

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 314 of 2011
with
I.A NO: CAN 1 of 2013
(Old NO: CAN 1118 of 2013)

Omprakash Das & Ors.
Vs.
The State of West Bengal & Ors.

For the Petitioners : Mr. Bikash Ranjan Neogi,
Ms. Soma Chakraborty,
Mr. Guddu Singh, Advocates

For the State : Sk. Md. Galib,
Mr. K. M. Hossain, Advocates

Heard & Judgment on : **August 7, 2023**

Debangsu Basak, J.

- 1.**The writ petition is directed against an order dated August 24, 2011 passed by the West Bengal Administrative Tribunal in OA 251 of 2010.
- 2.**By the impugned order, the claim of the writ petitioners for same pay as that of Sub-Assistant Engineers of other departments of the State, was turned down.

3. Learned advocate appearing for the petitioners submits that, the writ petitioners are discharging same duties as that of Sub-Assistant Engineers of other departments of the State. The writ petitioners are holding the same educational qualifications as that of Sub-Assistant Engineers of other departments of the State. Therefore, the writ petitioners are entitled to the same pay as that of Sub-Assistant Engineers of other departments of the State. He submits that, the writ petitioners discharges the same duties and functions as that of Sub-Assistant Engineers of other departments of the State. Therefore, on the principle of equal pay for equal work, the writ petitioners are entitled to the same pay as that of Sub-Assistant Engineers of other departments of the State. In support of such contention, he relies upon **AIR 2023 SC 2673 [All India Judges Association vs. Union of India]**.

4. Relying upon **(2014) 13 SCC 588 [Union of India & Ors. vs. Rajesh Kumar Gond]**, learned advocate appearing for the writ petitioners submits that, where, the State claims that the two posts are not equal, it is for them to bring materials on record to establish that the works of the two posts were not the same.

5. Relying upon **AIR 1996 SC 669 [M.R. Gupta, vs. Union of India & Ors.]**, learned advocate for the writ petitioners submits that, when, there is an issue of fixation of pay, limitation is not attracted. So long as the employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of wrong computation made contrary to the Rules.

6. Learned advocate appearing for the writ petitioners draws the attention of the Court to an earlier order of the High Court dated

March 7, 1988 passed in **CR 3550(W) of 1982 [Basant Kumar Maity & Ors. vs. State of West Bengal & Ors.]**. He submits that, same point with regard to the fixation of pay and same pay for the writ petitioners in parity with Sub-Assistant Engineers was allowed by the High Court. Consequently, he submits that same relief be granted to the writ petitioners.

7. Learned advocate for the State submits that, the educational qualifications required in the selection process for the two posts are different. So far as the Surveyors as that of the petitioners are concerned, the minimum qualification is Class-X pass and a certificate from specified institution while in respect of Sub-Assistant Engineer, it is diploma in any engineering discipline. Moreover, the nature of work for the two posts are different. Furthermore, subsequent to the order of the High Court dated March 7, 1988 passed in **Basant Kumar Maity** (supra), there was the 5th Pay Commission which considered the issue and did not agree with the claim that same pay with that of Sub-Assistant Engineer be given to Surveyor. Consequently, he submits that the petitioners are not entitled to any relief.

8. The writ petitioners are Surveyors working with the Land and Land Reforms Department of the State. They are drawing salary at Scale 9. They seek Scale 10 as they claim that they are discharging the same duties as that of diploma holder engineers in different disciplines working with different departments and that they possess the same educational qualification as that of diploma holder Engineers.

9. The educational qualification required for surveyor is a Class-X pass and a certificate from a specified institution while that of a Sub-Assistant Engineer is a diploma in any field of engineering. Nothing is

placed on record to establish that the nature of work done by the Surveyors is equivalent to that of Sub-Assistant Engineer.

10. In **Basant Kumar Maity** (supra), the High Court, granted relief to the Surveyors involved therein. However, **Basant Kumar Maity** (supra) was rendered on March 7, 1988. Subsequent thereto, there was 5th Pay Commission which looked into the issue of pay of the writ petitioners and persons such as the writ petitioners. The 5th Pay Commission in the report of June 2010 dealt with the issue extensively and did not find favour in granting the petitioner Scale No.-10. Relevant portion of 5th Pay Commission report of June 2010 is quoted in the body of the impugned order of the Tribunal. The claim of the writ petitioners, therefore, was considered by the 5th Pay Commission. Decision of the 5th Pay Commission was not assailed by the writ petitioners. Petitioners are now seeking a relief which they were denied by the 5th Pay Commission without assailing the report of 5th Pay Commission.

11. In **Judges Association** (supra), the Supreme Court recognized the principle of equal pay for equal work. As noted above, such fact is yet to be conclusively established in the present case.

12. The factual scenario obtaining in **Rajesh Kumar Gond** (supra) is also different. There, the issue was between a junior Hindi translator and junior translators working elsewhere. Supreme Court found that, the two junior translators were discharging the same duties and functions.

13. The issue as to whether Surveyors and diploma holder Engineers discharge the same duties and functions, was considered by the 5th Pay Commission which in its report of June 2010 fixed a

particular scale of pay for the Surveyors. Without such report being assailed, we are not minded to interfere with such exercise of pay fixation by the 5th Pay Commission.

14. As noted above, the prescribed eligibility for the two posts are different. Tribunal in the impugned order, considered such aspect also. We concur with the view of the Tribunal, taken on such aspect.

15. Tribunal also did not grant relief to the petitioners on the ground of delay. In **M.R. Gupta** (supra) the Supreme Court held as follows :-

"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellants claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any

other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

16. The factual scenario, as noted above, is different in the present matter. The petitioners are essentially seeking parity with regard to diploma holder Engineers which relief cannot be granted for the reasons ascribed above.

17. In such circumstances, we find no merit in the present writ petition.

18. **WP.ST 314 of 2011** along with all connected applications are **disposed of** without any order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

20. I Agree.

(Md. Shabbar Rashidi, J.)