

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Before:

The Hon'ble Justice Lapita Banerji

WPA 20066 of 2022

Supriya Gangopadhyay

Vs.

Saha Institute of Nuclear Physics & Ors.

For the petitioner : Mr. Anindya Lahiri, Adv.
Ms. Pranati Das, Adv.

For the State-Respondents : Mr. A.K. Dasgupta, Adv.

Heard On : 29.11.2022.

Judgment On : 21.12.2022.

Lapita Banerji, J:- The petitioner was recruited as an Assistant Security Officer under the department of atomic energy on July 15, 1991. Thereafter, the petitioner applied for the post of Security Officer in the Saha Institute of Nuclear Physics (in short, SINP). The petitioner was appointed to the post of Security Officer at SINP from, September 9, 2004.

2. The petitioner was promoted to the post of Senior Security Officer with effect from May 17, 2012.

3. The petitioner has challenged the purported arbitrary action on behalf of the respondent authorities since he was given a lesser scale/grade of pay

compared to his predecessor-in-interest.

4. The petitioner claims that when the petitioner was appointed by SINP on September 9, 2004, his scale of pay was Rs. 6500-200-10500/-. From the date the petitioner assumed duty, the petitioner was also entitled to receive DA and other allowances as admissible under the rules of the institute.

5. Mr Lahiri, learned counsel appearing on behalf of the petitioner submits that the employees who were receiving a pay scale of 6500-200-10500/- as per the 5th Pay Commission, were to get revised Pay Band under the 6th Pay Commission of Rs 9300-34,800/-. The corresponding Grade pay was Rs. 4200/- in Pay Band 2 of the employees whose pay was revised between Rs. 9300-34,800/-. The petitioner upon his promotion was upgraded from the post of "Security Officer" to the next higher grade in the revised Pay Band-2 of Rs. 9300-34800/- with corresponding grade pay of Rs. 5400/- when he was entitled to Pay Band-3 of Rs. 15600-39100/- with corresponding grade pay of Rs. 6600/-.

6. When the predecessor-in-interest of the petitioner, one Joydeb Maity, got promotion to the grade of Senior Security Officer, his pay scale/Band was revised to 10000-325-15200 in Pay Band-3. That scale corresponds to 15600-39100 of the Pay Band-3 under the 6th Pay Commission. The corresponding grade pay for the same is Rs. 6600/- and not Rs. 5400/.

7. Therefore, even though the petitioner was promoted, he was not given the same benefits as his Predecessor-in-interest. Initially in 2012 the petitioner was given the benefit of Pay Band-2 between 9300-34800 with corresponding

grade pay. The grade pay that was given to the petitioner was wrongly/unfairly stipulated at Rs. 4600/- whereas the petitioner was entitled to a grade pay of 5400 in the said Pay Band. The said amount was paid to the petitioner as on April 30, 2012. From May 2012, the petitioner was receiving grade pay of 5400 in the Pay Band of 9300-34800.

8. He further submits that when his predecessor in interest, one Joydeb Maity joined on May 8, 1989 he was receiving a scale of pay that was of Rs 2000-60-2300-75-3200-3500. Therefore, when the said scale of pay was revised as per the recommendation of the 5th Pay Commission, his predecessor-in-interest was given a scale of pay that was between 6500-200-10500. When the petitioner joined his services in SINP on September 9, 2004, his scale of pay was between 6500-200-10500 at par with Joydeb Maity, as per the recommendations of the 5th Pay Commission. Thereafter, the recommendations of the 6th Pay Commission were implemented and the petitioner received a pay matrix of 9300-34800 with a grade pay of 4200. The petitioner was later given the grade pay of Rs. 5400/- upon promotion. The petitioner at present is receiving a sum of Rs 82,600/- since he was given the Pay Band-2 of Rs. 9,300-34,800/- with grade pay of Rs. 5400/- but the petitioner was entitled to Pay Band-3/pay scale of 15600-39100 with grade pay of 6600 under the 6th Pay Commission. Had the petitioner been considered at par with the said Joydeb Maity the same benefits would have been payable to the petitioner upon promotion. The petitioner has been unfairly discriminated against.

9. Mr. Dasgupta, learned counsel appearing on behalf the of the respondents no. 1-7 submits that the circulars that are applicable to the government employees as per the 5th,6th and 7th Pay Commission are not applicable to SINP since it is an autonomous body and are entitled to make its own rules and policies. He further submits that the said Joydeb Maity who was the predecessor-in-interest of the petitioner was given the scale of pay between 10000-325-15,200 as a senior security officer but that said scale was restricted to the person concerned. It was clearly mentioned in his letter of promotion dated February 1, 2001 that the said designation and grade were valid for the present incumbent only.

10. Furthermore, he submits that the scale of pay between Rs 10000-325-15,200/- was given to the said Joydeb Maity in accordance with the rules and bye laws of the institute. The same will appear from the letter dated May 4, 2000 issued by the Registrar of SINP.

11. Having considered the rival submissions of the parties and the materials placed on record, this Court finds that no explanation has been given as to why a Senior Security Officer who was the predecessor-in-interest of the petitioner was given a higher scale of pay for the same work. It has not been explained in the Impugned order dated July 29, 2022 why the petitioner was not given the same scale of pay as Joydeb Maity. The institute relies on the ground that only employees who have served a minimum of 10 years in the salary grade of 6500-200-10500 can be considered to the next higher grade. It was argued that since the incumbent was promoted as a Senior Security Officer within 7 years with

effect from July 1, 2011 before completion of 10 years in the scale between 6500-10500 he already got the benefit of an early promotion. The petitioner's pay was revised to 9300-34,800 with grade pay of 4200 in the Pay Band-2 from April 30, 2012 pursuant to the recommendations of the 6th Pay Commission. Petitioner got a basic pay of Rs. 17,140/- prior to his promotion. Thereafter, pursuant to his promotion the petitioner got basic pay of Rs. 17,800/- and grade pay of Rs. 5400/- from May 29, 2012. Therefore, he could not be considered eligible for the benefits in a higher scale of pay. No rules or bye laws have been sought to be produced by the learned counsel appearing on behalf of the Saha Institute evidencing the fact that only people in 10 years of service could be considered for a higher scale of pay. In fact, the reasoning in paragraph 4 of the Impugned order as set out below is contrary to the principles of fair play.

12. **Paragraph 4** of the impugned order reads as thus,

"The considerations for promotion of Shri Jaydeb Maity were relevant for him only and should not be quoted as precedence. It may be noted that promotion can be considered if such avenues exist in SINP recruitment rules and promotion norms 2019".

13. The respondents/SINP failed to explain why after working in the same post and discharging the same duties the petitioner was not be considered eligible to be paid in the same scale/Band as his predecessor-in-interest. There was no dispute raised with regard to the fact that the duties discharged by the petitioner were not at par with that of his predecessor-in-interest. Furthermore,

no document has been produced to show that the petitioner's predecessor-in-interest completed 10 years of service. The Impugned order is discriminatory and is against the principles of fair play and is hereby set aside and/or quashed.

14. In the light of the discussions above, this Court directs that the petitioner be given the notional benefits of the pay scale of Rs. 10,000-325-15,200/- with the grade pay of Rs. 6600/- from May 17, 2012 i.e. the date on which he was promoted to the next higher grade to the post of Security Officer. The benefits to be given to the petitioner should be at par with the benefits given to his Predecessor-in-interest, Joydeb Maity. This Court comes to the finding based on the principle of equal pay for equal work.

15. With the direction aforesaid the Writ Petition being **WPA 20066 of 2022** is **disposed of**.

16. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

17. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)