

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 88 of 2024

Kamalendu Banerjee

Versus

The State of West Bengal and others

For the Petitioner : Mr. Dyutimoy Paul,
Mr. Akash Dutta.

For the State : Mr. Tapan Kr. Mukherjee, Id. AGP,
Mr. Somnath Naskar.

For the Respondent No. 3 & 4 : Mr. Suman Basu.

Heard on : January 29, 2025.

Judgment on : February 11, 2025.

Madhuresh Prasad, J.:

1. The present petitioner was working as Head Clerk-cum-Accountant (hereinafter referred to as 'HCCA') with effect from 01.12.2008. He was promoted to the post of Head Clerk (hereinafter referred to as 'HC') on 01.03.2012. He attained the age of superannuation on 31.01.2015. It is his grievance that at the time of his retirement his grade pay was calculated as Rs. 3,900/- since the post of HC was a promotional post from the post of HCCA having a lesser grade pay of Rs. 3650/-. The pension of the applicant was thus calculated on Rs. 11315/-. When the calculation reached the

office of the Principal Accountant General, the 3rd respondent before the Tribunal, it was of the opinion that the petitioner's posting from HCCA to HC was a lateral movement inviting no fixation benefit, normally admissible to a promotion. A consequential communication in this regard was issued by the Senior Account Officer. This communication dated 11.03.2015 was assailed by the petitioner/ applicant.

2. The Tribunal considered the stand of the Finance Department of the State Government that no promotional pay fixation benefit was admissible to the appellant for his promotion to the post of HC with effect from 01.12.2008. This is because the scale of pay of Rs. 4000/- – 8850/- with HI Rs. 4550/- (revised level – 9A) had already been upgraded to Rs. 4500/- – 9700/- (revised level – 10) notionally with effect from 01.01.1996 carrying actual benefits with effect from 01.08.2008. The pay scale of the feeder post and its promotional post was made identical for which no pay fixation benefits was admissible for promotion to the post of HC from the post of HCCA.

3. The claim of the applicant/ petitioner for a higher pay fixation and consequential higher pensionary benefits was thus not found to be admissible by the Tribunal. The Tribunal has thus disposed of the O.A. No. 03 of 2022 filed by the applicant/ petitioner.

4. The learned Counsel for the petitioner submits that others similarly situated as the petitioner have been allowed a higher fixation of pay and their pension has consequentially been fixed on Rs. 11315/- per month. The petitioner, however, has been held to be

entitled to a pay fixation, as a consequence of which the pensionary entitlement of the petitioner has been held to be Rs. 11010/-. The learned Counsel for the petitioner has drawn attention of the Court to the pension being paid to one Mr. Madan Mohan Ganguly and one Sri Sujit Mukherjee. They were promoted as HC with effect from 02.08.2008 and 01.02.2008 respectively. Insofar as Mr. Madan Mohan Ganguly is concerned, he submits that the order dated 10.09.2009 issued by the Director General shows that with effect from the date he has been posted as HC he has been placed in the grade pay of Rs. 3900/-. According to him, Mr. Sujit Mukherjee has also been placed in the grade pay of 3900 with effect from the date of his posting as HC (01.02.2008). The order in respect of Mr. Sujit Mukherjee is dated 08.09.2009.

5. In view of the dispute raised by the petitioner, we asked the learned Counsel representing the Accountant General to seek instructions in this regard. The learned Counsel representing the Accountant General submits that the issue raised by the petitioner is devoid of any substance. He has reiterated the stand of the Accountant General as well as the State Authorities, recorded in the order of the Tribunal. He submits that the petitioner had wrongly been granted a higher pay scale with effect from the date he joined on the post of HC i.e. with effect from 01.03.2012. There was no question of granting any pay fixation benefit, as petitioner's posting to the post of HC from HCCA was not a promotion but a lateral

movement. According to him the petitioner was thus wrongly granted an increment at this stage.

6. According to him, in view of revision of the pay scale attached to the post of HCCA with effect from 01.08.2008, the petitioner is entitled to the revised scale with effect from 01.08.2008. The authorities have thus rightly granted the petitioner benefit of revision of the pay scale attached to the post of HCCA i.e. Rs. 4500/- – 9700/- (revised level- 10) with effect from 01.08.2008 but subject to adjustment of the excess payment made to the petitioner on account of the fixation benefit granted with effect from 01.03.2012 i.e. the date when he was posted to the lateral post of HC.

7. The learned Counsel for the petitioner has vehemently argued that the authorities cannot be permitted to discriminate in the matter of grant of pay benefits to different persons on the same post, again referring to the grant of the higher scale with effect from the date of posting on the post of HC to Mr. Madan Mohan Ganguly and Mr. Sujit Mukherjee. To buttress his submission that the petitioner cannot be discriminated against the learned Counsel for the petitioner has relied upon decision of the Apex Court in the case of ***Dr. G. Sadasivan Nair Vs. Cochin University of Science and Technology Represented by its Registrar and Others*** reported in ***(2022) 4 SCC 404***.

8. We find that in the decision relied upon by the petitioner the appellants before the Apex Court were lecturers. At the time of their appointment they were practicing lawyers. Rule 25(a), Part-III of the

Kerala Service Rules provided for reckoning of the period of practice, subject to some conditions, for the purposes of determining superannuation pension. The appellant's claim was rejected relying on the proviso to Rule 25(a) which contemplated that benefit of 25(a) would be available only to those lecturers who were appointed on a post requiring the qualification in law and there was no such requirement for the post on which the appellant was appointed. The proviso, however, was not being applied uniformly and the authorities were found to be discriminating between the Lecturers, as others similarly situated as the petitioner were granted the benefit of Rule 25(a).

9. The decision of the Apex Court relied upon by the petitioner has no application to the facts and circumstances of the present case. There is also no material to show that the said two persons with whom the petitioner is claiming parity continued to be granted this pay scale even after revision of the pay scale of HCCA vide Finance Department Memorandum dated 23.02.2009 with effect from 01.08.2008; it is not in dispute that prior to revision the petitioner was also getting the higher scale with effect from the date of his posting as HC. No case of discrimination/ disparity has thus been made out.

10. We also find that in view of the revision of pay scale of HCCA by the F. D. Memorandum dated 23.02.2009 the applicant has been allowed in the higher pay scale with grade pay of Rs. 3900/-, with effect from 01.12.2008 i.e. the date on which he was posted as

HCCA. As per the stand of the respondents, which is not in dispute the applicant's movement from HCCA to HC was a lateral movement and not a promotion. Therefore, the same would not invite any fixation benefit, normally admissible to a promotion. Since such benefit had been granted to him but with effect from a much later date (01.03.2012), the authorities have rightly directed that the petitioner be given the higher revised scale for HCCA with pay band Rs. 3900/- with effect from his promotion as HCCA, but subject to adjustment of such amount paid already with effect from 01.03.2012.

11. Thus, we find no reason to interfere with the order dated 04.04.2024 passed by the Tribunal in O.A. No. 03 of 2022.

12. The writ petition and applications, if any, stands dismissed.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)