Mr. Bhattacharya then urged that the other decision of the Hon"ble Supreme Court in the case of Nayagarh Central Co-operative Bank (supra) had no application to the facts of this case, since the same was a decision concerning an appointment which was accepted as valid on the principle of acquiescence. Mr. Bhattacharya urged that the principle of acquiescence was of no relevance to the facts of this case.

37. Mr. Bhattacharya submitted that this was a case which did not call for any interference and was liable to be dismissed.

38. Mr. Akmam Khan was appeared for Shri D.M. Saha, the added respondent No.7, adopted Mr. Narayan Bhattacharya's submissions and urged that since the respondent No.7 had been wrongly deprived of the benefit of the NISG scale, the College authorities had acted with the intention of rectifying the error and righting the injustice done to the added respondent No.7.

39. Replying to the question of Jurisdiction and the right of the petitioner to maintain the writ application on the Original Side of this court, Mr. Bikash Bhattacharya referred to a single Bench decision of this court in the case of Ajoy Kumar Ghosh v. State of West Bengal, reported in 1995(1) CLJ 121, wherein it had been held that Article 226 of the Constitution of India confers jurisdiction upon the High Court to issue appropriate writs in relation to any matter, the cause of action whereof arises within its territorial jurisdiction. It was also observed that this court exercised its Jurisdiction under Article 226 of the Constitution not by reason of rules framed by the court but in terms of the Constitutional mandate contained in Article 226 itself and in such a situation

there cannot be any bar in the exercise of this court's inherent Jurisdiction in granting liberty to convert an application filed on the Original Side as an application filed on the Appellate Side.

40. Mr. Bikash Bhattacharya submitted that having regard to the above, the writ application was maintainable as filed and this court had ample jurisdiction to entertain the same.

41. Since a point of jurisdiction has been raised, it will only be proper to dispose of such objection first.

42. Strictly speaking, the objection raised is not one of jurisdiction but whether the writ petition should have been moved and entertained on the appellate side of this court, since according to the respondents no part of the cause of action arose within the Ordinary/Original Jurisdiction of this court. It may be mentioned at this Juncture that when the writ petition was heard, this court had determination to take up both appellate and original side matters and could, therefore, have entertained the writ petition whether it was filed on the appellate or original side.

43. As was observed by the learned single Judge while dealing with the case of Ajoy Kumar Ghosh (*supra*), the High Court exercises its Jurisdiction under Article 226 of the Constitution of India not by virtue of the Rules framed by this court but on account of the provisions of Article 226 itself. The Rules have been framed for administrative convenience and cannot become a bar to the exercise of jurisdiction under Article 226 of the Constitution.

44. In any event, as will appear from annexure "A" to the writ petition, the Sub-Committee of the Board of Governors of the College took a decision to adopt the NISG scale as adopted by the State of West Bengal at its meeting held on 28th April, 1978, in the office of the Deputy Secretary (T), Eastern Regional Office, Ministry of Education and Social Welfare. Government of India, at 5, Esplanade East, within the Ordinary Original Jurisdiction of this court. It is pursuant to such decision that the NISG scale was subsequently awarded to the petitioner and then revoked in favour of Shri Saha.

45. Since the decision to adopt the NISG scale is part of the bundle of facts giving rise to the cause of action for the present writ petition, it must be held that a part of the cause of action arose within the Ordinary Original Jurisdiction of this court and the writ petition, is, therefore, maintainable on the original side of this court.

46. As to the merits of the case even if it be accepted that the NISG scale pertaining to "draftsman" had been wrongly given to the petitioner and the same should in the first place have been given to Shri D.M. Saha, the question is whether the petitioner should be made to suffer because of an administrative lapse on the part of the College authorities. Moreover, it is not as if the alleged error was sought to be rectified immediately after the NISG scale had been

awarded to the petitioner. While the said scale was given to the petitioner pursuant to an order passed on 7th February, 1981, with retrospective effect from 1st August, 1974, the same was sought to be withdrawn by an office order dated 9th June, 1988, in pursuance of a decision taken by the Standing Committee (Management) at its meeting held on 28th April, 1988.

47. In effect, the benefit extended to the petitioner in 1981, with retrospective effect from 1st August, 1974, was sought to be withdrawn after seven years and to make matters worse a decision was also taken in 1988 to recover from the petitioner the excess amounts drawn by him since 1st August, 1974.

48. The decision taken after an interval of seven years by the College authorities to revoke the NISG scale given to the petitioner and the further decision to recover all excess amounts drawn by him on being given the said scale, cannot, in my view, be supported at least as far as the second part of the decision is concerned. The said benefit had not been extended to the petitioner on account of any misrepresentation or maneuvering on his part, but apparently on account of an administrative error on the part of the College authorities.

49. In fact, in almost similar circumstances, the Hon'ble Supreme Court in Sahib Ram's case (supra) while holding that the upgrade scale had been wrongly given to the appellant, also held that since the upgraded scale had been given to the appellant not on account of any misrepresentation on his part, the amounts already paid to him on the basis of the upgraded scale could not be recovered from him. The said principle was reiterated in Adwait Charan Mohanty's case (supra).

50. In the Nayagarh Central Co-operative Bank's case relied upon by Mr. Bikash Bhattacharya, the appointment of the respondent, who had been appointed as Secretary of the Society allegedly in violation of the rules, and had been allowed to function for 13 years in such capacity, was not disturbed upon the finding that since the Registrar had acquiesced in such appointment it was not open to him to set aside the same.

51. Admittedly, in the case, the College authorities extended the NISG scale to the petitioner after Shri Saha refused to accept the same. It appears that Shri Saha had good reasons to do so and his grievance was ultimately found to be genuine. The difficulty that has been created in this case is because the NISG scale could be given by the College authorities to only one person from the category of "draftsman".

52. The ideal solution would have been to have extended the NISG scale both to the petitioner as also to the added respondent No.7, Shri D.M. Saha. Since apparently the same is not possible, the principles explained by the Hon'ble Supreme Court in Sahib Ram's case and in Adwait Charan Mohanty's case (supra) would have to be applied to the facts of this case.

53. Consequently, although i am not interfering with the decision of the College

authorities to revoke the NISG scale given to the petitioner and to award the same to Shri Saha. the respondents concerned shall not recover from the petitioner the amounts already paid to him on the basis of the NISG and deduction, if any, made till the date of this order shall be reimbursed to him,

54. The writ application is thus disposed of.

55. There will be no order as to costs.

56. All parties to act on a singed copy of the operative part of this Judgment on the usual undertaking.

57. Application disposed of