

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.A. 25149 Of 2014

Kanailal Chakraborty

Versus

The State of West Bengal & Ors.

For the Petitioner : Mr. Ayan Banerjee, Adv.
Ms. Debasree Dhamali, Adv.

For the Respondent
No. 2 to 4 : Mr. Saptanshu Basu, Ld. Sr. Adv.
Mr. Arindam Banerjee, Adv.

Heard On : 09.02.2021 & 14.02.2022

Judgment On : 24.02.2022

Saugata Bhattacharyya, J.:

1. In the present writ petition petitioner has prayed for sanctioning benefit of Super Time Scale of Pay upon quashing memo no. 218-A dated 16th January, 2013 as well as memo dated 28th February, 2014 being no. 990-A

issued by the Registrar (Judicial Service), High Court, Calcutta whereby petitioner was intimated that his prayer for grant of Super Time Scale of Pay was spurned. The legality of these two decisions as contained in memo dated 16th January, 2013 and 28th February, 2014 is in question in the present writ petition qua entitlement of the petitioner to get the benefit of Super Time Scale of Pay which according to him he is entitled to.

2. Petitioner was a judicial officer who manned the post of Munsif, Judicial Magistrate, Metropolitan Magistrate, Assistant District Judge, Sub-Divisional Judicial Magistrate and thereafter he was promoted to the West Bengal Higher Judicial Service in 1997. On his promotion as member of the higher judicial service he functioned as Registrar of West Bengal Land Reforms and Tenancy Tribunal also as District and Session Judge, Balurghat and lastly prior to his superannuation on 31st October, 2007 he was discharging his function as Judge, City Civil Court at Calcutta.

3. Mr. Ayan Banerjee, learned advocate representing the petitioner has submitted that the petitioner was accorded benefit of Selection Grade vide notification dated 29th July, 2006 issued by the Registrar (Judicial Service), High Court, Calcutta w.e.f. 30th May, 2002. It is the case of the petitioner that he completed three years' continuous service in the Selection Grade scale from 30th May, 2002. His case was considered for awarding the benefit of Super time Scale of Pay by the concerned respondent authorities but such benefit was not

awarded to him as it is reflected from notification dated 12th September, 2006 issued by the Registrar (Judicial Service), High Court, Calcutta. Vide said notification dated 12th September, 2006 benefit of Super Time Scale of Pay though was granted to some of the judicial officers but he was not found eligible.

4. That by further notification dated 19th December, 2008 issued under memo no. 6100-A again eleven judicial officers were found fit to receive benefit of Super Time Scale of Pay when according to the petitioner he was incorrectly left out from the zone of consideration though fact remains the petitioner ought to have been considered for grant of such benefit by the respondent authorities prior to issuance of said notification dated 19th December, 2008.

5. Such refusal to accord benefit of Super Time Scale of Pay to the petitioner was the reason for preferring representations by him first on 20th July, 2009 and subsequently on 23rd November, 2010. Thereafter, in consideration of such representations Registrar (Judicial Service), vide memo dated 16th January, 2013 intimated the petitioner that the Hon'ble Court refused the prayer of the petitioner to sanction the benefit as sought for.

6. On being intimated such refusal to grant benefit led the petitioner to prefer another representation dated 10th June, 2013 whereby it was contended that junior officers who have retired before the notification dated 19th

December, 2008 were sanctioned Super Time Scale of Pay whereas the petitioner who is eligible in terms of the relevant rules was not considered for granting such benefit. Subsequently, again petitioner was intimated vide memo no. 990-A dated 28th February, 2014 that on consideration of the case of the petitioner it was rejected by the Hon'ble Court.

7. Thereafter, the petitioner made an application under the Right to Information Act dated 7th May, 2014 which was answered by the Deputy Registrar (Administration) & Public Information Officer, Hon'ble High Court, Calcutta vide letter dated 6th June, 2014 which is at page 54 and 55 of the writ petition. On perusal of such letter dated 6th June, 2014 it appears that the petitioner was not found entitled for grant of Super Time Scale of Pay. It was also informed to the petitioner selection for grant of such benefit was merit-cum-seniority and other eligible criteria were also intimated in response to query no. 2 which is quoted below:

“2.....

- (1) He has been granted the benefit of Selection Grade.
- (2) He is included within 10% of the post of Higher Judicial Officer in the rank of District Judge.
- (3) He has to be in not less than 3 years of continuous service in the Selection Grade Post.
- (4) He should not have been graded “E” during the last 3 years and should not have been graded “D” more than once during the said period of 3 years.

(5) No Departmental or Criminal proceedings is pending against him on charges of misconduct, moral turpitude, lack of integrity and dereliction of Duty.

(6) He has not been punished by the Disciplinary Authority on any of the grounds mentioned above or by any criminal court in respect of any penal and/or criminal offence. ”

8. In addition thereto vide said letter dated 6th June, 2014 it was also intimated to the petitioner though he was considered in the meeting held on 29th August, 2006 of the Hon’ble Administrative Committee of the Hon’ble High Court but it was found that the petitioner could not fulfill the eligibility criteria which resulted in refusal to sanction the said benefit.

9. The learned advocate representing the petitioner upon placing reliance on this letter dated 6th June, 2014 has submitted that it appears from the said letter that the reason behind refusal to sanction benefit of Super Time Scale of Pay was failure on the part of the petitioner to fulfill the eligibility criteria as stipulated in the said letter against query no. 2. According to the petitioner he fulfilled the eligibility criteria at the time of taking decision by the Hon’ble Administrative Committee of the Hon’ble High Court pursuant to which the notification dated 19th December, 2008 was issued still he was not sanctioned such benefit.

10. Another limb of submission of the petitioner is that he is entitled to receive Super Time Scale of Pay in terms of Rule 15 of the West Bengal Judicial Service (Revision of Pay and Allowance) Rules, 2003 (hereinafter referred to as “Rules of 2003”) which provides for 10% of the posts of Higher Judicial Officers in the rank of District Judge ought to put in not less than three years of continuous service in the Selection Grade post shall be allowed Super Time Scale of Pay. According to the petitioner since he was promoted to Selection Grade post w.e.f. 30th May, 2002 which makes him entitled to come within the zone of consideration at the time of issuing notification on 19th December, 2008 along with other eligible judicial officers.

11. It has further been submitted on behalf of the petitioner that prior to issuing notification dated 12th September, 2006 for grant of Super Time Scale of Pay by the Hon’ble High Court ACR of 2003, 2004 and 2005 were considered and petitioner was found to have been awarded Grade “D” in 2003 and 2004 which made him not entitled to receive the benefit but before issuing notification dated 19th December, 2008 ACR of 2005, 2006 and 2007 were considered when petitioner was graded “C”(Good) for the year 2005, “B”(Very Good) for the year 2006 and again “C”(Good) for the year 2007 which made him entitled to receive the benefit of Super Time Scale of Pay.

12. In addition thereto it is also a specific submission on behalf of the petitioner that there is no rule or departmental notification which prevents the

petitioner from being considered for the second time before issuing notification dated 19th December, 2008 since he was considered once before issuance of notification dated 12th September, 2006.

13. It has been contended on behalf of the petitioner that one Sri. Sukumar Chakraborty who is similarly circumstanced like the petitioner was considered for the second time for grant of Super Time Scale of Pay and accordingly granted such benefit *albeit* the case was considered and rejected vide notification dated 23rd February, 2006 which is at page 16 of the Affidavit-in-Reply of the petitioner. Vide said notification dated 23rd February, 2006 officers junior to said Sukumar Chakraborty were granted such benefit. Thereafter on second occasion Sukumar Chakraborty was found fit to be conferred the benefit of Super Time Scale of Pay vide notification dated 12th September, 2006 which negates the contention of the respondent authorities that once the case of a candidate for grant of Super Time Scale of Pay is refused subsequently such benefit cannot be extended to that candidate on considering the eligibility of the said candidate in following meeting.

14. Per contra appearing on behalf of respondent nos. 2, 3 and 4 Mr. Saptanshu Basu, learned senior advocate submits that Rule 15 of the Rules of 2003 is an enabling provision under which eligible candidates can be considered for grant of Super Time Scale of Pay on fulfillment of certain conditions as contained in said Rule 15 but such consideration will be on the

basis of merit-cum-seniority. In other words it is submitted petitioner does not possess right of conferment of benefit rather has the right of consideration on fulfillment of eligibility criteria.

15. According to the learned advocate representing the respondent authorities the eligibility criteria has been fixed in terms of said Rule 15 as well as those which were communicated to the petitioner vide letter dated 6th June, 2014 against query no. 2 in response to the RTI application of the petitioner. On applying such conditions relating to the eligibility of the candidates since petitioner was found to have been graded "D" twice in the year 2003 and 2004 he was not found fit for granting such benefit therefore by issuing notification dated 12th September, 2006 petitioner was refused such benefit.

16. It has been argued on behalf of the respondent authorities that vide notification dated 12th September, 2006 petitioner was not conferred such benefit subsequently there is no scope left open to the respondents to grant such benefit by next notification dated 19th December 2008 since refusal of granting such benefit vide notification dated 12th September, 2006 resulted in granting such benefit to next eligible officer.

17. In answering the point raised by the petitioner with regard to granting benefit of Super Time Scale of Pay to one Sukumar Chakraborty vide notification dated 12th September, 2006 while his case was considered for the

second time after he was not allowed the benefit by the resolution of the Administrative Committee dated 22nd December, 2005, it has been submitted since the Administrative Committee meeting held on 29th August, 2006 was not provided with the decision of the earlier Administrative Committee dated 22nd December, 2005 the Administrative Committee proceeded as if the case of said Sukumar Chakraborty was not considered earlier and rejected. Therefore, according to the respondent authorities the benefit of Super Time Scale of Pay was sanctioned in favour of Sukumar Chakraborty on wrong appreciation of facts.

18. This Court has posed query to Mr. Basu, learned senior advocate representing the respondents that whether any rule or notification debars any candidate from being considered for the second time for sanction of Super Time Scale of Pay but the Court does not get any satisfactory answer save and except the submission made on behalf of the respondents that once a judicial officer on consideration of his eligibility is refused to receive the benefit of Super Time Scale next eligible junior officer is generally sanctioned such benefit sealing the fate of senior candidate for being further considered for such benefit but it has been submitted by Mr. Basu very candidly that there is no provision in the Rules of 2003 or in any other notification issued by the respondent authorities which puts an embargo in considering the eligible judicial officer on second occasion for sanction of Super Time Scale.

19. This Court has considered the submissions made on behalf of the parties and also perused the relevant documents and pleadings available on record in order to ascertain the entitlement of the petitioner to receive Super Time Scale. The eligibility criteria for sanction of Super Time Scale in favour of a judicial officer is enumerated in Annexure –‘R-1’ appended to the Affidavit-in-Opposition used by the respondent nos. 2, 3 and 4. In the letter dated 6th June, 2014 issued by the Deputy Registrar (Administration) same eligibility criteria have been set out against query no. 2. This court has also made an endeavour to find out whether the petitioner was an eligible judicial officer for conferment of Super Time Scale of Pay in terms of such eligibility criteria before issuing notification dated 19th December, 2008 by the Registrar (Judicial Service).

20. It appears that the petitioner was granted Selection Grade scale vide notification dated 29th July, 2006 w.e.f. 30th May, 2002, therefore, at the time of issuing notification dated 19th December, 2008 petitioner completed three years’ service as a recipient of Selection Grade Pay and he was within the 10% posts of higher judicial officers in the rank of District Judge in addition thereto for taking decision on conferment of Super Time Scale of Pay before the notification dated 19th December, 2008 ACR of 2005, 2006 and 2007 were considered. The petitioner was awarded ‘C’ (Good) in 2005, ‘B’ (Very Good) in 2006 and in 2007 he was awarded ‘C’ (Good). Therefore, during these period of 2005, 2006 and 2007 he was not awarded ‘E’ once and not awarded ‘D’ more

than once; rather it appears he was not at all awarded 'D' or 'E' in 2005, 2006 and 2007. It is also an admitted position that no departmental or criminal proceeding was pending against the petitioner on the charges of misconduct, moral turpitude, lack of integrity or dereliction of duty at the material point of time and he was not punished by the disciplinary authority on any of the grounds mentioned above or by any criminal court in respect of any penal/any criminal offence.

21. Therefore, it appears that on applying the eligibility criteria as set out in Annexure-'R-1' to the Affidavit-in-Opposition the petitioner is eligible to receive Super Time Scale of Pay. This court is at a loss having seen the reply to query no. 3 communicated vide letter dated 6th June, 2014 issued by the Deputy Registrar (Administration) to him that reason for not granting Super Time Scale of Pay was non-fulfillment of eligibility criteria in reference to notification dated 19th December, 2008. As discussed above it is apparent that in terms of the relevant eligibility criteria petitioner is found to have fulfilled those conditions therefore, the reason for non-consideration of the candidature of the petitioner for grant of such benefit as communicated by the Deputy Registrar (Administration) vide letter dated 6th June, 2014 appears to be erroneous.

22. On behalf of the respondents it has been argued strenuously that petitioner was not found fit to get the benefit of Super Time Scale while issuing notification dated 12th September, 2006 therefore, next eligible officer junior to

the petitioner was accorded such benefit and there is no scope left open to consider the eligibility of the petitioner for grant of such benefit. Such submission does not hold much water since sanction of Super Time Scale of Pay is not a process by which a judicial officer is promoted from the existing post to the next higher post rather it pertains to grant of higher scale of pay. Therefore, if junior officer is sanctioned Super Time Scale vide notification dated 12th September, 2006 when the petitioner was found not eligible cannot lead to a situation where the petitioner cannot be considered for grant of such scale of pay at the time of issuing subsequent notification on 19th December, 2008. Had there been case where higher post is filled up by allowing promotion to a junior officer when a senior officer was found ineligible, the question of promoting the senior officer subsequently on assessment of eligibility to the said higher post is not possible. But in the present case this court is considering sanction of Super Time Scale of Pay to the petitioner which ought not be closed since junior officer was sanctioned Super Time Scale vide previous notification dated 12th September, 2006.

23. Both the learned advocates representing the parties to this writ petition have submitted that Rule 15 of Rules of 2003 is the only relevant provision relating to grant of Super Time Scale to an eligible judicial officer. Said Rule 15 is quoted below:

“15. Selection Grade Scale and Super Time Scale for Higher Judicial Officers in the rank of District

Judges.- The promotion to the pay scales of Selection Grade and Super Time Scale shall be on merit-cum-seniority basis to be decided by the High Court of Calcutta. 25% of the posts of High Judicial Officers in the rank of District Judges who have put in not less than 5 years of continuous service in a post in the rank of District Judges shall be awarded Selection Grade Scale and 10% of the posts of Higher Judicial Officers in the rank of District Judges who have put in not less than three years of continuous service in the Selection grade posts shall be allowed Super Time Scale of Pay.”

24. On perusal of Rule 15 it does not appear that any bar is provided therein to the extent that once a judicial officer is not found fit for conferment of Super Time Scale cannot be considered on subsequent occasion. Apart from said Rule 15 reliance has also been placed by the respondents on Annexure ‘R-1’ to the affidavit-in-opposition wherein eligibility criteria has been set out where no bar is clamped on consideration of an eligible judicial officer for second time for sanctioning such benefit.

25. It appears that one judicial officer namely, Sukumar Chakraborty, though was not found eligible at the time of issuing notification dated 23rd February, 2006 but subsequently vide notification dated 12th September, 2006 was sanctioned Super Time Scale of Pay and this fact of sanction of Super Time Scale in favour of said Sukumar Chakraborty upon consideration of the eligibility on the second occasion dilutes the submission of the respondents that once a judicial officer is found ineligible in granting Super Time Scale cannot be considered subsequently.

26. Attempt has been made on behalf of the respondents to explain the instance of granting Super Time Scale to said Sukumar Chakraborty on consideration of his eligibility for the second time by terming such exercise as mistake therefore, it has been argued that the benefit conferred by mistake cannot be extended to other similarly circumstanced candidates and in this regard reliance has been placed on the following judgments of the Apex Court;

(i) **(2013) 14 SCC 81 (Basawaraj And Another Vs. Special Land Acquisition Officer)**;

(ii) **(2020) 10 SCC 496 (State of Madhya Pradesh And Others Vs. Amit Srivas)**.

27. Though effort has been made to term such grant of benefit in favour of said Sukumar Chakraborty as mistake but this court finds as it has been discussed above that there is no impediment in grant of Super Time Scale to a judicial officer upon scrutinizing his eligibility for the second time and it appears there is no existing provision which prevents the authority from granting such benefit to such judicial officer if he is found eligible on scrutiny on second occasion. Therefore the judgments of the Apex Court cited on behalf of the respondents are of no help.

28. Mr. Basu has argued that since the petitioner retired on 31st October, 2007 and the notification was issued on 19th December, 2008 therefore Super

Time Scale could not be granted to the petitioner but such attempt on the part of the learned advocate representing the respondents is found to be made in desperation since judicial officers named against serial nos. 2, 3 and 4 in the notification no. 6100-A dated 19th December, 2008 retired prior to sanction of benefit of Super Time Scale. Therefore, superannuation of the petitioner on 31st October, 2007 ought not impose any restrictions upon the respondent authorities in deciding the case of the petitioner for sanction of Super Time Scale of Pay.

29. Accordingly decisions communicated to the petitioner vide memo dated 16th January, 2013 and subsequent memo dated 28th February, 2014 are set aside. Concerned authority of respondent no. 2 is directed to revisit the eligibility of the petitioner to receive Super Time Scale of Pay on the basis of the eligibility criteria as set forth in “Annexure- R1” to the affidavit-in-opposition of the respondent authorities within a period of twelve weeks from this date. Such decision shall be taken on the basis of ACRs of the petitioner for the year 2005, 2006 and 2007 and taking into account observations made by this court as aforesaid and decision to be taken in terms of this order shall be communicated to the petitioner within one week thereafter.

30. With the above direction this writ petition stands disposed of. However, there shall be no order as to costs.

31. Urgent photostat certified copy of the order, if applied for, be given to the parties upon usual undertakings.

(Saugata Bhattacharyya, J.)