

(2008) 12 CAL CK 0013
In the Calcutta High Court
Case No : W.P.S.T. No. 325 of 2006

State of West Bengal and Another

APPELLANT

Vs

Dr. Bikash Mohan Sanyal and Others

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Citation : (2008) 12 CAL CK 0013

Hon'ble Judges : Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Joydeep Kar and Mr. Siddhartha Ghosh, for the Appellant; Arunava Ghosh, Debabrata Roy, Soumya Mazumder and Mr. Sayan De, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Sengupta, J.—State of West Bengal has impugned the judgment and orders dated 9th November, 2005 of the learned State Administrative Tribunal (hereinafter referred to as the Tribunal) by which the relief sought for by the first respondent was granted quashing the Government decision for withdrawal of stagnation increment in terms of Rule 9 of the Revision of Pay and Allowance Rules, 1998 (hereinafter referred to in short as ROPA Rules). The admitted fact in this case is shortly put hereunder:

The first respondent, Dr. Bikash Mohan Sanyal joined in the West Bengal Junior Education Service as Lecturer in Economics in April, 1966. Gradually, he was promoted to the post of Reader in Economics with effect from 1st January, 1986 in the pay scale of Rs.3700-5700. The scale of the Reader was revised by the Government with effect from 1st January, 1986 to Rs.12000-420 & 18,300. The first respondent while in the post of Reader reached maximum amount of pay in the above revised scale and started drawing @ Rs.18,300/- per month on and from 1st January, 2001. So thereafter he was stagnated in the said scale. Therefore, he was given stagnation increment with effect from 1st January, 2002 and the applicant drew such salary until he retired from services on 31st October, 2002. In the meantime the first respondent in terms of the Government Order

No. 1390-Edn. (A) dated 17th October, 2001 was granted two advance increments as was made available by the Government to the teachers of the Government colleges. By the said Government Order dated 17th October, 2001 a class of teachers viz. those who obtained Ph.D. Degree during service before 1st January, 1996 did not obtain advance increment for the Ph.D. Degree as per earlier Career Advancement Scheme with effect from 27th July, 1998. Notwithstanding grant of the said increment the Principal of the Presidency College where he worked till his retirement, did not incorporate sanction of the said two increments in the Service Book for the purpose of fixing his revised pension. On the contrary, the said Principal refused to update the said Service Book and forward the same to the Accountant General for the revised pension, rather asked the petitioner to deposit a sum of Rs.11,840/- with the Reserve Bank of India that was granted as stagnation increment. The said application was contested by the State. It was and still is the contention of the State that grant of stagnation benefit to the first respondent in terms of ROPA Rules was not appropriate as he cannot get it by virtue of the Rule 2 of ROPA Rules. According to the State, the respondent is a member of Services and has been given pay scale of the University Grants Commission (hereinafter referred to as UGC), so in view of the said Rule 2 the stagnation increment is not allowed. Therefore, he derived illegal benefit.

2. The Tribunal in its judgment and order found that Rule 2 of ROPA Rules cannot be applied to exclude the respondent as he is not a member of Services nor he was enjoying the UGC pay scale.

3. Mr. Joydeep Kar with Mr. Siddhartha Ghosh, learned counsels, contends that admittedly the respondent has been enjoying UGC pay scale, as such he became member of Services to whom the said scale was applied. He has drawn our attention to the Rule 2 which provides inter alia that those persons who are in services and enjoying UGC pay scale the ROPA Rules which provide for stagnation increment will not be applicable for them. It is true, according to them, the applicant was a Reader in the Government College but the moment pay scale at par with that of UGC is granted to him he is not a Government servant. In support of their contention they have relied on the decisions of the Supreme Court reported in T.P. George and Others Vs. State of Kerala and Others, and State of West Bengal and others Vs. Tropical School Employees' Union and others,

4. Mr. Arunava Ghosh, learned advocate appearing for the first respondent, contends that there is no justification to interfere with the judgment and order of the Tribunal who has interpreted Rule 2 correctly and when two interpretations of any Rule is possible this Court will not substitute its own interpretation. He says that admittedly his client was a Reader of the Presidency College, which is a State Government establishment. All along his service conditions including pay scales are governed by the Rules and Regulation framed by the Government. The pay scale of the petitioner has been revised by the State Government and not by

the UGC. The guidelines of the UGC with regard to pay scale of the College teachers has been accepted by the Government. While revising pay scale, if guidelines of UGC is adopted by the Government it becomes the decision of the Government but not that decision of the UGC. He has drawn our attention to the Government Notification dated 5th February, 1999 (No. 42-Edn. (A)/5p-63/98) and adds, if it is read carefully it will appear clearly what he submits. Rule 2 of the ROPA Rules whereunder category of the employees has been excluded from the purview of the ROPA Rules clearly suggests that the first respondent is entitled to get the benefit of the Rule 9 of the ROPA Rules. His client does not belong to the members of the Services to whom the UGC pay scale is applied.

5. While hearing the learned counsels for the parties and going through the case made out by the parties it appears to us that the point for consideration in this matter is whether the State applicant is justified to withdraw the benefit of stagnation increment given to the first respondent treating that he belongs to excepted category of the member of Services.

6. There is no dispute that the first respondent was a Reader in Presidency College which is exclusively run by the Government and as such he was appointed by the State Government. The ROPA Rules framed under the proviso of the Article 309 has been made applicable to the persons appointed to the posts of Civil Service and Posts under Rule Making Control of the Government of West Bengal. The applicant is a college teacher of the Government, so he is obviously holding the Post under the Rule Making Control of the Government of West Bengal viz. Higher Education Department. His pay scale was also revised from time to time by the Government and he was given pay scale of Reader by the Government by the decision dated 5th February, 1999. The language of the said decision being the Memorandum No. 42-Edn. (A)/5p-63 /98 dated 5th February, 1999 is very clear to hold that the pay scale has been fixed by the Government and not by any other authority. We, accordingly, for the sake of convenience, set out the portion thereof:

"After careful consideration of the matter, in order to attract and retain talent in the teaching profession the Government have decided to introduce the scheme of revised pay scales of college teachers as recommended by Government of India in the Government Colleges."

7. The revised pay scale was really adopted by the State Government as per recommendation of the University Grants Commission or by the Government of India.

8. It is clear from the said Notification concerned that the University Grants Commission has not fixed up a pay scale, rather guidelines has been given and the same has been adopted by the Government. We are of the view, as rightly contended by Mr. Ghosh, that adoption of pay scale under the guidelines and/or scheme of the University Grants Commission for the purpose of revision of pay scale of the Reader of this college cannot be said to be the pay scale of

University Grants Commission being applied. According to us, from the document annexed to this application it appears that it is clear without any ambiguity that the pay scale has been revised by the State Government not by the UGC or by the Central Government. In our considered view, in order to attract the exception Clause of Rule 2 of ROPA Rules one must be a member of the Services to whom the University Grants Commission pay scale can be applied meaning thereby there are staffs and officers of the various universities and other autonomous bodies where pay scale fixed by the University Grants Commission is applied as a matter of course and revision of pay scales for those categories of officers and employees depends upon the University Grants Commission but not upon the State Government. In other words University Grants Commission must be decision maker in this regard. Just because the State Government has accepted the guidelines of the University Grants Commission for revision of pay scale the status of the first respondent as being the Reader of the Government college is not altered and/or changed in order to deprive him of the benefit of stagnation increment. As such we are unable to accept the contention of Mr. Kar that by virtue of adoption of the University Grants Commission pay scale the first respondent comes within the excepted categories of the employees and therefore he is dis-entitled to get stagnation benefit. The decisions cited by Mr. Kar in support of his submission are hardly applicable to the facts and circumstances of this case. The decision of the Supreme Court in case of T.P. George and Others Vs. State of Kerala and Others, was rendered by the Hon'ble Supreme Court entirely on different fact. The said decision, while approving the decision of the Division Bench of the Kerala High Court, in another Writ Appeal No. 223 of 1991, has held that once the scheme formulated by the University Grants Commission is accepted by the Government either in its entirety or in the modified form, the said scheme to the extent which is applicable becomes the Government decision and once it is done the employees concerned cannot get any benefit other than the accepted portion of the scheme formulated by UGC.

9. The said decision is helpful in this case also. We fail to understand how the decision of the Supreme Court in case of State of West Bengal and others Vs. Tropical School Employees' Union and others, can be an authority in this case. In that case factually it was held that the employees of the University are not Government servants. They are governed by their own regulations and statutes in the respective enactments. In that case a group of Group-C and Group-D staffs wanted the benefit of second Pay Commission which was partly accepted by the Government and in that context it was held that since they are not Government employees they cannot get the benefit of the second Pay Commission to the extent it was accepted. In that case it was held that the UGC pay scale is applicable to those employees belonging to Group-C and Group-D. This judgment really helps us to hold the applicant's status as being distinguished from that of all the members of the Services to whom UGC pay scale is applied. The decision of the Supreme Court in case of B. Bharat Kumar and Others Vs. Osmania University and Others, is also not applicable in this case

as we have already found that the first respondent is the Reader of the Government College and as such he is holding the Post under the Rule Making Control of the Government of West Bengal and he is controlled by the Higher Education Department of the State of West Bengal.

10. We, therefore, do not find any fault in the judgment and order of the learned Tribunal. We affirm the same. Accordingly, this application fails and the same is dismissed.

Prasenjit Mandal, J.

11. I agree.