

(1992) 07 CAL CK 0038

In the Calcutta High Court

Case No : Appeal No. 16A of 1991 and Matter No. of 1985

State of West Bengal and Others

APPELLANT

Vs

Deb Kumar Mukherjee and Others and The D.M. 24 -
Parganas and Others

RESPONDENT

Date of Decision : 20-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 39(d)

Citation : 97 CWN 658

Hon'ble Judges : Shyamal Kr. Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shyamal Kumar Sen, J.—This appeal is directed against an order of the Learned Single Judge whereby the Learned Judge made the Rule absolute in the writ petition filed by the respondents. Learned Judge also passed, inter alia, the following directions :

The respondents are directed to revise the Pay Scale of the petitioners in the Scale of Rs. 425-1050/- after unifying and abolition of the two grades in the post of Inspectors of Housing Department with effect from the 1st April, 1981. Respondents are directed to pay to the petitioners all arrears of salaries and allowances within four months from the date of communication of this order"

The facts, inter alia, leading to this appeal are that the post of Inspectors were created in or about March, 1956 in the Development Department under the Government of West Bengal. For the purpose of appointment to the said post of Inspectors, the Government prescribed recruitment regulations and according to the said regulations graduates working in the Government offices were eligible for selection and appointment. For the purpose of appointment to the said post of Inspectors knowledge of Civil and Criminal Law and their application were essential, apart from the fact that they should be well conversant with the office procedures and accounts matters. Though the said posts were originally created

for the Development Department with the said posts were transferred to the Housing Department and the Inspectors were to look after the Middle Income Group Housing and Low Income Group Housing and the scale of pay prescribed for the said post of Inspector was Rs. 100-200. Originally the posts were created on temporary basis.

2. By a notification issued by the Department of Finance Government of West Bengal being Notification No. 5472-F dated 27th December, 1961 published in the Calcutta Gazette Extraordinary dated 2nd January 1962 the said department amended the West Bengal Service Rules 1961. by prescribing and/or reviving the scale of pay of the employees under the Government of West Bengal notwithstanding the fact that the respondents as Inspectors were employees under the Government of West Bengal and notwithstanding the fact that as inspectors were employees under the Government of West Bengal and the cadre of Inspector was borne in the cadre of Civil servant, the said pay Commission kept silent with regard to scales prescribed for the said post of Inspectors and though the said revision in the scales of pay was for abolishing the different scales of pay for the same post carrying and similar nature of responsibilities recommended the scale of pay Rs. 150-250/- for the Inspectors of the Housing Department. As a matter of fact this revision in the scale of pay and fixation of the scale of payment Rs. 150-250/- was challenged in the writ petition as wholly arbitrary and the said fixation was alleged to have been made without making any assessment, without considering the responsibilities and the performances attached to the said post. It is significant to note that the said scale of pay was prescribed for the Lower Division Clerk. It is further contention of the respondent (sic) petitioners in the writ petition that from the very beginning i.e. (sic) post of Inspectors in the Housing Department were included in the proper cadre and the status of the Inspectors were not at all maintained and therefore, the posts of Inspectors were even lower in status than the Upper Division Clerk. It is the further case of the writ petitioners that for the purpose of appointment as a Lower Division Clerk the required qualification was Matriculate and, the nature of job is stereotyped and completely clerical. From the recruitment regulations and prescription of eligibility criteria it would reveal that post of Inspector could in no way be equated with Upper Division Clerk even not to speak of Lower Division Clerk. As a matter of fact the nature of job of Inspectors was prescribed by the Government Order No. 1990-I K-87/55 dated 2.3.1956 and from the said Government Order it would reveal that the duties and responsibilities of the Inspectors are verification of income of the applicants and that of the surety by examining the trade licence and various other licences and examination of books of accounts and verification of pay certificate and verification of title deeds and documents in the matter of agricultural land for ascertaining the income from the source of agriculture. Secondly to verify the title to the land where the proposed building was to be erected and mortgaged to the Government.

3. It is the further contention of the writ petitioners/respondents that it would be crystal clear that duties and responsibilities of the Inspectors do not only in office

but also in the field in the nature of inspection. From the said Government order it would also reveal that if on any occasion the Head Clerk is absent. Inspectors are to take the charge of the work of the Head Clerk and in absence of Officer-in-Charge of the department to meet the visitors. In the said government order the official works were also prescribed. It is very unfortunate that the pay Commission which prescribed the scale of pay on the basis of duties and responsibilities attached to the said post revised the scales of pay and on that basis recommended a scale of pay which is wholly unwarranted for the post of Inspector of Housing Department. It is further significant to note that the said pay Commission recommended the scale of pay at Rs. 175-325/- for Inspectors of other departments who possess less academic qualification and perform less duties and responsibilities. Therefore, the recommendation of the pay Commission with regard to the scale of pay for inspectors was made not on any objective and/or rational materials but the said was made on some subjective and on imaginary grounds.

4. That against the aforesaid arbitrary fixation of pay of the Inspectors of the Housing Department the writ petitioners/ respondents submitted representation before the appropriate authority and the appropriate authority could well realise the contention and/or grievances of the Inspectors of the Housing Department and in order to meet the grievances of the Inspectors instead of abolishing the discrimination, the respondents further reiterated their discriminatory action by creating gradation among the same grades of Inspectors. As a matter of fact by Government Order No. 2044 dated 4th June, 1965 the post of Inspectors were graded one as Inspector grade - I in the scale of pay Rs. 175-325/- and another as Inspector Grade -II in the scale of pay Rs. 150-250/-.

5. It is the further contention of the writ petitioners/respondents that the said gradation of the post of Inspectors as Grade- I and Grade - II and prescribing a higher scale of pay for grade-I has no rational nexus between the performance, duties and responsibilities and this scale of pay attached to the said post and as such this Government order is on the face of it arbitrary, devoid of any reason and capricious. It has been alleged that there was and there is no intelligible differential amongst the Inspectors for the purpose of enabling the Respondents to make a rational discrimination amongst the Inspector. The writ petitioners/ respondents submitted that the Inspectors performing same and identical nature of job cannot be discriminated with regard to fixation of scale of pay. It is the case of the respondents/writ petitioners that the Inspectors of the Housing Department are a class by themselves and there is no difference between the work of Inspectors Grade -I and Inspector Grade - II and, therefore, the fixation of higher scale of pay for a particular group of Inspectors and fixation of pay in lower scale for another group are highly discriminatory and violative of rights guaranteed under Articles 14 and 16 of the Constitution of India. The writ petitioners/respondents submitted that the respondents as Inspectors of Housing Department are performing the same and identical nature of job and as such the respondents according to their accepted principles have issued different

notifications in similar circumstances the discrimination, distinction, difference among the same class of Government employee, should be abolished and one scale of pay should be introduced for Inspectors of Housing Department as they are engaged in similar same and identical nature of job.

6. It is the further contention of the writ petitioners/respondents that the respondents submitted a memorandum to the Chairman of the pay Commission of 1961 and the Commission after perusing the record and going through the memorandum was *prima facie* (sic) that the scales of pay fixed for the Inspectors Grade-I and Grade - II are discriminatory and also realised that the scale of pay that was prescribed in 1961 for all the inspectors as Rs. 150-250/- is also not commensurate with the work and/or duties and responsibilities attached to the said post of Inspector and as such the Commission recommended revised scale of pay of 350 - 600/- and also they further recommended to abolish the artificial gradation that was made purporting to mitigate the grievances of the Inspectors of Housing Department.

7. It is very significant to note that though the Government could well realise that the Inspectors of the Housing Department have been deprived of scale of pay commensurate with their duties and responsibilities and notwithstanding the fact that the Chairman of pay Commission, 1970 clearly recommended the scale of pay of the Inspectors as Rs. 350-600/- and abolition of gradation by the West Bengal Services Rules, 1970, the scale of pay for the Inspectors of L.I.C.G.H. Scheme, Howrah, Collectorate was equated with the scale of pay of the Lower Division Clerk, i.e. Rs. 230/- -405/- later on the Housing Department allowed the Inspectors Grade- I the scale of pay of Rs. 350-600/- and the Inspectors Grade-II were kept in the cadre of Lower Division Clerk by forcing them to draw scale of pay of Rs. 230-425/-. The writ petitioners/respondents submitted that the discrimination that was started from 1961 was reaffirmed by the 2nd pay Commission and /or Second revision of the scales of pay in 1981. It has further been submitted that by this fixation of scale of pay for Inspectors of the Housing Department and keeping gradation alive the respondents authorities have violated the constitutional provisions guaranteed under Articles 14 and 16 of the Constitution of India. That this fixation of scale of pay in 1970 for Inspectors Grade-I AND Grade-II has no relevant connection between the pay and performance of duties and obligations of respective offices and that such fixation of the scale of pay is wholly arbitrary devoid of any reason and on the facts of it capricious. The writ petitioners/respondents contended that there was no reason and there cannot be any reasonable ground and/or any intelligible *diffentia* in keeping alive the discrimination among the same categories of persons and making an artificial *differentia* among the same categories of persons by grading Grade - I and Grade- II posts of Inspectors carrying different scales of pay but the duties and responsibilities remaining same and identical. The writ petitioners/respondents further contended that this prescription of higher scale of pay for some Inspectors and lower scale of pay for some other Inspectors though they were appointed on same basis and same qualification and for performing the

same and identical nature of job, amounted to unreasonable and irrational classification and treated equals as unequals. Whatever be its activity the Government is still the government and is subject to restraint inherent in its position in a democratic society. Constitutional power conferred on the Government "cannot be exercised by it arbitrarily or capriciously or in unprincipled manner. The case of the writ petitioners/respondents is that the powers conferred on the government or public authority were to be exercised for the public good and that every activity of the Government must have a public element in it and it must, therefore, be with reasons and guided by public interest. Every action taken by the Government must be in public interest and government cannot act arbitrarily without any reason. In the instant case the fixation of scale of pay of the Inspectors as was observed by the Chairman, pay Commission of 1961 and from his recommendation it would reveal that the gradation among the Inspectors and fixation of separate scale of pay for each grade is wholly arbitrary and therefore, recommended one single scale of pay i.e. Rs. 350-600/- but the Government in refusing to accept the said recommendation did not assign any reason and on the contrary, the respondents reiterated their discriminatory action and equated a group of Inspectors with the Lower Division Clerk and kept alive the gradation which is the artificial gradation without any intelligible differential and therefore, this fixation of scale of pay which is artificial gradation created among the same categories of persons is wholly unconstitutional and invalid.

8. It is the further contention of the writ petitioners/respondents that the fixation of scale of pay of Inspectors and their gradation amounts to treating equal as unequals. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin test of classification being founded on intelligible differential which distinguishes persons from things that are group and that such differential must have a rational to the object sought to be achieved by the gradation. The respondents submitted that the privilege of the scale of pay of Rs. 350-600/- given by the Government to Inspectors Grade- II keeping other Inspectors out of the said cadre has destroyed the bed of equality as enshrined in Article 14 of the Constitution of India. The writ petitioners/respondents further submitted that gradation among the same the categories of persons and fixation of the same scale of pay according to the gradation without keeping in mind the duties and responsibilities and the jobs performed by the Inspectors affects the interest relating to public employment and it is violative of Article 16 of the Constitution of India and the same is violative of well settled principle and/or concept of equal pay for equal work. It has been submitted that when it was found that there cannot be any differentia between the Inspectors, they should have acted fairly and should have given equal treatment to all Inspectors of the Housing Department who perform the same and identical nature of job. The writ petitioners/respondents further submitted that Articles 39D of the Constitution of India imposes upon the respondents and obligation to see that the constitutional goal as enshrined in the

said Article i.e. equal pay for equal work is maintained. The respondents stated that, where all relevant considerations are same persons performing same and identical nature of job cannot be treated differently in the matter of their pay merely because they belong to different officers.

9. It is further contention of the writ petitioners/respondents that when the 3rd pay Commission was set up, it was expected that in order to rationalise the scale of pay among the public servant the said pay Commission would definitely abolish the discrimination in fixation of pay which was made earlier but unfortunately by the Revision of pay and Allowances Rules, 1981 the scales of pay of Grade-1 Inspectors have been revised in the scale of Rs. 380-910/- and whereas the scale of pay of the Inspectors Grade-II has been revised as Rs. 340-750/-. This revision in the scale of pay is nothing but revising and/ or keeping alive the discrimination which was started since 1971. The writ petitioners/respondents submitted that from instance given, below it would be crystal clear that the Inspectors of the Housing Department have been deprived of their legitimate claim and the scale of pay which is commensurate with the position status and duties and responsibilities of the same post.

10. Inspectors, Animal Husbandary and Dairy Department whose scale of pay was revised as Rs. 200-400/- in 1961, was given Rs. 300-600/- in 1971 and Rs. 425-1050/- was given in 1982 though the qualification for the said post is intermediate.

11. From the chart mentioned in the writ petitioner it appears that the Inspectors attached to the Housing Department were and are always discriminated from the Inspectors of other department in as much as Inspectors of Housing Department were and are discriminated among themselves with regard to fixation of their scales of pay. The writ petitioners/respondents further submitted that there cannot be gradation among the same categories of persons and there cannot be any discrimination in fixation of pay of same categories of persons. The categorisation of Grade -I and Grade - II is nothing but manifestation of the bureaucratic autocracy in order to create a division among the same categories of persons. As stated herein before there cannot be any reasons and/or ground for categorising the Inspectors into two categories when all considerations are the same. It has been submitted on behalf of the respondents that the Inspectors as Grade I and Grade II is violative of Article 14 and 16 of the Constitution of India as it makes a discrimination among the same categories of Inspectors of the Housing Department were appointed alike on the basis of the same qualification and experience and eligibility and the said Inspectors formed an integrated cadre, no discrimination could thereafter be made in favour of some Inspectors. It was submitted that this fixation of scale of pay and the gradation among the same categories of persons is wholly arbitrary and as such per se amounts to denial of protection of law.

12. It is the further contention of the writ petitioners/respondents that all the respondents formed one single integrated category i.e. inspectors of Housing

Department as such the scale of pay of the respondents should be fixed in the scale of Rs. 200-400/- from 1961, Rs. 350-600/- in 1971 and Rs. 425-1050/- from 1981 and non-granting of the said scale of pay is wholly arbitrary. The respondents/writ petitioners submitted that as Inspectors of Housing Department formed one integrated category there cannot be two scale of pay among the same categories of employees.

13. The writ petitioners/respondents further submitted that the respondents/writ petitioners were represented before the pay Commission set up in 1977 by the Association to which they belong but without any affect.

They demanded justice but justice has not been done.

Under such circumstances, they moved the aforesaid writ petition and succeed therein.

14. It has been submitted on behalf of the appellants that in the Housing Department and under its control, there are in all seven posts of Inspectors and out of the said seven posts the respondents Nos. 1 and 2 are Grade -I, Inspectors and they are senior in service to respondents Nos. 3,4,5 and 6 who are Grade II Inspectors of the said Department. Respondents Nos. 3, 4, 5 and 6 entered into service much later than the respondents Nos. 1 and 2. The respondents Nos. 1 and 2 are now in the scale of Rs. 380-910/- whereas the scale of respondents No. 3 to 6 who are grade -II Inspectors, have been placed in the scale of Rs. 340-750/- It has alleged that initially in the Department in the cadre of Inspector there was no scope for any promotion. In 1965, the authorities by Government Order dated 4.6.1965 as contained in Memo No. 2044 H.K. decided that a few posts of Grade-I Inspectors would be created for giving promotion on the basis of seniority. It has been submitted that the Grade I and Grade II Inspectors of the same cadre was made just only to open promotional benefits to the members belonging to the said cadre.

15. It has further been submitted that the recruitment Rules for the posts of the Inspectors were framed in 1988. In the said Rules it has been provided that the method of recruitment to Inspectors Grade I is by way of promotion from the cadre of Inspectors Grade - II. But the method of recruitment to the said cadre of Inspector is by way of Selection or by transfer from the cadre of Lower Division Clerk. But the qualification for the said direct recruitment to the cadre of Inspector is Higher Secondary or its equivalent but for recruitment to the cadre of Inspector by way of transfer is equivalent to the qualification of a lower Division Clerk. It may be mentioned that Lower Division Clerks did not require Higher Secondary pass Certificate or its equivalent. Only Graduate in Government service is considered for appointment to the post of Inspector is not the correct fact. It is further pointed out that the Inspector. Grade - II can also avail themselves of Promotion of the next higher post. It may be pointed out that Grade - II Inspectors already continue their lien in the post of Lower Division Clerks and accordingly, they get promotion to the Upper Division Clerks. To be

more clear it has been submitted that in the Housing Department Inspectors Grade- II are transferred from Lower Division Clerks with lien in the said clerical post. Thereafter those Grade- II Inspectors get promotion to the Upper Division Clerks when their turn comes. This practice has been continuing in the said department for the last more than 20 years.

16. It has also been contended that regarding the nature of job of the Inspectors of both the groups there is nothing peculiar. According to the appellants the contention of the writ petitioner respondents as made in the writ petition regarding the nature of their job is not correct and the same has been rather exaggerated. The duties of higher officers in the department have been shown to be discharged by the respondents but this contention of the respondent is far from the truth. To be more clear the nature of duties of the Inspectors is of general nature. There is nothing about any technical, legal or any other specified branch of knowledge.

17. It has further been submitted that in the Housing Department the recruitment to the posts of Upper Division Clerk is generally made from the Lower Division Clerks. The employees get promotion to various channels including Grade - II, Inspectors wherefrom an employee may either be promoted to Grade-I or to Upper Division Clerk. Thus the weigh (scale) status of Inspector Grade -I and Upper Division Clerk is same. The claim of the writ petitioners/ respondents is that they discharge higher duties, better responsibilities and have got higher qualification than the clerks though they should be treated as a separate class and they should be given higher monetary benefit by way of higher scale of pay cannot have any basis. It has further been submitted that the recruitment to the posts of Inspector purely an affair of the regional office of the Housing Department. Their appointments and thereafter promotion either to the Inspector or to the clerical line is purely a policy of the government and these qualifications have been brought only just to have better and more classified allotment of duties. This classification as Inspectors from the clerical staff is only meant for the qualification as well as allotment of duties of the Housing Department. It has been submitted on behalf of the appellant that the claim of the respondents is that they belonged to a higher cadre, consequently they can claim higher scale of pay is not correct.

18. It has also been submitted that impugned judgment and order if given effect to will create serious administrative troubles and there will be financial burden on the State Government.

19. It appears to that firstly the Government order dated June 4, 1965 by which the Government has created two grades i.e. Inspector Grade-I and Inspector Grade-II only in so far as the Housing Department is concerned providing two different scales as mentioned above, even though the qualifications, the nature of duties are same and that there is no basis for making of providing two scales in the facts and circumstances of the case.

20. Secondly, it has been urged that when the Inspectors of other department have been given the pay scale of Rs. 450-1050/- the respondents should also give that pay scale to the writ petitioners on the principles of equal pay for equal work.

21. It was further submitted by the Learned Advocate for the writ petitioner that in the instant case the respondents refused to pay equal pay for equal work in respect of the Housing Department Inspectors among themselves as well as in comparison with the other Inspector of other department under the Government of West Bengal. It was submitted by the writ petitioners that the action in this behalf taken by the respondent State Government, was highly illegal, arbitrary, discriminatory and violative of Article 14 and 15 of Constitution. It was further submitted that there was no rational basis for making classification of Inspectors into two Grades-Grade-1 and Grade-11 ignoring the principle of equal pay scale for equal work and inspite of the fact that they all perform the same nature of duties and take up similar responsibilities. In this connection reference was made to the case reported in Budhan Choudhry and Others Vs. The State of Bihar, wherein the Supreme Court held that Article 14 only forbids class legislations.

It does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible-classification two conditions must be fulfilled (Twin Test) viz.

(i) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relations to the object sought to be achieved by the status in question. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decision of the Hon''ble Supreme Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

22. Further reference was made from time to time to the case of D.S. Nakara and Others Vs. Union of India (UOI), where the Supreme Court considered the scope of "equal pay for equal work". Supreme Court observed in that case as follows :-

In that case, the writ petitioner before the Supreme Court was a driver cum Constable in the Delhi Police Force and he demanded that his scale of pay should at least be the same as the scale of pay of other drivers in the service of the Delhi Administration. There, the Supreme Court held as follows:- "We conclude that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar

functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

23. "It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Art. 39(d) of the Constitution proclaims equal pay of equal work" for both men and women as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the nexus. Directive principle as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Construing Articles 14 and 16 in the light of the preamble and Articles 39(d), we are of the view that the principle "Equal pay for equal work" is deductible from those Articles and may be properly applied to cases of in equal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

24. The Supreme Court also observed in that case that "the respondents in their affidavit did not explain how the case of driver in the Police Force was different from that of the drivers in the other departments and what special factors weighed in fixing a lower scale of pay for them."

25. "In the case of P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, the Supreme Court followed the decision of Ranadhir Singh (Supra) and held that "equal pay for equal work" is deductible from Articles 14, 16 and 39(d) and may be property applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. The Supreme Court held in that case there is no attempt was made to sustain the scales of pay of professor on the doctrine of classification because the classification of existing incumbents as being distinct and separate from newly recruited hands with flimsy change in essential qualification would be wholly irrational and arbitrary. The Supreme Court, therefore, issued a writ of Mandamus directing the Government to put the petitioners in the revised scale of pay where all relevant considerations are the same the persons holding identical post and discharging similar duties cannot be treated differently.

26. Supreme Court observed as follows in the case of Dhirendra Chamoli & Anr. vs. State of U.P. reported in (1986) S.C.C. 637.

It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Vuvak Kendras knowing fully well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare state committed to a socialist pattern of society cannot be permitted to advance such an argument. It

must be remembered that in this country where there is so much unemployment, the choice for the majority of the people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide as escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there shall be equality before law and equal protection of the law and should not be permitted to challenge the validity of the same on the ground of inordinate delay. On this question it was submitted by the learned Advocate for the petitioner that the delay should not debar the petitioner from obtaining any relief when it established that the impugned action violates the fundamental rights guaranteed under the Constitution of India. Further, the Affidavit-in-opposition is totally silent on the question why the Inspectors of other departments have been paid higher scale of pay of Rs. 425-1025/- without giving the same to the Inspectors of the Housing Department.

27. Learned Advocate for the State Government stated that the Inspectors of the Housing Department are performing the same duty as that of Clerks. We have considered the records and it appears to us that the Inspector cannot be equated with the Clerks and, as such the contention of the appellants they cannot get same pay as that of the Inspector of other departments can not be accepted. It appears from the proposed amendment to the recruitment Rules for the posts of Inspector on 6th August, 1986 that the Inspector Grade -I to be appointed by promotion from the cadre of Inspector Grade- II is to be appointed by selection on the basis of merit-cum-seniority from the cadre of Lower Division Clerks of the respective district/house building loan office having at least five years experience in departmental work, and they should have as minimum qualification a degree of an Indian University in the event of direct recruitment by selection. A xerox copy of the letter addressed from the Deputy Secretary to the Government of West Bengal, the Secretary, Public Service Commission regarding proposed recruitment rules have been produced in court. The same proposed rules were subsequently incorporated and accepted by the Government. The said rules are set out herein below :-

"A" Inspector Gr. I by promotion from the cadre of Inspector, Gr. II "B" Inspector G. II (i) By selection on the basis of merit-cum-seniority from the cadre of Lower Division Clerks of the respective district/house building loan office having at least live years experience in departmental work.

(ii) By direct recruitment through selection :

a) Qualification : A degree of an Indian University.

b) Age: Not more than 35 years on the first day of January of the year of recruitment.

28. That apart, it does not appear to us that there is any scope for promotion from the post of Inspector Grade-I whereas from the Upper Division Assistants there are promotions to the post of Section Officer etc. Under such circumstances, the contention of the Learned Advocate for the State Government that the post of Inspector Grade-I is identical with that of grade of Upper Division Assistants can not have any basis. Their duties are different from that of Clerks. They are discharging duties and functions similar in nature to Inspector of other departments.

29. Accordingly, we do not find any reason to interfere with the judgment and order under appeal.

The appeal is, accordingly, dismissed.

There will be no order as to costs.

Ajit Kumar Sengupta, J.

I agree.