

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5306 OF 2005

STATE OF WEST BENGAL & ANR. Appellant (s)

VERSUS

P.K.MOITRA & ORS. Respondent(s)

Date: 09/12/2010 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Mr. Bhaskar P. Gupta, Sr. Adv.
Mr. Rana Mukherjee, Adv.
Mr. Goodwill Indeevar, Adv.

For Respondent(s) Mr. Rana S. Biswas, Adv.
Mr. Hemant Singh, Adv.
Ms. Indra Sawhney, Adv.

UPON hearing counsel the Court made the following
O R D E R

This appeal is allowed, the order of the High
Court and Tribunal are set aside and the application for
relief is dismissed in terms of the signed order.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5306 OF 2005

STATE OF WEST BENGAL & ANR.APPELLANTS

Versus

PRANAB KUMAR MOITRA & ORS.RESPONDENTS

O R D E R

The respondent was appointed as an Inspector in the
Food and Supplies Department in the year 1972. He was
promoted to the post of Chief Inspector in the Food and
Supplies Department in the year 1985 and his pay was fixed
in the scale of 425-1050 under Pay Scale 11 of the Revision

of Pay & Allowances Rules 1981('ROPA Rules 1981' for short). He approached the West Bengal Administrative Tribunal in the year 1988 praying that Pay Scale 13 (Rs.470-1230) granted to Chief Inspectors in the Relief & Welfare Department should be extended to him. The said petition was disposed of on 7.9.1990 with a direction to consider his representation.

2. On 12.1.1990, the Govt. of West Bengal, accepting the recommendations of the Third Pay Commission, framed the ROPA Rules 1990 with retrospective effect from 1.1.1986. The said rules prescribed the following scales for Food and Supplies Department:
(i) Scale 10 (Rs.1390-2970) for Chief Inspector (Grade I)
(ii) Scale 9 (Rs.1260-2610) for Inspectors (Grade II)
(iii) Scale 6 (Rs.1040-1920) for Sub-Inspectors (Grade III).

The first respondent exercised his option for pay Scale 10 and his pay was refixed in the Scale of Rs.1390-2970. It may be mentioned that ROPA Rules 1990 merged Scales 10 and 11 prevailing till then and renumbered them as 'Scale 10'.

3. In the year 1990, two Inspectors (Abhijit Kumar Samaddar and another) in the Food & Supplies Department approached the High Court (C.O.No.1895 (W) of 1990) seeking the benefit of Scale 10 for Inspectors, Food & Supplies. During arguments they contended that the Secretary, Finance Department had made recommendations to the State government on 9.11.1992 stating that the Pay Review Committee set up by the department for examining anomalies in the pay scales had already recommended grant of higher scale of 10 for Inspectors, Food & Supplies and, therefore, the same should be given to them. Even before the government could consider the said recommendation, a

learned single Judge of the High Court, disposed of their writ petition by a short order dated 5.1.1993 extracted below:

"Pursuant to the order passed by this Court on September 13, 1991, the Finance Secretary, Government of West Bengal has considered the matter and passed an order recommending appropriate scale for the petitioners.

In view of the said petition, the concerned respondent authorities are directed to implement the decision of the Finance Secretary within eight weeks from the date of communication of this order.

Petitioner will be entitled to consequential benefits in accordance with law under R.O.P.A. Rules 1981."

In view of the said order, the State Government made an order dated 20.8.1993 granting the said two writ petitioners the benefit of higher pay scale (Rs.1390-2970) notionally from 1.1.1986, and in effect from 1.1.1988.

4. Another set of 50 Inspectors, Food & Supplies (namely, Pinaki Ranjan Gupta and others) also approached the High Court in C.O.No.20188 (W) of 1994 for extending them the benefit of pay scale of Rs.425-1050 with effect from 1.4.1981 on the ground that the two Inspectors were granted such relief. The said petition (numbered as TA No.987/1996) on transfer to the West Bengal Administrative Tribunal, was allowed on 10.7.1997 directing that the petitioners therein be given the same scale of pay as has been given to Abhijit Samaddar and another in case No. 1895(W)/1990 on the same terms and conditions.

5. The Secretary, Finance Department passed a reasoned order dated 5.9.1994 rejecting the claim of first respondent for grant of higher pay scale 13, on the ground that Chief Inspector in Food & Supplies Department was not equal to Chief Inspector in Relief & Welfare Department. The first respondent filed a writ petition (No.3684/1994)

in the year 1994 challenging the order dated 5.9.1994 and praying for grant of the higher pay scale for the period 1981-85 when he worked on the post of Inspector (Pay Scale No.11 of ROPA Rules 1981 corresponding to Scale 10 of ROPA Rules 1990) and for grant of the higher pay scale No.13 of ROPA Rules 1981 corresponding to pay scale 12 of ROPA Rules, 1990 for the period when he was working on the post of Chief Inspector, Food & Supplies, and consequential reliefs. The said writ petition was transferred to the Tribunal (and numbered as TA No.567 of 1997). The Tribunal by order dated 15.9.1997 allowed the said petition directing the appellants to give the first respondent the benefit of Scale 11 of ROPA Rules, 1981 for his tenure in the post of Inspector of Food & Supplies with all consequential benefits and to consider and fix an appropriate Scale of pay as Chief Inspector of Food & Supplies which must be higher than the scale of pay of Inspector of Food & Supplies. The said order purported to follow its order dated 10.7.1997 passed in the case of Pinaki Ranjan Gupta and 49 others which had in turn relied upon the decision dated 5.1.1993 in Abhijit Samaddar and another. The State filed a writ petition challenging the order and the Tribunal and the Division Bench of the High Court, by a brief order dated 23.6.1998, dismissed the writ petition, which is challenged in this appeal by special leave.

6. The first contention urged by the appellant is that the order passed in the case of Abhijit Samaddar and the decision in Pinaki Ranjan Gupta, following the decision in Abhijit Samaddar were erroneous. It was submitted that the order in Abhijit Samaddar was virtually a non-speaking premature order directing the appellant to give reliefs on the basis of a recommendation of the Finance Secretary, when the recommendation was yet to be

considered by the Government. It is submitted that the recommendation of the Finance Secretary was in fact not accepted by the State Government. It is, submitted neither the decision in Abhijit Samaddar nor the decision in Pinaki Ranjan Gupta (that followed in Abhijit Samaddar) considered the issue raised on merits. On the other hand, learned counsel for the first respondent submitted that the decision in Pinaki Ranjan Gupta attained finality as the appeal filed against the said decision was dismissed by this court. We however find that while dismissing the state's appeal in the case of Pinaki Ranjan Gupta (CA No.4791/2004 decided on 18.3.2004), this court had specifically left open the question of law to be decided in an appropriate case. In this context we may also refer to the decision in Col.B.J. Akkara vs. Govt.of India [2006 (11) SCC 709] wherein this court had reiterated the following well-settled position:

"A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others."

The decision of High Court in Abhijit Samaddar was not rendered on merits but solely on the ground that Finance Secretary had passed an order dated 9.11.1992 recommending higher pay scale No.10 (Rs.1390-2970) for Inspectors, Food & Supplies and therefore the writ petitioners therein were entitled to relief in terms of the said recommendations. But the said order being only a recommendation to the Finance Minister, was not

enforceable until it was accepted and a Government order was issued in terms of the decisions of the Government. The High Court prematurely directed relief merely based on a recommendation, which obviously is erroneous. As a consequence the decision of the High Court in Pinaki Ranjan Gupta is also erroneous. Be that as it may.

7. It may not be necessary to go into that aspect any further, in view of another reason. It is not in dispute that in the cases of Abhijit Samaddar and Pinaki Ranjan Gupta which was followed by the Tribunal in this case, government servants in the post of Inspectors, Food & Supplies were granted the higher pay scale No.10 (Rs.1390-2970) notionally with effect from 1.1.1986 and actual with effect from 1.1.1988. In this case, the first respondent was promoted as Chief Inspector in the year 1985 itself and he was not an Inspector on or from 1.1.1986. Therefore, the question of any relief being granted to him on the basis of the decision in Abhijit Samaddar or Pinaki Ranjan Gupta does not arise, as those cases granted relief to Inspectors only from 1.1.1986. The first respondent's prayer that he should be given a higher pay scale when he was an Inspector for the period 1981 to 1985 cannot be accepted as such relief was not granted in the case of Pinaki Ranjan Gupta which was followed by the Tribunal. Therefore, obviously, the first respondent was not entitled to any relief in regard to the period that he was working as Inspector. Insofar as the pay scale for the post of Chief Inspector, there is no recommendation either by the Pay Commission or by the Anomalies Review Committee or otherwise nor any acceptance thereof by the State Government for revising the applicable pay scale or to equate the posts of Chief Inspector, Food & supplies with the post of Chief Inspector, Relief & Welfare Department. The first respondent cannot, therefore, have any grievance in

regard to pay scale that was extended to him as Chief
Inspector.

8. We, therefore, allow this appeal, set aside the
order of the High Court and Tribunal and dismiss the
application for relief.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
December 09, 2010.

.....J.
(A.K. PATNAIK)