
(1993) 08 CAL CK 0040
In the Calcutta High Court
Case No : Matter No. 527 of 1993

Tapan Kumar Chandra and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 229

Citation : (1994) 1 CALLT 359

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : D. Chowdhury, S.B. Mukherjee, P.K. Das, Barin Ghosh and Manju Manot, for the Appellant; Samar Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—In. the present Writ Petition four petitioners who are graduates in law and having been enrolled with Bar Council of West Bengal to practise as Advocates were selected for the post of Assistant Registrars on the Original Side of this Court, and they are now working as such. They have prayed, inter alia :

(a) Declaration that the petitioners were entitled to and be given higher initial start in the same manner and mode as had been granted to all recruits for the posts of Clerk of the State/Assistant Registrar on the Original Side of this Hon"ble Court prior to 1st April, 1981.

(b) A Writ of and/or Order and/or Direction in the nature of Mandamus do issue commanding the respondents to forthwith grant to the petitioners the higher initial start in the same manner and mode as has been granted to all recruits for the posts of Clerk of the State/Assistant Registrar on the Original Side of this Hon"ble Court prior to 1st April, 1981.

(c) A Writ of and/or order or Direction in the nature of Certiorari do issue commanding the respondent authorities to forthwith transmit to this Hon"ble

Court all records, papers and documents pertaining to their wrongful title not to pay to the petitioners the higher initial start which had been given to and availed of by all recruits for the post of Clerk of State/Assistant Registrar on the Original Side of this Hon''ble Court appointed prior to 1st April, 1981 so that conscionable justice may be done by quashing the same.

(4) A Writ of and/or Direction and Order in the nature of Mandamus do issue to the respondent authorities from taking any step or further steps to refuse to grant to the petitioners higher initial start to which the petitioners were and are entitled and which facility has been granted to all the direct recruits for the post of Clerk of State/Assistant Registrar on the Original Side of this Hon''ble Court appointed prior to 1st April, 1981.

(e) A Writ of and/or Order and/or Direction in the nature of Mandamus do issue commanding the respondent authorities to forthwith grant to the petitioners all benefits at par which have been granted by the respondent authorities to the direct recruits for the post of Clerk of State/Assistant Registrar on the Original Side of this Hon''ble Court appointed prior to 1st April, 1981.

(f) RULE NISI in terms of prayers above.

(g) Rule to be issued herein be made absolute.

(h) Injunction restraining the respondents, their servants, agents and assigns from refusing to grant same and/or similar facilities to the petitioners attached to their respective posts as those who have been recruited in the post of Clerk of State Assistant Registrar on the Original Side of this Hon''ble Court appointed prior to 1st April, 1981.

(i) Ad interim orders in terms of prayers above.

(j) Appropriate direction and/or other order or orders be made and/or direction or directions be given as to this Hon''ble Court may seem fit and proper.

2. The grievance of the petitioners is that they are discharging and have been made responsible for the same and/or similar duties as the persons who have been recruited prior to 1st April, 1981 but in the matter of payment of emoluments, the respondents have discriminated amongst the same class of employees, namely the petitioners, and the direct recruits prior to 1st April, 1981. In fact, the employees similarly circumstanced prior to 1981 had received the benefits of higher initial pay at the time of recruitment. Subsequently, the appointees after 1981 have not been receiving the benefits of higher initial pay. It is stated in details that there was a proposal for granting higher initial pay for direct recruits in the posts of Clerk of the State, Assistant Registrar and the Special Officer on the Original Side. It has been brought to the notice of the Court that the Joint Secretary to the Government of West Bengal by a communication dated 24.8.1977 informed the Registrar, Original Side of this Court "that the Government is agreeable to grant the proposed higher initial pay for direct recruits in the posts of Clerk of the State, Assistant Registrar and the

Special Officer on the Original Side from the legal profession only. A draft rule for the purpose be forwarded to this department for according approval of the Governor under Article 229(2) of the Constitution."

3. After the introduction of ROPA Rules, 1981, a dispute arose and it was brought to the notice of the Original Side of this Court by the then Secretary to the Government of West Bengal by a letter dated 30.12.1987 that higher initial start was allowed to the direct recruits in the posts of Assistant Registrars and Clerk of the State on the Original Side of the High Court as per provision of West Bengal Service (ROPA) Rules, 1970. But as no such provision has been made this time in the WBS (ROPA) Rules, 1981, the Government regrets its inability to allow such benefit in the revised scale of 1981 to those Officers, of the Original Side of this Court.

4. By a letter dated 12.2.1988 the Registrar, Original Side of this Court had written to the Secretary, Judicial Department, as to the background and the relevant facts as to how the direct recruitments have been made from the legal profession and unless the new incumbents who have been directly recruited, receive the benefit, the prospect of recruitment from the members of the legal profession in future will be lost. The denial of such benefits of higher initial pay will cause hardship and discrimination so far as the newly recruited Assistant Registrars from the legal profession who are concerned inasmuch as on all previous occasions the members of legal profession who are directly appointed to the said posts enjoyed such benefit of higher initial pay.

5. The Writ Petition is opposed by the State by filing an Affidavit in Opposition. An Affidavit in Opposition has been filed on behalf of the High Court Administration as well. By the affidavit filed by the Administration, the case of the petitioners has not been disputed. All relevant facts have been disclosed, and by referring to the series of correspondence, the stand taken by the Chief Justice in its administrative capacity has been made clear "as I find is that the petitioners are entitled to higher initial pay."

6. In the Affidavit in Opposition filed by the State the only point that has been taken is that although under Article 229 of the Constitution the High Court has the inherent power to control the Administration and regulate the service conditions of the employees but in respect of any financial involvement the State has to approve or approval of the State is necessary. It is also highlighted that in ROPA Rules of 1970, there was a scope for making such provision of higher initial pay, but after introduction of ROPA Rules, 1981 the scales have been reoriented and/or regularised and in spite of giving comprehensive benefits, there is no further scope for approving the proposal of the higher initial pay to the newly recruits as contended by the writ petitioners.

7. Upon perusal of the materials on record and after patient hearing of the learned lawyers appearing for the petitioners, the State and the High Court Administration, this Court finds that the petitioners being well qualified to

practice under the provisions of Bar Council of West Bengal, have been selected to the posts in the Original Side and this aspect is neither disputed nor challenged. Previously, this type of recruits had the benefit of enjoying higher initial scale for the purpose of attracting better talent and proper administration in the right perspective. The dispute raised is that in ROPA Rules, 1970 there was such a provision and in 1981 ROPA Rules there is none. This Court fails to appreciate the merit of such stand. The scales of pay are not disputed. The benefit is confined to higher initial pay to attract the new recruits. This aspect has been considered by the High Court Administration for the purpose of attracting people of better talent, and for the better administration. Once such proposal was existing by the Government there is no scope for departure upon a distinguishing feature that ROPA Rules of 1981 will have an impact to withdraw such an approval. Upon the comparative study of ROPA Rules, 1970 and ROPA Rules, 1981 it does not lead to any conclusion that in the subsequent rules, there is any bar and/or impediment for the petitioners to obtain benefit of higher initial pay.

8. The recommendation of the High Court in the administrative capacity, has been tested judicially by this Bench and in view of the relevant facts, issue and appropriate provisions of law, there is nothing justiciable for the State to refuse approval of such proposal. Upon judicial scrutiny the stand taken by the State to refuse the proposal of the High Court Administration to grant higher initial benefits to the newly recruits, is not warranted both in law and in fact. There cannot be any conception or finding and forming any reasonable classification to discriminate the persons who had been appointed prior to 1981 to receive higher benefits and to deny the persons to receive the higher benefits after the year 1981. The drawing of such a line is also unheard of and deprecated by this Court.

9. For the foregoing reasons, this Court finds sufficient merit in the case of the writ petitioners and the stand taken by the State is not sustained.

The Writ petition is allowed.

Let a Writ of Mandamus do issue commanding the State respondents to take effective steps to release the benefits of the higher initial pay on the existing scale to the petitioners from their respective dates of appointment and financial benefits as calculated upon will be released within four months from the date of communication of the order.

There will be no order as to costs.

All parties to act on a signed copy of the ordering portion of the judgment on the usual undertaking.