

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/729/2017

PANKAJ KAR CHAUDHURI & ORS.
VS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE :
THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA
Date : 7th February, 2024.

Appearance :
Mr. Debdatta Sen, Adv.
Ms. Ledia Dasgupta, Adv.
...for the petitioners.

Mr. Alak Kumar Ghosh, Adv.
Mr. Arijit Dey, Adv.
...for the KMC.

The Court : Three petitioners retired from the post of Deputy Manager on different dates in the year 2012 are jointly claiming pay parity with the respondent no.9 who also retired from the post of Deputy Manager on 30th June, 2013.

Mr. Sen, learned Counsel representing the petitioners, submits that they were initially appointed as Standard Grade Clerk and subsequently were promoted to Assistant Manager cadre in the pay scale of Rs.6000-12000 during the period from 23rd February, 1990 to 1st October, 1992 whereas the respondent no.9 who was previously working in the post of Welfare Officer was also promoted to the post of Assistant Manager on 14th August, 1996. It has been submitted on behalf of the petitioners that their entry into Assistant Manager cadre was before the promotion of the respondent no.9 to the post of Assistant Manager on 14th August, 1996, but astonishingly the pay of the petitioners was fixed at lower rate than that of the respondent no.9. It has been

contended on behalf of the petitioners considering the respective dates of entry of the petitioners vis-à-vis the respondent no.9 when it is found that the petitioners are senior in the cadre of Assistant Manager, their pay is required to be fixed at par with the respondent no.9 at the material point of time. Subsequently, the petitioners as well as the respondent no.9 were promoted to the post of Deputy Manager on different dates and all the four persons retired on superannuation from the post of Deputy Manager.

Several representations have been made as it has been submitted on behalf of the petitioners claiming pay parity starting from 27th March, 2012 and, thereafter, the claims of the petitioners were spurned by the concerned authority of the Kolkata Municipal Corporation (hereinafter referred to as 'KMC') *vide* decision dated 6th June, 2017.

In support of the contention made on behalf of the petitioners, Regulation 34A of the Service Regulations applicable to the employees and officers of KMC is relied upon. In addition thereto, Circular dated 31st January, 1985 is also relied upon.

KMC is represented by learned Advocate who has made submission in order to defend the decision dated 6th June, 2017 and it has also been submitted that the petitioners were appointed initially as Peon/Assistant whereas the appointment of the respondent no.9 was as Junior Clerk and, thereafter, the respondent no.9 on the recommendation of the Municipal Service Commission was appointed as Welfare Officer having higher scale of pay than the petitioners. Thereafter, the respondent no.9 was also promoted to the post of Assistant Manager on 14th August, 1996, but according to KMC, since the respondent no.9 enjoyed higher scale of pay while working as Welfare Officer, fixation of pay as Assistant Manager so far the respondent no.9 is concerned, was made

comparatively at the higher rung than the petitioners. According to KMC, there is no anomaly in pay fixation made in favour of the petitioners *vis-à-vis* the respondent no.9.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on record, it appears that service career of respondent no.9 as employee/officer of KMC is not akin to that of the petitioners as it emanates from the decision dated 6th June, 2017 of KMC.

On perusal of the said decision dated 6th June, 2017, it transpires when petitioners were appointed either as Peon or Assistant, respondent no.9 was appointed as Junior Clerk and, thereafter, he was appointed directly to the post of Welfare Officer on 14th September, 1983, as a result whereof, his pay was fixed at Rs.470-1230 when the pay of the petitioners was not at par with the said respondent no.9. Subsequently, the respondent no.9 was promoted to the post of Assistant Manager and the same posts were held at that point of time by the petitioners. Promotion of the respondent no.9 to the post of Assistant Manager was on 14th August, 1996 whereas, according to the petitioners, they were promoted to the cadre of Assistant Manager during the period from 23rd February, 1990 to 1st October, 1992 though it has been argued on behalf of the petitioners that due to late entry of the respondent no.9 into the cadre of Assistant Manager on 14th August, 1996, petitioners are entitled to get pay protection considering the higher pay which was being enjoyed by the respondent no.9. That submission cannot be accepted in view of the fact that prior to promotion of respondent no.9 on 14th August, 1996, he was holding the higher post of Welfare Officer enjoying higher scale of pay which might be the reason for fixing the pay of the respondent no.9 *w.e.f.* 14th August, 1996 at higher rung in the scale of pay in respect of Assistant Manager cadre.

Ultimately, the petitioners and the respondent no.9 were promoted on different dates to the cadre of Deputy Manager and, thereafter, they retired on different dates while working as Deputy Manager.

There is another issue which requires to be addressed by this Court while considering the claim of the petitioners relating to pay parity since the respondent no.9 enjoyed higher scale of pay while serving in the cadre of Assistant Manager. In view of chronology of facts and pay fixation made in favour of the petitioners *vis-à-vis* the respondent no.9, it also transpires that the respondent no.9 on the date of his promotion to the Assistant Manager cadre was granted higher initial pay in the said cadre than the petitioners. Therefore, the cause of action arose on 14th August, 1996 against which the petitioners should have taken necessary steps contemporaneously. At that material point of time, the petitioners did not raise any demur and they retired on different dates in the year 2012 and, thereafter, started making representations to the KMC seeking pay parity. Thereafter, writ petition has been filed on 21st December, 2017 five years after superannuation of the petitioners at a point of time when prayer of the petitioners was spurned by the concerned authority of KMC *vide* decision dated 6th June, 2017.

Apart from entitlement of the respondent no.9 to receive higher pay in the cadre of Assistant Manager as it has been discussed hereinabove, the petitioners herein have approached this Court with the present writ petition belatedly. The explanation offered for such delay is not found to be satisfactory since preferring one after another representations cannot extend the period of limitation in approaching the Court as it has been decided by the Apex Court in *Shiv Dass versus Union of India and Ors.*, reported in 2007 (9) SCC 274.

Before parting with, it needs to be recorded that in the present writ petition the decision of the concerned authority of KMC dated 6th June, 2017 rejecting the prayer of the petitioners to grant pay protection in order to bring pay parity in between the petitioners and the respondent no.9 has not been challenged.

In the aforesaid conspectus, writ petition being WPO/729/2017 stands dismissed.

However, there shall be no order as to costs.

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

(SAUGATA BHATTACHARYYA, J.)