

WPA 16081 of 2016
Mrinal Pal
Vs.
Indian Institute of Engineering Science and Technology, Shibpur & Ors.

Mr. Indranath Mitra

...for the Petitioner

Mr. Subrata Mukherjee,

Mrs. Basabi Ray Chowdhuri,

...for the Respondent Nos. 1 & 2.

Mr. S. K. Bhattacharya

...for the Respondent No. 5

In the year 1975, the petitioner was appointed as a Lower Division Clerk in the office of the Principal, Bengal Engineering College, Shibpur, Howrah. Subsequently, he was appointed as a laboratory assistant at the same organisation with the pay scale of Rs. 440-Rs. 1170/- which was subsequently revised by a government order dated January 12, 1990 (ROPA 1990) to Rs. 1420/- – 3130/-.

In the year 1987, the petitioner was appointed as a Technical Assistant at the said College through a regular recruitment process.

Later, Bengal Engineering College, Shibpur, Howrah was declared as a Deemed University and all posts of Bengal Engineering College was to be governed by the rules and orders which were applicable to them before the college attained the status of a Deemed University. In the year 1999, all employees were asked to

submit their option for employment at the Deemed University.

There is no dispute that at the time of his retirement, the petitioner was provided with a pay scale of Rs. 9000/- – 40500/- (Pay Band- 4) with a Grade Pay of Rs. 4600/-. The petitioner retired from the position of Technical Assistant on December 31, 2010.

The petitioner made some representations before the college authorities sometimes both before and after his retirement, claiming a higher-scale of pay on the ground that he should be treated as a teacher of the university.

To consider his representation, a three-member committee was formed and the said committee by its report dated September 29, 2015, rejected the case of the petitioner. In this writ petition, the said report has been challenged.

It has been submitted on behalf of the petitioner that the Government of West Bengal by an order dated February 13, 1984 conferred the status of a teacher upon the technical assistant attached to the Government Engineering Colleges. It has been further argued that the pay scale of laboratory instructors of the non-Government Colleges who were given the status of a teacher, had been revised from Rs. 2200 – Rs. 4000/- to Rs. 8000/- - Rs. 13500/- with effect from August 1, 1987. The petitioner submits that since the technical

assistants were also given the status of teaching staff, his pay-scale also should have been revised similarly.

In support of his contention, the petitioner has placed reliance upon a notification dated March 11, 2002 issued by the Government of West Bengal.

It has further been pointed out that the Registrar of the University by his letter dated July 1, 2010 highlighted certain anomalies in the pay-scale of the technical assistants at the university. The letter observed that the technical assistants are enjoying lower scale of pay compared to the technical assistants in Government Engineering Colleges and sub-assistant engineers working for the State Government.

In support of his case, the petitioner places reliance upon a judgment reported at *(2001) 5 SCC 327 (Anil Ratan Sarkar & Ors. Vs. State of West Bengal & Ors.)*. By referring to paragraph 24 of the said judgment, it has been argued that a teacher cannot be allowed a pay-scale of a non-teaching post. In the event of conferment status of a teaching staff, one is entitled to get a pay-scale fixed for a teacher and not for non-teaching member of the staff.

The university on the other hand submits that the petitioner, throughout his career, never raised any objection regarding his pay-scale. Only after his retirement, he has filed this speculative writ petition. Therefore, the petitioner cannot be entitled to any relief.

It has been further submitted that the petitioner retired as a technical assistant Grade-I and the said nomenclature has never been challenged by him during his service tenure.

In my view, no relief can be granted to the petitioner.

The very basis of the claim for a revision of pay-scale is a notification dated February 13, 1984 whereby technical assistants were given the status of teaching staff by the State.

It is crucial to note that in terms of the said notification, the posts of technical assistant attached to the Government Engineering Colleges were given the status of teachers only with their existing scale of pay. The State did not provide a higher-scale of pay upon conferring the status of a teacher. The petitioner never challenged the said notification dated February 13, 1984, and therefore, it is not open for him to selectively accept a part of the said circular and reject the remainder.

Though it appears that by an order dated February 5, 2009, different posts of erstwhile Bengal Engineering College had been re-designated to their corresponding posts with scale of pay in the university service, the post of technical assistant was redesignated as technical assistant Gr.-I with the same pay-scale of Rs. 1420/- -- Rs. 3130/-. The petitioner was also submitted his option, albeit belatedly, in the year 2010 for being

absorbed as an employee of the Deemed University accepting the pay-scale provided to him from time to time with the corresponding pay-scale of Rs. 1420 -- Rs. 3130/-.

The petitioner, in fact, cannot claim any parity with the laboratory instructors of non-government colleges and claim benefit of the Government Circular dated March 11, 2002. The said government order was issued in implementation of an order passed in C.O. No. 9704 (W)/1995 (Anil Ratan Sarkar & Ors. Vs. State of West Bengal & Ors.) by this Court. The laboratory instructors of the non-government colleges were given the benefit of revised pay-scale from Rs. 2200 -- Rs. 4000/- to Rs. 8000 -- Rs. 13,500/-. The petitioner has failed to demonstrate before this Court that as a technical assistant in the department of Computer Science and Technology, he stands on equal footing with a laboratory instructor in a non-government college of the State.

I am of the view that it is too late in the day to argue that the petitioner was entitled to get the benefits of the government order dated March 11, 2002, when he never challenged the decision of the university to provide him with a pay-scale lower than that of a laboratory instructor of non-government colleges throughout his career.

Accordingly, **WPA 16081 of 2016** is dismissed.

Urgent certified *website* copies of this order, if

applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)