

(2001) 08 CAL CK 0028
In the Calcutta High Court
Case No : F.M.A. No. 312 of 1995

State of West Bengal and Others

APPELLANT

Vs

Sudhakar Bhandari

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 309

Citation : (2002) 2 CALLT 567

Hon'ble Judges : Tarun Chatterjee, J;Asit Kumar Bisi, J

Bench : Division Bench

Advocate : Sankar Mukherjee, for the Appellant;B.R. Neogi and S.K. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Bisi, J.—The instant appeal is at the instance of the appellate State of West Bengal and Ors. and is directed against the judgment and order dated 16.12.87 passed by the learned single Judge of this Court in Civil Rule No. 2241(W) of 1980. By the impugned judgment and order the learned single Judge allowed the writ petition filed by the writ petitioner presently the respondent Sudhakar Bhandari, made the rule absolute and directed the State authorities to take immediate steps for treating the said writ petitioner as Sub-Assistant Engineer and further directed to pay all the service benefits to which he would have been entitled had he been treated as Sub-Assistant Engineer in terms of the Notification dated November 19, 1974 within a period of 12 weeks from the dated of communication of the said order.

2. In a nutshell the facts of this case are that the writ petitioner filed the writ application against the inaction on the part of the State authorities to term the writ petitioner as Sub-Assistant Engineer and action of the State authorities in conferring the benefit on a selected diploma holder engineer. The petitioner was appointed to the post of Mohurrior on 18.2.69 and thereafter promoted the post of Calculator on 18.9.72. His qualification as Diploma Holder in Engineering was

recorded in the Service Book. The Government of West Bengal by the Notification No. 10303-F dated d 19.11.74 issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India amended the provisions of West Bengal Services (Revision of Pay and Allowances) Rules, 1970 and the said Notification dated 19.11.74 provided that in Schedule I Part B of the said Rules of 1970, the following amendments, *inter alia*, shall be made : "IV(ii): All Test Relief Officers and other Diploma Holder Engineers will henceforth be termed as Sub-Assistant Engineers". The West Bengal (Revision of Pay and allowances) Rules, 1970, as amended from time to time regulate the Pay and Allowances and other conditions of service and according to the amended Rules, 1970, the Diploma Holder Engineers are entitled to be termed as Sub-Assistant Engineers to get the benefits including Pay and Allowances of the said post.

3. It has been alleged by the writ petitioner that the Government of West Bengal has not termed him as Sub-Assistant Engineer nor he has been paid the allowances of the post of Sub-Assistant Engineer although under the provisions of the said amendment made by the aforesaid Notification dated 19.11.74, the State Government is under obligation to term the petitioner as Sub-Assistant Engineer and pay to him the Pay and Allowances of the post of Sub-Assistant Engineer in recognition of his qualification of Diploma in Engineering.

4. The learned single judge held that the petitioner is entitled to the benefit of being treated as Sub-Assistant Engineer in terms of Notification No. 10303-F dated 19.11.74 and the State Government is under an obligation to treat the petitioner as Sub-Assistant Engineer and pay to the petitioner the Pay and Allowances attached to the post of Sub-Assistant Engineer in recognition of his qualification of Diploma Engineering. Consequently, the writ petition was allowed and the Rule had been made absolute. The learned single Judge passed the directions upon the State authorities in the manner as indicated above. It is noteworthy in this context that despite the direction to file affidavit-in-opposition, the State Government had not filed any affidavit-in-opposition before the learned single Judge for which it was observed by the learned single Judge that the allegations made in the writ petition should be taken to have been admitted.

5. Being aggrieved by the judgment and order passed by the learned single Judge in the above noted matter, the State/appellants have preferred the instant appeal contending, *inter alia*, that the learned single Judge was wrong in holding that the respondent should be treated as Sub-Assistant Engineer, inasmuch as, the respondent is not eligible to be called and placed as Sub-Assistant Engineer and as such the notification in question has got no application in the case of the respondent. It has been further alleged by the appellants that the learned single Judge in the present case should have held that the petitioner is not entitled to the benefit of being treated as Sub-Assistant Engineer in terms of Notification No. 10303-F dated 19.11.74 and the State Government is under no obligation to treat the respondent as Sub-Assistant Engineer and as such the question of payment of the Pay and Allowances attached to the post of Sub-Assistant

Engineer does not arise at all.

6. The sole point arising out for decision in the instant appeal is whether or not the learned single Judge was justified in allowing the writ petition and directing the State authorities to take steps for treating the writ petitioner presently the respondent as Sub-Assistant Engineer and giving all the service benefits to which he would have been entitled had he been treated as Sub-Assistant Engineer in terms of the Notification dated 19.11.74.

7. Admittedly, the respondent who is the writ petitioner was appointed to the post of Mohurrior on 18.2.69 and thereafter promoted the post of Calculator on 18.9.72. It is indisputable as well that the present respondent is a Diploma Holder Engineer. The learned advocate for the appellants has contended that in terms of Memo. No. 1075-Estt/E/7p-102/78 dated 7.3.81 of the Land and Land Reforms Departments, Government of West Bengal, the Surveyors/Draftsmen employed in Land Acquisition offices under the administrative control of the said department who possessed Diploma in Engineering and held the said post prior to 5th September, 1979 should be redesignated-in terms of Notification No. 10303-F dated 19.11.74 issued by the Finance Department as surveyors and ex-officio Sub-Assistant Engineer and/or Draftsman and ex-officio Sub-Assistant Engineer with effect from 1st March, 1974 and as the respondent is a Calculator whose post is not a technical one and did not complete 10 years of service in 1980, he is not entitled to get any benefit in terms of the Notification No. 10303-F dated 19.11.74. To refute the above contention the learned advocate for the respondent has drawn our attention to copy of the letter No. 10301-LA(II)/2-E-33/73 dated 4th June, 1973, issued by the Assistant Secretary to the Government of West Bengal, Land Utilization and Reforms and Land and Land Revenue Department, Land Acquisition (II) Branch, to the Collector, 24-Parganas (South), Land Acquisition Department, Alipore which has been marked annuexure-"X-2" to the writ application and pointed out that it has been specifically stated in the said letter that the duty of the Calculator should be treated as technical post. Having regard to the above materials on record we are clearly of the view that the post of Calculator is a technical post and that being so, the post of the present respondent is a technical post.

8. The learned single Judge referred to the unreported judgment of this Court made in the case of Kamal Kumar Bhadra and Ors. v. Chief Engineer, Government of West Bengal and Ors. in C.R. 6053(W) of 1978 where this Court while making the Rule absolute held in the following manner :-- "There is nothing in the notification dated 5th of September, 1979 to indicate that the explanation should be deemed to have been in force from since the date of notification dated 19th of November, 1974, therefore, those who were eligible to called and placed as Sub-Assistant Engineers and entitled to the scale of pay as contemplated in the appropriate rules their right could not be defeated by any notification which is prospective in its application. Therefore, the notification dated 5th of September, 1979 does not affect the present petitioners because undoubtedly

they were entitled without the notification to be called Sub-Assistant Engineers. It may also be pointed out that the notification itself is an admission on the part of the Government that prior to 5th of September, 1979, all other diploma holder engineers even though they were not holding positions of the same scale of pay as Sub-Assistant Engineers for whose recruitments qualification of engineer was not necessary were entitled pursuant to the notification dated 19th of November, 1974 to be termed as Sub-Assistant Engineer and to be paid their pay scale accordingly."

9. The learned advocate for the respondent has submitted that the decision of this Court in the case of Kamal Kumar Bhadra and Ors. (supra) was challenged by the State of West Bengal before the Division Bench of this Court and the appeal preferred by the State of West Bengal against the said decision was dismissed by the Division Bench of this Court whereupon the State of West Bengal went to the Hon"ble Apex Court and the Hon"ble Apex Court has ultimately dismissed the civil appeal preferred by the State of West Bengal. The learned advocate for the respondent has produced the copy of the judgment of the Hon"ble Apex Court in the aforesaid matter wherefrom we find that the said civil appeal being Civil Appeal No. 830 of 1991 (State of West Bengal and Ors. v. Kamal Kumar Bhadra and Ors.) along with another civil appeal No. 1196 of 1986 (State of West Bengal and Ors. v. Debdas Kumar and Ors.) was heard by the Hon"ble Apex Court and the said appeals were dismissed on 19.2.91.

10. It has been specifically provided in sub-para (ii) of para IV of Notification No. 10303-F dated 19.11.74 that all Test Relief Overseers and other Diploma holder engineers will henceforth be termed as Sub-Assistant Engineers. In the case of Kamal Kumar Bhadra and Ors. (supra) it was contended by the State that the said sub-para (ii) of para IV of the said Notification applies only to the overseers, estimators and sub-overseers already holding the scale of pay of Rs. 300-600/- and not to Operator-cum-Mechanics/Electricians etc. like the said writ petitioners whose scale of pay is Rs. 230-425/-. Such contention was negated by the Hon"ble High Court and Hon"ble Apex Court. In the said case the learned single Judge construed the expression "other Diploma Holder Engineers" in Clause (ii) of para IV of the said Notification as covering persons who are holders of Diploma in Engineering. The Division Bench, however, held a contrary view on that score. It has been specifically observed by the Hon"ble Apex Court in the said case that the Division Bench in holding a contrary view overlooked the fact that the post of Overseers, Estimators and Sub-Overseers were already covered under the category of Sub-Assistant Engineers even under the unamended rules and were in the pay scale of Rs. 300-600/- whereas the respondents holding the post of Operator-cum-Mechanics/Electricians were diploma holder engineers in the scale of pay of Rs. 230-425/-. The observation of the Hon"ble Apex Court made in the said case which is very relevant for our purpose is noted below : "As noticed by the learned single Judge, the reasons for amending the 1970 Rules by the Notification dated 11.3.74 and 19.11.74 was the decision of the Government to remove the anomalies in the existing rule so as to attract men of quality and

also with a view to remove frustration among those having specialized knowledge of a technical nature. This factual background was not considered by the Division Bench while considering the scope of the amended provision."

11. Applying ratio of the decision of the case of Kamal Kumar Bhadra and Ors. (supra) which was ultimately upheld by the Hon"ble Apex Court as noted above to the instant case we are of the view that the learned single Judge was perfectly justified in holding that the writ petitioner (presently the respondent) is entitled to the benefit of being treated as Sub-Assistant Engineers in terms of Notification No. 10303-F dated 19.11.74 and the State Government is under an obligation to treat him as Sub-Assistant Engineer and pay to him the Pay and Allowances attached to the post of Sub-Assistant Engineer in recognition of his qualification of Diploma Engineering. It has been contended by the learned advocate for the appellants that the respondent was promoted to the post of Calculator on 18.9.72 and he filed the writ petition in 1980 when he did not complete 10 years of service in the technical post and that being so, he is not entitled to get the benefit as claimed. But we find no substance in such contention raised by the learned advocate for the appellants since on plain reading of Notification No. 10303-F dated 19.11.74, it appears to us that completion of 10 years of service in the grade next below is required only for the purpose of sanctioning the new or intermediate selection grade which is not at all relevant in the instant case.

12. For the foregoing reasons we find no merit in the instant appeal. The appeal is accordingly dismissed. The judgment and order dated 16.12.87 passed by the learned single Judge of this Court in Civil Rule No. 224(w) of 1980 is hereby affirmed.

There will be no order as to costs.

Xerox certified copy of the judgment be given to the parties if the same is applied for.

T. Chatterjee, J.

I agree.