

01. 30.07.2025
Court No.08.

(Pritam)

**MAT 500 of 2024
With
CAN 2 of 2024**

The State of West Bengal & Ors.

-Vs.-

Tapas Kr. Kundu & Ors.

Mr. Sirsanya Bandyopadhyay, Sr. Adv.,
Mr. Saaqib Siddiqui,
Mr. Sagnik Chatterjee.

.....for the appellants.

Mr. Soumya Majumder, Sr. Adv.,
Mr. Soumik Dey.

....for the writ petitioner/respondents.

Mr. Arindam Chattopadhyay.

...for the DPSC, Nadia.

1. Mr. Sirsanya Bandyopadhyay, learned senior advocate appears for the appellants.
2. Mr. Soumya Majumder, learned senior advocate appears for the respondents.
3. Mr. Arindam Chattopadhyay, learned advocate appears for the DPSC, Nadia.
4. With the consent of the parties, finally heard the matter.
5. Learned counsel for the appellants submits that it was the second visit of the writ petitioners before the learned Single Judge.
6. In the previous writ petition filed by them, a direction was issued to the respondents to take a decision on the claim of the writ petitioners

7. In turn, by a communication dated January 24, 2017, the claim was rejected by passing a reasoned order. The said rejection order became the subject matter of challenge in the instant writ petition. The learned Single Judge invoked the doctrine of “*equal pay for equal work*” and allowed the writ petition.
8. Criticizing the said order, the bone of contention of learned counsel for the appellants is that there is no iota of discussion about validity of the rejection order dated January 24, 2017 in the impugned order.
9. For the purpose of invoking the doctrine of “*equal pay for equal work*”, the court is required to examine the qualifications, nomenclature, source of recruitment, nature of work and other relevant factors of both the set of employees. Merely, because the designations are similar and both the set of employees are performing the legal work, the principle of “*equal pay for equal work*” cannot be pressed into service in a mechanical manner. The order of the learned Single Judge is silent on this aspect.
10. The learned counsel for the writ petitioners supported the impugned order but fairly submitted that there is no discussion regarding the legality, validity and propriety of rejection order dated January 24, 2017 in the impugned order passed by learned Single Judge.

11. However, by placing reliance on Order XLI Rule 33, learned counsel for the writ petitioners urged that the matter is languishing in court and they are fighting for their genuine claim for more than a decade.
12. In this backdrop, rather than remitting the matter back for fresh adjudication, the Appellate Court itself can decide the matter. He submits that the petitioners are less in number and, therefore, neither the matter was sent for consideration for revision of pay scale by Pay Commission nor their pay scale was upgraded.
13. The petitioners' pay scale were revised, whereas, it should have been upgraded. The benefit of upgradation was given to various other set of employees without there being any recommendation of the Pay Commission. The petitioners were given step-motherly treatment by the respondents.
14. We have heard the parties on this aspect. A plain reading of the order of the learned Single Judge leaves no room for any doubt that there is no iota of discussion on the correctness of the rejection order dated January 24, 2017.
15. Apart from this, the learned Single Judge has not decided the claim of petitioners for grant of benefit of "*equal pay for equal work*" on the basis of relevant factors, such as, educational qualification, mode of recruitment, job nomenclature, hours of work and

nature of the duties and responsibilities, etc. of both the set of employees.

16. In absence thereto, we find substance in the argument of learned counsel for the appellants that the doctrine of “*equal pay for equal work*” flowing from Article 39(d) of the Constitution, cannot be extended on mere asking.

17. Now if we agree with counsel for the writ petitioners, this court itself can decide the matter on merits, else, the matter needs to be remanded. We are not inclined to invoke order XLI Rule 33 of the C.P.C. in a matter of this nature. Instead, we deem it proper to remit the matter back to the learned Single Judge with a request to hear and decide the matter expeditiously preferably within two months from the date of order is brought to the notice of learned Single Judge.

18. In view of the foregoing discussion, the impugned order of learned Single Judge dated December 20, 2023 is set aside.

19. WPA 4510 of 2021 is restored to its original number with a request to the learned Single Judge mentioned hereinabove.

20. It is made clear that this court has not expressed any opinion on the merit of the case.

(Sujoy Paul, J.)

(Smita Das De, J.)