

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

HEARD ON: 05.11.2024

DELIVERED ON: 05.11.2024

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 3212 OF 2019

Rituparna Basu & Anr.

Vs.

The State of West Bengal & Ors.

Appearance:-

Mr. Sakti Pada Jana

Ms. Sudipta Pramanik

Mr. Subhojyoti Das

.....for the petitioners

Mr. Chandi Charan De, Ld. AGP

Mr. Anirban Sarkar

.....for the State

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioners have prayed for issuance of a writ of mandamus commanding the respondents to pay remuneration and other allowances to them from the respective dates of their initial entry into the service in accordance with the notification dated August 14, 2008.
2. Pursuant to an employment notice dated May 18, 2015 issued by the District Judges' Office, Nadia for recruitment of two Bench Clerks and one Group-D staff in the Court of the learned Additional District & Sessions Judge, converted from the Court of Additional District & Sessions Judge,

Fast Track Court and the Court of the learned Additional District & Sessions Judge, Fast Track Court, Nadia on contractual basis, a panel was prepared from the selected candidates. Similarly, another panel was prepared for recruitment of two Bench Clerks and one Group-D staff in pursuance of the employment notice dated March 14, 2016 issued by the District Judge, Nadia.

3. The petitioner no. 1 was appointed in the post of Bench Clerk on December 2, 2015 on contract/temporary basis in the Court of the learned Additional District & Sessions Judge, Krishnagar, Nadia vide Office Order dated December 2, 2015. The petitioner no. 2 was appointed in the post of Bench Clerk vide Office Order dated February 21, 2017 on contract basis in the Court of the learned Additional District & Sessions Judge, Krishnagar, Nadia.
4. The petitioners were appointed at a consolidated monthly remuneration of Rs. 10,000/-. The petitioners claim that they are similarly situated like other Bench Clerks, which have been abolished and they have been discriminated against in the matter of granting pay and other allowances. The petitioners claim that while other similarly situated employees appointed in the year 2015 and 2017 under the District Judge, Nadia and holding similar posts have been borne in the scale of pay with other allowances in terms of the notifications dated August 14, 2008 and September 16, 2009, the petitioners were appointed at a fixed monthly remuneration, which is far below the limit, which has been stipulated in the said notifications.

5. The petitioners further claim that the nature of work, job responsibilities, volume of work, qualifications and other parameters, which are required to be considered for the purpose of “equal pay for equal work” clearly exists in the case of the petitioners vis-à-vis the other Group-D staff in the Fast Track Courts of the same Districts and, therefore, the petitioners should be granted pay and allowances equal to that enjoyed by similarly situated employees.
6. Heard Mr. Jana, learned advocate for the petitioners and Mr. De, learned Additional Government Pleader for the State.
7. The issue involved in this writ petition is identical with the issue that was considered by this Court in a writ petition being **W.P.A. 3364 of 2019 (Saiful Gain & Ors. v. State of West Bengal & Ors.)** and the same was decided by a judgment and order passed on August 2, 2024.
8. The petitioners herein are similarly situated with the petitioners in *Saiful Gain (supra)*. In the said decision, it was held as follows:-

“15.....The question that arises for consideration is whether the remuneration fixed in the notification dated 08.01.2013 shall be applicable to the case of the petitioners. The portion of the said notification dated 08.01.2013 which would be relevant for the purpose of deciding this writ petition is extracted hereinbelow:

“24 numbers of posts of District Judge Entry Level for above mentioned 24 ADJ’s Courts will be filled up subject to the observance of extant Recruitment Rules and 24 posts of Bench Clerk and 24 posts of Group Defendant ; one from each category fro 24 ADJ Courts; will be filled up on contract basis from among the retired Government employees for a period of 1(one) year of a consolidated monthly remuneration at the rates as follows;

a) Bench Clerk @ Rs. 10,000/- (Rupees ten thousand) only per month.

b) *Group Defendant @ Rs. 8,000/- (Rupees eight thousand) only per month; or Re-employment remuneration as per existing Government Order whichever is less.*

The posts of Bench Clerk Stenographer and Peon (Group Defendant) of the said Fast Track Courts shall continue to function in the newly created regular ADJ Courts.

The charge will be debited to the head “2014-Administration of Justice-00-105-Civil and Sessions Courts Non-Plan etc.....”

16. After going through the said notification, this Court is of the considered view that the monthly remuneration for Bench Clerks and Group-D staff as indicated therein are applicable only to those employees appointed on contract basis from amongst the retired government employees. It is not the case of the State that the petitioners are the retired government employees. In view thereof, the monthly remuneration indicated in the notification dated 08.01.2013 cannot be applied to the case of the petitioners.

17. The memo dated 08.02.2019 was issued by the Finance (Audit) Department, Government of West Bengal for further improvement of the conditions of service of the casual/daily rated contractual workers engaged in various Government Establishments in terms of the memo no. 9008-F.I.R. (P) dated 16.09.2011.

18. After reading the memorandum dated 08.02.2019, it is evident that the said memorandum applies to a particular category of casual/daily rated contractual workers who were engaged in various Government Establishments in terms of memo dated 16.09.2011. It is not the case of the State that the appointment of the petitioners were made in terms of the memo dated 16.09.2011. Therefore, the memorandum dated

08.02.2019 also cannot be applied to the case of the petitioners in hand.

19. From the notification dated 08.01.2013, it is evident that the posts of Fast Track Courts in respect of three subdivisions viz. Ranaghat, Nabadwip and Tehatta within the District of Nadia were abolished and 24 regular ADJ Courts were created. The said notification also states that the posts of Bench Clerks, Stenographers, Peon, Group-D staff of the said Fast Track Courts shall continue to function in the newly created ADJ Courts. Therefore, an employee appointed on contractual basis in respect of the Fast Track Courts which stood abolished vide notification dated 08.01.2013 shall continue to function in their respective posts under the newly created regular ADJ Courts. Therefore, such contractual staffs will perform the same duties upon creation of regular ADJ Courts which they were performing while they were under Fast Track Courts.

20. This Court is, therefore, not inclined to accept the contention and submission of Mr. Chakraborty that since some of the petitioners were appointed on contract basis in regular ADJ Courts, they are not similarly situated with the employees appointed on contract basis in the Fast Track Courts prior to the issuance of the notification dated 08.01.2013.

21. It is evident from the record that the Government took a policy decision with regard to fixation of pay of staff of Fast Track Courts to the effect that the pay of the directly recruited personnel on contract will be the minimum of scale of pay of the respective posts. The Office Order dated 25.08.2006 was subsequently modified partially vide order dated 14.08.2008 which in turn was partially modified by the order

dated 16.09.2009. All these orders have been issued by the Judicial Department, Government of West Bengal with regard to pay and allowances of the employees directly appointed on contract basis in the Fast Track Courts in West Bengal. Such orders were also issued with the concurrence of the Finance Department.

22. Therefore, this Court is of the considered view that the order dated 14.08.2008 which was partially modified on 16.09.2009 shall be applicable to the case of the petitioners who were appointed on contract basis in the Fast Track Courts or in newly created regular ADJ Courts upon abolishing of the Fast Track Courts.

23. The Coordinate Bench of this Court after taking note of the decision of the Hon'ble Supreme Court in the cases of **Supreme Court Employees' Welfare Association Vs. Union of India**, reported in **AIR 1990 SC 334** and **State of Punjab and Others Vs. Jagjit Singh and Others**, reported in **2017 (1) SCC 148** held as follows:

“It is a settled principle of law that equal pay for equal work is considered to be a part of the right to equality before law as guaranteed by Article 14 of the Constitution of India. This is a cherished constitutional goal to remove all inequalities in the matter of payment of remuneration of persons doing the same work and for holding the same post. There cannot be any discrimination in the pay and allowances of employees holding the same post without any reasonable classification for the same. Not only Article 14, Article 16 of the Constitution of India also ensures equal opportunity in the matter of public employment. In between the members of the same class of employees there must be equality in matters concerning service benefits. Depriving the petitioners of the remuneration enjoyed by the other bench clerks holding the similar nature of employment in the district of Murshidabad itself is an instance of invidious discrimination practiced by the State in paying different remunerations to two employees.

The Supreme Court in the case of **Supreme Court Employees' Welfare Association Vs. Union of India**, reported in **AIR 1990 SC 334**, held that if the classification of pay scale is unreasonable or unequal pay is based on no classification Article 14 will be attracted. If unequal pay is discriminatory, court will direct equal pay. This is a case where there is not only similarity in duty and function discharged by the petitioners on the one hand and other bench clerks appointed on contractual basis on the other, there is no qualitative difference in respect of their duties, functions and responsibilities. Thus, the petitioners can be held to be equally placed in all respects with those bench clerks who are getting a monthly remuneration almost twice than that drawn by the petitioners.

It is pertinent to mention that the petitioners are not seeking parity in total remuneration with the regular employees. It is true that the doctrine of equal pay and equal work has no application to persons employed on contractual basis vis-à-vis the regular employees. But the petitioners are the victims of gross discrimination between the members of the same classes of employees holding the same nature of employment i.e. bench clerks appointed on contractual basis. Although the consistent view of Supreme Court as well as various High Courts is that when there is equality of work without any reasonable qualification, the pay of the employees should also be equal certain criteria for deciding the equal work have been laid down from time to time. The Supreme Court in more recent time in the case of **State of Punjab and Others Vs. Jagjit Singh and Others**, reported in **2017(1) SCC148** has reiterated that the sole factor that requires determination is whether the concerned employees were rendering similar duties and responsibilities as were being discharged by the regular employees holding the same or corresponding posts. With reference to the fact of that case the Supreme Court held that the duties and responsibilities discharged by the employees in the present set of appeals were the same as were being discharged by the regular employees. The Supreme Court observed that the principle of equal pay for equal work would be applicable to all the concerned temporary employees so as to vest in them the right to claim wages at par with the minimum pay scale of the regularly engaged government employees holding the same post.

The petitioners discharging the same duties and responsibilities with the same qualification and holding the same post without any distinction with the same nature of employment cannot be allowed to continue with a consolidated sum of Rs. 10,000/- irrespective of whether it was mentioned in the concerned employment notice and whether they had accepted it at the time of joining the relevant posts. There cannot be any waiver of any fundamental right. There may be many circumstances requiring an employee to accept an employment under certain circumstances with certain terms and conditions. That does not prevent them from asking

the State to remove the inequality. Neither can the State deny the same merely because once it was accepted by the petitioners.

In such view of it, I hold and declare that the petitioners are entitled to get the remuneration and other allowances from the respective dates of their initial entry into the service in terms of the notification, dated August 14, 2008.”

24. It would also be relevant to point out at this stage that the writ petitioners have annexed copies of the appointment orders in respect of the Group-D Peon appointed on contractual basis under the District Judge of Nadia wherefrom it appears that they were appointed in the pay scale with Grade Pay and other allowances as per the G.O. dated 25.08.2006 and 16.09.2009. Therefore, it appears that similarly situated persons appointed temporarily as Group-D Peon on contract basis under the District Judge, Nadia have been appointed at the pay scale of with Grade Pay and other allowances in terms of the Office Order dated 25.08.2006 and 16.09.2009 whereas the petitioners have been discriminated against as they were appointed at a fixed monthly remuneration.

25. As the State in its report could not point out that the nature of duties performed by such contractual employees are different from that of the writ petitioners, this Court is of the considered view that the petitioners could not have been discriminated against and they ought to have been appointed at a minimum pay scale with Grade Pay and other allowances as per G.O. dated 25.08.2006 as modified on 14.06.2006 and subsequently modified on 16.09.2009. This Court holds that the petitioners are entitled to get remuneration and other allowances from their respective dates of their initial entry into the service in terms of the notification dated 14.08.2008 and as modified by notification dated 16.09.2009.

26. For the reasons as aforesaid, this writ petition stands allowed.....”

9. The said decision shall squarely apply to the case on hand.
10. In view thereof, the writ petition stands allowed. The respondent nos. 1 and 2 are directed to take immediate steps to release the remuneration and other allowances to the petitioners from the respective dates of their initial joining into service in accordance with notification dated August 14, 2008 and September 16, 2009 as well as any subsequent notification after adjusting the payments already received by them as expeditiously as possible but positively within a period of eight weeks from the date of receipt of server copy of this order.
11. It will also be open to the said respondents to call for any record from the concerned District Judge and if such request is made, the District Judge concerned is requested to comply with the said request at the earliest.
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA , J.)

Pallab AR(Ct.)