

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

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

WPO/101/2016

**SUDHIST KUMAR JHA
VERSUS
THE STATE OF WEST BENGAL & ORS.**

For the Petitioners	:	Debdutta Basu, Advocate Mr. Apzal Ansari, Advocate (VC)
For the Respondent Nos. 2 to 6.	:	Ms. Debolina Chattaraj, Advocate
For the State	:	Mr. Ranjan Saha, Advocate
Heard on	:	13th December, 2023.
Judgment on	:	13th December, 2023.

RAJA BASU CHOWDHURY, J:

1. The instant writ petition has been filed, *inter alia*, praying for a direction upon the respondents to remove the anomaly of pay of the petitioner by enhancing his pay to make it at par with the pay of his junior and to release the differential amount from the date of commencement of such anomaly along with 12% interest.
2. The petitioner had joined the service of the respondent no.2 in the year 1981 as a 'Khalasi'. After the successful completion of his probationary

period, his service was regularised as per rules and norms applicable to the said respondent. The petitioner claims that in the year 2006, he was promoted to the post of Fitter with effect from 1st December, 2006 and at the time of filing of the writ petition he had been working at Belgachia tram depot. At the relevant point of time, in July, 2014, his basic pay was Rs.9245/- only, and grade pay was Rs.2300/- only. Subsequently, he had received one increment from July, 2015 onwards.

3. It is also the case of the petitioner that one Sri Narendra Kumar Singh who had joined the respondent no.2 in the year 1983 as 'Khalasi' and after completion of his probationary period, was also regularised. The said Narendra Kumar Singh was also promoted to the post of Fitter with effect from 1st December, 2006. Unfortunately, for the petitioner, the said Narendra Kumar Singh despite being junior his basic pay in July, 2014 was Rs.10,650/- only, and his grade pay was Rs.2300/- only, which was higher than that of the petitioner. The said Narendra Kumar Singh had also subsequently been granted one increment from July, 2015.
4. According to the petitioner, since, the petitioner is entitled to parity in pay with that of his junior, he had made a representation addressed to the Chairman-cum-Managing Director of the respondent no.2 on 24th March, 2000. The same was followed up by another representation dated 26th September, 2013. Although, in the case of similarly circumstanced persons, the respondents in terms of the direction issued by this Court, by relying on provision of Rule 55(4) of the West

Bengal Service Rules (Part 1) (hereinafter referred to as the “said Rules”) had upgraded the pay of the senior incumbent so as to refix his pay from the same stage and from the same date, his junior draws the higher rate of pay and was accordingly allowed the differential amount, however, in the petitioner’s case, the same was declined. In such circumstances, the petitioner was compelled to file the instant writ petition.

5. Mr. Basu, learned Advocate representing the petitioner by drawing the attention of this Court to Rule 55(4) of the said Rules and the orders passed by the respondents from time to time whereby they have revised the scale of pay of the senior incumbents to bring the same at par with the juniors, submits that the petitioner was discriminated as in his case no revision was allowed. By drawing the attention of this Court to the observations made by the Chairman of the respondent no.2 on the petitioner’s application dated 26th September, 2013, he submits that simply because, the petitioner had not opted for the higher pay scale in terms of Revision of Pay and Allowance (ROPA), 1990, the petitioner’s case was rejected. It is submitted that after ROPA, 1990, ROPA, 1998 was implemented and the same was made applicable to the employees of the respondent no.2 w.e.f. 1st January, 1996. Since then ROPA, 2006 had also been implemented. When ROPA, 1998 was implemented, the petitioner’s pay was revised since ROPA 1998 did not require any option to be exercised. According to the petitioner, at the relevant point

of time, he was getting higher pay than his junior namely, Narendra Kumar Singh. The anomaly in pay was only detected in the 2014 after ROPA, 2006 was implemented.

6. Having regard to the aforesaid and having relied on Rule 55(4) of the said Rules, Mr. Basu submits that since, the petitioner had retired from service, the respondents should make available the difference in pay by enhancing the pay of the petitioner to match the same with that of his junior and should disburse all consequential benefits in his favour.
7. *Per contra*, Ms. Chattaraj, learned Advocate representing the respondent no.2, submits that the petitioner was given the option to opt for the revised pay scale under ROPA, 1990. Notwithstanding the aforesaid, the petitioner chose to continue with the unrevised pay scale. She submits that the petitioner was conscious that had he opted for revised pay scale under ROPA, 1990, the same would have enured to certain disadvantages and the petitioner in such circumstances would not be entitled to extension for 5 years of service which ordinarily was available to employees who had not opted for the higher pay scale under ROPA, 1990. She further submits by placing reliance on the communication dated 5th August, 1991 issued by the Special Secretary, Government of West Bengal in relation to the revision of pay scale of employees of the Calcutta Tramways Company (1978) Limited and enforcement of ROPA, 1990, that the petitioner without opting for ROPA, 1990 had enjoyed higher dearness allowance as also leave and bonus as was

applicable at the relevant point of time. Having taken advantage of the aforesaid provision, the petitioner cannot claim that he has been put to a disadvantageous position. By placing reliance on Rule 55(4) of the said Rules, it is submitted that the said Rule itself carved out an exception which provided it shall not be applied in case where the employee concerned exercises his option to retain unrevised scale of pay. Having regard to the aforesaid, it is submitted that the instant writ petition does not merit any consideration and the same should be dismissed with costs.

8. Heard the learned Advocates appearing for the respective parties and considered the materials on records. Admittedly, it is noticed that the petitioner had joined the service in the year 1981 as 'Khalasi' and was regularised after his probationary period. It is also an admitted position that the benefit under ROPA, 1990 was made applicable to employees of respondent no.2. However, the petitioner did not exercise the option to be entitled to the aforesaid benefit under ROPA, 1990. Subsequently, ROPA, 1998 was implemented and was made applicable to the respondent no.2. Under the aforesaid ROPA, 1998 there was no provision for exercise of any option and the pay scale and other allowance of the employees of the respondent no.2 were revised in terms of the aforesaid ROPA, 1998. Subsequently, ROPA, 2006 had also been made applicable to the respondent no.2. Although, the petitioner contends that there is a disparity in his pay scale and he is receiving a

lesser pay than his junior, by relying on Rule 55(4) of the said Rules and that he is entitled to be paid at par with his junior, however, the petitioner in the instant writ petition has not disclosed the particulars of the pay that he was receiving subsequent to the implementation of ROPA, 1998.

9. It is true that the petitioner may not have exercised his option under ROPA, 1990, however, subsequent to ROPA, 1998 when pay of all the employees of the respondent no.2 were revised, if the petitioner was getting same or higher pay than his junior Shri Narendra Kumar Singh then certainly, the petitioner may be entitled to the benefit of Rule 55(4) of the said Rules. If, however, it is detected that after implementation of ROPA, 1998 the petitioner was getting lesser pay than his junior then certainly the petitioner may not be entitled to the benefit of Rule 55(4) of the said Rules.
10. Having regard to the aforesaid, I direct the respondent no.4 to reconsider the case of the petitioner in the light of observations made hereinabove and to communicate the same to the petitioner after passing a reasoned order upon giving an opportunity of hearing to the petitioner. If the respondent no.4 comes to a conclusion that even after implementation of ROPA, 1998 the petitioner was getting similar or higher pay than his junior, in such an event, the difference in pay along with all consequential benefits be made available to the petitioner.

11. It is, however, made clear that the purported observations as noted by the Chairman of the respondent no.2 on the petitioner's representation dated 26th September, 2013, appears to be cryptic, and also does not consider Rule 55(4) of the said Rules, as such the same is set aside and shall not be taken into consideration by the respondent no.4 while taking the above decision
12. With the aforesaid observations and directions, the writ petition is disposed of.
13. There will be no order as to costs.
14. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)