

A CALCUTTA MUNICIPAL CORPORATION AND ANR.

v.

SUJIT BARAN MUKHERJEE AND ORS. ETC.

FEBRUARY 14, 1997

B [K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Service Law :

Calcutta Municipal Corporation Regulations :

C *Regulation 34-A—Stepping up of pay—Claim for—Junior Copyist in Calcutta Municipal Corporation—Transferred in Secretariat Department—Allowed Rs. 50 per month as special pay towards discharging arduous duty—Pay scales revised—Special pay merged with pay in revised pay scales—Employee started drawing higher pay than others—Other junior Copyists claiming to step*
D *up their pay—Held, though on revision of pay scales, special pay came to be merged in the pay, it must be treated to be a special pay given to the employee for onerous duty to be discharged outside normal duty assigned to the post—Such a fortuitous circumstance would not be a ground for other seniors to claim parity of pay by stepping up of their pay—Their claim cannot be*
E *sustained.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1549 of 1997 Etc.

F From the Judgment and Order dated 2.2.93 of the Calcutta High Court in A. No. 662/92 in Matter No. 5511 of 1987.

Tapas Ray, Gaurav Jain and Ms. Abha Jain for the Appellants.

B.K. Ghosh (Ms. Sarla Chandra) (NP), for the Respondents.

G The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides.

H These appeals by special leave arise from the impugned order, made on February 2, 1993 by the Calcutta High Court followed by contempt petition, clarification petition etc. of Calcutta High Court.

The admitted position is that the respondents, viz., Tapan Kumar Paul and others, Sujit Baran Mukherjee and others and one Shankar Bose, all were initially appointed as Junior Copyists on May 12, 1969. Their *inter se* seniority was determined on the basis of their respective date of birth. Subsequently, Shankar Bose was transferred to the Secretariat Department whereat he had to discharge arduous duty for which he was paid special pay of Rs. 50 per month. Consequent upon revision of the pay scales effected in 1981, the pay of the respondents and others came to be revised. The special pay paid to Shankar Bose got merged with his pay in the revised pay scales. Consequently, he started drawing higher pay than Tapan Paul, Sujit Baran Mukherjee and others. Tapan Paul and others filed writ petition in the High Court seeking upgradation of their scale of pay so as to be on par with that of Shankar Bose. The writ petition was allowed by the High Court and the Corporation was directed to step up the pay of Tapan Paul and others so as to be on par with that of Shankar Bose. Subsequently, a petition for contempt was filed by Tapan Paul and others for non-compliance of the directions issued by the High Court. The appellants filed an application for clarification. In the meanwhile, an order had come to be passed at the instance of Sujit Baran Mukherjee and others on April 23, 1993; when it was realised that Regulation 34-A of the Calcutta Municipal Corporation Regulations (for short, the 'Regulations') did not apply to stepping up of the scale of pay, the order passed for stepping up of their scale of pay of T.K. Paul and others was withdrawn which also came to be challenged. The order dismissing the contempt petition was passed, directions to keep that amount in account pending writ petition filed by the Sujit Mukherjee and others were issued and consequential application for clarification came to be dismissed in the impugned orders. Thus, these appeals by special leave.

It is not in dispute that Shankar Bose was given a special pay; in other words, overtime pay for doing work outside the normal duties at a sum of Rs. 50 per month and after the revision of the pay scales, the special pay of Rs. 50 came to be merged in his pay. Nonetheless, it must be treated to be a special pay given to him since he had the onerous duty to be discharged outside the normal duty assigned to the post. The question is : whether Tapan Paul, Sujit Baran Mukherjee and others who came to be appointed on the same day are entitled to have their pay scales stepped up so as to be on par with Shankar Bose? It is contended for the respondents that when such a relief was granted and was allowed to become final, it

- A would not be open to the respondents to withdraw the same. We find no force in the contention.

Regulation 34-A postulates thus :

- B "It an employee on his promotion to a higher post draws pay at a higher rate than his senior employee due o fixation of his pay in the higher post under the normal rules, of due to revision of pay scales, the pay of the employee senior to him shall be fixed at the same stage and from the same date his junior draws the higher rate of pay irrespective of whether the lien in the lower post held by the senior employee is terminated at the time of refixation of pay subject to the conditions that both the senior and junior employee belong to the same cadre and same pay scale of the post in which they have been promoted are also identical.

- D The benefit of this Regulation shall not be admissible in case where junior employee exercises his option to retain unrevised scale to pay."

- E A reading thereof would clearly indicate that the principle of stepping up of the pay should arise only when a junior employee, on his promotion, is drawing higher pay than his seniors; in that case, they would be entitled to the stepping up of the pay so as to be on par with him on the principle that the persons who are similarly situated and are drawing the same scale of pay and are doing the same duty and being seniors to the persons drawing higher pay, are entitled to have their pay stepped up but that principle is inapplicable to the situation, as in the present case, where a junior person on transfer to a different place is being paid extra payment by way of special pay or overtime pay, whatsoever the nomenclature be and would be treated to be a special pay since he has to discharge the duty outside his normal duty or due to special circumstances. Such a fortuitous circumstance would not be a ground for other seniors to claim parity of pay by stepping up of their scale of pay. If the contention is given acceptance, the extra salary would become payable to persons who do not take pains and do the normal work while staying in a convenient post/place with indolence whereas the person who undertakes special responsibility or puts up hard work would be put on par; and stepping up of pay would be a premium on laziness and indolence. It would be deleterious to augmentation of efficiency in service or dedication to duty. Under those

circumstances, we think that the statutory principle of stepping up of the pay so as to be on par with the junior would be not on rational principle. When all of them discharge the same duties and are under the same responsibility and not in different circumstances and if the juniors draw higher pay on promotion, the seniors who do not get the opportunity would be entitled to parity of pay with their juniors. A

Learned counsel for the respondents, however, contends that withdrawal is without notice and, therefore, it is violative of principle of natural justice. We find no force in the abstract contention. It is now well settled legal position and needs no reiteration. However, on the facts of this case, we do not find any reason to set aside that order for the reasons that they have not withdrawn any amount paid to them pursuant to the legal order passed in favour of the respondents. All that they have done is that they have revised the pay scales only after realising the mistake. B C

It is next contended that the respondents are discriminated since Sujit Baran Mukherjee and others are entitled to get higher pay. In view of the principle stated above, there is no question of any discrimination of others since they are not entitled to the parity with Shankar Bose. D

Under those circumstances, the appeals are allowed. The orders of the High Court are set aside. No costs.

R.P.

Appeals allowed. E