

## State Of West Bengal And Ors. Etc vs Debdas Kumar And Ors. Etc on 19 February, 1991

**Equivalent citations: 1991 SCR (1) 517, 1991 SCC SUPL. (1) 138, 1991 AIR SCW 704, (1991) 1 SCR 517 (SC), (1991) 62 FACLR 647, (1991) 2 LAB LN 464, 1991 SCC (L&S) 841, (1992) 7 SERVLR 735, 1991 UJ(SC) 2 30, 1991 SCC (SUPP) 1 138, (1991) 17 ATC 261, (1991) 2 CURLR 10, (1991) 2 JT 36 (SC)**

**Author: M. Fathima Beevi**

**Bench: M. Fathima Beevi, L.M. Sharma**

PETITIONER:

STATE OF WEST BENGAL AND ORS. ETC.

Vs.

RESPONDENT:

DEBDAS KUMAR AND ORS. ETC.

DATE OF JUDGMENT 19/02/1991

BENCH:

FATHIMA BEEVI, M. (J)

BENCH:

FATHIMA BEEVI, M. (J)

SHARMA, L.M. (J)

CITATION:

1991 SCR (1) 517

1991 SCC Supl. (1) 138

JT 1991 (2) 36

1991 SCALE (1) 271

ACT:

West Bengal Services (Revision of Pay and Allowance) Rules 1970-Schedule I, Part-B and Notification dated November 19, 1974 sub-para (ii) of Part IV 3 'Diploma holders in engineering'-Whether to be termed as Sub-Assistant Engineers and given the benefit of the post and pay scale.

HEADNOTE:

The respondents in these appeals are diploma holder engineers employed in the various departments of the Government of West Bengal as Operator-cum-mechanics/Electricians etc. in the pay scale of Rs.230-425. Consequent upon the amendment of West Bengal Services

(Revision of Pay and Allowances) Rules, 1970 the respondents filed writ petitions before the High Court claiming that by virtue of sub-para (ii) of Para IV of the Notification dated 19.11.74 they are to be termed as Sub-Assistant Engineers and given the benefit of that post and scale of pay of Rs.300-600, as they are diploma holders in engineers. It was asserted by them that the benefit of the said Notification had been given to similarly situated persons in the other department of the State Government but they had been subjected to discriminatory treatment by denying to them those benefits. The State Government contended before the High Court that sub-para (ii) Para IV of the notification applied only to Overseers, Estimators and Sub-Overseers already working in the pay scale of Rs.300-600 and not to Operator-cum-Mechanics/Electricians etc. whose scale of pay was Rs.230-425. According to the State, the said Notification was intended merely to change the designation of various technicians and engineers having identical scale of pay Rs.300-600 to secure uniformity of designation of those employees and since the recruitment qualification of the respondents was much less than the diploma in engineering, they were not entitled to be redesignated as Sub-Assistant Engineers. The learned single Judge of the High Court allowed the writ petitions holding that the case of the respondents fell within the purview of the November 1974 notification and they were entitled to be termed as Sub-Assistant Engineers. The State Government preferred an appeal against the said order before the Division Bench. The Division Bench of the High Court, though held that sub-para (ii) of para IV of the Notification dated 19.11.1974 could not be

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construed to include the Operator-cum-Mechanics/Electricians, who were drawing the pay scale of Rs.230-425, dismissed the appeals with the observation that the respondents/writ petitioners should have been admitted to the benefit of the pay scale of Rs.300-600 long before others holding the same position as the writ petitioners had been granted the benefits. The State Government has now filed these appeals after obtaining special leave.

Dismissing the appeals, this Court,

HELD: The reasons for amending the 1970 Rules by the Notifications dated 11.3.1974 and 19.11.1974 was the decision of the Government to remove the anomalies in the existing rule so as to attract men of quality and also with a view to remove frustration among those having specialised knowledge of a technical nature.[525C-D]

The persons brought under the category of 'other diploma holder engineers' can only be the persons like the Operator-Cum-Mechanic/Electrician with diploma in engineering and working in various departments in the Engineering Service. [525F]

Clause (iv) of Para IV of the Notification which states

that Gazetted status is conferred on the members of the Subordinate Engineering Services and all sub-Assistant Engineers also relates to these two categories, that is, the Overseers, Sub-Overseers and Estimators who are already members of the Subordinate Engineering Service and the 'other diploma holder engineers' now termed as Sub-Assistant Engineering. [525G-H]

There is a concurrent finding that these respondents have been discriminated and the State Government had acted arbitrarily without any rational basis by conferring benefits of the Notification to 17 other employees in other departments while denying the said benefits to the said respondents in the Agriculture Department.[526E]

Chief Secretary to Government of A.P. v. Cornelius, [1981] 2 SCR 930; State of Punjab v. Joginder Singh, [1963] Supp.2 SCR 169, referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1196 of 1986 with 830 of 1991.

From the Judgment and Order dated 19.4.1985 of the Calcutta High Court in F.M.A.T.Nos. 153 of 1980 and 326 of 1983.

N.S. Hegde, Additional Solicitor General, Tapas Ray, D.K. Sinha, J.R.Das and D.N. Mukherjee for the Appellants.

P.P. Rao, A.K. Ganguli, Ajit Chakraborty, A. Mariarputham. Mridula Ray, A. D. Sikri and B.B. Tawakley for the Respondents.

The Judgment of the Court was delivered by FATHIMA BEEVI, J. The West Bengal Services (Revision of Pay and allowance) Rules, 1970, (hereinafter referred to as 1970 Rules), issued in exercise of the power conferred by the proviso to Article 309 of the Constitution of India, vide Notification No. 5212.F dated 30th December, 1970 on the basis of the Pay Commission Report specified the revised scales of pay of the government employees in various departments with effect from 1st April, 1970. Schedule I of the 1970 Rules relates to services generally.

The Government of West Bengal issued Notification No. 10303.F dated 19th November, 1974, amending the 1970 Rules. The Notification material for the purpose of these cases is set out below:

"NOTIFICATION No. 10303.F, Dated the 19th November, 1974. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor is pleased to direct that the following amendment shall be made in the West Bengal Services (Revision of Pay and Allowance) Rules, 1970, Published with Finance Department Notification No. 5212,F, dated the 30th December. 1970, as amended from time to time, namely:

AMENDMENTS In Schedule I, Part-B, to the said rules, the following amendments shall be made:

1. In the cadre of Assistant Engineers under different Departments, the Intermediate Selection Grade shall be at 15 per cent of the Cadre in the scale as shown in Column (3) of the Schedule.

II. In departments/offices having services/posts as shown in Column (i) in the scale as shown in Column (2) of the Schedule, there shall be no Intermediate or New Selection Grade as the case may be at 10 per cent of the services/posts (except in the cadre of Assistant Engineer) in the scale as shown in Column (3) of the Schedule.

III. From 1st August 1974, the New/Intermediate Selection Grade shall be raised to 15 per cent, from 10 per cent.

IV. (i) Sub-Assistant Engineers having Engineering Degree shall have an initial start in the existing scale of Rs.300-600 at the stage of Rs.360 per month. They will also get the benefit of age relaxation for direct recruitment either through the Public Service Commission or for ad hoc appointments.

(ii) All Test Relief Overseers and other diploma holder Engineers will henceforth be termed as Sub-Assistant Engineers.

(iii) Sub-Assistant Engineers with L.E.E. who have supervisor's licence from the Commerce and Industries Department will get a qualification pay of Rs.50 per month.

(iv) Gazetted status is hereby conferred on the members of the Subordinate Engineering Service and all Sub-Assistant Engineers.

V. The existing scale, namely Rs.375-10-415-15-610- 20-650 prescribed for the members of the non-gazetted Health Service having M.B.B.S., or M.M.F. qualifications shall be changed to Rs. 375-10-415- 15-610-20-650 (E.B. after 8th and 18th stages) higher initial start at Rs.450.

VI. All Licentiate Medical Officers in the West Bengal Health Service (Non-Gazetted) who have completed 10 years of service shall be eligible for appointment in the West Bengal Health Service (Gazetted) within the existing cadre strength of the basic grade provided they are found suitable for the basic grade in consultation with the Public Service Commission.

VII. The New or Intermediate Selection Grades sanctioned above shall be admissible after 10 years of service in the grade next below.

VIII. Unless otherwise stated above and in the Schedule; these amendments shall be deemed to have come into effect from 1st day of March, 1974. IX. The Notifications bearing No. 2194.F, 2195.F and 2197, dated the 11th March, 1974, stand cancelled.

X. No prior consultations with the Public Service Commission shall be necessary for making appointments to New/Intermediate Selection Grades sanctioned in this Notification."

The said Notification contained a Schedule. The relevant items dealing with Engineering is provided as follows:

| S  | C | H | E | D | U | L | E |
|--|---|---|---|---|---|---|---|
| Service/ Existing scale New/Intermediate Posts Rs. Selection Grade Rs. |   |   |   |   |   |   |   |

#### 1. Engineering Services/Posts.

i) Assistant 475-30-685-35-1000- 825-50-875-60-1415.

|                             |  |                       |
|-----------------------------|--|-----------------------|
| Engineer                    | 50-1150, with selection grade for 5 per cent of the cadre on 1150-50-1350. |                       |
| ii) Executive Engineer      | 825-50-875-60-1475.  | 1535-60-1775.         |
| iii) Sub-Assistant Engineer | 300-10-430-15-600 with higher initial start at Rs. 330/-.                  | 560-20-700-25-825(a). |

----- The respondents in Civil Appeal No. 1196 of 1986 and the respondents in the other Civil Appeal arising out of S.L.P. (Civil) No. 5298 of 1987 are diploma holder engineers employed in various departments of the Government of West Bengal in the post of Operator-cum-Mechanics/Electricians etc. in the scale of pay of Rs.230-425. These respondents filed two writ petitions bearing No. C.R.. Nos. 6053 (W) of 1978 and C.R. No.6593(W) of 1978 before the High Court of Calcutta, claiming that by virtue of sub-para (ii) of Para IV of the Notification No. 10303.F dated 19th November, 1974, the writ petitioners who are diploma holders in engineering are to be termed as Sub- Assistant Engineers and given the benefit of that post and the scale of pay of Rs.300-600. They contended inter alia that the benefit of the aforesaid Notification was given to similarly situated persons in the other departments of the Government of West Bengal and the writ petitioners employed in the Agriculture Department had been subjected to discriminatory treatment.

The State Government contended before the High Court that sub-para (ii) of Para IV of the said Notification applies only to the Overseers, Estimators and Sub-Overseers already holding the scale of pay of Rs.300-600 and not to Operator-cum-Mechanics/Electricians etc.like the writ petitioners whose scale of pay is Rs.230-425. According to the State, the said Notification was merely one changing the designation of various techniques and engineers having scale of pay of Rs.300-600 but having different designations and was meant to give uniformity of designation to all the aforesaid

officials in the same scale of pay of Rs.300-600. It was also the contention of the State that they being Operator-cum-Mechanics whose recruitment qualifications is much less than the the diploma in engineerings, the writ petitioners cannot or are not entitled to be redesignated as Sub-Assistant Engineers. These contentions were repelled by the learned single Judge who by judgment dated 19th September, 1979, allowed the writ petitions. In the Judgment, Sabyasachi Mukharji, J., (as he then was) held as under:

"Now it is important to emphasise that the said Notifications covered 'other diploma holder Engineers'. Now, if those who were engineers or those for whose recruitments qualification of being engineers was essential there was no necessity to indicate that they should be henceforth be termed as Sub-Assistant Engineers. They are Engineers, Sub-Assistant or otherwise, before they were called by the deeming provision of the amended Notifications referred to hereinbefore."

In construing sub-para (ii) of Para IV of the said Notification, the learned Judge said thus:

"The aforesaid clause in the Notifications can only mean, in my opinion, that even though the persons who come within the purview of this amended clause of the Notification will for the limited purpose of their pay, allowances and other financial emoluments be termed from the date of coming into operation or from the mentioned in the Notification of 1974 that is to say from 1st of March, 1974 as Sub-Assistant Engineers though they are, in fact, not engineers. That in my opinion, is clear from the language used."

The learned single Judge noticed that the history preceding the Notification supported the clear language used and persons holding different positions became by virtue of the Notification entitled to be termed as Sub-Assistant Engineers irrespective and independent of whether by fortuitous circumstances some of the incumbents who got the benefits of the said Notification are also qualified engineers. Accordingly, it was held that the writ petitioners come within the purview of the Notification for purpose of the the pay-scale and the rule was made absolute.

The State Government carried the matter in appeal. The Division Bench of the High Court vide judgment and order dated 19.4.1985, however, affirmed the judgment while holding that sub-para (ii) of Para IV of the Notification dated 19.11.1974 cannot be construed to include the Operator-cum-Mechanics/Electricians who are holders of diploma in engineering and drawing the scale of pay of Rs. 230-425. The appeal was dismissed with the observation that the writ petitioners should have been admitted to the benefit of the scale of pay of Rs.300-600 with higher initial start long before others holding the same position as the writ petitioners have been granted the benefits and that great injustice had been done to the writ petitioners by keeping them in the panel since 1974 without taking any steps for their appointments to the post of Sub-Assistant Engineers although others have been appointed to the said post in implementation of the impugned Notification.

Being aggrieved by the appellate judgment, the State has moved this Court under Article 136 of Constitution. Leave is granted in S.L.P.(C) No. 5298 of 1987.

The main contention urged on behalf of the appellants is two-fold. It is contended that the Division Bench having come to the specific conclusion that the Notification in question is not applicable to the respondents herein, the writ petitions ought to have been dismissed. The further contention is that the appointment of 17 other persons without considering the case of the respondents even if irregular cannot be the basis for making the Notification applicable to the respondents.

Before considering these propositions put forward by Mr. Hegde, Addl. Solicitor General, appearing for the appellants, we shall dispose of the preliminary objection raised by Mr. P.P. Rao, counsel for the respondents. It was pointed out that no appeal has been preferred by the State of West Bengal against the judgment dated 25.6.1982 in the case of Ranjit Kumar Ghosh & Ors. v. The State of West Bengal & Ors., being C.R. No. 923 (W) of 1980, granting similar relief and that the rule of law has become final so far as that matter is concerned. Relying on the decision of this Court in Chief Secretary to Govt. A.P. v. Cornelius, [1981] 2 SCR 930, it was argued that the State cannot agitate the case of only few others. It is not disputed that the judgment against which no appeal has been preferred is only based on the judgment in the main case which is now pending before us for consideration. The Court in State of Punjab v. Joginder Singh, [1963] Supp.2 SCR 169, where a similar objection was raised overruled the same observing at page 177 thus:

"In our opinion, the true position arising, if the present appeal by the State Government should succeed, would be that the finality of the orders passed in the other three writ petitions by the Punjab High Court would not be disturbed and that those three successful petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed. That however would not help the present respondent who would be bound by our judgment in this appeal and besides, so far as the general law is concerned as applicable to everyone other than the three writ petitioners (who would be entitled to the benefit of decisions in their favours having attained finality), the law will be as laid down by this Court. We therefore overrule the preliminary objection."

It appears that this pronouncement was not noticed in Cornelius case (supra) where the facts were also not identical. We have, therefore, no hesitation in overruling the preliminary objection.

The appellants, in our opinion, cannot however, succeed on the merits. The basis of the respondents' claim is that they are diploma holder engineers who are to be designated as Sub-Assistant Engineers for the purpose of the revised pay-scale by virtue of the Notification dated 19th November, 1974. The learned single Judge had construed the expression 'other diploma holder engineers' in clause (ii) of Para IV of the said Notification as covering persons like the respondents who are holders of diploma in engineering. The Division Bench in holding a contrary view overlooked the fact that the posts of Overseers, Estimators and Sub- Overseers were already covered under the category of Sub-Assistant Engineers even under the unamended rules and were in the pay-scale of Rs.300-600

whereas the respondents holding the post of Operator-cum-Mechanics/Electricians were diploma holder engineers in the scale of pay of Rs.230-425. As noticed by the learned single Judge, the reasons for amending the 1970 Rules by the Notifications dated 11.3.1974 and 19.11.1974 was the decision of the Government to remove the anomalies in the existing rule so as to attract men of quality and also with a view to remove frustration among those having specialised knowledge of a technical nature. This factual background was not considered by the Division Bench while considering the scope of the amended provisions. The appellants admitted that in 1970 the pay-scale of Overseers and Sub-Overseers was revised and both Overseers and Sub-Overseers were brought within the scale of Rs.300-

600. The Division Bench has recorded a finding to the effect that the Overseers, Estimators and Sub-Overseers were already included in the categories of Sub-Assistant Engineers under Schedule I Part-B of the 1970 Rules even before the same was amended by the Notification.

The persons brought under the category of 'other diploma holder engineers' can only be the persons like the Operator-cum-Mechanic/Electrician with diploma in engineering and working in various departments in the Engineering Service. It is to be noticed that the respondents have been absorbed in the posts of Operator-cum- Mechanics after having attended to the training sponsored under the scheme 'Training of Educated Unemployed Youths' in the operation of river lift, deep tubewells and shallow tubewells etc. Clause (iv) of Part IV of the Notification which states that Gazetted status is conferred on the members of the Subordinate Engineering Services and all Sub- Assistant Engineers also relates to these two categories, that is, the Overseers, Sub-Overseers and Estimators who are already members of the Subordinate Engineering Service and the 'other diploma holder engineers' now termed as Sub- Assistant Engineers.

It has been contended for the appellants that by construing the Notification as including Operators-cum- Mechanics in the lower time scale as Sub-Assistant Engineers and giving them a higher scale, there would be a division amongst the Operators-cum-Mechanics in the matter of their pay-scale and such an anomaly would not have been contemplated by the rule makers. There is no force in this contention. It is well-settled that difference in pay of employees belonging to the same cadre post or educational qualification is constitutionally valid and permissible and is not violative of Articles 14 and 16 of the Constitution. The post of Sub-Assistant Engineer is a direct recruitment post. It appears that the Division Bench assumed that the post of Sub-Assistant Engineers were ultimately a promotional post for the Operators-cum-Mechanics through intermediary promotions in intermediary grades. This is incorrect. Under the Rules, the post of Sub-Assistant Engineers is not at all a promotional post for any categories of employees in the State, on the contrary, it is a direct recruitment post. It is not contested that 17 other employees similarly placed as the respondents herein were given the benefits of the said amended Notifications and were conferred both status of Sub-Assistant Engineers and also the pay-scale thereof for the reason that they were also diploma holder engineers though they were not in the pay-scale of Rs.300-600. This is a concurrent finding that these respondents have been discriminated and the State Government had acted arbitrarily without any rational basis by conferring benefits of the Notification to 17 other employees in other departments while denying the said benefits to the said respondents in the Agriculture Department.



It has been brought to the notice of the Court that the Operators-cum-Mechanics would be absorbed in the existing vacancies in the category of Sub-Assistant Engineers since injustice had been done to the respondents by keeping them in the panel since 1974 without taking any steps for their appointments as Sub-Assistant Engineers along with others when such appointments were made and the assurance made before the Court. The fact that in implementation of the judgment of the learned single Judge, the respondents have already been admitted to the benefits of the amended Rule, is an additional reason for this Court not to interfere with the impugned judgment.

We are, therefore, of the view that both the civil appeals have only to be dismissed. We do so accordingly. The parties are directed to bear their respective costs.

Y.L.

Appeals dismissed.