

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 8996 of 2016

**Ghanashyam Das (Since Deceased) substituted by his legal heirs and
representatives Nandita Das & Ors.**

-Vs-

The State of West Bengal & Ors.

For the Petitioner : Mr. Arup Kumar Lahiri

For the Respondents : Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas

Heard on : 03.07.2024

Judgment on : 14.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner retired from service as a Process Server under the District Judge, Howrah, with effect from 30.09.2013, having initially been appointed as a Night Guard on 03.12.1976 and thereafter promoted to the post of Process Server with effect from 01.03.1978. At the time of retirement, the petitioner was drawing a total monthly salary of ₹30,177/-, with a basic pay of ₹26,792/-. The pension currently received by the petitioner is ₹12,116/- per month. The petitioner claims that he was senior in service to Respondent No. 4, Shri Dilip Kumar Pal, who had retired earlier on

30.06.2012, having been appointed as a Process Server on 28.05.1981 and drawing a basic pay of ₹29,748/- at the time of retirement.

2. Respondent no. 4 who worked as a Process Server under the Learned District Judge, Howrah retired on 30/06/2012 and received Rs 29,748/- per month as basic pay in 2012. Respondent No. 4 was given the benefit of the Career Advancement Scheme after the completion of ten years of service vide Government Order being 6075 (F) dated 21/06/1990, however the same benefit was not extended to the petitioner, despite the petitioner working for more years than him.
3. The petitioners have prayed for a writ of in the nature of mandamus commanding the respondents to pay the petitioner at par with the pay of the respondent no. 4 and to refix the pay of the petitioners from the date when respondent no. 4 started receiving higher pay on the grounds that the respondent authorities have misused their authority and surpassed the law by denying the petitioner benefit of pay protection considering persons in similar circumstances have been extended such benefits, the person receiving higher pay is a junior to the petitioner and that salary is property within the meaning of Article 300A of the Constitution of India.
4. Sri Kamallesh Manna, a Process Server under the Learned District Judge Howrah had made a similar prayer to the Learned Judge praying that his pay scale should be fixed as per Sri Kashinath Patra who was also appointed as a Process Server under the District Judge, Howrah. Sri Kashinath Patra was appointed after Sri Kamallesh Manna but was given the benefit of Career Advancement Scheme and thus received a higher pay scale. The Learned

District Judge, Howrah forwarded his representation to the Judicial Department, Government of West Bengal. However, his prayer was rejected vide Memo No. 16472 dated 31/08/1994 issued by the Deputy Secretary, Judicial Department, Government of West Bengal (hereinafter referred to as 'order dated 31/08/1994'). The same was challenged in an application under Article 226 of the Constitution of India to this Court vide writ petition C.O. No. 20804(W) of 1995 where this Court vide an order dated 25/02/2002 set aside the order dated 31/08/1994 and directed the Secretary, Judicial Department, Government of West Bengal to reconsider the pay scale of the Sri Kamalesh Manna (hereinafter referred to judgment dated 25/02/2002). As per the judgment dated 25/02/2002, the Judicial Secretary, Government of West Bengal on 21/08/2002 passed a reasoned order and held that the petitioner was entitled to get his pay refixed at par with the pay of Sri Kashinath Patra, similarly situated with respondent no. 4 and thus Sri Kashinath Manna pay scale was refixed and was paid all his arrear dues.

5. Following the reasoned order dated 21/08/2002, three other Process Servers namely Sri Gourango Dey, Sri Prasanta Seth and Sri Pratap Chandra Ghosh who were senior to Sri Kashinath Patra were receiving less pay than him. They filed three applications under Article 226 of the Constitution of India before this Court and prayed that the authorities should be directed to set their pay scale at par with Sri Kashinath Patra. All three writ petitioners were heard together and in an order dated 17/04/2006 passed in WP No. 9868 (W) of 2005, this Court directed the authorities to pay Sri Gourango Dey, Sri Prasanta Seth and Sri Pratap Chandra Ghosh at par with Sri

Kashinath Patra which was consequently complied with by the State respondents.

6. The petitioner had made representation to the Respondent No. 2 to be granted protection of pay to the petitioner as evidence from the representation dated 19/04/2012. In the year 2012, both the petitioners alongside with other people who were similarly situated with him filed an application under Article 226 of the Constitution of India vide writ petition No. 16246(W) of 2012 where it was argued that the pay scale granted to the petitioner was not proper and his juniors were getting paid higher. Through an order dated 10/01/2013, this Court directed the authorities to consider and dispose of the representation of the petitioners in the writ petition. Since the writ petition was disposed of without calling for any affidavits, all allegations contained therein were deemed to have been denied. However, the Learned Advocate for the petitioners urged that they had never prayed that that the petitioner should get pay at par with the pay of Respondent No. 4.

7. The Learned Advocate for both the petitioners urged that the petitioners were similarly situated with Sri Gourango Dey, Sri Prasanta Seth and Sri Pratap Chandra Ghosh. Furthermore, other Process Servers working under the District Judge, South (24) Parganas were given a higher pay scale vide order No. 3-P dated 28/02/2007 and the petitioners were also similarly situated to these individuals. If the petitioners were granted pay protection, they would have not only received a greater salary, but they would have also received a higher rate of pension. Pay scale no. 6 was granted by this Court on the

basis of the principle of equal pay for equal work. Respondent no. 4 was admittedly junior to the petitioners in the post of Process Server as Respondent No. 4 was promoted on 28/05/1981 and the petitioners were promoted on 01/03/1978 and 11/8/1975. Denying the petitioners a high pay was violative of Article 14 and 16 of the Constitution of India. Furthermore, as the emoluments of the petitioners were property within the meaning of Article 300-A of the Constitution of India, such mala fide action of the authority amounted to deprivation of property without the authority of law. They were entitled to the benefit of Rule 55(4) of the West Bengal Service Rules, Part-I and have suffered a loss each month to the tune of approximately Rs 6,000/- . They have cited the case of ***Birendra Sharma - Vs.- State of West Bengal & Ors.***¹ and ***Uday Sankar Das -Vs.- The State of West Bengal & Ors.***² which was decided on the same set of facts and the petitioner was directed to submit a comprehensive representation before the Learned District Judge, South 24 Parganas disclosing his grievances and if the Learned judge was to find he was being paid less then to increase their pay.

8. The Learned Advocate for the respondents no. 2 submitted that that the Career Advancement Scheme promulgated by the Government of West Bengal debarred the writ petitioner from getting benefit of the said scheme. However, the petitioner was entitled to benefits under the Modified Career Advancement Scheme. Furthermore, the respondent was attached to the

¹W.P.A. No.8989 of 2016

² WPA 8997 of 2016

Learned District Judge at Alipore and refrained from making any comments as they were unaware of the employees or Process Servers attached to the office of the Learned District Judge of Howrah. Such Process Servers were allowed pay protection on the basis of memo bearing No. 83(9) JL dated 20th February, 2007 issued by the Judicial Department, Government of West Bengal in compliance of the directions of the Hon'ble High Court at Calcutta in WP No. 4384 (W) of 2006. The Learned Advocate representing the respondent denied that the grant of pay scale no. 6 under the West Bengal Services (Revision of Pay and Allowances) Rules, 1990 in compliance of the order passed by this Court was treated as an advancement in the office of respondent no. 2. He further urged that the petitioners were not similarly placed as the other Process Servers. The Learned Advocate also pointed out the petitioner had admitted to have filed a separate writ petition along with other employees praying for fixing of a proper scale of pay. However, such writ petition was duly deposed of by this Hon'ble Court. Thus, it was evident the petitioner was trying to raise the issue once again in a different manner.

9. The Learned Advocate for both the petitioners urged the petitioners were similarly situated with others who received the benefit of the scheme. Furthermore, other Process Servers working under the District Judge, South (24) Parganas were given a higher pay scale vide order No. 3-P dated 28/02/2007 and the petitioners were also similarly situated to these individuals. If the petitioners were granted pay protection, they would have not only received a greater salary, but they would have also received a higher rate of pension.

10. The petitioner stated although Respondent No. 4 was junior in service, he received the benefit of the Career Advancement Scheme (CAS) and a corresponding higher pay scale, which was not extended to the petitioner. The denial, according to the petitioner, resulted in a lower pension and financial loss during and after his service. He submitted if pay protection had been extended, his retirement benefits would have been significantly enhanced.
11. The petitioner's case draws on precedent concerning similarly situated employees under the District Judge, Howrah. He cited the instance of Sri Kamalesh Manna, who served as a Night Guard before being promoted to the post of Process Server. Sri Manna had challenged the denial of CAS benefits in writ petition C.O. No. 20804(W) of 1995, contending that his junior, Sri Kashinath Patra, had received the benefit. The High Court, by an order dated 25.02.2002, set aside the rejection of Sri Manna's representation (Memo No. 16472-J dated 31.08.1994) and directed reconsideration. In compliance, the Judicial Secretary, Government of West Bengal, passed an order dated 21.08.2002 granting Sri Manna pay parity with Sri Patra. This order resulted in the refixation of Sri Manna's pay and the disbursement of arrears.
12. Following the implementation of the above decision, other Process Servers—namely Sri Gourango Dey, Sri Prasanta Seth, and Sri Pratap Chandra Ghosh—approached the Court for similar relief. Their applications under Article 226 of the Constitution were allowed by an order dated 17.04.2006 in WP No. 9868(W) of 2005. This Court directed the authorities to refix their

pay at par with that of Sri Kashinath Patra. The State complied, and the beneficiaries received arrears and revised pension benefits. The petitioner in the present matter submitted that he stood on the same footing as these individuals.

13. The petitioner also cited Order No. 3-P dated 28.02.2007, whereby the Learned District Judge, South 24 Parganas stepped up the pay of Process Servers such as Amanur Rahaman and Bishwanath Chatterjee. The petitioner submitted that he was similarly circumstanced with them and no valid reason existed to deny him parity. It was stated that while juniors across districts had received the benefit of a higher pay scale either through judicial orders or administrative action, the petitioner had been excluded without just cause.

14. The petitioner further submitted that he had made representations to the authorities, including one dated 20.06.2007 addressed to Respondent No. 2, seeking pay protection. He contended that denial of parity amounted to a loss of Rs. 6,000/- to Rs. 7,000/- per month and continued to affect his pension. The petitioner reiterated that he was not granted the benefit of the Career Advancement Scheme on the ground that he had been promoted, whereas the same objection had been overcome in previous cases where pay refixation had been allowed regardless of such promotions.

15. It was also noted by the petitioner that he had earlier joined in filing WP No. 16246(W) of 2012 along with others alleging improper pay scale and disparities with juniors. The writ petition was disposed of by order dated 10.01.2013 by the Hon'ble Mr. Justice Sambuddha Chakrabarty with a

direction to the authorities to consider and dispose of the representation. The petitioner submitted that the said writ petition did not raise the specific prayer for pay parity with Respondent No. 4, Dilip Kumar Pal. He further stated that the instant writ petition was the first he had filed specifically seeking pay protection vis-à-vis Respondent No. 4.

16. In support of his claim, the petitioner relied on his seniority in service, identical nature of duties performed by similarly situated employees, and a consistent pattern of relief granted by this Court in earlier proceedings on analogous facts. He stated that the denial of pay parity amounted to differential treatment and had resulted in recurring monthly financial loss. The petition sought direction upon the respondents to step up his pay at par with that of Respondent No. 4 and to grant all consequential benefits, including arrears and revised pension.

17. The petitioner's plea was thus grounded in facts that showed that juniors in the same cadre had received a higher pay scale either through CAS or judicial intervention, and similarly situated employees had successfully obtained relief on the basis of parity. The records annexed with the writ petition included the judicial orders and administrative memoranda relied upon in support of the claim. The petitioner submitted that the issue had attained finality in respect of others and prayed for identical relief in view of his similar service profile.

18. The instant writ petition is disposed of with a direction upon the petitioner to submit a fresh representation stating his claim of parity to be granted in his favour vis-à-vis his junior annexing relevant documents necessary to

establish his legal right to the objected claim. It is further directed the District Judge, South 24 Parganas shall assess the viability and affordability of step-up in pay through re-fixation in commensurate to the pay scale accrued to the juniors of the present petitioner.

19. The Learned District Judge, South 24-Parganas shall also assess similar grant of pay conferred on the process servers employed at district of Howrah who had been entitled to similar relief as claimed by the present petitioner for determining the eligibility of the present petitioner for being similarly circumstanced through a reasoned order.
20. The District Judge, South 24-Parganas shall seek assistance of the District Judge, Howrah, providing him/her the necessary details and/or documents pertaining to the process servers who had been granted the benefit of step-up at the district of Howrah.
21. The petitioner is to submit a fresh representation narrating the course of events and his claims of parity with the respondent No.4 and junior process servers through proper documents.
22. In view of the above discussions, the writ petition being WPA 8994 of 2016 stands disposed of.
23. There is no order as to costs.
24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)