

(1975) 03 CAL CK 0007
In the Calcutta High Court
Case No : F.M.A. No. 458 of 1974

State of West Bengal

APPELLANT

Vs

Santi Ranjan Roy

RESPONDENT

Date of Decision : 17-03-1975

Acts Referred:

Constitution of India, 1950 — Article 226(1), 309
West Bengal Shops and Establishments Act, 1963 — Section 21(1), 21(2)(e), 25(1), 25(2)(b)

Citation : 79 CWN 1025

Hon'ble Judges : Mitra, C.J;S.K. Datta, J

Bench : Division Bench

Advocate : Pravat Kumar Sen Gupta and Paritosh Kumar Mukherjee, for the Appellant;Saktinath Mukherjee and Bhaskar Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—This is an appeal against the judgment and order dated December 24, 1973 passed by A.K. Sen, J. in Civil Rule No. 2745 (W) of 1973 whereby the Rule was made absolute.

The facts in short are as follows:

The petitioner in response to an advertisement issued by the Public Service Commission on January 19, 1961 applied for the post of Inspector of Shops and Establishments under the Shops & Establishments Act, 1940. The petitioner was selected and was appointed in that post from October 6, 1961, and since then the petitioner has been serving the Government in the said post. By an order dated June 8, 1973 the petitioner was transferred from Burdwan to Durgapur and was posted "as a Supervisor of Labour Welfare Centres in the same service with effect from the date he assumes charge until further orders." The petitioner challenged this order of transfer as being made in violation of the conditions of his service as according to him he could not be transferred from the post of Inspector under the Shops and Establishments Act which constituted a separate

and distinct cadre from the other cadres of the West Bengal Subordinate Labour Service. The petitioner also contended that the proposed transfer was not in public interest and was made malafide for reasons mentioned in the petition. The petitioner on these allegations and contentions moved this Court under Article 226(1) of the Constitution and obtained the connected Rule on June 26, 1973 praying for a Writ of Certiorari quashing the order of transfer as also for issuing a Writ of Mandamus restraining the respondents from giving effect to the impugned order.

The State of West Bengal and other respondents being officers of the department, contested the Rule by filing affidavits-in-opposition and it was stated therein that the petitioner belonged to West Bengal Subordinate Labour Service or as per Government notifications. The West Bengal Subordinate Labour Service has four subdivisions--Inspector of shops and Establishments, Inspector of Minimum Wages, Inspector of Trade Unions, Supervisor of Labour Welfare Centres. These four Sub-divisions have same grade and their services are interchangeable. Accordingly there is no legal impediment in the transfer of a person holding a post in one of the sub-divisions to a post of another sub-division of the same service. The petitioner accordingly could not contend that the order of his transfer was not in accordance with law. The allegations of malafides in passing the impugned order was denied. The petitioner filed his affidavit-in-reply reiterating the allegations made in the petition.

2. The learned Judge held that the rules of appointment to the statutory posts of Inspector of Shops and Establishments framed under sections 21(1) and 21(2) (e) of the Bengal Shops and Establishments Act, 1940 or under sections 25(1) and 25(2) (b) of the Shops and Establishments Act, 1963 which repealed the earlier Act do not provide for any appointment of an Inspector by transfer from other cadres of the West Bengal Subordinate Labour Service. It was held that these two posts, namely, the post of Inspector of Shops and Establishments and the post of Labour Welfare Officer did not belong to the same cadre and these were not interchangeable and any appointment of such Inspector by transfer from other cadre would be contrary to the statute and its Rules. Accordingly it was held that until the four different categories of posts classified as West Bengal Subordinate Labour Service are amalgamated into one unit as a whole they cannot be considered as a cadre by themselves and the notifications did not constitute the different categories of service into one cadre. For the above reasons, the Rule was made absolute and a Writ in the nature of Mandamus was issued directing the respondents to recall the orders of transfer and further directing them not to give effect to the same. The propriety of this decision has been challenged in this appeal filed by the State of West Bengal and its officers.

3. Mr. Pravat Kumar Sen Gupta, learned Government Pleader appearing for the appellants, submitted that these four services were brought into one cadre by notifications issued by the Government of West Bengal under powers conferred by Article 309 of the Constitution. He drew our attention to the notification dated

December 16, 1954 whereby the West Bengal Junior Labour Service was constituted with posts designated as Labour Officer (Conciliation) and Labour Officers (Statistics). By notification dated November 14, 1969 an amendment was made to the notification of 4th November, 1959 in respect of other services and also thereby the West Bengal Subordinate Labour Service was constituted with the following posts: (1) Inspector of Shops and Establishments, (2) Inspector of Minimum Wages, (3) Inspector of Trade Unions and (4) Supervisor of Labour Welfare Centres.

4. On December 18, 1963 the Governor framed rules, under proviso to Article 309 of the Constitution, for recruitment or appointment to the posts of Inspector of Minimum Wages, Inspector of Trade Unions and Supervisor of Labour Welfare Centres in the Labour Directorate. On March 30, 1964 the Government framed rules for appointment of Inspectors of Shops and Establishments in exercise of the powers conferred under sections 21(1) and 21 (2) (e) of the West Bengal Shops and Establishments Act, 1940. Again by notification dated July 31, 1968 framed under powers conferred by sections 25(1) and 25(2) (b) of the West Bengal Shops and Establishments Act, 1963 the Government published rules for appointment of Inspectors of Shops and Establishments. On the same day again the Government under Article 309 proviso framed rules for appointment to the other three categories of services under the Labour Directorate of the Government of West Bengal. Our attention was also drawn to the notification of May 14, 1970 in supersession of the earlier notification whereby the Government constituted West Bengal Subordinate Labour Service amongst others consisting of four categories of posts we have already indicated.

5. It will appear from a perusal of the above notification that though the West Bengal Subordinate Labour Service was constituted as a service it had four categories of services which have been referred to above. The Rules appointment of Inspector of Shops and Establishments have been framed under powers conferred by the Act while the rules for appointment in the three other categories have been framed under Article 309 proviso. In the rules of appointment to the respective categories of service there are only two methods provided, viz. (1) by selection as a result of the West Bengal Miscellaneous Services Recruitment Examination and (2) by promotion from clerks and assistants of the Labour and Shops and Establishments Directorate. Government of West Bengal. In none of these notifications there is any provision for appointment by way of transfer of persons belonging to the other category of West Bengal Subordinate Labour Service to the posts of Inspector of Shops and Establishments and vice versa. It is obvious that in this state of affairs there is no scope for inter-changeability of the posts of Inspector of Shops and Establishments with posts of the other categories of the service, which in view of the different rules of appointment have been kept separate and distinct categories in the West Bengal Subordinate Labour Service.

6. Mr. Sen Gupta has submitted that the Government has the power to change

the terms and conditions of service and it was so done by the constitution of the West Bengal Subordinate Labour Service. He further submitted that the petitioner at no period of time disputed the above constitution of the Junior or Subordinate Labour Service and it has not been shown also that he suffered any prejudice by such transfer. We have not been shown any rule whereby the posts of these categories of the West Bengal Labour Subordinate Service have been constituted by amalgamation into one unit or cadre and the posts are interchangeable. On the contrary we have seen the separate recruitment rules framed under different provisions of law which does not make any provision for such interchange. It may be further noted that the petitioner have always been serving prior to the impugned order as the Inspector of the Shops and Establishments under the Shops & Establishments Act. Accordingly it cannot be said that he submitted to the inter-changeability of posting in the different categories in Junior or Subordinate Labour Service as interpreted by Mr. Sen Gupta appearing for the Government. It has been stated further that there may not be any financial prejudice as under the West Bengal Services (Revision of Pay and Allowances Rules) 1961 these categories of service have been put in the same grade. Even so the post of Inspector of Shops and Establishments is a statutory post with certain additional powers which we do not find in the posts of other sub-divisions of the said service and these posts, as we have seen are not interchangeable. For all these reasons we are of opinion that the posts of Inspectors of Shops and Establishments form a distinct category of the service and they are not interchangeable with other categories of service. Accordingly the order transferring the petitioner to the post as a Supervisor of a Labour Welfare Centre cannot be sustained.

For all these reasons this appeal fails and is dismissed.

There will be no order for costs. Sankar Prasad Mitra, C.J.

I agree.