

22.04.2026
Item No.2
Court No.12
(cp)

FMA 1380 of 2017

West Bengal Comprehensive Area Development
Corporation & Ors.
Vs.
Pran Krishna Dutta & Anr.

Mr. Subir Kumar Bhattacharyya
Ms. Pinky Dey

.....for the appellants.

Mr. Tanmoy Mukherjee
Mr. Manoranjan Jana
Mr. Rudranil Das

.....for the respondent no.1.

1. The appeal arises out of a judgment and order dated June 29, 2016, passed in W.P. 19345 (W) of 2014. The learned Judge allowed the writ petition filed by the respondent no. 1. The learned Judge observed that in view of the decision of the Hon'ble Apex Court dated August 1, 2012, the appellant No. 1 could not maintain any distinction between electricians possessing ITI certificates and those possessing equivalent qualification, but not ITI certificates, without framing proper service rules.
2. His Lordship was of the view that, it was not the appellants' case that, rules had been framed for such purpose which permitted that, a distinction in the pay

structure of those electricians having ITI certificates and those who did not have the same could be made.

3. His Lordship was of the further view that in matters pertaining to service, when a judgment was rendered on an issue governing a particular cadre or their condition of service, such judgment was binding on the employer and the employer was bound to act accordingly. The employer could not discriminate between the employees in the same cadre on the technical ground that only some of them were parties to the judgment and others were not. His Lordship took note of the fact that, in this case, the employer was a party to the judgment of the Apex Court. The judgment was binding on the employer. Thus, the fact that the respondent no. 1, although an employee, was not a party to the judgment of the Apex Court would not deprive the employee from getting the benefit of the judgment. The employer was bound to allow the same pay structure to the respondent no. 1 as was paid to the similarly situated electricians who were before the Hon'ble Apex Court, i.e., treating the respondent no. 1 at par with the cadre of electricians who were successful before the Hon'ble Apex Court.
4. It was informed to His Lordship as it has been informed to us that another employee had moved a writ petition belatedly, which was dismissed by the writ court and an appeal therefrom is pending. In view of the pendency of

the appeal, His Lordship rightly observed that the order of dismissal of the said writ petition ceased to become final and in view thereof, the order passed in WP 11390 (W) of 2015 was not binding on His Lordship. This observation of His Lordship was correct. Reference is made to the decision of Satyanarayan Prasad Goopta Vs. Diana Engineering Company, reported in 1955 CWN 509, in support of the contention that an order is final upon disposal of a proceeding. Once an appeal is filed, the order loses its character of finality. His Lordship allowed the writ petition of the respondent no. 1 directing that the judgment of the Apex Court dated August 1, 2012, applied to all employees who were similarly situated as the employees who had been successful before the Apex Court. The additional amount due to the respondent no. 1 was directed to be calculated by the appellant and offered to the respondent no. 1 with interest @ 4% p.a. within three months from date. It was further directed by His Lordship that if the entire amount was not paid within the time prescribed by His Lordship, the appellant No. 1 would be liable to pay interest on the principal sum in default, @ 8% p.a. from the respective due dates till the date of payment.

5. Mr. Bhattacharyya, learned advocate for the appellants, submits that the respondent no. 1 was appointed on temporary basis vide notification dated April 20, 1985 in

the pay scale of Rs.300-10-400-15-565-20-685/-, in the post of electrician. Thus, after 15 years from having accepted the temporary appointment in the said prescribed scale mentioned in the notification, the respondent no. 1 could not have maintained the writ petition, thereby, seeking pay parity with electricians who had approached the High Court and the Apex Court. Those employees were vigilant and diligent. They had approached the court shortly after their appointment. Delay itself was fatal in this case and the writ petition should have been dismissed on such ground.

6. Secondly, the argument of Mr. Bhattacharyya was that the respondent no. 1 was estopped from claiming a higher scale, when he had acquiesced to the scale that was offered to him vide notification dated April 20, 1985. The employees who were successful before the Hon'ble Apex Court had joined earlier and the respondent no. 1 could not be treated at par with those persons.
7. Mr. Tanmoy Mukherjee, learned advocate for the respondent no. 1, submits that, one of the employees before the Hon'ble Apex Court had joined on May 20, 1985.
8. Thus, the argument of the appellants that the employees who were successful before the Hon'ble Apex Court had joined earlier than the respondent no. 1 and they could not be placed at par, is not correct. We have perused the

order of the Hon'ble Apex Court and we find that such submission is correct.

9. We find that the authority had published the advertisement for recruitment to the post of electricians and the qualification/eligibility criteria was that the candidates should have ITI training certificates or equivalent qualification. The respondent no. 1 claimed to have equivalent qualification and applied. His qualification was accepted and he was appointed. His qualification was treated to be equivalent to ITI certificates. His appointment was also confirmed. Under such circumstances, when the appellants treated ITI qualification to be equivalent to those qualifications which the other electricians had, the question of making a distinction in their pay by way of an office order/office circular was held to be illegal by the Hon'ble Apex Court.
10. Moreover, the Hon'ble Apex Court observed that the service conditions of the employees under the appellants were governed by statutory regulations, namely, the West Bengal Comprehensive Development Corporation Service Regulations. The regulations did not mention any difference in pay between the electricians who did not have the ITI certificates and those who did. Thus, such regulations could not be overridden by any administrative instructions or order. Having initially recruited the electricians in a single unified cadre, the

said electricians could not be treated differently in the absence of any amendment to the statutory regulations.

11. On the last occasion, we had posed a question to Mr. Bhattacharyya as to whether the regulations had been since amended in order to include a difference in pay structure between the electricians who had ITI certificates and who had not. We have been informed that no such amendment had taken place. Thus, the authority had accepted the decision of the Hon'ble Apex Court in 2005 and did not deem it necessary to amend the regulations by making pay disparity on the ground of superior qualification as they claimed that ITI certificate holders had. This means that the decision of the Hon'ble Apex Court is still binding on the appellants.
12. The corporation has the power to issue administrative instructions to supplement the regulation, but an administrative instruction in derogation of the service regulations is not permissible in law. The administrative regulations can be issued to fill up the gap in a regulation or a rule, but not to create a class within a class of employees thereby giving a set of employees higher pay when the regulations were silent.
13. The learned trial judge noticed that the appellants could not demonstrate that there were two categories of electricians. They belonged to one unified cadre or grade. Thus, all electricians formed one class of employees. By

way of an administrative instruction, a distinction could not be made between the employees of the same class. The appellants also failed to show before us the rationale/ nexus between the circular issued and the object sought to be achieved thereunder.

14. When the qualification of the respondent no. 1 was treated to be at par with the electricians having ITI certificates, the question of making a distinction in their pay did not arise. Not only the regulations, but the advertisement on the basis of which the recruitment process had been initiated ought to have provided for such difference in pay.
15. Under such circumstances, we do not find that the learned Single Judge had failed to appreciate the legal principle and the facts. Moreover, delay is not fatal in this case, as the employer was bound to treat all employees equally and grant the benefit of the order of the Hon'ble Apex Court to all similarly situated electricians, who did not have ITI certificates. They were not required to approach the writ court one by one, seeking pay parity.
16. Accordingly, the appeal is dismissed.
17. The order of the learned Trial Judge is upheld, but modified to the extent that time to make the payment is extended. The excess amount to be paid to the respondent no. 1 on the basis of the order of His

Lordship which has been upheld by us, shall be calculated by the appellant No. 1 and paid to the respondent no. 1 within two months from date, with 4% interest per annum on the principal amount.

18. If such payment is not made within the time stipulated by us, additional interest of 4% shall be paid on the total sum payable on the basis of this order from the date when the payment became due on the basis of our order, till the date of actual payment.
19. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)