

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Before :-

The Hon'ble Justice M.V. Muralidaran

W.P.A. No.8989 of 2016

With

IA No. CAN 1 of 2017 (Old No. CAN 6605 of 2017)

Birendra Sharma

-Vs.-

State of West Bengal & Ors.

Mr. A.K. Lahiri

--- for the petitioners

Hearing Concluded On :

1.12.2023

Judgment On :

15.12.2023

M.V. Muralidaran, J.

1. Heard Mr. Lahiri, learned counsel for the petitioner.

There is no representation on behalf of the respondents.

2. The petitioner has filed this writ petition seeking issuance of a writ of mandamus to direct the respondents to forthwith step up the pay of the petitioner at par with the pay of the fourth respondent and to re-fix the pay of the petitioner

after stepping up the pay of the petitioner from the date when the fourth respondent started receiving pay higher than the pay of the petitioner.

3.1. The facts in a nutshell are as under: The petitioner, who was appointed as "Night Guard" on 11.8.1976 by the District of the then 24 Parganas, was promoted to the post of "Process Server" with effect from 15.4.1980 and he is serving in the post of Process Server under the District Judge, 24 Parganas (South).

3.2. The grievance of the petitioner is that the fourth respondent, who was junior to the petitioner and who retired on 30.6.2012, was paid Rs.29,748/- per month as basic pay in the year 2012, whereas, at that time, the petitioner, despite being senior, was paid only Rs.26,792/- per month.

3.3. The petitioner was promoted to the post of Process Server on 15.4.1980, whereas the fourth respondent was appointed as Process Server on 28.5.1981. The fourth respondent was given the benefit of career advancement scheme after completion of ten years, whereas the same was

not granted to the petitioner on the ground that the petitioner was promoted to the post of Process Server.

3.4. The petitioner made representation to the authority concerned seeking protection of basic pay drawn by him in relation with the pay drawn by the staff junior to him. As the said representation did not evoke any response, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner reiterating the factual backdrop narrated hereinabove submitted that the petitioner, being senior in service to the fourth respondent, cannot be denied the benefit of pay which his junior was drawing. In support of the said submission, reference was made to Rule 55(4) of the West Bengal Service Rules Part-I.

5. Learned counsel for the petitioner further submits that when similarly placed Process Servers – Kamalesh Manna, Gouranga Dey, Prasanta Seth and Pratap Chandra Kumar were extended the benefit of pay protection, the denial of the same to the petitioner is discriminatory and violative of the

provisions of Articles 14, 16 and 300A of the Constitution of India.

6. To buttress the aforesaid arguments, learned counsel for the petitioner placed reliance on the orders (i) dated 20.11.2023 passed by a learned Single Judge of this Court in WPA.No.8997 of 2016; (ii) dated 13.11.2019 in WP.No.8992 (W) of 2016; passed in respect of similarly situated persons.

7. This Court has considered the submissions canvassed by learned counsel for the petitioner and perused the documents available on record, besides the earlier orders passed by this Court.

8. Rule 55(4) of the Rules accentuates that in cases where a government employee is drawing pay at a rate higher than his senior officer either due to fixation of his pay in the higher post or due to revision of pay scales, the pay of the government employee senior to him shall be re-fixed at the same stage and from the same date his junior draws the higher rate.

9. The Supreme Court in a catena of decisions has held that if the senior employee due to any reason draws lesser pay than his junior, then the scale of pay of the senior is required to be stepped up at par with the pay of his junior to remove the pay anomaly.

10. A perusal of the order dated 13.11.2019 in WP.No.8992 (W) of 2016 makes it clear that in respect of a similarly situated person, this court had directed the Principal Secretary (Judicial Department), Government of West Bengal, to give a fresh hearing to the petitioner therein and allow him to produce the documents which the petitioner's advocate says to have been submitted with written notes, within three months from the date of communication of that order.

11. In fact, pursuant to the aforesaid order dated 13.11.2019, the Principal Secretary (Judicial Department), Government of West Bengal, had considered the request of the petitioner in W.P.No.8992 (W) of 2016 and, inter alia, directed the authority concerned to step up the petitioner's pay at par with the pay of the fourth respondent therein, apart from consequential benefits.

12. In the recent judgment dated 20.11.2023 passed in WPA No.8997 of 2016, another learned Single Judge of this Court had considered an identical situation and granted liberty to the petitioner therein to submit a comprehensive representation to the District Judge, South 24 Parganas and issued consequential directions.

13. The case of the petitioner is squarely governed by the decisions of this Court, referred supra, and the State of West Bengal and the District Judges accepted such legal position and stepped up the pay of the senior employees at par with the pay of their juniors. This court finds no reason to take a different view.

14. For the foregoing reasons, this court disposes of the writ petition with the following directions:

- (i) The petitioner is directed to make a fresh representation to the District Judge, Alipore, 24 Parganas (South) ventilating his grievance within two weeks from the date of receipt of a copy of this order,

of course, enclosing all relevant documents in support of his plea;

(ii) On receipt of the said representation, the authority concerned shall consider the same on its own merits and in the light of the decisions of this Court, referred supra, and the law laid down by the Supreme Court, and dispose of the same after affording an opportunity of hearing to the petitioner;

(iii) If the authority concerned comes to the conclusion that the pay drawn by the petitioner during the relevant time is lesser than the pay drawn by the fourth respondent, then steps shall be taken to step up the pay of the petitioner at par with that of the fourth respondent from the date the fourth respondent had received the higher pay than the petitioner.

(iv) If the authority concerned does not find merit in the plea raised by the petitioner, then a reasoned order shall be passed and duly communicated to the petitioner.

(v) The Principal Secretary (Judicial Department), shall based on the decision taken by the District Judge, pass appropriate orders in this regard.

(vi) The entire exercise shall be undertaken by the authority concerned within eight weeks from the date of receipt of a copy of this order.

There will be no order as to costs.

(M.V. Muralidaran, J.)