
(1996) 07 CAL CK 0042
In the Calcutta High Court
Case No : F.M.A. No. 192 of 1991

State of West Bengal

APPELLANT

Vs

Kalipada Paul

RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:

Citation : (1996) 2 ILR (Cal) 153

Hon'ble Judges : Visheshwar Nath Khare, C.J.; V.K. Gupta, J

Bench : Division Bench

Advocate : A.C. Moitra and Sumitra Dasgupta, for the Appellant; Japan Kumar Pal, Santosh Kumar Banerjee and Surojit Chakrabarti, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, J.—This appeal is directed against the judgment of a Learned Single Judge dated March 9, 1988 where, while allowing the writ application of the Respondents, a mandamus was issued by the Learned Single Judge upon the Appellants directing them to effect the revision of the pays scale of the Respondents in the post of Operator-cum-Mechanics from Rs. 300-685 to Rs. 340 - 375 with effect from April 4, 1981 and also to pay them the arrears within a period on 18th months from the date of the communication of the order.

2. The Respondents had filed a writ petition in this Court claiming that they were working as Operators-cum-Mechanics in the R.L.I. Scheme under the Chief Engineer (Agriculture-Mechanic), West Bengal. The following four types of duties was claimed to be performed by the Respondents:

1. The Operator-cum-Mechanics in the R.L.I. Scheme operate 3 diesel engines and pumps of 24.5 h.p. each having discharge of 2.5 cusecs per hour.

2. The Operator-cum-Mechanics" has to perform the duties of repairs, diesel engines and pumps apart from operating the same. They are entrusted with the function of maintenance of the diesel engines and pumps.

3. The Operator-cum-Mechanics are also entrusted with the duties of measuring the lands to be irrigated under the R.L.I. Scheme for cultivation.

4. The Operator-cum-Mechanics is also to perform the job of store-keeping and maintaining the stocks and maintaining the stocks and maintaining the stocks and maintain the registers and books in connection therewith. In this connection some of the documents from which the aforesaid duties will appear are annexed hereto and collectively marked with the matter "B".

3. The case of the Respondents before the writ Court was that in 1961 they were in the pay scale of Rs. 140-200 whereas the Tubewell Operators were working in the pay scale of Rs. 100 - 140 and in 1971 while the Respondents were in the pay scale of Rs. 230 - 425, the deep tubewell operators worked in the pay scale of Rs. 180 - 350. By the coming into force of the West Bengal Service (Revision of Pay and Allowances) Rules, 1981, the pay scales of the Respondents and the deep tubewell operators were brought at par. The grievance of the Respondents was that by bringing the pay scale of deep tubewell operators at par with that of the Respondent, Arts. 14 and 16 of the Constitution were violated and unequals were treated as equals in the matter of the grant of pay scale. Reference were also made to memorandum No. 27-35/78 dated June 6, 1978 whereby, as many as 13 posts, including those of Operator-cum-Mechanics and deep tubewells operators were brought together under one grade of Rs. 230-420. It is claimed that the 1981 Pay Revision Rules were more or less based on the aforesaid memorandum dated June 6, 1978.

4. We have heard the Learned Counsel for parties at great length. It appears to us clearly that the Learned Single Judge perhaps fell in error in mixing the question of equal pay of equal work and the issue of unequals being treated as equals. If the Respondents had any actual grievance with regard to any wrong allegedly done to them, undoubtedly they were entitled to maintain the petition. As clearly seen in the present case, the grievance of the Respondents was illusory and not real. If a person or any class of persons is working at a particular level and is placed in a particular grade, he can be justified in his complaint if he says that he has been downgraded from that not in that level or pay scale or that persons inferior to him in service or grade have been upgraded to a level higher than his own level in service. If such a complaint is made, the Court is duty bound to enquire into the allegations and find out if persons similarly situated have been treated differently and if the Petitioners have been wronged because of their supersession. In the case before us, however, we find that all that happened an inferior category of Government employees in regular Government Service has been brought at par with the Operator-cum-Mechanics and placed in the same grade, along with 11 other similar categories of Government employees. If some classes of employees in a lower category are brought along with and at a level of a class of employees in a higher category, unless and until the employees in the higher category have any genuine, legitimate and real grievances, it cannot be said that any wrong has been per se

done to them. It is also to be noticed and observed that the basic cause of action, if at all, could be deemed to have accrued to the Respondents when 1978 memorandum was issued bringing at par and clubbing 13 post of Government employees together under one grade. In fact it was at that point of time that the Respondents could have felt aggrieved of being treated at par with the tube-well operators and others, if at all ; even though we have no doubt that even that event did not give rise to any cause of action to the Respondents. If in the meantime the Pay Commission, while rationalising the pay structures of various Government officials did take into consideration the aforesaid memorandum of 1978 and because, in the meanwhile 13 posts had been clubbed together, it recommended uniform pay structure for all these 13 posts, based on the principle of rationalising of pay structure, one can only say that the pay Commission was wholly justified in doing so. The Pay Commission was an expert body and it conducted the exercise of fixing the pay structure on the basis of the data and the material available before it.

5. Apart from the aforesaid considerations, we totally fail to understand as to how could the Respondents claim the relief of promotion to a higher grade than that of operator-cum-mechanic, merely and only because deep tubewell operators had been brought at par with them. The judgment under appeal of course proceeds on a very strange hypothesis that if a class of employees is brought at par with another class, the second class should be lifted to a step higher automatically. We fail to appreciate the reasoning of such a hypothesis.

6. It is not within the province of this Court to declare that a particular class of Government employees is entitled to a particular scale of pay. If at all the Respondent felt aggrieved, the best that could have been done under the circumstances was to direct the Appellants to consider the grievances of Respondents in the light of the material available to the Appellants and on the basis of the applicable rules and regulations. Nothing more could have been done.

7. For the foregoing reasons therefore, we allow this appeal and set aside the judgment of the learned Single Judge.

8. Before parting, however, we wish to observe that it shall be upto the Respondents to approach the Appellants for redressal of their grievances. If such a representations is made within one month from today, we direct that the Appellants shall consider the same purely on its merits and in accordance with applicable rules and regulations and dispose of the same within a reasonable period of time.

9. No order as to costs. V.N. Khare, C.J.: I agree.