

(2002) 05 CAL CK 0014
In the Calcutta High Court
Case No : F.M.A. No. 161 of 1994

Sri Rajesh Chandra Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:

Calcutta Municipal Act, 1923 — Section 537
Constitution of India, 1950 — Article 226, 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 24, 24(1), 377, 378

Citation : (2005) 2 CALLT 44

Hon'ble Judges : Maharaj Sinha, J;Ajoy Nath Ray, J

Bench : Division Bench

Advocate : Somen Chandra Bose and Arun Kr. Maity, for the Appellant; Chandra Sekhar Das and Alochhaya Sil, for the Respondent

Judgement

Maharaj Sinha, J.—This is an appeal against a judgment and order of a learned single Judge dated 20 December, 1991 passed in Civil Rule No. 4449 (W) of 1978.

2. A writ application was moved way back in the year 1978, to be precise on 20 July, 1978, when a Rule was issued and an interim order made by His Lordship, Mr. Justice N.C. Mukherjee (as His Lordship then was). Eventually, the said writ application was heard on merits and the same was concluded on or about 11 June, 1985 and the judgment was delivered after a lapse of five and a half years thereafter, to be precise again, on 20 December, 1991.

3. The facts and circumstances on the basis of which the said writ application was moved could thus be put in a short compass.

4. In the month of February, 1971 newspaper advertisements were made inviting applications for a whole time permanent post of Deputy Superintendent and Remembrancer of Legal Affairs, West Bengal, shortly called Deputy Legal Remembrancer (commonly known as D.L.R. in legal parlance). In continuation of the said advertisements made in the month of February there was another newspaper advertisement in the month of June, 1971 for the said post of D.L.R.

The said advertisement made in June, 1971 contained various particulars for the said job of Deputy Legal Remembrancer, West Bengal.

5. Pursuant to the said advertisements about forty learned advocates applied for the said post of Deputy Legal Remembrancer along with the appellant.

6. A selection committee was formed thereafter consisting of very experienced and reputed legal practitioner and officers namely, the then Advocate General, the then Judicial Secretary, and the then Legal Remembrancer for selection of candidates from those who applied for the said post.

7. The name of the appellant was, however, recommended along with the name of another learned advocate to the Government of West Bengal, being the first respondent herein.

8. The appellant was selected by the first respondent for the said post. The appellant was first appointed for the said post for a period of two years on probation with effect from 3 September, 1971.

9. The said appointment was, however, challenged in this High Court when an interim order was made and a rule issued. The said interim order, however, was vacated on 17 September, 1971 and the said rule was also discharged. The appellant was thereafter on the same day 17 September, 1971 was able to take charge of the office as Deputy Legal Remembrancer.

10. Having found the performance of the appellant satisfactory for two years on probation the first respondent on or about 20 October, 1973 confirmed the appellant in the said post of Deputy Legal Remembrancer with effect from 15 September, 1973 in the pay scale of Rs. 1,600-60-1,900/- with admissible allowances and other facilities. At the time of appointment the appellant was about 41 years of age in the year 1971. The duties and functions of the Deputy Legal Remembrancer are contained in Legal Remembrancer's Manual and Civil Service Regulation which no doubt have the force of law.

11. The duties and functions of the appellant were to give legal opinion on matters sent to him by the State Government and advise on the questions of preferring appeals both to the High Court from the orders of acquittal from the criminal Courts and also appeals to the Supreme Court against the orders of this Court and also to move revision applications to this Hon'ble Court against certain orders and to appear in criminal cases. In short, the appellant used to perform all duties as enumerated, in Rule 13 of the Legal Remembrancer's Manual.

12. It would, however, not be out of place to mention here that the post of Deputy Legal Remembrancer was created way back in the year 1875. From the very inception of the said post the office of the Deputy Legal Remembrancer was set up by the Government within the High Court premises. The chamber and office of the Deputy Legal Remembrancer in the High Court building was maintained by the Government all along and all the previous holders of the said post including the appellant performed their duties and functions and operated

from the said office at the High Court premises.

13. On or about 1 April, 1974 the new Code of Criminal Procedure, 1973 came into force. At the time when the said Criminal Procedure Code, 1973 came into force there was a Public Prosecutor in the Original Side of the High Court and the Deputy Legal Remembrancer was in charge of the criminal matter on the Appellate Side and in addition, he had other duties to discharge also. The appellant claims to have the requisite qualifications of being appointed a Public Prosecutor of High Court as an required under the provisions of Section 24 of the new Code of Criminal Procedure and for all practical purposes he had been working as such until the appoint of a Public Prosecutor, being the sixth respondent herein.

14. In or about the month of June, 1977 the Left Front Government came to power and Mr. Hasim Abdul Halim (presently the speaker of legislative assembly), was appointed as the Minister-in-Charge of Judicial Department. It is alleged by the appellant that the then Chief Minister and the Minister-in-Charge openly declared that they wanted committed lawyers. The appellant, it is alleged, had the reason to believe that the post of Advocate General, Senior Standing Counsel and the State Government lawyers were replaced by the persons who were supposed to be the committed lawyers as declared by the then Judicial Minister, being the second respondent herein, in public. The appellant, it is further alleged, had reason to believe that the new Government in the year 1977 did not want the appellant to hold the post of Deputy Legal Remembrancer as the appellant was not a committed layer and did not belong to any particular political party. The appellant had again reason to believe that from the very beginning the second respondent had been trying to find out ways to get rid of the appellant by any means. The appellant had been holding a permanent Government post as such he could not be removed from the said post without initiating and holding a complete disciplinary proceeding against him.

15. The respondent, it is alleged, could not find any fault with the working of the appellant though the appellant was under pressure to resign but the appellant did not do so as the appellant always acted with honesty, sincerity and in accordance with law.

16. On or about 7 July, 1977 the Minister-in-Charge, Judicial Department, being the second respondent, passed an order directing the appellant to hand over the room which had so long been the chamber of Deputy Legal Remembrancer to the learned Government Pleader and the Deputy Legal Remembrancer had to shift in the room which had so long been the chamber of the learned Government Pleader. In fact, the order passed by the second respondent on 7 July, 1977, inter alia, was termed in the following words :-

"Order regarding adjustment of room at High Court building relating to Deputy Legal Remembrancer and Government Pleader. The Government Pleader will sit in the room now allotted to the Deputy Legal Remembrancer and the Deputy

Legal Remembrancer will henceforth sit and perform duties from the room now allotted to the Government Pleader in the High Court building.

7 July, 1977 (H. A. HALIM) Minister-in-Charge Judicial Department"

17. In short the appellant faced great difficulties in discharging his duties to the unusual and unnecessary interference by the then Judicial Minister, the second respondent herein. The appellant, in fact, has alleged bad faith on the part of the second respondent and said that the facts as disclosed in the writ petition will show that the entire action of the second respondent had been tainted with malice against the appellant. Some such instances of actions in bad faith on the part of the second respondent, are referred to in paragraphs 20, 24, 25, 26, 28(a) and 28(b) of the writ petition. Such allegations of bad faith and/or mala fide actions on the part of the second respondent against the appellant, would be mentioned later in the judgment. There are allegations in the writ petition against the first respondent and also against the second respondent that the said respondents intended to withdraw various pending criminal cases on political and other extraneous considerations but the said respondents found it difficult to withdraw the said criminal cases against the accused due to the adverse opinion given by the appellant in course of his official duties. The first respondent, therefore, did not like that a person who raised objection to this proposal for withdrawal of criminal cases would be retained to its prejudice. It is alleged that the first respondent in order to by-pass the appellant started sending files directly to the learned Advocate General for his opinion.

18. It is alleged that the appellant had incurred the displeasure of the State Government and in particular the second respondent because he used to give independent legal opinion irrespective of the pressure upon him both from the first and the second respondents regarding withdrawal of cases and other matters.

19. In or about July, 1977 the first respondent decided to withdraw two criminal cases as the first respondent did not intend to prosecute the said two cases any further. The reference of the said two cases are given in paragraph 28 of the writ petition. The files of the said two cases were sent to the then learned senior standing counsel for his opinion and the learned senior standing counsel gave his opinion in favour of withdrawing the prosecution of the said two cases. The said two files were then sent to the learned Advocate General who also agreed with such opinion of the then learned senior standing counsel.

20. The second respondent, being the Minister-in-Charge of the Judicial Department, passed order withdrawing the prosecution of the said two cases. The said two files were then sent to the appellant through Legal Remembrancer for making necessary prayers before the Hon'ble Court for withdrawing the said two cases. The appellant, however, found that those two cases could be withdrawn only after obtaining consent of the Central Government.

The appellant then informed the learned Advocate General that the prayer for

withdrawing the prosecution could only be made after obtaining the consent of the Union Government and such consents were necessary for withdrawal of the said two cases. The reference of the said two files of the said two criminal cases are mentioned in paragraphs 28 of the writ petition.

21. A third case, it is alleged, in the same paragraph 28 of the writ petition, was also withdrawn where the then judicial minister, the second respondent appeared on behalf of the accused before the trial Court while the said minister was at the bar and according to him there was nothing in the matter though the State decided to file and filed appeal against the order of acquittal in the said criminal case. The reference of the necessary file No. is also mentioned in the said paragraph of the writ petition.

22. On or about 20 September, 1977 the State Government i.e. the first respondent decided to appoint a Public Prosecutor in the High Court under the provisions of Section 24(1) of the Code of Criminal Procedure, 1973. Late Biren Mitra, a learned advocate of this High Court, the sixth respondent herein, was appointed as the Public Prosecutor.

23. The newly appointed Public Prosecutor Late Biren Mitra was requested to take over the charge of the office of the Public Prosecutor, High Court from Sri Debaprasad Roy, who was then acting as Public Prosecutor of the High Court at Calcutta. The said order, therefore, dated 20 September, 1977 did not ask the appellant to handover the charge of office of the newly appointed Public Prosecutor at all. In fact, the appellant was discharging the duties of Public Prosecutor so far the cases in the Appellate Side were concerned even after 1 October, 1977.

24. On 6 October, 1977, however, an order was passed by the second respondent, the then minister-in-charge of judicial department, whereby the appellant was directed to handover all papers and files including the office room in his charge to the said Public Prosecutor immediately and in future all the matters of the criminal side were directed to be referred to the said newly appointed Public Prosecutor. The said order dated 6 October, 1977 was in the following terms :-

"The Deputy Legal Remembrancer may be directed to hand over all papers and file including the office room in his charge to the Public Prosecutor immediately and in future all matters of the Criminal Side should be referred to the P.P., High Court."

Said/- H. A. H. 6.10.77"

25. On or about 8 October, 1977, having been armed with the said order dated 6 October, 1977 Late Biren Mitra, the sixth respondent, entered the office of the appellant without his knowledge while, in fact, he was absent and took possession of the office without any prior information and permission at all. It is alleged in this connection that such an entry to the said office room by the sixth

respondent, Late Biren Mitra was utterly illegal, arbitrary and without sanction of law. The sixth respondent, in fact, usurped the functions and powers of the appellant illegally.

26. The appellant, however, it is alleged in the writ petition, was not given any other alternative accommodation though the said office of the appellant was taken over by the sixth respondent illegally and in improper manner as mentioned above. The appellant was left with no office accommodation and was practically made absolutely inactive while he was very much holding the office of the Deputy Legal Remembrancer of the State. The appellant being the Deputy Legal Remembrancer of the State certainly found himself without any office accommodation in the High Court or elsewhere as his office was taken over by the sixth respondent and that too without making any arrangement for alternative office accommodation and all these were done at the instance of the second respondent, being the then Minister-in-Charge of the Judicial Department.

27. The appellant, no doubt, has rightly contended in the writ petition that by virtue of his public post he was entitled to an office accommodation and by refusing the said office accommodation to the appellant his duties and functions as Deputy Legal Remembrancer were interfered with utterly illegally without the sanction of law.

28. The appellant, however, protested by a letter written to the Superintendent and Remembrancer of the legal affairs by demanding justice against such illegal and arbitrary Acts both of the second and the sixth respondents.

29. In the month of December, 1977 the appellant received a memo issued by the then Joint Secretary, Judicial Department, the fourth respondent herein, dated 8 December, 1977 whereunder the appellant was informed that the post of Deputy Legal Remembrancer was abolished by order of the Governor. The said order dated 8 December, 1977 was termed in these words :-

"Whereas a Public Prosecutor has been appointed by the State Government under Sub-section (1) of Section 24 of the Code of Criminal Procedure, 1973 (Act 2 of 1974), for conducting in the High Court, Calcutta no any prosecution, appeal or other proceeding on behalf of the State Government.

And whereas consequent to the appointment of such Public Prosecutor in the High Court, Calcutta, the permanent post of Deputy Legal Remembrancer, West Bengal borne in the Legal Remembrancer's establishment and carrying the scale of Rs. 1,600-60-1,900 has become redundant having no work-load to justify its retention;

Now therefore the Governor is pleased to order that the said post of Deputy Legal Remembrancer, West Bengal should be abolished with immediate effect.

Consequent upon the abolition of the post of the Deputy Legal Remembrancer, West Bengal, the Governor is further pleased to order that the services of Sri Rajesh Chandra Ghosh, who is holding the said post of Deputy Legal

Remembrancer, West Bengal in substantive permanent capacity should be dispensed with immediate effect. He should relinquish the charge of his post immediately. He is allowed three months' emoluments as gratuity in lieu of three months' notice in accordance with the provisions of Rule 46 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971. He shall be entitled to such gratuity as is admissible under the said rules but no gratuity shall be payable for the period in respect of which he has been allowed gratuity in lieu of three months' notice."

30. By the said order the service of the appellant was dispensed with immediate effect. The appellant was holding the post of the Deputy Legal Remembrancer, West Bengal in a substantive permanent capacity but he lost his job by virtue of the said order of abolition of the post of the Deputy Legal Remembrancer, West Bengal as above. He was further directed to relinquish the charge of his post immediately. He was allowed three months' emolument as gratuity in lieu of three months' notice in accordance with the provisions of Rule 46 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. According to the said order the appellant was entitled to such gratuity as was admissible under the said rules but no gratuity was payable for the period in respect of which the appellant had been allowed gratuity in lieu of three months' notice.

31. The appellant never accepted emoluments offered in lieu of notice and also did not have to hand over the charge to anybody nor anybody had ever come forward to take over the charge from the appellant at any point of time at all. The appellant contends that from the facts referred to in the writ petition it is apparent that the post of the Deputy Legal Remembrancer was abolished not for any administrative interest but merely with the mala fide motive of removing the petitioner by any means or in the manner as stated in the writ petition.

32. There is no doubt, however, that the post of the Public Prosecutor is a statutory post and according to the appellant it was incumbent for the State Government to advertise for the said post inviting applications from the intending qualified candidates. The State Government without issuing any advertisement at all surreptitiously, illegally and in excess of their jurisdiction appointed a man of their choice i.e. the sixth respondent herein, as the Public Prosecutor. The appellant no doubt had the requisite qualification for being appointed as a Public Prosecutor as he had been functioning as the de facto Public Prosecutor for the last six years and holding a permanent post under the State of West Bengal as Deputy Legal Remembrancer.

33. Mr. Somen Chandra Bose, the learned senior counsel, appearing on behalf of the appellant and Mr. Chandra Shankar Das, the learned counsel appearing on behalf of the respondents have given their able assistance to enable this Court to come to a proper conclusion on the facts and circumstances of the instant appeal.

34. Mr. Bose, learned counsel for the appellant has made his submissions mainly on two grounds. There is also a third ground which needs to be mentioned and

considered as well.

35. Firstly, Mr. Bose has contended that Rule 38 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which no doubt applies to the case of the appellant with its full force, is an affirmative procedure which casts an obligation upon the Government to offer an option to the holder of a civil post for accepting an equivalent or lower posts and if the incumbent does not accept the offer then only the Government is entitled to terminate his service on payments of three months' emoluments.

36. The provisions of Rule 38 of the said Death-cum-Retirement Benefit Rules 1971 are set out hereunder:-

Rule 38: Option in case of abolition of permanent post - If an officer is selected for discharge owing to the abolition of permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option--

"(A) Of taking any compensation pension or gratuity to which he may be entitled for service he has rendered;

or

(B) Of accepting another appointment or transfer to another establishment even on a lower pay if offered, and continuing to count his previous service for pension."

37. In support of his contention Mr. Bose has relied on a decision of the Supreme Court i.e. Ballabhdas Agarwala Vs. J.C. Chakravarty, . In the said case the provisions u/s 537 of the Calcutta Municipal Act, 1923 were under consideration. In paragraph 19 of the said judgment it was observed as follows :-

"On behalf of the appellant it has been urged before us that the provisions of Section 537 are obligatory, and the principle invoked in aid of this construction is that adopted by the Privy Council in AIR 1936 253 (Privy Council) viz., that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. In other words, the argument of learned counsel for the appellant is not that the word "must" must necessarily be read for the word "may" in Section 537, but that if a legal proceeding is to be instituted under the Municipal Act in question, it must be done in accordance with the provisions of the Act and not otherwise."

38. On the basis of the observations the Hon'ble Supreme Court found that the said Section 537 of the Calcutta Municipal Act was not observed in accordance with the terms thereof and the majority view namely Mr. Justice S.K. Das and Mr. Justice A.K. Sarkar (as their Lordships then are) were in favour of quashing the criminal proceedings being the subject matter of that appeal before the Supreme Court.

39. Relying strongly on the decision of the Supreme Court above and relying strongly on the fundamental rule of constructions of the provisions of an enactment, Mr. Bose has contended that under the provisions of the said Rule 38 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 a choice had first to be given to the concerned employee to accept an equivalent or lower post and if such offer is refused by the employee concerned only then the State had the option to terminate the service of the employee concerned upon payment of three months' salary or equivalent emoluments and not otherwise at all.

40. On the same principle as above Mr. Bose has contended that in not following the said procedure of offering in the first place equivalent or a lower post to the appellant the question of dispersing with his service by offering three months' salary or other emoluments could not in any event arise at all. The purported order of abolition of the said post of the appellant, according to Mr. Bose, did not become operative and the appellant was entitled to be deemed to have been in the service until he reached the age of superannuation.

41. Mr. Bose has submitted next that the chain of events leading to the order of abolition of the said post of the appellant, if considered objectively, then it points only to one direction that the order of abolition of the said post was made with a mala fide intent or motive and the facts or the chain of events set out in the writ application in several paragraphs i.e. paragraphs 20, 24, 25, 26 and 28 thereof are a clear pointer that the appellant was not otherwise liked by the Government, or to be more particular, by the second respondent, to be retained in service. The appellant was on the same ground, not offered any equal or lower post in terms of the said mandatory provisions in Rule 38 of the said 71 Rules.

42. Under the Code of Criminal Procedure which came into force with effect from 1 April, 1974. It was provided u/s 24 thereof that there should be a Public Prosecutor for every High Court. Mr. Bose has submitted that there was already a Public Prosecutor and the appellant continued to hold the post of Deputy Legal Remembrancer until a December, 1977. The appellant having successfully discharged his duties for the last four years as Deputy Legal Remembrancer why his name was also not considered for the post of the Public Prosecutor still remain incomprehensible. Needless to mention that there was also no advertisement for appointment to the post of new Public Prosecutor ever.

43. The second ground upon which Mr. Bose has relied most is that the appellant faced great difficulty in discharging his duties due to unusual and unnecessary interference by the then new Judicial Minister, the second respondent herein, Mr. Bose has given instances of the malafides particularly on the part of the second respondent and the first respondent in eventually getting rid of the appellant from his office by abolishing the post of the Deputy Legal Remembrancer of the State which the appellant was holding for the last few years without their being any difficulty at all.

i) In support of his contention Mr. Bose, particularly, has referred to the facts pleaded in some paragraphs of the writ petition. In paragraph 20 of the writ petition it is said that the Hon'ble Chief Minister and the Minister-in-Charge of the Judicial Department (the second respondent herein), when the new Government came to power, openly declared that they wanted committed lawyers who would be holding legal posts on behalf of the Government. In paragraph 3 of the affidavit-in-opposition affirmed by one, Nirmal Mukherjee, Deputy Secretary, to the Government of West Bengal, Judicial Department on behalf of the first, third and the fifth respondents, stating that such allegations were matters on record. Mr. Bose submitted that the allegations made in paragraph 20 were not denied at all.

ii) Then in paragraph 24 it was said that on 7 July, 1977 the second respondent, the then Minister-in-Charge of the Judicial Department, passed an order personally directing the appellant to hand over the room which had so long been the chamber of the Deputy Legal Remembrancer, to the learned Government Pleader and to shift in the room which had been the chamber of the learned Government Pleader. In the said affidavit-in-opposition in paragraph 6 thereof it is only stated that the allegations in paragraphs 24 to 28 are denied, the particular incident mentioned in the writ petition in paragraph 24 was not denied by the then Minister, second respondent herein, or even the deponent of the said affidavit. No affidavit was however used by the second respondent himself or on his behalf.

iii) Then in paragraph 25 and in paragraph 28 of the writ petition it was said that the appellant was asked to withdraw a few criminal cases including a case in which the second respondent appeared on behalf of the accused at one time when the accused was acquitted and the State Government preferred an appeal against such order of acquittal. In this connection relying on the statements made in paragraph 6 of the said affidavit-in-opposition to the said allegations made in paragraphs 26 and 28 of the writ petition, it is contended that there had, at best, been an evasive denial and that too by the deponent who affirmed the affidavit on behalf of the first, third and fifth respondents only and not by the second respondent in as much as the second respondent, in fact, did not choose to use any affidavit at all. The said allegations which were of serious nature against the second respondent remained unrebutted.

iv) It is contended serious allegations had been made against the second respondent in paragraph 31 of the writ petition which could only be denied by the second respondent alone. In the affidavit-in-opposition used on behalf of the first, third and the fifth respondent there has been practically no denial of the allegations made in the said paragraph 31 of the writ petition as the second respondent was not in position to deny such allegations in the first place. In paragraph 32 of the writ petition serious allegations were made against the then newly appointed Public Prosecutor of forcible entry to the office of the Deputy Legal Remembrancer. It is contended that in reply to such allegations what was

stated in paragraph 8 of the said affidavit of the first, second and the third respondents could at best be called on evasive denial, only by the said respondents and the allegations against the second respondent remained un rebutted.

v) Again it is argued, serious allegations of personal nature were made against the second respondent both in paragraphs 34 and 35 of the writ petition which practically remained un rebutted in affidavit-in-opposition used on behalf of the first, third and the fifth respondents. The denial that had been made in the opposition against these allegations could at the best said to be an evasive denial, but with regard to the allegations of loss of office because of the order passed by the second respondent dated 6 October, 1977 no answer had or has at all been provided and the said allegations have thus remained unanswered. It was also pointed out that the incidents mentioned in the said paragraphs of the writ petition took place much before the said order of abolition was even made.

44. In support of his contention on the ground of mala fide nature of the acts on the second respondent Mr. Bose, learned counsel on behalf of the appellant has relied on a decision in S. Pratap Singh Vs. The State of Punjab, .

45. Paragraphs 14 and 20 at page 72 of the said judgments were in particular referred to. Thus the said paragraphs 14 and 20 say this--

Paragraph 14

"We shall first take up for consideration the several allegations that have been made and see whether they had been satisfactorily made out. Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister, where could only be two ways in which they could be replied. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they need not have been answered and the appellant would derive no benefit from the respondents not answering them. We have already dealt with this motor and have made it clear that if they were true and made out by acceptable evidence they could not be ignored as irrelevant. (2) if they were relevant, in the absence of their intrinsic improbability, the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegations were made denying the same on oath. In the present case there were serious allegations made against the Chief Minister and there were several matters of which he alone could have personal knowledge and therefore which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department, who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In these circumstances we do not think it would be proper to brush aside the allegations

made by the appellant, particularly in respect of those matters where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observations we have in mind the Chief Minister as well as Mr. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them."

Paragraph 20

"The next allegation relates to the requests made by the Chief Minister himself and the members of his family for undue favours to be shown to certain patients who were recommended for medical certificates or for special treatment by the appellant at the hospital. This allegation was denied by the State, but as stated earlier, the denial has little force because the only persons who were in a position to contradict the appellant have not come forward to state anything on oath."

46. The petitioner, in the above case, was a civil surgeon in the employment of State Government who had been granted leave preparatory to retirement and subsequently in June 1961, orders were passed by the Government revoking the leave he had originally been granted and recalling him to duty, simultaneously placing him under suspension pending the result of enquiry into certain charges of misconduct and ordering the departmental enquiry against him. The legality of the order was challenged under Article 226 of the Constitution in High Court against the State Government of Punjab. The petitioner in the said case contended that everyone of the impugned orders of June 1961, was illegal and contrary to the services rules applicable to him. The second ground of challenge was that these orders assuming them to be within the power of the Government on a proper interpretation of the rules, were passed mala fide, by or at the instance of the Chief Minister, Punjab who was personally hostile to him by reason of certain incidents and circumstances and that the impugned orders "were prompted by the desire on the part of the Chief Minister to wreak personally his vengeance on the matter."

47. It was inter alia held by the majority in that case that the rule of law is guaranteed by the Constitution itself and Article 226 is designed to ensure that each and every authority in the State including the Government acts bona fide and within the limits of its power and that if the Court is satisfied that there is abuse or misuse of power and its jurisdiction is invoked it is incumbent upon the Court to afford justice to the individual.

48. Needless to mention here that in order to decide the allegations of such serious nature against an important person who was holding such a high office in the Government, like the second respondent herein, I have to consider and analyse the facts of this case in order to arrive at a decision as to whether the allegations of mala fide against the second respondent are of substance.

49. Mr. Bose, in support of the said second ground, next referred to decision in C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, of

the said judgment in particular was referred to.

50. In that case certain motor transport operators, challenged by a writ petition the validity of certain scheme framed under the Motor Vehicles Act, 1939, nationalising motor transport in their particular area, on the ground that the State Transport Corporation had framed schemes not because of their opinion formed under the provisions of the said Act but on the direction of the Chief Minister of the State and that the Chief Minister was himself motivated by an extraneous considerations as detailed in the petition, the petitioners gave all relevant facts in support of their allegations in their affidavit but there was no denial by the Chief Minister nor an affidavit by any person who claimed or could claim personally about the truth of those allegations and the affidavit filed on behalf of the Government formally denying the allegations on instructions of the Chief Minister was rejected as "hear say", by the Supreme Court.

51. It was inter alia held in that case that the allegations that the Chief Minister was motivated by bias and personal ill-will against the petitioner stood un rebutted.

52. In paragraph 22 at page 970 of the said judgment the Supreme Court said this--

"The next question is as regards the inference to be drawn from these facts which in the absence of their denial have to be taken as true. It is here that we have felt the greatest uneasiness, because if the facts which serve as the foundation for the plea of mala fide are made out, the only question would be whether the inference of malafides on the part of the Chief Minister would be a reasonable one to draw. It is at this point that we faced with the necessity of having to proceed without there being any effective answer to the propriety of drawing the inference which the appellants desire. There has been no denial by the Chief Minister nor an affidavit by any person who claims or can claim to know personally about the truth of these allegations. The Secretary to the Home Department, one Mr. S.A. Iyengar has filed a counter affidavit in which the allegations we have set out earlier have been formally denied. He says, "I have been expressly instructed and authorised by the Hon"ble the Chief Minister to state that the allegations suggesting personal animus and giving mandate are false and mischievous and have been deliberately made to create an atmosphere of sympathy."

53. In this connection, however, it would perhaps be useful to mention the observations of the Supreme Court in paragraph 20 of the said judgment. In paragraph 20 at page 969 of the said judgment it was said--

"It is, no doubt, true that allegations of malafides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before this and other Courts and it is found that they have been made

merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least by my stick. Consequently it has become the duty of the Court to scrutinise those allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the Courts it would conduce to a mere satisfactory disposal and consideration of them, of those against whom allegations are made come forward to place before the Court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of malafides on the part of authorities of the status of these with which this appeal is concerned have discharged their burden of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer".

54. This precisely is the situation in which we find ourselves in the present appeal. In the present appeal also we find that the learned single Judge in the Court below while dealing with the allegations of malafides in the writ petition merely observed that there was lack of materials to support such allegations. With respect the said observations of the learned Judge do not appeal to me and I do not agree with the learned Judge on that score.

55. In the present appeal in the absence of proper denial by the second respondent we are in the same position as the Supreme Court had been in the said case of *C.S. Rawgi v. State of Andhra Pradesh*. We are in this appeal, is left to judge the veracity of the allegations merely on the balance of probabilities as the allegations, which are positive in nature, against the second respondent remained unanswered. Furthermore such allegations in the present appeal, we find were based on certain documentary evidence as well, issued by the second respondent himself.

56. Relying on the said two judgments it was submitted by the learned senior counsel, Mr. Bose, on behalf of the appellant, that the same principle about the facts of non-traversal of the allegations by the persons against whom such allegations are made applied appropriately to this case also. The second respondent against whom the allegations of malafides have been made expressly in a sequence of events, stated in the petition, would clearly indicate that the second respondent was absolutely determined in removing the appellant from the service but as the appellant was holding a permanent civil post his service could not be terminated and as such recourse was taken to the device of recommending the abolition of the said post and as a member of the cabinet also deciding that the post of D.L.R. be abolished because a Public Prosecutor had to be and was appointed.

57. It was further contended on behalf of the appellant that the appellant was selected by a high powered selection committee, as mentioned above and was appointed by the State Government as Deputy Legal Remembrancer who was in-

charge of looking after all the criminal matters in the appellate side of the High Court and in addition he had several other duties also. The duty of the Public Prosecutor so far looking after the criminal matters in the appellate side of the High Court, were concerned, was the same as was being done by the Deputy Legal Remembrancer. No advertisements were made before the appointment of Public Prosecutor as was done in the case of appointment of Deputy Legal Remembrancer way back in 1971. Naturally, therefore, the appellant could not offer himself to the said post though he had been practically discharging the duties and functions of the Public Prosecutor and had the necessary qualifications to be appointed as Public Prosecutor as well.

58. Mr. Bose in support of his contention relied on two more decisions the first one is by the U.S. Supreme Court in the case of YICK & W.V. Peter Hookins (1888) 118 US 356 at page 272(B) and a decision in Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, . Since the passage from the said judgment of the U.S. Supreme Court relied upon by Mr. Bose is quoted with approval in the said judgment of Supreme Court in Messrs. Dwarka Prosad v. State of U.P. reported in 1954 page 224, only the passage of our Supreme Court from the judgment of His Lordship Mr. Justice Bijon Kumar Mukherjee (as his Lordship then was) at page 227, in paragraph 8, is referred to for the present purpose.

"It was joined out and with perfect propriety by Mr. Justice Mathews in the well known American Case of Wick Wo v. Hopkins" (1886) 118 US 356 at page 373(B) that the action or non-action of officers placed in such position may proceed from enmity or prejudice from partisan zeal or animosity, from favouritism and other improper, influences and motives which are easy of concealment and difficult to be detected and exposed, and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to everyman, without the necessity of detained investigation."

59. The above passage was cited in support of the facts consistently pleaded in the writ petition as chain of events leading to the order of abolition of the said post of the appellant as Deputy Legal Remembrancer. The said order may appear to be innocent but the real object of the man or men in power was that a person of independent mind and character who was holding such an important post as Deputy Legal Remembrancer be replaced by person or persons who were committed to such man or men in power.

60. Lastly, in the present appeal, the judgment of the learned single Judge was attacked inter alia, on the ground that the learned Judge though was quite satisfied that in consequence of the order of abolition of the said post of the appellant was seriously prejudiced but the learned Judge only directed the first respondent to pay compensation only for a period of 12 months. Secondly it was submitted that the learned Judge in fact noted all the points urged on behalf of the appellant i.e. the writ petitioner but the said points were not effectively dealt with at all in the judgment.

61. And thirdly, it was submitted, that the learned single Judge though heard the matter way back in 1985 when the hearing was concluded but the judgment was delivered by the learned single Judge after a lapse of about six years and that could, according to the learned counsel, be the reason of not dealing with the points urged on behalf of the appellant/ writ petitioner effectively in the judgment under appeal.

62. With regard to the first ground Mr. Bose has urged that the provisions under Rule 38 of the Death-cum-Retirement Benefit Rules, 1971 are mandatory provisions, which were to be complied with in any event before bringing the service career of the appellant to and end in the manner as the respondent did.

63. From a plain reading of Rule 38 of the said 1971 Rules it appears, if an officer who is selected for discharge owing to the abolition of a permanent post, such as the post of Deputy Legal Remembrancer he should unless, appointed to another post equal to the post that he was holding should have the options and the said options are provided in Rule 38(a) and Rule 38(b) thereof.

64. Mr. Chandra Sekhar Das, learned counsel appearing on behalf of the respondents, has submitted that there had been no illegality or irregularity committed on the part of the respondents in passing the order, being annexure (G), to the writ petition whereby the post of Deputy Legal Remembrancer was directed to be abolished and the services of the appellant holding a substantive permanent post of Deputy Legal Remembrancer were dispensed with with immediate effect.

65. In the first place Mr. Das has in support of his submission, strongly relied on a decision in *Re : Superintendent and Remembrancer of Legal Affairs, West Bengal v. Prafulla Majhi and Anr.* report in 91 CWN 423. According to Mr. Das it was held in the said judgment that u/s 377 and 378 of the Code of Criminal Procedure only the Public Prosecutor was empowered to file appeal against acquittal in criminal matters. The Government by the said judgment was directed to appoint a Public Prosecutor of the High Court with immediate effect and as such the Government had no option but to appoint a Public Prosecutor for the High Court as soon as possible on the basis of the pronouncement in the said judgment.

66. Mr. Das has submitted next, that Section 24 of the Code of Criminal Procedure, 1973 clearly provides the procedure for appointment of Public Prosecutor in district Courts as well as in High Court. There was no scope for making any advertisement or take interviews to select candidates for the said post because in the case of district Court Government was only to appoint a Public Prosecutor from the panel prepared by the District Magistrate in consultation with Sessions Judge and in the High Court after consultation with the High Court. The State Government, according to Mr. Das, was bound to appoint a Public Prosecutor as per direction of the Hon"ble Court under the amended provision of Section 24 of the Code of Criminal Procedure, 1973. The

duties and functions of the Public Prosecutor and the Deputy Legal Remembrancer were practically the same and as such it was not possible for the State Government to retain two posts for the same purpose. As a neutral consequences of appointment of Public Prosecutor the post of Deputy Legal Remembrancer was, therefore, decided to be abolished with the sanction of the cabinet and as such it could not be said that the post of Deputy Legal Remembrancer was abolished illegally or to cater the decision of the Left Front Government.

67. On the question of options for alternative appointment as provided under the provisions of Rule 38 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 Mr. Das has submitted that the condition of offering alternative appointment to the person whose post is abolished was or is not a mandatory provision. In the instant case as the abolition of the post of Deputy Legal Remembrancer was sanctioned by the decision of the cabinet and the cabinet also sanctioned of not offering any alternative employment to the appellant. The same, therefore, could not be said to be violative of Rule 38 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and as such the appellant was offered three months' salaries as per provisions of the said rules as the said 71 Rule. There was or had been no irregularity in either abolishing the post of Deputy Legal Remembrancer or not offering an alternative appointment to the appellant and the offer as made to the appellant for payment of three months' salary was perfectly valid.

68. Mr. Das next dealt with the allegations of the appellant made mainly against the second respondent in the writ petition. According to Mr. Das the said allegations had or have no bearing upon the instant case. The abolition of the post of Deputy Legal Remembrancer and the order for appointment of Public Prosecutor were not made by the opinion or intention or decision of the minister concerned i.e. the second respondent herein. The second respondent had no power to appoint the Public Prosecutor or to abolish the post of Deputy Legal Remembrancer. The post of the Deputy Legal Remembrancer was abolished with the sanction of the cabinet which remained unchallenged in the writ petition and as such these allegations of malafides against the second respondent should not be taken into account.

69. Mr. Das also made it clear that the Central Service Regulation was not applicable after coming into force the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. Lastly, Mr. Das submitted that the actions taken by the State in the matter such as passing of the order of abolition of the post of Deputy Legal Remembrancer and the other orders passed against the appellant were not illegal and very importantly. Mr. Das has submitted that the judgment of the trial Court does suffer from any illegality or infirmity.

70. Mr. Das, however, has at our instance handed up a chart giving full particulars of the payments of salaries and other emoluments which the appellant would have received, had he been in employment till his normal

retirement in May 1988. A sum of Rs. 4,28,687/- is shown to have been the amount which the appellant would have received as his monthly emoluments till his retirement as aforesaid in May 1988.

71. We appreciate the effort given by Mr. Das, learned counsel, for the respondents for preparation of the said chart at our instance.

72. As aforesaid we have had the advantage of hearing both Mr. Bose and the learned senior counsel on behalf of the appellant and Mr. Das, the learned counsel on behalf of the respondents at length.

73. From a plain reading of Rule 38 of the said 1971 Rules it appears, if an officer who is selected for discharge owing to the abolition of a permanent post, such as the post of Deputy Legal Remembrancer he should, unless appointed to another post equal to the post that he was holding should have the options and the said options are provided in Rule 38(a) and Rule 38(b) thereof.

74. As far as Rule 38 of the said 1971 Rules is concerned. There is no doubt that procedure provided therein is a positive one and an obligation was created upon the first respondent to offer an option to the holder of a civil post for accepting an equal or lower post that the employee holds. In others words, under the said provisions the employee has a right to be offered an option either to accept an equal post to that he was holding or a lower post and if and only if the concerned employee does not accept such offer, only then the question of payments of salaries for three months" would be a relevant factor or consideration. Any other interpretation or construction of the said provisions under the said Rule 38 would make the said provisions practically a dead letter and that would, no doubt, lead to an absurd result.

75. The legislature and the rule makers were quite conscious about the condition of an employee who was or is likely to lose his job suddenly and as such made the said provisions under Rule 38 to protect the interests of an employee concerned whose post is abolished by virtue of State action. It was not intended to make the employee redundant but he should be offered with an equal or a lower post upon the abolition of the post that he holds so that he does not lose his livelihood just by a stroke of pen on a particular day.

76. In my opinion there is no conflict again between provisions made in Rule 38 of the said 1971 Rules and the provisions made in Rule 46 of the said 71 Rules, a combined reading of the said two provisions under Rule 38 and 46 would make the above position quite Central Rules. I agree on this score with the learned counsel. Mr. Bose on behalf of the appellant that the respondents had been in incomplete breach of these mandatory provisions provided in Rule 38 of the said 1971 Rules by not offering the appellant the options for alternative appointment to the equal or lower post. Thus the first respondent made itself liable for breach of the said provisions under Rule 38 of the said 1971 Rules which it was under an obligation to discharge.

77. As aforesaid the allegations of malafides against the second respondent or the first and the second respondents have been stated in several paragraphs in the writ petition, these allegations have been referred to hereinabove in this judgment as well. Needless to mention that these serious allegations against the second respondent had not and have not been answered at all. In this connection the decisions relied upon on behalf of the appellant are noted hereinabove in this judgment. These decisions are *S. Pratap Singh Vs. The State of Punjab*, , *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, and *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, which also approved the American decision of *Yick Wo v. Peter Hopkins* reported in (1886) 118 US 356. The said decisions in the facts and circumstances of this case are quite relevant and are to be accepted as applicable to the present case.

78. Much before the appointment of the Public Prosecutor on 20 July, 1977 and much before the abolition of the post of Deputy Legal Remembrancer the second respondent in July 1977 by his letter directed the appellant to hand over his office to the learned Government Pleader. The said order was passed by the second respondent on 7 July 1977. It would be impossible for a reasonable mind to conceive as to why the said order was at all passed if the language of the said order also points to most obvious conclusion that the person concerned was ever-sensitive about the power he was enjoying as Minister-in-Charge of the Judicial Department.

79. Again the order of the second respondent dated 6 October, 1977, directing the Deputy Legal Remembrancer i.e. the appellant to hand over all papers, files including the office room in his charge to the Public Prosecutor immediately was a clean-pointer to one indisputable fact that the second respondent was ever-sensitive of his power and authority. What is striking in all these is the manner in which the then Deputy Legal Remembrancer, the appellant herein was treated by the first and the second respondents. To say the least I have no manner of doubt in my mind, that the appellant was treated in the most undignified manner which no doubt also was utterly improper and illegal. I here to bear it in mind when the said orders dated 7 July, 1977 and 6 October, 1977 were passed by the second represent the appellant was very much holding the post of Deputy Legal Remembrancer as the abolition of the said post took place much after the said orders were passed.

80. The question that arises in the mind of a reasonable man is why the appellant was treated in the manner by the second respondent as he was treated even much before the initiation of the process of abolition of the said post was prior set in motion. I have no manner of doubt in my mind, on the basis of the facts and circumstances of the case that the second respondent was moving with a predetermined mind to get rid of the appellant even much before the said order of abolition was passed. If the initiation of the process of abolition of the said post was predetermined because the second respondent intended to get rid of the appellant from the post that he was holding then subsequent sanction of

the cabinet for abolition of the said post could not cure the same.

81. The general principles of law relating to abolition of post appear to have been established on the basis of decided authorities both of the Supreme Court and of High Courts. The abolition of post is usually regarded by a Court of law as a matter of executive policy. If an employee loses his job by virtue of abolition of a post that he holds he cannot question such policy decision of abolition of the post that he holds on the ground that the service of the employee has been terminated or that he has been dismissed or removed from the service. Normally, therefore, the employees cannot complain of breach of principles of natural justice if he loses his job by virtue of an order of abolition of post simpliciter. The Courts usually do not interfere in the matters relating to abolition of post simpliciter. If, however, it is shown that such abolition was made arbitrarily or mala fide or that the true intention of such an order of abolition is to remove or dismiss an employee concerned then and in that event judicial interference is called for and the employee concerned has a remedy.

82. It is not necessary to deal with the decisions regarding abolition or creation of post in detail, suffice it to say that the above principles of law relating to abolition of post were, in fact, established through these decided authorities both of the Supreme Court and of High Courts. In this connection a Full Bench decision of the Allahabad High Court in *State of Uttar Pradesh and Another Vs. Dr. Prem Behari Lal Saxena*, the decision in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, and the decision in *S.S. Dhanoa Vs. Union of India and others*, are referred to. The Supreme Court, however, in the said judgment *M. Ramanatha Pillai Vs. The State of Kerala and Another*, .

"A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311(2)."

83. So the general principles of law relating to abolition of post are by now settled. A post may be abolished by an executive action or order but such order or action if taken in good faith then and in that event the Courts normally do not interfere in matters relating to such abolition of post. Needless to mention again, however, that every case depends on the facts and the circumstances of that case. If the order of abolition is found to be simple and straight forward without there being any arbitrary or mala fide element in such order and the facts and the circumstances of the case also do not indicate any impropriety then such order must stand. There is no manner of doubt, however, from the decided authorities that the power of Courts to make judicial review in a case of this nature of abolition of post is unquestionable but such powers are exercised on the established principles by Courts as above.

84. In the present appeal, however, the learned counsel on behalf of the appellant has submitted that the chain of events as set out in the writ petition leading to the final order of abolition of the post of the appellant, considered

objectively will lead to a positive interference that the initiation of the process of abolition of the said post by the man or men in authority was set in motion arbitrarily and with malafide intent to bring the service career of the appellant to an end though the order of abolition itself might appear as to be absolutely innocent.

85. To my mind, even if the order of abolition is to be regarded as a matter of policy decided by the executive, the said order of abolition does not and cannot itself justify the actions or the inactions of the concerned respondents not also to comply with the provisions under Rule 38 of the said 71 Rules at the sometime. The appellant, in my view, had the right to be offered an equal or lower post as provided in Rule 38 of the said 1971 Rules consequent to the said order of abolition of the said post.

86. These rules such as Rule 38 and Rule 67 of the said 1971 Rules were intended to protect an employee who might lose his job or post by virtue of an order of abolition of the present nature. The rule makers intended to provide protection to such employees whose posts could be abolished and naturally, therefore, provisions such as under Rule 38 were made. The respondents were and are under a duty to give effect to the said rules which were and are not only mandatory but are intended to protect the employees concerned who loses his job by virtue of absolute executive actions such as order of abolition of post.

87. The appellant was offered no options at all by the concerned respondents though under the rules he was entitled to be offered. It has already been indicated that much before the order of abolition of the post of Deputy Legal Remembrancer orders were being passed by the second respondent herein. In fact the orders dated 7 July, 1977 and 6 October, 1977 were made much before the said order of abolition was passed. With the concept of reasonableness in mind it can be said with sufficient certainty that the appellant was being harassed by the executive actions much before the post that the appellant was holding was abolished. No explanations have come forward from the person against whom such allegations have been made as to why these actions were at all needed and why the provisions of the rule which were intended to protect an employee whose post is abolished were not given effect to by the concerned respondents with the passing of the said order of abolition of the post of Deputy Legal Remembrancer.

88. Perhaps all these could have been and should have been explained by the concerned respondent, the second respondent herein. If he had chosen to come forward to counter those allegations, which to my mind were of immense importance. I have to bear in mind that the appellant came before this Court with his writ application way back in July, 1978. Years have passed still the appellant is waiting for no redress. The learned single Judge observed in her judgment under appeal that the respondent authorities did not give any option to the appellant/writ petitioner of any alternative appointment though the appellant was a permanent incumbent to the said post. It was further observed in the said

judgment (at page 86 of the paper book)--

"under the circumstances this Court is of the view that the petitioner is entitled to compensation for the loss of service which was in the nature of civil post. Articles 426, 429 and 436 provides the mechanism of the consequential effect for abolition of a permanent post vis-a-vis compensation pension which an incumbent is entitled to. The West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971 also provides for the social security measures for the State Government employees. Chapter (V) of the said rules includes compensation pension, invalid pension, superannuation pension, retiring pension etc. Where due to the abolition of the permanent post the holder of the post has not given an alternate appointment he is entitled to compensation pension. The petitioner had not been given any alternate offer. The petitioner had been prejudiced by the said abolition of post. Under the circumstances this Court is of the view that justice demands that the petitioner be paid the compensatory benefit in the nature of one year's salary at the rate what he had been drawing till the date of the abolition of the said post."

89. The learned Judge, therefore, hold that the appellant/writ petitioner was entitled to compensation for loss of service which was in the nature of a civil post. The consequential effect of abolition of a permanent post was compensation pension which an employee was entitled. The learned Judge further held that where due to the abolition of a permanent post the holder of the post is not given an alternate appointment he is entitled to compensation pension and since the petitioner had not been given any alternate offer the petitioner had been prejudiced by the said order of abolition of post of Deputy Legal Remembrancer Learned Judge found that the justice demanded that the writ petitioner/appellant should be paid the compensatory benefit in the nature of one year salary at the rate what the appellant had been drawing till the date of abolition of the said post. The interesting point is, the learned Judge took note of the failure on the part of the concerned respondents in not providing any alternate equal or lower post to the appellant. To my mind, however, the appellant was entitled to and had the right to have the options as contemplated under Rule 38 of the said 1971 Rules and the concerned respondents were in breach of the said rule. The concerned respondents were also under a duty to give effect to the provisions of Rule 67 of the said West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

90. The respondents, however, did not prefer any appeal nor the concerned respondents seem to have been aggrieved by the said order of the learned Judge, though the learned Judge had hold that since the holder of the post i.e. the appellant was not given an alternate appointment he was entitled to compensation pension as the appellant was prejudiced by the said order of abolition.

91. I, on my part, think that the appellant had the right of options as contemplated under the said Rule 38 of the said 1971 Rules. He was deprived of

such right by the inaction on the part of the concerned respondents as the mandatory provisions of the said Rule 38 were not complied with by the concerned respondents. However, the concerned respondents thought that their duty was only to comply with the provisions of Rule 46 of the said 71 Rules consequent upon such order of abolition.

92. As aforesaid at our request the learned counsel appearing on behalf of the respondents prepared a statement of pay and allowances for the period from 1.11.1977 to 31.5.1988 in the scale of pay to Rs. 1600-60-1900/- corresponding scale of pay of Rs. 2250-125-2750/- and corresponding scale of pay of Rs. 5900-200-7300/-. A total sum of Rs. 4,28,687.00 is shown to have been the final amount which the appellant would have received had the appellant been allowed to continue in service and retired at the normal age of retirement on 31 May, 1988. The said statement of pay and allowances was directed by us to be kept on record duly countersigned by the Assistant Registrar (Court) by our order dated 22 April, 2002.

93. I have considered the facts and the circumstances of the case in detail I have also seen the stand taken by the concerned respondents in their affidavits, I have already said the uneasiness with which I had to consider the serious allegations of malafides on the part of the second respondent, (in the absence of any statements from him) who had a vital role to play in the decision making process for abolition of the post of the Deputy Legal Remembrancer.

94. It is perhaps worthwhile to mention that the learned single Judge having found that the appellant was entitled to compensation pension, directed one year's salary to be paid to the appellant till the date of abolition of the said post that he was holding. In my judgment, in modification of the said order of payments of one year's salary as compensation pension, I substitute my order directing the first respondent to pay to the appellant the said sum i.e. Rs. 4,28,687.00 as reasonable compensation pension. The said sum appears to be a reasonable amount which the appellant should receive, under the facts and circumstances of this case, by way of reasonable compensation pension from the concerned respondents.

95. Although the order of abolition of the said post by itself may appear to be otherwise innocent but under the facts and circumstances of the case the appellant, in my opinion had been subjected to arbitrary treatment and serious injustice by the executive actions. The appellant in my view, is entitled to receive some compensation, and as such, for the purpose of justice, I direct that the appellant be paid the said sum of Rs. 4,28,687.00 by way of reasonable compensation. The entire payment of the said sum to the appellant by the first respondent should be made within a period of one month from the date of this order.

Thus this appeal is disposed of in terms of the above order.

There will be no order as to costs.

Ajoy Nath Ray , J.

96. I agree.