

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member(J)**

-AND-

**The Hon'ble Dr. A. K. Chanda
Member(A)**

J U D G M E N T

-of-

Case No. O.A - 1098 of 2014

Sipra MajumderApplicant.

-Versus-

State of West Bengal & others....Respondents

**For the Applicants: - Mr. A. N. Ghosh,
Ld. Adv.**

**For the State Respondents:-Mr. B.P. Roy,
Ld. Adv.**

Judgment delivered on : 19th March, 2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

J U D G E M E N T

1. The instant application has been filed praying for following relief:-

- (i) To direct the Respondents to pay the applicant the same scale of pay as was granted to the writ petitioners in W.P.S.T. No. 291 of 2007 (Pankaj Kumar Pal and Others –Versus- State of West Bengal and Others) and in W.P.S.T. No. 160 of 2011 (Tarun Biman Chatterjee and Others -Versus- State of West Bengal and Others) from the date they have been granted the higher scale of pay.
- (ii) Pass such other order or orders and/or direction or directions as to Your Lordships may deem fit and proper to meet the ends of justice.

2. The admitted fact of the case as follows :-

- i) Admittedly some Block Youth Welfare Officers were appointed under the Respondent No. 1 in the scale of pay of Rs. 300-10-420-15-600/- w.e.f. 1.4.1974. During that period, some employees employed to the post of Youth Organiser in the scale of Rs. 375-10-415-15-510-20-650/-. Thereafter, considering the identical nature of work, the two categories of posts i.e. Youth Organisers and Block Youth Welfare Officers were amalgamated and redesignated as Block Youth Officers in the year 1978 and the scale of the new post i.e. Block Youth Officers were fixed at Rs. 300-600/-. However, the erstwhile Youth Organiser, whose scale of pay was Rs. 375 – 650/- were allowed to continue with their higher sale of pay as personal to them vide Memo No. 1055 – YS/2E-15/77 dated 21.1.1978. (Annexure P/6).
- ii) Thereafter, by and under West Bengal Services (Revision of pay and allowances) Rules, 1981, which came into force from 1.4.1981, a unified pays scale of Rs. 380-910/- was sanctioned in place of aforesaid two pay scales of Rs. 300-600/- and Rs. 375 – 650/- as a result of which, your applicant would again suffer because of the higher start of in the year

1981 revised pay scale that the erstwhile Youth Organisers would be entitled under the statutory Rules in force.

- iii) Being aggrieved with such discriminatory pay scale and subsequent revised pay scale, some of the erstwhile Block Youth Welfare Officers moved an application before this Tribunal in O.A. No. - 289/2001 (Pankaj Kr. Paul & Ors. –Vs- State of W.B. and Ors). However, the said application was dismissed vide order dated 12.12.2006 (Annexure P/8).
- iv) Being aggrieved with, the applicants of the aforesaid O.A. moved before the Hon'ble High Court, Calcutta in W.P.S.T. No. 291 of 2007, which was allowed by Hon'ble High Court on 2.4.2008.

That pursuant to the said order dated 2.4.2008, the Govt. of W.B., Deptt. of Youth Services had issued order re-fixing of the scale of pay of the of said applicants vide the order dated 21.10.2008 and 3.12.2008 respectively.

- v) Since the said order of the Hon'ble High Court was restricted only to the writ petitioners of the said case, other similarly situated Block Youth Officers filed an O.A. No. - 1038 of 2009 (Tarun Biman Chatterjee and Others –Vs- State of W.B. and Others). However, the said case was also dismissed on 23.2.2011.

Against the said order, the applicant of the said case, filed appeal before the Hon'ble High Court, Calcutta in the Writ Petition No. 160 of 2011, wherein the Hon'ble High Court vide their judgement dated 13.7.2011 was pleased to extend the benefit of WPST No. 291 of 2007.

However, the Respondents vide their order dated 23.2.2012 (Annexure P/11) had extended the benefit of the said order by granting higher scale of pay to the applicant of the said writ petition only.

- vi) As per the applicant, she was also appointed as Block Youth Officer on 30.9.1980 and retired as Block Youth Officer on 31.8.2013. Therefore, as per the applicant, she is similarly circumstanced with the writ petitioners of the W.P.S.T. No. 291 of 2007 and also W.P.S.T. No. 160 of 2011. As the Hon'ble High Court set aside the portion of the order dated 15.5.1978 to the extent of the disparity of pay scale, she is entitled for the pay scale of erstwhile Youth Organisers scale of pay 375 – 650/-. Further as some of other similarly situated Block Youth Officers

were not granted the said pay scale and benefit of two W.P.S.T. Nos., being aggrieved with they filed application before this Hon'ble Tribunal asking the said benefit in O.A. No. - 490 of 2012 (Niranjan Ch. De and Others –vs- State of W.B. and Others), which was allowed by the Tribunal vide their order dated 14.5.2014. According to the applicant since she was working at the relevant point of time, shouldering the same duties and responsibility, therefore, she is entitled to the same benefit as was granted to other Block Youth Officers being part of the same cader. It has further submitted that the State Govt. cannot discriminate the employees, who belong to the same cader depriving the others, which is a violation of Articles 14 and 16 of Constitution of India. The applicant further submits that the Association of the applicant made representations on 15.1.2010 and 25.2.2010 to the Director, Directorate of Youth Services, Govt. of W.B. granting the higher scale of pay at par with the writ petitioners of W.P.S.T. No. 291 of 2007 but till date with no effects.

3. The Respondents have filed their Reply, wherein they have more or less admitted the fact of the case. However, as per the Respondents the petitioner is not similarly circumstanced with the petitioners of W.P.S.T. No. 291 of 2007 and W.P.S.T. No 160 of 2011. The petitioner has joined directly as Block Youth Officer in 1980 i.e. after the year 1978, when the two types of post i.e. (i) Youth Organizer and (ii) Block Youth Welfare Officers were amalgamated as Block Youth Officers in the new pay scale of Rs. 300 – 600/- by Notification dated 15.5.1978 under the Youth Service Department.

The Hon'ble High Court granted some benefits to the petitioners of W.P.S.T. No.291 of 2007 and W.P.S.T. No. 160 of 2011, who were similarly circumstanced before the amalgamation of the above mentioned two types of post in the year 1978 but not others.

As the petitioner is not similar circumstanced with the petitioners of the aforesaid two writ petitions, she is not entitled to the benefit as claimed for. The Counsel for the Respondents has submitted that the application is barred by limitation. According to the Respondents the

benefit of order dated 14.5.2014 passed by the Tribunal in O.A. No. - 490 of 2012 will depend upon the outcome of the writ petition filed by the Hon'ble High Court.

4. The petitioner has filed Rejoinder, wherein it is submitted that this Hon'ble Tribunal passed two judgements in O.A. No. - 490 of 2012 (Niranjan Ch. De and Others –vs- State of W.B. and Others) dated 14.5.2014 and O.A. No. - 1407 of 2012 (Dibakar Chanda and Others –vs- State of W.B. and Others) dated 14.4.2014. Against the judgement passed in O.A. No. - 490 of 2012 one W.P.S.T. No. 217 of 2015 has been filed. However, the Hon'ble High Court did not grant any interim order of stay and only directed to file Opposition and against O.A. No. - 1407 of 2012, another W.S.P.T. No. 231 of 2016 has been filed (Annexure collectively R/1) wherein Hon'ble High Court vide their judgement dated 4.5.17 dismissed the writ petition and directed the State Respondents to pay the higher scale of pay within four weeks. Being aggrieved with the aforesaid order, the State Respondent had filed an SLP No. 23931 of 2017, which was again dismissed by the Hon'ble Apex Court vide their order dated 3.10.17 (copy of the aforesaid order was handed over during the course of the hearing). The petitioner has further submitted that since it is a case of wrong pay scale and Hon'ble High Court in their first judgement dated 2.4.2008 passed in W.P.S.T. No. 291 of 2007 held and declared the Notification dated 15.5.1978 as discriminatory to the extent of disparity of pay scale, therefore it is a continuous cause of action and the applicant is similarly circumstanced being the holder of post of Block Youth Office, thus she is entitled to get the same benefit. Moreover, nowhere in the above mentioned judgement, there was any bar or restriction to the extent that the benefit of pay scale will only be restricted to the employees appointed before 1978. The applicant referred the following judgements in support of his case of
 - (i) "M.R. Gupta –Vs- Union of India and others reported in (1995) 5 SCC 628.
 - (ii) State of Karnataka and others –Vs- C. Lalitha reported in (2006) 2 SCC 747".

5. We have heard both the parties and perused the record. It is noted that the main dispute had arisen after issuance of Notification dated 15.5.1978 by which erstwhile one post of Youth Organizer in the pay scale of Rs. 375-650/- and the post of Block Youth Welfare Officer in the pay scale of Rs. 300 – 600/- was amalgamated due to the same nature of duty and responsibilities and a new post of Block Youth Officer was created in the pay scale of Rs. 300-600/-. However, the erstwhile Youth Organizers were allowed to draw the higher pay scale. Being aggrieved with, some erstwhile Block Youth Welfare Officers had challenged the said Notification dated 15.5.1978 on the ground of discrimination of pay scale in O.A. No. - 289 of 2001, which was dismissed by the Tribunal by judgement dated 12.12.2006 but subsequently Hon'ble High Court by their judgement dated 2.4.2008 passed in W.P.S.T. No. 291 of 2007 held inter alia :

“Respectfully following the ratio decidendi in the case, we, therefore, hold and declare that the notification dated 15th May, 1978 is discriminatory to the extent of disparity of pay scale granted to the present applicants. We declare that the applicants are entitled to get the same pay scale as that of being drawn by erstwhile cadre of Block Youth Organiser who are now designated with the cadre of the petitioners. However, this benefit shall not be given retrospectively and it shall be given from the date of filing of second application before the learned Tribunal. 40% of the arrears benefit shall be given from the date of filing application before the learned Tribunal upto the date of passing of the present order today. Full benefits shall be given from following day of present order. There will be no order as to costs. However, this order will confine to the petitioners only and it cannot have

any omnibus effect as no one has come forward except the petitioners before us.”

As the said judgement was restricted to the writ petitioners to the said case, the other similarly situated employees, who were the Block Youth Welfare Officers at the relevant time and retired from service as Block Youth Officers, filed O.A. No. – 1038 of 2009 (Tarun Biman Chatterjee and Others –vs- State of West Bengal and Others) in relation to which one W.P.S.T. No. 160 of 2011 was filed before Hon’ble High Court, Calcutta. Hon’ble High Court by their judgement dated 13.7.2011 has held inter alia: (annexure P/10)

“On merits, we find that it is an admitted position that the petitioners herein are similarly circumstanced with the other group in W.P.S.T. 291 of 2007. Hence, they were entitled to identical relief being similarly circumstanced. From the judgement and order impugned we do not find any definite finding of the Tribunal that the petitioners herein were not similarly circumstanced with the petitioners in W.P.S.T. No. 291 of 2007.

The Tribunal application succeeds and is allowed. Extend benefit accordingly.

There would be however, no order as to costs.”

However, again the Respondent Authority extended the benefit of judgement dated 13.7.11 vide order dated 23.2.2012 only to the petitioners of W.P.S.T. No. 160 of 2011. It is further noted that the further similarly circumstanced employees had filed two O.A.s being O.A. No.490 of 2012 (Niranjan Ch. De and Others –vs- State of W. B. and Others and O.A. No. 1407 of 2012 (Dibakar Chanda and Others –vs- State of W.B. and others). Both the O.A.s were disposed of in favour of the applicants by extending the benefit of judgements dated 2.4.2008 and 13.7.2011, vide both the orders dated 14.5.2014. Being aggrieved

with, the Respondent authorities had preferred W.P.S.T. No. 217 of 2015 and W.P.S.T. No. 231 of 2016 (Annexure R/1) the Hon'ble High Court vide their judgement dated 4.5.2017 dismissed the W.P.S.T. No. 231 of 2016, while dismissing the said W.P.S.T. No. 231 of 2016 as held inter alia:

“The main contention of the applicants before the Tribunal i.e., Respondents here, was that they are similarly situated as other Block Youth Officers, who were the writ petitioners in WPST No. 291 of 2007 and WPST No. 160 of 2011. According to them, the work performed by them is similar and, therefore, they were entitled to the same salary as the writ petitioners in the aforesaid writ petitions. The Tribunal has on the facts before it held that the applicants (i.e. Respondents here) were performing similar duties as the writ petitioners and were borne in the same cadre and were, therefore, entitled to the same scale of pay as the petitioners in the aforesaid writ petitioners, as they were similarly circumstanced.

It has been argued by Mr. Mukherjee, learned Counsel appearing for the State/Petitioners that the source of recruitment for the Respondents in this petition and the petitioners in the aforesaid two writ petitions was different and, therefore, they cannot be considered to be similarly circumstanced. According to him, if the source of recruitment of two employees is not the same, they will not be entitled to the same salary.

The submission of Mr. Mukherjee is unacceptable. Furthermore, the Tribunal on the

basis of the record before it has found that the Respondents had the same duties and responsibilities as the writ petitioners in the aforesaid two writ petitions and were borne in the same cadre; therefore, they were similarly circumstanced and entitled to the same scale of pay.

The Tribunal has directed the State to re-fix the pay of the Block Youth Officers, who were the applicants before it and to grant them a higher scale of pay of 375-650/- with retrospective effect from their respective dates of joining the post. As the Tribunal has found that the applicants are similarly circumstanced as the writ petitioners in the aforesaid two writ petitions, the Respondents here i.e. the applicants in the original application no. 1407 of 2012 would be entitled to the same benefits as the writ petitioners in WPST No. 291 of 2007 and WPST No. 160 of 2011.

The writ petition is dismissed, however, without costs.

The State/Petitioners will comply with the impugned order of the Tribunal within eight weeks from today.”

Against the above mentioned judgement, the State Respondent has preferred one SLP being No. 23931 of 2017, which was dismissed by the Hon’ble Apex Court by order dated 3.10.2017.

It is noted that according to the applicant, as she was appointed as Block Youth Officer and is performing the same and similar duties of the

above mentioned petitioners therefore she being similar circumstanced is entitled to get the above mentioned judgements, whereas, as per the respondents, since she was appointed after 1978, therefore she is not entitled to get the extension of the above mentioned judgements. The Respondent has raised point of limitation and according to the applicant since issue related with wrong fixation of pay scale, it is a continuous cause of action. In view of the above, we are of the opinion that the instant case is not barred of limitation.

From the perusal of the above mentioned judgements as well as contentions made by both parties it is observed that admittedly the applicant was appointed as Block Youth Officer in the year 1980 and is performing the same duty and responsibility as performed by the petitioners of the above mentioned cases. Moreover, in WPST No. 291 of 2007, the Hon'ble High Court vide their judgement dated 2.4.2008 had declared the Notification dated 15.5.1978 as discriminatory to the extent of disparity of pay scale and declared that the applicants would be entitled to get the pay scale of Rs. 375-650/-, which was further followed by the subsequent judgements and implemented by the Respondents. Therefore, it is admitted position that the Block Youth Officers are entitled to get pay scale of Rs. 375-650/-. Therefore when the applicant was appointed in the year 1980 in the scale of Rs. 300-600/- as per the notification dated 15.5.1978 in the pay scale of Rs. 300-600/- which scale was subsequently declared not applicable for Block Youth Officers by the order of the Hon'ble High Court with a direction to provide Block Youth Officers pay scale of Rs. 375-650/-. Therefore being appointed as Block Youth Officers, she is entitled for the pay scale of Rs. 375-650/-. Moreover, the Respondent never claimed that she is not performing the same duty as Block Youth Officer like above mentioned petitioners or has borne out of different cadre.

It is further noted that in the case of Dibakar Chanda (Supra), some of the petitioners were appointed even after 1978 and the Hon'ble High Court by their judgement dated 4.5.17 passed in WPST No. 231 of 2016 (State of W.B. and Others –Vs- Dibakar Chanda & Others), has observed

that as the writ petitioners are performing the same duties and responsibilities therefore they would be entitled to the same benefit, which was subsequently affirmed by the Hon'ble Apex Court in their order dated 3.10.2011 passed in SLP No. 23931 of 2017. In view of the above, we are of the considered opinion that as the applicant is similarly circumstanced with the above writ petitioners, she is also entitled to get the pay scale of Rs. 375-650/-.

Therefore, the respondents are directed to pay the applicant the same scale of pay of Rs. 375 – 650/- and the benefits in terms of the order dated 2.4.2008 passed in WPST No. 291/2007 and order dated 13.7.2011 passed in WPST No. 160/2011 as well as State Government's consequential orders date 3.12.2008 & 23.2.2012. The respondents are further directed to provide further revised pensionary benefit to the applicant immediately within four weeks from the date of receipt of the order and the arrears should be paid within four weeks from the date of receipt of the order.

Accordingly, the O.A. is allowed in terms of the above observations and directions with no order as to costs.

Dr. A.K. Chanda
Member (A)

Urmita Datta (Sen)
Member (J)