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STATE OF WEST BENGAL AND ORS.

v.

SRI DEB KUMAR MUKHERJEE AND ORS.

MARCH 27, 1995

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[KULDIP SINGH AND B.L. HANSARIA, JJ.]

*Service Law*

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*State of West Bengal—Housing Department—Inspectors—Bifurcation of cadre into Grade-I given higher scales and to be filled by promotion from amongst Grade-II posts—Categorisation of Inspectors held valid—Inspectors of Housing Department—Claim for parity in pay scales with Inspectors of Animal Husbandry Department—Held not maintainable.*

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*Principle of 'equal pay for equal work'—Applicability of.*

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By an order dated June 4, 1965 the appellant-State bifurcated that cadre of Inspectors in the Housing Department into two grades i.e. Inspectors Grade-I and Grade-II. Under the order, 20% of the posts in the cadre were converted into grade-I posts which were to be filled up by promotions from amongst grade-II Inspectors. The Three Pay Commissions examined the revision of pay-scales of various cadres in the State of West Bengal and keeping in view the recommendations of these Pay Commissions the appellant-State decided to maintain the two grades in the Cadre of Inspectors. The respondents filed a writ petition before the High Court challenging the decision of the State Govt. contending that (i) maintenance of two grades in the cadre of Inspectors was violative of equal pay for equal work; and (ii) they were entitled to the pay scale of Rs. 425-1050 drawn by Inspectors in the Animal Husbandry Department because Inspectors in both the Departments were performing almost identical duties.

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The High Court struck down the categorisation of Inspectors holding that the categorisation of Inspectors violated the principle of 'equal pay for equal work' and further directed that Inspectors in the Housing Department be given the pay scales drawn by Inspectors in the Animal Husbandry Department. Against the judgment of the High Court, State

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preferred an appeal before this Court.

Allowing the appeal and setting aside the judgment of the High Court, this Court A

**HELD : 1. The High Court, in its writ jurisdiction, was not justified in reaching the findings different than that of the Pay Commissions.**

[1126-F]

**2. The High Court fell into patent error in setting aside the classification on the ground of discrimination. There is no infirmity in up-grading 20% of the posts in the cadre to be filled up from amongst the senior and meritorious members of the cadre. The duties performed by the Inspectors in the two grades may be the same, but no fault can be found with the classification. Classification in the cadre on the ground of selection based on merit is permissible. [1126-A, 1125-G]** B C

**3. There is nothing common in the Housing Department and the Animal Husbandry Department. The two departments stand apart. Neither the judgment of the single Judge nor that of the Divisions Bench indicates any factual material to show that the duties of the Inspectors in the two departments are similar. The reasoning and the findings of the High Court, on the face of it, are untenable and cannot be sustained. [1126-D]** D

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5304 of 1993.** E

From the Judgment and Order dated 20.7.92 of the Calcutta High Court in A. No. 16A of 1991.

Tapas Ray, Dilip Sinha and J.R. Das, with him for the Appellant.

Dr. Shankar Ghosh, S.K. Banerjee and P.K. Chakraborty with them for the Respondents. F

The following Judgment of the Court was delivered by

**KULDIP SINGH J.** The Calcutta High Court, in the impugned judgment, has struck down the categorisation of Inspectors in the Housing Department as Grade-I and Grade-II, on the ground that it violated the principle of 'equal pay for equal work'. The High Court further directed that the Inspectors in the Housing Department be given the pay-scale which was being drawn by the Inspectors in the Animal Husbandry Department of the Government of West Bengal. This appeal by the State of West H

A Bengal is against the judgment of the High Court.

We may briefly state the necessary facts. The Government of West Bengal by order dated June 4, 1965 bifurcated the cadre of Inspectors in the Housing Department into two grades. The said order is reproduced hereunder :

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"I am directed to say that the question of improvement in the prospects of promotion of the Inspector employed under 24-Parganas, in connection with implementation of Housing Schemes had been under consideration of Government for some time past. After considering the question in all its aspects, the Government has pleased to sanction formation, with effect from 10.8.1964, of cadre of these Inspectors under the Housing Department with the following two grades :

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Inspector Grade I... Rs. 175-7-245-8-325

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Inspector Grade II.. Rs. 150-5-250

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2. Of the total number of posts in this Cadre of Inspectors 20% were converted into Grade I posts. As there are 9 (nine) posts in the cadre, 2 posts belong to Grade I and the others to Grade II. The two posts of Inspectors on Grade I should be filled up by promotion of Grade II Inspectors according to the usual rules governing promotion of candidates from lowers to higher Grade."

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According to the Government, the Inspectors in the Housing Department prior to bifurcation, were equated with the Clerks. The bifurcation was done with a view to remove stagnation and provide a channel of promotion in the same line. As a result of the report of the First Pay Commission in the year 1971, the pay- scale of Rs. 300-600 was given to Inspectors Grade I and the pay- scale of Rs. 230-425 to the Inspectors Grade II. It is no doubt correct that the Chairman of the First Pay Commission recommended a unified cadre of the Inspectors, but the Government accepted the report of the majority of the members and maintained the two Grades in the cadre of Inspectors. The Second Pay Commission in the year 1981 examined the question thoroughly and on the basis of the material placed before it recommended the continuance of the two Grades in the cadre of Inspectors. The Second Pay Commission

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recommended Rs. 380-910 for Grade I Inspectors and Rs. 340-750 for Grade II Inspectors. The Third Pay Commission in the year 1990 further maintained the status quo regarding the Inspectors. Keeping in view the recommendation of various Pay Commissions constituted from time to time, the State Government came to the conclusion that the two Grades in the cadre of Inspectors were to be maintained.

It has been further averred by the State Government that the Pay Commission recommended different pay-scales for Inspectors in different departments. The pay-scale of Inspectors in the Food and Civil Supplies Department was Rs. 175-325 which was revised in the year 1981 to that of Rs. 350-600. The pay-scale of Inspectors in the Co-operative Department was Rs. 200-400, which was revised to that of Rs. 425-1050. Similarly the Inspectors in the Bureau of Applied Economics and Statistics were in the pay-scale of Rs. 300-600 which was revised to Rs. 380-910.

The main contention of the respondents before the High Court was that the maintenance of two Grades in the Cadre of Inspector was violative of the principle of 'equal pay for equal work' as the Inspectors Grade I and Grade II were performing similar duties and their posts were interchangeable. The other contention raised before the High Court that the Inspectors in the Housing Department are entitled to the pay-scale of Rs. 425-1050 which was being drawn by the Inspectors in the Animal Husbandry Department on the ground that the Inspectors in both the departments were performing almost identical duties. The same contentions have been raised before us.

The Government Order dated June 4, 1965, reproduced above, makes it clear that the higher grade in the cadre of inspectors was created with a view to provide a channel of promotion and to remove stagnation in the said cadre. 20% of the posts in the cadre were upgraded and given higher pay-scale. The higher grade posts were to be filled by way of promotion from amongst the Inspectors holding the lower grade. We see no infirmity in up-grading 20% of the posts in the cadre to be filled-up from amongst the senior and meritorious members of the cadre. The duties performed by the Inspectors in the two grades may be the same, but no fault can be found with the classification. It is settled by string of authorities of this Court that classification in the cadre on the ground of selection based on merit is permissible. It is well-known in service jurisprudence that

A selection grade and super time-scale based on seniority or seniority-cum-merit are permissible. The High Court fell into patent error in setting aside the classification on the ground of discrimination.

The High Court was equally unjustified in accepting the second contention of the respondents. The State Government has categorically stated that the pay-scales of Inspectors in different departments of the state are not uniform. We have noted some of the instances in the earlier part of the judgment. The High Court has held that since the Inspectors in the Animal Husbandry Department were given the pay-scale of Rs. 425-1050, the Inspectors in the Housing Department are also entitled to the same.

There is patent fallacy in the reasoning. There is nothing common in the Housing Department and the Animal Husbandry Department. The two departments stand apart. Neither the judgment of the learned single judge nor that of the Division Bench indicates any factual material to show that the duties of the Inspectors in the two departments are similar. The reasoning and the findings of the High Court, on the face of it, are untenable and cannot be sustained.

As mentioned above, the three Pay Commissions during the last three decades examined the revision of pay-scales of various cadres in the State of West Bengal. On the basis of the material placed before the Pay-Commissions the two grades in respect of Inspectors in the Housing Department were maintained. Similarly the Pay-Commissions recommended different pay-scales for Inspectors in different Departments of the State Government. The High Court, in its writ jurisdiction, was not justified in reaching the findings different than that of the Pay-Commissions.

We, therefore, allow the appeal, set aside the judgment of the learned single Judge and of the Division Bench of the High Court and dismiss the writ petition filed by the respondents before the High Court. We, however, direct that while implementing this judgment, the appellants shall not recover any amount of money already paid to the respondents in terms of the impugned judgments of the High Court. No costs.

T.N.A.

Appeal allowed.

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