

80.
17.4.2023
S.D.

W.P.A. 28445 of 2022
Suman Bhui
Vs.
The State of West Bengal & Ors.

Mr. Sridhar Chandra Bagari
Mr. Sk. Nizamuddin

... For the Petitioner

Mr. Susanta Dutta
Mr. Sanjay Saha

....For the Respondent No. 2

Ms. Koyeli Bhattacharya

...For Municipal Service Commission

The additional report on affidavit as filed in Court today is retained with the records.

The petitioner is working as an Assistant General Manager with Bharat Heavy Electricals Limited (BHEL). The petitioner applied for the post of District Manager with the West Bengal Essential Commodities Supply Corporation Limited (WBECSCCL). As per the West Bengal Service Rules which have come into force with effect from October, 1971 vide Notification dated August 5, 1971, any employee of the Central or other State Government/Educational Institution including a body corporate substantially owned or controlled by the government if appointed to a post under the West Bengal Government for carrying duties and responsibilities similar to those attached to the post held in a substantive,

officiating or temporary basis by the employee immediately before joining the appointment under the Government of West Bengal, irrespective of any categorization of the post under that Organization, his pay would be fixed at a stage of the time scale which is equal to his pay in the old post. If there is no such stage, the stage below that pay plus personal pay equal to the difference is to be absorbed in the subsequent increases in the pay in the new post under the Government of West Bengal. The said provision is made under 42A (5) of the WBSR.

Under 42A (1) where a Government employee holds a post as substantive, temporary or in officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, the initial pay of such Government employee in the scale of pay of the higher post shall be fixed at a stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay approved.

Mr. Bagari, learned counsel appearing on behalf of the petitioner submits that the duties and responsibilities to be discharged by the petitioner as a District Manager, WBECSCCL

is equivalent to the duties discharged by him at the post of Assistant Engineer, E-2, BHEL and therefore the petitioner is entitled to pay protection.

Mr. Dutta, learned counsel appearing on behalf of the WBECSCCL submits that the duties discharged by the District Manager is not equivalent to the duties discharged by the petitioner as a Senior Engineer, Grade E-2, BHEL. He submits that the petitioner is posted at Hyderabad and knowing fully well that two posts are not equivalent and the level of pay will be lesser at the post of a District Manager, the petitioner applied for the same. He further refers to the offer letter of appointment dated October 12, 2022 issued by WBECSCCL to the petitioner. From the said letter of appointment, it clearly appears that the post carries pay in the Pay Level -16 in the Pay Matrix. There is no mention as to the Cell of Pay in the said offer letter of appointment.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that an employer is at liberty to fix the nature of duties and the level of pay attached to a particular post considering the nature of duties to be performed by an employee. The employer has categorically stated the level of pay in the offer letter of

appointment on October 12, 2022. It is upto the employee to accept or reject the said offer.

From a Notification dated September 25, 2019 issued by the Finance Department, Government of West Bengal, it appears that the pay of the employees appointed by direct recruitment on or after January 1, 2016 **shall** be fixed at the minimum pay or the *first cell* in the *level* applicable to the post to which such employees are appointed. However, in case, the employees are appointed to another post through direct recruitment where the duties discharged are similar then the applicable level of pay shall be equivalent to his last pay of the old post and if there exists no such cell in the applicable level of the new post, the pay shall be fixed at immediate higher cell of that level, if the new post carries higher level than the old post and immediate lower cell if the new post is in the lower level (upto second lower level) in relation to the old post.

This Court finds that the duties to be discharged by the District Manager, WBECSCCL is different in nature/lower in category than the nature of the duties to be discharged as an Assistant Manager of BHEL as per the assessment of WBECSCCL. The employer/WBECSCCL has assessed the nature of duties to be discharged by the 'District Manager'. This

Court fails to see how an incumbent can challenge the subjective assessment of the employer before a writ court. There are serious and complex disputed questions of fact involved in the present writ petition and the writ Court is not the appropriate forum for adjudication of the same. Therefore, the prayer for 'Pay Protection' cannot be allowed in the offered Post.

The Hon'ble Supreme Court has consistently held that the equation of the post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commission. This is because such job evaluation exercise may include various factors including relevant data and such exercise would be both difficult and time consuming apart from carrying financial implications. Such task is best left to expert body unless there is cogent material on record to come to a firm conclusion that grave error has crept in while fixing the pay scale and court's interference was absolutely necessary to undo the injustice.

A beneficial reference may be made to the case of **Secretary, Finance Department vs. West Bengal Registration Service Association & Ors.** reported in 1993 Supp (1) 153

and 2022 Live Law (SC) 97 (**State of Madhya Pradesh vs. R.D. Sharma and Anr.**)

In the light of the discussions above, **W.PA. 28445 of 2022 is dismissed.**

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)

Later:

Stay is prayed for by the learned counsel appearing on behalf of the petitioner.

Such prayer is considered and rejected.

(Lapita Banerji, J.)