

Item no. 33

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

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 3364 of 2019

Saiful Gain & ors.

vs.

State of West Bengal & ors.

Appearance:

For the petitioners : Mr. Soumya Majumder
Ms. Sanjukta Dutta

For the State : Mr. Anirban Ray, learned G.P.
Mr. Tanoy Chakraborty

Heard on : 02.08.2024

Judgment on : 02.08.2024

Hiranmay Bhattacharyya, J.:

1. The petitioners have prayed for issuance of a writ of mandamus to command the respondents to pay remuneration and other allowances to them from the respective dates of their initial entry upto service in accordance with notifications dated 14.08.2008 and 16.09.2009.

2. Pursuant to an employment notice dated 18.05.2015 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.

3. The petitioner no. 1 was appointed in the Group-D post on contract/temporary basis in the Court of the learned Additional District & Sessions Judge, Tehatta, Nadia vide Office Order dated 22.09.2015. The petitioner no. 2 was appointed in the post of Group-D category vide Office Order dated 15.07.2014 on contract basis in the Court of the learned Additional District & Sessions Judge, Nabadwip, Nadia. The petitioner no. 3 was appointed as a temporary Group-D employee on contract basis for a period of one year in the Court of the learned Additional District & Sessions Judge, Fast Track Court-2, Krishnanagar.

4. All the petitioners were appointed at a consolidated monthly remuneration of Rs. 8000/-. The petitioners claim that they are similarly situated like other Group-D staff of Courts 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 2013 and 2016 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 14.08.2008 and 16.09.2009, 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 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. Mr. Majumder, learned counsel appearing for the petitioner submits that the Judicial Department, Government of West Bengal issued a notification dated 14.08.2008 specifically stipulating the pay and other allowances for the employees who were appointed on contract basis in the Fast Track Courts in West Bengal. He further submits that the said notification was subsequently modified by another notification dated 16.09.2009. Mr. Majumder submits that the monthly remuneration of Rs. 8,000/- fixed in the appointment letters was dehors the aforesaid notifications and, therefore, the respondents should be directed to release the pay and allowances to the petitioners at the rate mentioned in the notification dated 14.08.2008 which was subsequently modified vide notification dated 16.09.2009.

7. Mr. Majumder further submits that the petitioner no. 3 subsequently joined the regular post of process server (Group C) with effect from 09.09.2020 and, therefore, the claim of the petitioner with regard to pay and allowances as per the aforesaid notifications shall be restricted only upto 08.09.2020. Mr. Majumder placed reliance upon a decision of the Hon'ble Supreme Court in the case of **State of Punjab & ors. vs. Jagjit Singh & ors.** reported at **(2017) 1 SCC 148** and submitted that the temporary employees possessing the requisite qualification and appointed against the posts which are also available in regular cadre and are performing similar duties and responsibilities as being discharged by regular employees who are entitled to claim wages at par with the minimum pay scale of the regular employees holding the same posts. He also placed reliance upon a decision of a Coordinate Bench of this Court delivered on 01.10.2018 in the case of **Bivas Chandra Saha & anr. vs. State of West Bengal & ors.** being **W.P. 5157(W) of 2018** and submitted that the coordinate bench held that a contractual employee in Fast Track Courts are entitled to get remuneration and other allowances from the respective dates of their initial entry into the service in terms of the notification dated 14.08.2008.

8. Per contra, Mr. Chakraborty, learned counsel representing the State seriously disputed the submission of Mr. Majumder. He contended that by virtue of a notification by 08.01.2013, the Fast Track Courts were abolished with effect from 01.04.2013. He submits that the said notification fixed the monthly remuneration of Bench Clerks and Group-D staffs appointed on contractual

basis. By drawing attention of the Court to the appointment letters of the respective writ petitioners, he submits that it was specifically mentioned in the appointment letters that the monthly remuneration has been fixed in terms of the notification dated 08.01.2013. He submits that the petitioners have not challenged the said notification and after having accepted the appointment, cannot now claim the pay and other allowances in terms of the notifications issued prior to 08.01.2013 as there has been a substantial structural change in the Fast Track Courts after issuance of the notification dated 08.01.2013.

9. Mr. Chakraborty further submits that the Government has issued a memorandum dated 08.02.2019 revising the remuneration of the casual/daily rated/contractual workers engaged in various Government Establishments and the petitioners have been extended the benefits of such memorandum. Mr. Chakraborty distinguished the judgment of the coordinate bench in the case of **Bivas Chandra Saha** (supra) by contending that the petitioners therein cannot be said to be similarly situated as they were appointed pursuant to the notifications issued in the year 2006 i.e. prior to the abolishing of the Fast Track Courts.

10. He further submits that the notification of 2008 and 2009 pertains to appointment on contractual basis in the Fast Track Courts and not in regular ADJ Courts and since the petitioners have been appointed as contractual employees in regular ADJ Courts, the said notifications are not applicable.

11. Heard learned counsel for the parties at length and perused the materials placed.

12. Record reveals that the Judicial Department, Government of West Bengal issued a Department Order dated 25.08.2006 with regard to the policy regarding the recruitment and fixation of pay of staff of the Fast Track Courts in West Bengal. Clause 2 of the said Circulars states that the pay of directly recruited person on contract will be the minimum of the scale of pay of the respective posts without any allowances with effect from date of the joining in the service. Such order was issued with the concurrence of the Finance Department, Government of West Bengal. Subsequently, the said order dated 25.08.2006 was modified by issuing another Department Order dated 14.08.2008 wherein it was stated that the Governor has been pleased to order that the employees who are directly appointed on contractual basis in the Fast Track Courts in West Bengal will be entitled to draw emoluments per month at the rate of initial basic pay equal to the minimum of the scale of pay of their respective posts; Dearness Pay; Dearness Allowance, Medical Allowance, House Rent allowance under the existing Rules of the Government with effect from 01.01.2008. The said order was also issued with the concurrence of the Finance Department, Government of West Bengal. Thereafter, another order dated 16.09.2009 was issued in partial modification of the Department Order dated 14.08.2008 wherefrom it appears that the Governor has been pleased to order that the employees who were directly appointed on contractual basis including the Ex-Service Men (retired from Service) in the Fast Track Courts in West Bengal will be entitled to draw emoluments per month at the rate of initial basic pay (pay in the pay band) + (Grade Pay of the Pay); revised rate of Dearness

Allowance, Medical Allowance, House Rent allowance at the rate of Rs. 300/- p.m. under the existing Rules of the Government with effect from 01.09.2009. The said order was also issued with the concurrence of the Finance Department, Government of West Bengal.

13. Subsequently, a notification dated 08.01.2013 was issued whereby the Governor has been pleased to accord approval with the abolition of the 24 Fast Track Courts in 24 Sub-Divisions covering 7 Districts and accord sanction to the creation of 24 regular ADJ Courts within 24 Sub-Divisions and creation of 24 posts in the rank of District Judge Entry Level for 24 regular ADJ Courts and 24 posts of Bench Clerks and 24 posts of Group-D posts for each of such 24 regular ADJ Courts.

14. In the report in the form of an affidavit filed by the State, it has been specifically stated that with effect from 01.04.2013, the Governor has been pleased to accord approval for the abolition of the 24 Fast Track Courts in 24 Sub-Divisions out of 51 Fast Track Courts and accord sanction to the creation of 24 regular ADJ Courts vide notification dated 08.01.2013 and since then 88 Fast Track Courts is continuing till date with the complete funding by the State Government.

15. The petitioners were appointed pursuant to an employment notice dated 18.05.2015 in Group-D posts in the Office of the District Judge of Nadia. 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 sub-divisions 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) SCC 148** 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**. The respondent nos. 1 and 2 are directed to take immediate steps to release the remuneration and other allowances to the petitioner nos. 1 and 2 from the respective dates of their initial joining into the service in accordance with notifications dates 14.08.2008 and 16.09.2009 as well as any subsequent notifications 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 the server copy of this order. The respondent nos. 1 and 2 are also directed to release remuneration and other allowances to the petitioner no. 3 from the date of his initial joining into service in accordance with the notifications dated 14.08.2008 and 16.09.2009 as well as any subsequent notification till 08.09.2020 after adjusting the payments already received by him within the time limit as stipulated hereinbefore.

27. It will also be open to the respondent nos. 1 and 2 to call for any records from the concerned District Judge and if such request is made, the District Judge concerned is requested to comply with the same at the earliest.

28. There will however be no order as to costs.

29. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)

Amitava Nag (AR. CT.)