
(2019) 09 CAL CK 0270

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 954 (W) Of 2016

Shyamali Ganguly

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Industrial Dispute Act, 1947 — Section 2(p), 18
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0270

Hon'ble Judges : Shampa Sarkar,J

Bench : Single Bench

Advocate : Robin Kumar Ghorai, Soma Chakraborty, Ananya Neogi, Arunabha Ghosh, S.R. Saha

Final Decision : Disposed Of

Judgement

Shampa Sarkar, J

It is submitted by the learned Advocate for the petitioner that persons who had been appointed in the same post as her and were junior to her were drawing higher pay. Reference has been made to the certain paragraphs of the affidavit in opposition filed by the WEBEL Technology, in support of the contention. Admittedly, some persons were drawing Rs.1,000/? more than the petitioner. One such example is a person, named, Sri Shyamal Kumar Chakraborty. The petitioner relies on the decision of the Hon'ble Apex Court, wherein, it has been held that in consonance with the principle of service jurisprudence, a senior employee should draw higher pay than his junior.

It is further submitted by Mr. Ghorai, that the petitioner had moved this Court on an earlier occasion claiming higher pay on the ground of her qualification. The said writ petition was disposed of without granting the prayer, but granting liberty to the petitioner to approach the concerned authorities, if there was any anomaly in the pay structure. On the basis of such liberty, the petitioner filed a detailed representation on March 7, 2013, with tabular depiction of the anomaly

in the pay structure. The said authority had disposed of the said representation of the petitioner by an order.

Aggrieved by the order passed by the authorities, the petitioner once again filed W.P. 19176(W) of 2014. The said writ petition was heard and disposed of by a learned single judge of this Court on March 2, 2015. The relevant portion of the above judgement is quoted below:

"In the first of the petitions filed by the petitioner, she claimed to be entitled to higher pay on the basis of her better educational qualifications. This Court declined such prayer.

However, the Court left the petitioner free to complain of any anomaly in the pay received by her and perceived juniors.

In pursuance of the liberty granted to the petitioner, she filed the representation of March 7, 2013 and the table at the second page thereof captures the essence of her grievance.

The concerned officer of the employer ought to have paid attention to the table that had been indicated in the petitioner's representation and specifically dealt with the cases of others in the same post who drew less pay than the petitioner in September, 2004 but now get more pay. The order impugned does not deal with such aspect of the matter and glosses over the same in an attempt to skirt the primary question of anomaly raised by the petitioner.

Since the order impugned dated June 5, 2014 does not effectively deal with the grievance of the petitioner as evident from the representation dated March 7, 2013, such order is set aside and the concerned authority is directed to ensure that the representation of March 7, 2013 is appropriately dealt with by a reasoned order to be communicated to the petitioner within four weeks from date."

Pursuant to the above direction, another reasoned order was passed by the Chief Executive Officer, WEBEL Technology Limited on April 17, 2015. The petitioner is aggrieved by the order dated April 17, 2015.

The first contention of the petitioner is that the order impugned refers to the pay of persons who drew the same pay as her counterpart but, the order was silent with regard to pay of such persons who although junior to the petitioner was at least earning Rs.1,000/? more than the petitioner.

The next contention of the petitioner is that the bipartite settlement entered into between the registered Union, namely, WEBEL Technology Limited Employees Union was not binding on the petitioner, inasmuch as, the petitioner was not aware of such settlement and the petitioner was not a member of the Union. The petitioner further contends that the settlement was unfair and discriminatory in nature as the pay fixed therein did not take into consideration seniority and qualification.

Mr. Arunabha Ghosh, learned Advocate appearing on behalf of the respondent

nos.5&6 submits that the settlement was a settlement in terms of Section 2(p) of the Industrial Dispute Act, 1947 (hereinafter referred to as the said Act). According to Mr. Ghosh, Section 18 of the said Act made the bipartite agreement between the Company and the Union, binding upon the petitioner. Mr. Ghosh further contended that until and unless the said agreement was challenged and held to be not binding on the petitioner in an appropriate proceeding, the petitioner was not entitled to any relief, as prayed for in this writ petition.

Admittedly, the name of the petitioner appears in the list of employees annexed to the bipartite settlement.

It is a settled law that the settlement was binding upon all parties whose names appear in the settlement. For convenience, Section 2(p) is quoted below:

"Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to {an officer authorized in this behalf by} the appropriate Government and the conciliation officer."

It is the settled principle of law that the settlement entered into between the employer and the Union

is binding. For convenience, Section 18 is quoted below:

"Persons on whom settlements and awards are binding:? (I) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."

Under such circumstances, until and unless the said agreement is under challenge, this Court sitting under Article 226 of the Constitution of India cannot grant the relief, as prayed for.

If the petitioner succeeds in her challenge to the settlement in an appropriate proceeding, the claim for higher pay could be considered on the other facts stated.

Under such circumstances, this writ petition is disposed of granting liberty to the petitioner to file an appropriate application on the self same cause of action along with a challenge to the bipartite agreement, which according to the petitioner was entered into behind their back and allegedly by persons not authorized to represent her before the management.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.