

THE MUNICIPAL COMMISSIONER, CALCUTTA MUNICIPAL CORPORATION AND ORS.

PIJUSH KANTI DAS AND ANR.

JANUARY 22, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Bengal Municipal Act, 1932 :

Ss. 120(2) and (2A):—Notification dated 21.12.1983, Circular No. 31 dated 29.6.1985 : Merger of Jadhavpur, South Suburban and Garden Reach Municipalities in Calcutta Municipal Corporation—Placement of employees of erstwhile municipal units in comparable posts and pay scales under the Corporation on the basis of their pay and nature of duties in erstwhile municipal units—Held to be wholly justified.

Constitution of India, 1950 :

Articles 14, 16—Merger of Jadhavpur, South Suburban and Garden Reach municipalities in Calcutta Municipal Corporation—Placement of employees of erstwhile municipalities in comparable posts and pay scales under the Corporation keeping in view their pay and nature of duties in the erstwhile municipalities—Held, neither arbitrary nor irrational.

With the constitution of Calcutta Municipal Corporation under the provisions of Calcutta Municipal Corporation Act, 1980, with effect from 4.1.1984, comprising erstwhile Calcutta Corporation and three other municipalities, namely Jadhavpur Municipality, South Suburban Municipality and Garden Reach Municipality, employees of all the four municipalities were taken over by the Corporation on the same terms and conditions of service as in force in municipality concerned immediately before the date of merger. In view of the disparity in the staffing pattern and the distinction in the functioning of the erstwhile municipalities the merged municipalities were identified as 'Units' under the Corporation until framing of appropriate rules and regulations. The Governor of West Bengal, in exercise of powers under Ss. 120(2) and (2A), issued Notification

dated 21.12.1983 making arrangement for the employees of erstwhile Garden Reach Municipality, Circular No. 31 dated 29.6.1985 issued in this regard stated that the officers and the employees of the three units, i.e., erstwhile municipalities of Jadhavpur, South Suburban and Garden Reach, who were in service on 3.1.1984 and continued till date would be placed in the comparable posts and pay scales under the Corporation. Under the Corporation there were 4 categories of Education Officers, namely, Assistant Education Officer in the pay-scale of Rs. 610-1270, Deputy Education Officer in the pay scale of Rs. 540-1470, Education Officer in the pay scale of Rs. 660-1600 and Senior Education Officer in the pay scale of Rs. 1100-1900. Respondent no. 1, who was working as 'Education Incharge' in a much lower pay scale of Rs. 380-910, in the erstwhile Garden Reach Municipality was, on merger, given the pay scale of Rs. 610-1270, admissible to Assistant Education Officer in the Corporation, with the designation Education Officer 'Unit'.

Respondent no. 1 filed a writ petition before the High Court claiming that he was entitled to the pay scale of Rs. 660-1600 meant for Education Officer of the Corporation as he was also an Education Officer. The High Court allowed the writ Petition. The letters patent appeal of the Corporation was dismissed. Aggrieved, the Corporation filed the present appeal.

Allowing the appeal, this Court

HELD : Taking into account the pay which the respondent was getting in the erstwhile Garden Reach Municipality and his nature of duties, fixing of his pay comparable to the Asstt. Education Officer by application of Circular No. 31 dated 29.6.1985 can neither be said to be arbitrary nor irrational, on the other hand, the decision contained therein must be held to be wholly justified. The respondent has rightly been granted the pay scale of Rs. 610-1270 with the designation Education Officer 'unit'. Before the merger, the respondent had been drawing the pay scale (of Rs. 380-910) much less than that of Assistant Education Officer under the Corporation. The High Court erred in allowing the claim of the respondent, since by such direction not only the respondent has been given promotion by two hierarchy but also he would march over the other Deputy Education Officer under the Corporation. [835-H, 836-A, B, 835-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2202 of 1996.

From the Judgment and Order dated 11.7.95 of the Calcutta High Court in O. Order No. 146 of 1993.

Tapas Ray and L.C. Agrawala for the Appellants.

N.R. Choudhary, A.L. Basu and Somnath Mukherjee for the Respondents.

The Judgment of the Court was delivered by

G.B. PATTANAİK, J. Leave granted.

This appeal is directed against the Judgment of the Calcutta High Court in Letters Patent appeal arising out of the Judgment of the Single Judge in Writ Petition No. 10421(W) of 1988. The question that arises for consideration is whether the principle of 'equal pay for equal work' has at all got any application to the case in hand following which principle the High Court has directed that respondent no. 1 would be entitled to the pay scale of 660-1600, which is the pay scale of the Education Officer under the Calcutta Municipal Corporation?

The Calcutta Municipal Corporation was constituted under the provisions of Calcutta Municipal Corporation Act, 1980 with effect from 4.1.1984. Prior to the constitution of the aforesaid Corporation, there was in existence the Calcutta Corporation under the Calcutta Municipal Act, 1951 and three other Municipalities called Jadhavpur Municipality, South Suburban Municipality and Garden Reach Municipality which had been constituted under the Bengal Municipal Act. By Notification dated 21st of December, 1983 the Governor in exercise of power conferred upon him by sub-section (2A), read with sub-section (2) of Section 120 of the Bengal Municipal Act, 1932 made arrangement for the employees of the erstwhile Garden Reach Municipality. Admittedly the respondent was serving as 'Education in-charge' on a pay scale of 380-910. In the Notification dated 21st of December, 1983, it was clearly stated that for continuing civic services employees of the Commissioner of the Garden Reach Municipality shall, on and from the said date, be taken over by the Corporation and shall continue to serve, on the same terms and conditions of service as in force in the said municipality immediately before the said date, under the

Corporation until further orders. In other words, the service conditions of employees of Garden Reach municipality including that of the respondent remained unaltered under the Calcutta Municipal Corporation. Notwithstanding the constitution of the Calcutta Municipal Corporation and the merger of all the four municipalities referred to earlier, in view of the disparity in the staffing pattern and the distinction in the functioning of the erstwhile municipalities, the merged municipal units of Jadhavpur, South Suburban and Garden Reach continued to be identified as 'Units' under the Corporation until framing of appropriate rules and regulations. Under the Calcutta Municipal Corporation there were 4 categories of Education Officers namely (1) Asstt. Education Officer in the pay scale of 610-1270, (2) Deputy Education Officer in the pay scale of 550-1470, (3) Education Officer in the pay scale of 660-1600 and (4) Senior Education Officer in the pay scale of 1100 - 1900. Since the respondent as 'Education Incharge' of Garden Reach Municipality was in the pay scale of 380-910 which is much less than the pay scale of Asst. Education Officer 610-1270, he was given the said pay scale with the designation Education Officer 'Unit'. The said respondent, however, filed the writ petition claiming that he is entitled to the pay scale of 660-1600 meant for Education Officer of the Corporation since he is also Education Officer. The said writ petition having been allowed and the appeal against the same to the Division Bench having been dismissed, the present appeal has been preferred.

The learned counsel for the appellant apart from bringing it to our notice the Notification of the Governor dated 21st of December, 1983 to which reference has already been made also brought to our notice two circulars namely Circular No. 31 1985-86 as well as Circular No. 35 of 1985-86 which squarely deals with the dispute with regard to the fixation of pay scales. Under Circular No. 31 dated 29th June, 1985 it has been clearly indicated that the officers and the employees including the labour staff of the three units viz. Jadhavpur, South Suburban and Garden Reach (erstwhile municipalities) who were in service of the municipalities on 3.1.1984 and also those who have been appointed thereafter in the pay scales of the Units and are continuing in service till date be placed in the comparable posts and pay-scales under Calcutta Municipal Corporation as indicated by designations and pay scales under Annexure-A, B & C respectively for Jadhavpur, South Suburban and Garden Reach Units with effect from 1st day of July, 1985 subject to exercising option by individual employee to come under the recommended designations and pay scales

shown in the Annexure-A,B & C. So far as the respondent is concerned who was earlier serving as 'Education Incharge' under Garden Reach Municipality approved designation was Education Officer 'Unit' and his pay scale fixed at 610-1270. The Circular No. 35 of 1985-86 which was issued on 7th August, 1985 pursuant to the order of the administrator had been issued as there had been certain changes in designation and/or pay scales in respect of certain posts under the Calcutta Municipal Corporation between the period from 4.1.1984 to 30.6.1985. Even in that Circular while fixing of pay of employees in comparable posts, so far as the post of erstwhile 'Education Incharge' in Garden Reach Municipality, the same has been notified and pay scale of 500-1360 has been given with the designation of Education Officer 'Unit'. But the learned Single Judge being of the opinion that the Education Officer 'Unit' discharges the same functions and duties as Education officer of the Municipal Corporation had directed the Corporation grant him the pay scale of 660-1600 as is admissible to the Education Officer of the Calcutta Municipal Corporation. The Division Bench has also affirmed the said decision having examined the matter on record and after hearing the counsel for the parties. We unhesitatingly come to the conclusion that both the learned Single Judge as well as the Division Bench of the High Court have committed gross error in directing the Corporation to grant the pay scale of 660-1600 to the respondent. There is no manner of dispute that before the merger, the respondent as Education Incharge under the Garden Reach Municipality was drawing the pay scale of 380-910 which was much less than the pay scale of Asst. Education Officer under the Calcutta Municipal Corporation. After the merger of the Garden Reach Municipality with Calcutta Municipal Corporation the question arose for posting the employees of the erstwhile municipality against any comparable post. Circular No. 31 had been issued and rightly the respondent had been granted the pay scale with the designation as Education Officer 'Unit'. In complete ignorance of the aforesaid Circular the High Court appears to have granted the pay scale of 660-1600 to the respondent which is admissible to the post of Education Officer under the Calcutta Municipal Corporation. By such direction not only the respondent has been given promotion by two hierarchy but also would march over the other Deputy Education Officers under the Corporation. Taking into account the pay which the respondent was getting in the erstwhile Garden Reach Municipality and his nature of duties, fixing of his pay comparable to the Asst. Education Officer by application of

Circular No. 31 can neither be said to be arbitrary nor irrational, on the other hand the decision contained therein must be held to be wholly justified. The High Court on the other hand failed to consider the pay scale which the respondent was drawing in the erstwhile Garden Reach Municipality and the duties discharged by him thereunder and merely from the designation of Education Officer jumped to the conclusion that the respondent should be entitled to the same pay scale as is admissible to the Education Officer under the Corporation. The aforesaid conclusion of the High Court on inaccurate premises, and on non consideration of the relevant materials as well as the Circular No. 31 of 1985-86 is thus vitiated and the judgment of the learned Single Judge as well as that of the Division Bench has become vulnerable. In the circumstances we set aside the judgment of the Division Bench of the High Court as well as that of the learned Single Judge and the writ petition filed by the respondent stand dismissed. This appeal is allowed. No costs.

Appeal allowed.