

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present:

The Hon'ble Justice Debangsu Basak
and
The Hon'ble Justice Md. Shabbar Rashidi

APO No. 36 of 2024

Pankaj Kar Chaudhuri & Others
Vs.
The Kolkata Municipal Corporation & Others.

For the Appellant : Mr. Dubdutta Sen, Sr. Adv.
 : Ms. Suchismita Ghosh Chatterjee, Adv.
 : Ms. Ledia Dasgupta, Adv.

For the KMC : Mr. Alak Kumar Ghosh, Adv.
 : Mr. Arijit Dey, Adv.
 : Ms. Manisha Nath, Adv.

Heard on : January 16, 2025

Judgment on : January 28, 2025

Md. Shabbar Rashidi, J.

1. The appeal is in assailment of judgment and order dated February 07, 2024, passed in WPO No. 729 of 2017.
2. By the impugned judgment and order the learned Single Judge, dismissed the writ petition filed on behalf of the appellant writ petitioners on the ground of delay in approaching the court. Learned Single Judge also observed that in the writ petition, the writ petitioners had not challenged the decision of the KMC authorities 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.
3. It was contended on behalf of the appellants that there was factually no delay in approaching the court. Learned Single Judge erred in holding that the appellants filed the writ petition with a delay of more than 5 years. The appellants also disputed the finding of the Learned Single Judge to the effect that the cause of action arose in the year 1996. It was

submitted that although, the disparity in the pay packet of the writ petitioner and Respondent No.9 arose in 1996, the writ petitioners preferred representation against such disparity contemporaneously. However, the representation of the appellants was disposed on June 06, 2017 and thereafter; the writ petitioners approached the court with a writ petition which culminated into the impugned judgment and order. Therefore, such approach by the appellants cannot be said to be belated.

4. It was also submitted that the authorities acted in utter violation of Article 14 of the Constitution of India by negating the claim of the writ petitioners for pay parity in accordance with Regulation 34A of Central Civil Service Regulations and Circular No. 74 dated January 31, 1985. Such claim could not have been rejected on the ground of delay. In support of their contentions, the appellants relied upon **(1974) 1 Supreme Court Cases 317 (Ramchandra Shankar Deodhar & Ors v. The State of Maharashtra & Ors)**, **(1974) 3 Supreme Court Cases 91 (Haryana State Electricity Board v. State of**

Punjab and Others) and (1989) 1 Supreme Court Cases 546 (P.L. Shah v. Union of India and Another).

5. It was further submitted that the higher pay granted to Respondent No.9 was possibly because of the fact that he was enjoying higher pay in the post of welfare officer as he was accommodated to the post of assistant manager on the post of welfare officer being abolished, was not sustainable. It was contended that since the post of welfare officer was abolished and Respondent No. 9 was accommodated in the post of assistant manager, he could not have brought forward his previous scale of pay for determination of fixation of his pay in the cadre of assistant manager. It was further submitted that the appellants as well as Respondent No. 9 were simultaneously promoted to the post of deputy manager and as such, they should have been granted similar pay in the promotional post. As such, the appellants were entitled to pay protection as against the pay as fixed for Respondent No. 9.
6. It was further contended that after the revision of pay and immediately prior to the promotion of the appellants, Respondent No. 9 was getting a pay at par with appellant No.2

whereas appellant No.1 and 3 were getting slightly less than the pay of appellant No.1. Respondent No.9 was junior to the appellants and as such, the appellants were entitled to pay protection in terms of the provisions of regulation 34A read with circulars dated January 31, 1985 and August 29, 2007. In support of such contention learned advocate for the appellants relied upon **All India Reporter 1987 SC 537 (Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. v. K. S. Jagannathan & Anr.)** and **All India Reporter 2010 SC 1955 (Secretary, Cannanore District Muslim Educational Association, Kanpur v. State of Kerala & Ors)**.

7. On the other hand, learned advocate for KMC submitted that the appellants have filed the instant writ petition much after their superannuation in the year 2012. It was also submitted that the appellants did not make any prayer as prayed in the writ petition while discharging their function as Assistant Manager and subsequently as Deputy Manager. Learned advocate for KMC also stated that the prayer of the appellants for pay protection was considered by a six-member

committee headed by the Joint Municipal Commissioner (Personnel) of KMC as the chairman. The decision of said committee dated June 6, 2017 has not been challenged in the writ petition.

8. It has also been submitted that the pay packets of the appellants and Respondent No.9, were changed/enhanced from time to time in accordance with ROPA Rules, 2009 and 2006. Learned advocate for the KMC has also submitted that the pay scale of the appellants was fixed in Pay Band 4. The pay of appellant number one was fixed at ₹ 24,740/- in Pay Band 4 (₹ 9000 – 40,500 with grade pay of ₹ 4800). Similarly pay of appellant No. 2 was fixed at ₹ 25,310/- and that of appellant No. 3 was fixed at ₹ 24,020/- in the same scale of pay. Whereas, basic pay of Respondent No. 9 was fixed at ₹. 31,380/- in Pay Band 4A (₹ 15,600 – 42,000/- with a grade pay of ₹ 6600/-).

9. It was further contended that after promotion of the appellants to the post of Deputy Manager, the pay of the appellants was fixed on the next highest stage in the same pay scale as fixed in the post of Assistant Manager. However,

Respondent No.9 was not provided with the higher fixation of pay in the promoted post of Deputy Manager as the last pay drawn in the post of Assistant Manager was retained by him on such promotion.

- 10.** Learned advocate for KMC also submitted that, Respondent No.9 came to the Assistant Manager Cadre from a different source and for that reason; his pay was higher than that of the appellants in the post of Assistant Manager. Consequently, basic pay and grade pay of Respondent No. 9 continued to be higher than the appellant. The appellants never raised any objection in this regard. It was also submitted that there has been substantial difference between the pay scales, basic pay and grade pay of Respondent No. 9 and that of the appellants which entitled Respondent No. 9, a higher pay packet. The appellants have suppressed such facts with regard to fixation of their pay following ROPA Rules, 2009. Learned advocate for KMC relied upon the circulars issued on April 24, 2010 and August 29, 2007 as well as Rule 55 (4) of the West Bengal Service Rules Part-I. In support of his contentions learned advocate for KMC relied upon **(1997) 7**

Supreme Court Cases 690 (Union of India & Ors v R. Swaminathan & Ors), (1997) 6 SCC 360 (Union of India & Ors v. O.P. Saxena) and 1995 All India Reporter SCW 1318 (Manish Gupta & Ors v. Gurudas Roy).

- 11.** Relying upon **(1989) 2 Supreme Court Cases 290 (State of Andhra Pradesh & Ors v. G. Sreenivasa Rao & Ors)**, learned advocate for Kolkata Municipal Corporation submitted that equal pay for equal work does not mean that all the members of the cadre must receive the same pay packet irrespective of their seniority, source of recruitment, additional qualifications and various other incidents of service. Reasonable classification based on intelligible criteria having nexus with the object sought to be achieved is permissible. Abstract doctrine of equal pay for equal work cannot be read in Article 14 of the Constitution.
- 12.** Appellants joined the post of Assistant under Kolkata Municipal Corporation on various dates in the year 1976. They were subsequently promoted to the post of Head Assistant on November 20, 1984. Ultimately, the appellants were promoted

to the post of Assistant Manager on October 1, 1992, February 23, 1990 and June 30, 1992 respectively.

13. Respondent No. 9 was initially appointed as junior clerk on February 5, 1973. He was later on promoted to the post of standard clerk with effect from September 7, 1978. Respondent No. 9, however, qualified in the municipal service commission examination, and was appointed to the post of Welfare Officer on September 14, 1983. On August 14, 1996 i.e. more than four years after the appellants were promoted to the post of Assistant Manager, Respondent No. 9 was accommodated to the post of Assistant Manager (Welfare Service) in the cadre of Assistant Manager since the post of Welfare Officer was abolished. At the time of such arrangement, the pay of Respondent No. 9 was fixed much higher than that of the appellants.

14. Thereafter, on several dates in 2011 and 2012, the appellants and Respondent No. 9 were promoted to the post of Deputy Manager in the pay scale of ₹. 9000/- 40,500/-. However, according to the case made out by the appellants, inspite of them being in the same scale of pay after promotion,

the pay of Appellant Nos. 1 and 3 was fixed at ₹. 26090/- and that of Appellant No. 2 was fixed at ₹. 26670/-. The pay of Respondent No. 9 was fixed at ₹. 31380/- which was higher than that of the appellants, though, he was promoted to the post of Deputy Manager subsequent to Appellant Nos. 2 and 3.

15. Subsequently, appellant No.1 superannuated from service on June 30, 2012 with last pay drawn by him at ₹. 26090/-. Appellant Nos. 2 and 3 superannuated on August 31, 2012 with last pay of ₹. 27470/- and ₹. 26880/- respectively. Respondent No.9 superannuated from service on June 30, 2013 with last pay of ₹. 33300/-. All of them superannuated as Deputy Manager and at the relevant point of time, they were drawing salary in the pay scale of ₹. 9000-40500/-.

16. Therefore, on the basis of the materials placed before us it is evident that the appellants were inducted into service on different dates in the year 1976. They got promotion from time to time and subsequently came to hold the post of Assistant Manager in the year 1990 and 1992.

17. Respondent No. 9, although, was inducted into service much prior to the appellants i.e. in 1973 and he was promoted as standard clerk in 1978 but in 1983, Respondent No. 9 competed for welfare services and was selected. He was posted as Welfare Officer at a higher pay. Later on, the post of Welfare Officer was abolished and Respondent No. 9 was accommodated in the cadre of Assistant Manager in the year 1996. The record goes to show that while the appellants were promoted to the post of Assistant Manager in due course, Respondent No. 9 was accommodated in such cadre as Assistant Manager (Welfare Service).

18. Consequently, the pay packet of Respondent No. 9 was higher than that of the appellants. Such facts indicate that Respondent No. 9 was accommodated in the cadre of Assistant Manager from a different source than that of the appellants. Although, the appellants and Respondent No. 9 were officiating in the same cadre of assistant manager, nevertheless, their pay was fixed in accordance with the extant rules governing the field commensurate to the pay they were receiving before their induction in the promoted cadre.

19. Naturally, Respondent No. 9 was getting a higher pay in his previous cadre i.e. welfare officer as compared to the pay the appellants were receiving before their promotion to the cadre of Assistant Manager. It also transpires from the materials placed on record that after their promotion to the post of Assistant Manager, the appellants were enjoying Pay Band 4 (₹ 9000 – 40,500 with grade pay of ₹ 4800) whereas Respondent No. 9, owing to the source of his appointment, was granted pay band 4A (₹ 15,600 – 4200 with grade pay of ₹ 6600). For such reason, basic pay of Respondent No. 9 was fixed much higher than the pay of the appellants. Although, at some point of time pay of Respondent No. 9 may have gone at par with some of the appellants but owing to different scales of pay, grade pay, increment and other parameters, such respondent was found to be getting higher salary than that of the appellants.

20. It has been contended on behalf of the appellants that since the appellants and Respondent No. 9 were promoted to the same posts of Assistant Manager and Deputy manager and the respondent was much junior to the appellants, he could

not have been granted higher pay. It cannot be ignored that the appellants and Respondent No. 9 came to hold the post of Assistant Manager and Deputy Manager from different sources. Their pay in the promotional posts was fixed in accordance with the extant rules commensurate to their pay in the previous post. Reliance was placed on DMC (P)'s Circular dated April 24, 2010 dealing with clarification on pay fixation. The said circular is reproduced here as follows:

D.M.C.(P)'s Circular NO. 07/ VIII of 2010-11

Date: 24/04/2010

Sub : Clarification on pay-fixation of departmental employees in cases of promotions / appointments to higher posts.

It is clarified that the pay of (1) the qualified departmental candidates to the post of Jr.Asstt., Driver, Teacher etc. and (2) promotees to higher posts shall be fixed in the following manner :-

i) If it is seen that the pay of the departmental employee after fixation is less than the minimum entry pay (part E of CMFA's Circular No.23 of 2008-09 dt.07.03.09) of the higher post as applicable to the direct recruit candidates to the post to which appointment is given, the pay of the employee shall

be fixed in such minimum entry pay of such higher post(s).

ii) If it is seen that the pay of the departmental employees after fixation is higher than the minimum entry pay of the higher post to which appointment is given, the pay of the employee shall be fixed in the same stage in the pay scale of the newly appointed post. If there is no such stage the excess amount shall be absorbed in next/ subsequent increments.

iii) The concerned employee may at his/ her option retain his/ her old pay scale until the date on which he/ she has earned his/ her next or any subsequent increments on the old scale of pay. The option shall be exercised within 30 days from the date of issue of the order for appointment to the higher post. The option once exercised is final.

iv) It has been decided that an undertaking from the concerned employee is to be obtained before giving effect of fixation of pay as stated in (i) above. A pro-forma for undertaking is given overleaf.

v) The aforesaid clarification shall take effect from 01.01.2006 and arrear payment shall be admissible.

This is issued as clarification to Personnel Deptt's Circular No.2 of 1997-98 dated 07.04.1997.

This Circular is issued with the approval of the Municipal Commissioner.

Sd/-

(A. Bandyopadhyay)

O.S.D. & D.M.C (Personnel)

21. Clause (ii) of the aforesaid circular clarified as to how the pay of an employee would be fixed on his promotion. That is how the pay of Respondent No. 9 was fixed on his promotion to the post of Assistant Manager and Deputy Manager. We are also not unmindful of the fact that owing to his previous post as Welfare Officer in the welfare service, Respondent No. 9 was enjoying the pay scale of 4A whereas, the appellants were receiving their pay in pay scale 4. The two scales carried different grade pay and quantum of increment might as well be different.

22. The appellants placed reliance on Regulation 34A of the corporation of Calcutta Service Regulation which provides that, *if an officer on his promotion to a higher post draws pay at a higher rate than his senior officer due to fixation of his pay in the higher post under the normal rules, or due to revision of*

pay scales, the pay of the officer senior to him shall be fixed at the same stage and from the same date the junior draws the higher rate of pay irrespective of whether the lien in the lower post held by the senior officer is terminated at the time of re-fixation of pay subject to the condition that both the senior and junior officer belong to the same cadre and the pay scale of the post in which they have been promoted are also identical. The aforesaid regulation also clarifies that the benefits of this Regulation shall not be admissible in the case where senior officer exercise his option to retain unrevised scale of pay or where the pay drawn by the senior officer in the lower post before promotion to the higher post was also less than that of his junior.

23. In the facts of the present case, the appellants claim to be senior than Respondent No.9, though, both of them belonged to different cadres and came from different sources. Moreover, Respondent No.9 was enjoying higher pay, even in the previous post of Assistant Manager, at least from 1996 and possibly as the Welfare Officer as well. Respondent No.9 was inducted in the post of Welfare Officer after qualifying an

examination for such post. Owing to his special posting as welfare officer, on absorption in the cadre of Assistant Manager, his pay was fixed at was fixed at ₹. 31380/- whereas pay of the Appellant Nos. 1 and 3 was fixed at ₹. 26090/- respectively and that of Appellant No.2 was fixed at ₹. 26670/- No objection whatsoever was ever raised by the appellants, at least since 1996, when he was absorbed into the cadre of Assistant Manager. Therefore, the clarification appended to Regulation 34A itself, disentitles the appellants from claiming pay protection on the grounds set forth in the writ petition.

24. As noted above, the appellants have sought for pay protection as against Respondent No.9. The appellants superannuated from service with last pay of ₹. 26090/-, ₹. 27470/- and ₹. 26880/- respectively. On the other hand at the time of his superannuation, Respondent No.9 was drawing a pay of ₹. 33300/-. The appellants superannuated in June, 2012 and August, 2012 whereas, Respondent No.9. superannuated at the end of June, 2013. This must have entailed an additional increment to Respondent No.9.

Therefore, higher last pay of Respondent No.9 was also on account of his longer service for at least, one additional year.

25. The writ petition filed by the appellants was dismissed on another ground of stale claim. The cause of action for the writ petition arose on August 14, 1996 whereas the appellant filed the writ petition in 2017. Therefore, according to the impugned order, the appellants approached the court with much delay. Not only that, they went on receiving their pay without any objection or protest, since then.

26. In **Ramchandra Shankar Deodhar (Supra)**, the Hon'ble Supreme Court held that,

“10. The first preliminary objection raised on behalf of the respondents.....

.....

Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse

relief solely on the jejune ground of laches, delay or the like.”

27. Similarly, in **Haryana State Electricity Board (Supra)**, the Punjab and Haryana High Court’s decision that the case with regard to confirmation where the affected person has been filing representations could not be considered to be case where relief could be denied on the ground of laches and delay, was upheld by the Hon’ble Supreme Court.

28. In **P.L. Shah (Supra)**, the Hon’ble Supreme Court observed in the following terms. That’s to say:

“7. In the circumstances, the Tribunal was not right in rejecting the application solely on the ground that the order reducing the subsistence allowance having been passed on 6-5-1982 the Tribunal could not entertain an application for directing the Government to revise the order dated 6-5-1982 even in respect of any period within three years from the date on which the Tribunal commenced to exercise its powers having due regard to the date of the application also since we feel that the cause of action in respect of such prayer arises every month in which the subsistence allowance at the reduced rate is paid. We therefore set aside the order of the Tribunal and remand the case to it to dispose of the application

made by the appellant on merits. We make an order accordingly.”

29. In the case at hand, the cause of action first arose in 1996. The appellants went on receiving their pay which was less than Respondent No.9 since 1996. The appellants then did not raise any objection to such fixation. They first raised the issue with the authorities when they superannuated in 2012 which was of course, disposed in 2017. It is true, lesser or erroneous fixation of pay, if at all erroneous, is causing injustice to the appellant from month to month but there is no explanation offered for not taking up the issue at the very outset when it occurred in 1996. Such conduct on the part of the appellants is not only infested with delay but also invites the principle of acquiescence and tacit acceptance as well.

30. In **K. S. Jagannathan (Supra)**, the Hon’ble Supreme Court observed that,

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government

or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

- 31.** Similarly, in the case of Secretary, **Cannanore District Muslim Educational Association (Supra)**, on the question of jurisdiction of the High Court, the Hon’ble Supreme Court noted that,

48. This Court has also taken a very broad view of the writ of Mandamus in several decisions. In the case of *The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. K.S. Jagannathan and another* - (AIR 1987 SC 537), a three-Judge Bench of this Court referred to Halsbury's Laws of England, Fourth Edition, Volume I paragraph 89 to illustrate the range of this remedy and quoted with approval the following passage from Halsbury about the efficacy of Mandamus :
 "...is to remedy defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right, and it may issue in cases where, although there is an alternative legal remedy yet that mode of redress is less convenient beneficial and effectual." (See para 19, page 546 of the report)

49. In paragraph 20, in the same page of the report, this Court further held :.....
 "...and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

32. There is no doubt that the High Court has the jurisdiction and power to issue directions in appropriate cases of injustice and to pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

33. In **R. Swaminathan (Supra)**, in a situation identical to the facts of the present case, the Hon'ble Supreme Court noted that,

“7. For the fixation of pay on promotion, therefore, one has to first look at the pay being drawn by the promotee in the lower post. This pay in the lower post must be increased by one increment in that pay scale. His initial pay in the time-scale of the higher post is fixed at the stage next above this notional pay arrived at in the lower post.

8. The fixation of this pay in the higher post is, however, subject to the proviso. If the person so promoted has earlier officiated in that higher post or substantively held that higher post for short or long duration, then, (1) his initial pay which is fixed under Rule 22(I)(a)(1) shall not be less than the last pay which he drew when he last held the higher post. (2) The period during which he drew that pay on such

last and any previous occasions shall count for increments in the time-scale of the pay for the higher post. For example, if the promotee had previously, on various occasions, officiated in that higher post for different periods, and if the sum total of periods for which he so officiated is more than 12 months, he would be entitled to an increment in that higher pay scale. His initial pay, therefore, on his regular promotion will be fixed taking into account not merely his entitlement on the basis of his notional pay in the pay scale of the lower post, but also taking into account the last pay drawn by him while he was officiating in the higher post and also counting the previous periods during which he so officiated for his increment in the higher pay scale. The Department has also, in this connection, drawn our attention to Fundamental Rule 26 which, inter alia, provides as follows:

“FR 26. (a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment.”

9. We are, however, in the present case, concerned basically with Fundamental Rule 22(I)(a)(1) and the proviso to Fundamental Rule 22 because, in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional post for different periods on account of local ad hoc promotions granted to them. This is because the Department of Telecommunications is divided into a number of circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all-India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts in question against short-term vacancies up to 120 days in the event of the regular panelled officers not being available in that Circle. This period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the seniormost official in the Circle is allowed to hold the charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the exigencies of work. This practice, we are informed, has been followed in all Circles in the Department of Telecommunications since 1970. This is because, at times it is not

possible to fill up all the vacancies in a particular Circle for various reasons such as non-joining by a particular person, chain promotions or short-term vacancies arising on account of leave etc. It is submitted before us by the Department that it is not always possible to convene meetings of the departmental promotion committee for filling up all the posts which are only available for short periods on all-India basis because of administrative problems. To fill up this gap, the Government has issued instructions from time to time to allow local officiating arrangements in the interest of work. The Department has also pointed out that all the aggrieved employees in these appeals have availed of such officiating promotions as and when such occasion arose in their Circle and they were eligible. The juniors, therefore, in each of these cases who have received a higher pay on their regular promotion than the seniors, have received this higher pay on account of the application of the proviso to Fundamental Rule 22.”

34. In view of the aforementioned facts, the Hon’ble Supreme Court, in the said case, held thus,

“13. The employees in question are, therefore, not entitled to have their pay stepped up under the said Government Order because the difference in the pay

drawn by them and the higher pay drawn by their juniors is not as a result of any anomaly; nor is it a result of the application of Fundamental Rule 22(I)(a)(1)."

- 35.** We have noted hereinbefore that since the appellants and Respondent No.9 were inducted into the post of Assistant Manager from two different sources i.e. on regular promotion from the feeder posts and that from Welfare Officer, they could not have been treated at par for the purpose of fixation of their pay. Such view was laid down by the Supreme Court in the case of **O.P. Saxena (Supra)**. The Supreme Court in the said Case observed that,

"21. Apart from the fact that the application of the respondent before the Central Administrative Tribunal which was filed in July 1991 was highly belated, the position in this case is no different from that of Union of India v. O.P. Saxena. In this case also the respondent and Shri Sood were appointed to the stationary post from two different sources. The respondent was Driver Grade-C when he was so appointed while Shri Sood was appointed to the stationary post from the post of Driver Grade-A. Therefore, for the reasons contained in the judgment

in CA No. 8852 of 1996 the order of the Tribunal has to be set aside.”

36. In the case of **Manish Gupta (Supra)**, in view of the provisions of Rule 55 (4) of the West Bengal Service Rules it was held by the Hon’ble Supreme Court that,

“we cannot say that there is no merit in the submission of Shri. Sanghi that in view of the proviso to Rule 55(4) the respondent cannot claim the fixation of his basic pay on the same level as the basic pay drawn by Hrishikesh Roy. In our view the appellants could reasonably proceed on the basis that in view of the proviso contained in Rule 55(4) of the Rules the pay of the respondent cannot be fixed at the same level as that the Hrishikesh Roy and, therefore, in fixing the basic pay of the respondent it cannot be said that the appellants had wilfully and deliberately disobeyed the directions given by the Appellate Bench in its order dated September 20, 1989.”

37. As regards the ‘principle of equal pay for equal work’, the Hon’ble Supreme Court, in the case of **G. Sreenivasa Rao (Supra)** laid down that,

“14. We do not agree with the High Court/Tribunal. Doctrine of “equal pay for equal work” cannot be put in a strait-jacket. Although the doctrine finds its place

in the Directive Principles but this Court, in various judgments, has authoritatively pronounced that right to “equal pay for equal work” is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution of India. Nevertheless the abstract doctrine of “equal pay for equal work” cannot be read in Article 14. Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved, is permissible.

15. “Equal pay for equal work” does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for

experience/passing a test/acquiring higher qualifications or incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal.”

- 38.** Thus, in the facts and circumstances of the present case, it transpires that the appellants and Respondent No.9 came to be appointed as Assistant Manager from different sources. It is also evident that Respondent No. 9 was drawing more salary than that of the appellants even in post prior to his promotion as Deputy Manager which ultimately resulted in fixation of higher pay in such post in comparison to the appellants. Moreover, Respondent No.9 worked for one additional year before his superannuation. Such action on the part of the authorities does not seem to violate any of the Rules, Regulations and Circulars with regard to fixation, at any stretch of imagination.

39. Therefore, in the light of discussions made herein, we find no infirmity in the findings arrived at by learned Single Judge and no reason to interfere with the impugned judgment and order. The same is hereby affirmed.

40. Accordingly, the instant appeal being **APO No. 36 of 2024** is hereby dismissed without any order as to costs and thus, disposed of.

41. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

42. I agree.

[DEBANGSU BASAK, J.]