

**In Re: Abhijit Dutta**

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**Court :** Kolkata

**Decided On :** Sep-15-1992

**Reported in :** (1993)IILLJ160Cal

**Judge :** Paritosh Kumar Mukherjee, J.

**Acts :** West Bengal Service Rules - Rule 24(1)

**Appeal No. :** W.P. No. 1992

**Appellant :** In Re: Abhijit Dutta

**Advocate for Def. :** P.K.R. Choudhary and ;Udayan Ray, Advs.

**Advocate for Pet/Ap. :** Bidan C. Ghosal, ;Baishati Ghosal, Advs.

**Disposition :** Petition allowed

**Judgement :**

**Paritosh Kumar Mukherjee, J.**

1. In the instant writ petition, the writ petitioner, Abhijit Dulla challenges a notification dated May 1, 1992, whereby Governor was pleased 'to appoint', Abhijit Dutta, 'Technical Officer', attached to the Hosiery Section, under the said Directorate and to post him in the interest of public service, as 'Handloom Development Officer' at Aliporcduar, in the district of Jalpaiguri, with immediate

effect, and until further orders.

2. According to the petitioner, under the garb of appointment and/or 're-designation', the petitioner was sought to be transferred as 'Handloom Development Officer,' although the post held by the petitioner as Technical Officer, is not transferable.

3. Mr. Bidhan Chandra Ghosal, learned Advocate appearing in support of the writ petition, made following submissions, which are as follows:-

4. In the first place, he submitted that the recruitment rules of Technical Officer and the Handloom Development Officer, being distinct and separate, the petitioner, who was appointed in the post of Technical Assistant, Grade-I (Hosiery), by notification dated September 1, 1987, cannot be transferred outside the Headquarter, as the post of Technical Officer is attached to the Headquarter only.

5. In the second place, Mr. Ghosal submitted that there are two different recruitment rules for appointment in the post of Handloom Development Officer, as well as in the post of Technical Officer. In this connection, he referred to the notification dated May 13, 1982, which is Annexure 'C' to the application for further order, which has been filed in connection with the main writ petition.

6. As per the said notification, for appointment in the post of Handloom Development Officer, the qualifications required are as follows:-

1. (a) A degree or diploma in Textile Technology/Handloom Technology from a recognised University, Institute or its equivalent.

or

(b) A degree of a recognised University or its equivalent.

2. One year's for 1(a) above, two year's for 1 (b) above, experience in the field of Cottage Industries, particularly Handloom Industry of West Bengal.

3. Knowledge of Bengali Spoken and Written.

Desirable

(i) Knowledge of Commercial Accounts.

(ii) Knowledge of Cooperative Acts, Rules and Procedures.

7. As per separate notification dated May 13, 1992, the qualifications required for appointment in the post of Technical Officer, has been prescribed as follows:-

1. A degree or diploma in Textile Technology/Handloom Technology from a recognised University/Institute or its equivalent.

2. One year's experience in dealing with Textile Industry.

3. Knowledge of Bengali Spoken and Written.

Desirable

1. Experience in the inspection or testing of textile materials.

2. Knowledge of the Textile Control orders in force for the time being.

8. Thirdly, Mr. Ghosal referred to the notification dated July 10, 1981 and submitted that on July 14, 1975, the Handloom Wing of the Directorate of Cottage and Small Scale industries was separated and constituted into a full-fledged Directorate, under the name and style of the Directorate of Handloom and Textiles, in the Department Notification No. 7524 Cot. dated July 14, 1975. Before July 14, 1975, the Handloom wing was a regional set-up under the Directorate of Cottage and Small Scale Industries.

9. By the said notification, it has been decided that the following establishments of the then Directorate of Cottage and Small Scale Industries, as they were immediately before July 14, 1975, will constitute the Head quarters of the Directorate of Handloom and Textiles;

(a) Office of the then Joint Director of Industries (Handloom)

(b) Powerloom Section,

(c) Textile Licensing Section.

(d) Collection of Statistics, Section located at Calcutta.

10. Accordingly, the Governor was pleased to approve composition of the Headquarters of the Directorate of Handloom and Textile with effect from July 14, 1975, with the following establishments of then Directorate of Cottage and Small Scale Industries as they were immediately before July 14, 1975:-

(a) Office of the erstwhile Jt. Director of Industries (Handloom)

(b) Powerloom Section.

(c) Textile Licensing Section.

(d) Collection of Statistics, Section located at Calcutta, together with different categories of posts attached to the said establishments and detailed in Annexure 'A'. The posts created after July 14, 1975, as shown in Annexure 'B' will also be a part of the Headquarters of the Directorate of Hand-loom and Textiles.

11. A statement regarding different categories of posts, as on July 14, 1975, attached to the Headquarters has been annexed along with the said notification dated July 10, 1981 and from Clause 3 of the said statement, which relates to Textile Licensing Section, it appears that the post of Technical Officer is at a pay scale of Rs. 400-750/-.

12. Thereafter, Mr. Ghosal referred to the provisions of Rule 24 of the West Bengal Service Rules, Part-I, which relates to transfer, which is set out below:-

'Rule 24 (1): A Government servant may be transferred from one post to another:

Provided that, except (i) on account of inefficiency or misbehavior, or (ii) on his written request he shall not be transferred substantively to, or except in a case covered by Rule 65, appointed to in officiating a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had it not been suspended under Rule 20:

Provided further that unless the transfer is from one cadre post to another, the post to which a Government servant may be transferred shall be a post (i) which carries a scale of pay comparable to that of the post presently held by the Government servant, (ii) for which the Government servant possesses at least the minimum of the prescribed qualifications and (iii) in the recruitment rules for which there is no bar to the appointment of the Government servant to the post by transfer.

(2) Nothing in Sub-rule (1) of this rule or in Clause (23) or Rule 5 shall operate to prevent the transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of Sub-rule (1) of Rule 20.'

13. After placing the aforesaid rules, Mr. Ghosal admitted that, as admittedly there is no corresponding post of Technical Officer at Aliporeduar, in any event, the petitioner cannot be transferred, as Handloom Development Officer, against his will, and without obtaining his prior consent.

14. In the next place, Mr. Ghosal submits that although by the said notification, the Governor has 'appointed', the petitioner in the post of 'Handloom Development Officer', but actually it is a case of 'transfer' from the post of Technical Officer, to the post of Handloom Development Officer which is not permitted, on the basis of recruitment rules and notification dated July 10, 1981 referred to above.

15. Mr. Ghosal further submits that throughout the West Bengal, the post of 'Technical Officers' are attached to the Headquarters, as would be evident from the relevant recruitment rule dated May 13, 1982.

16. Thereafter, Mr. Ghosal referred to the nature of duty of the Technical Officer, from paragraph 9 of the writ petition, which are as follows :-

1. Inspection of factories vis. Powerloom Factory, Tapeloom Factory, processing units, Hosiery Units, Readymade Garment Manufacturing Units.

2. Examination of the Reports submitted by Technical Assistants, Inspectors etc.

3. Examination of schemes relating to Powerloom Hosiery processing readymade garments units.
4. To give Technical Assistance required by the Powerloom and Hosiery Units.
5. To see that the powerlooms are not violating the Handloom Reservation Act.
6. To implement the Textile (Control) Order, 1986.
7. To examine cases regarding change of ownership of power loom/tape loom factories.
8. Any other duty that may be given to him by the Director of Handloom and Textiles.

17. Mr. Ghosal further referred to nature of duty of the Handloom Development Officer, which are as follows:-

1. Drawing and Disbursing Officer of the District.
2. Controlling Officer for implementation of different Handloom Schemes created at Directorate of Handloom & Textiles to execute different Plans and Schemes in Hand-loom Development Programme.

18. Thus, according to Mr. Ghosal, the post of Technical Officers and the post of Handloom Development Officer are not at all identical with each other, as the Technical Officers are attached to the Powerloom exclusively, while the Handloom Development Officers are exclusively attached to the Handloom Section.

19. Lastly, Mr. Ghosal submitted that the Recruitment Rules, regulating the recruitment to the various posts under the Directorate of Handloom and Textiles have already been challenged before Umesh Chandra Bannerjee. J. of this Court, being C.R. No. 711 o (W) of 1986, which is still pending.

20. In support of his contention that the post of Technical Officer is not transferable, Mr. Ghosal has placed strong reliance on a Single Bench decision of the Court in the case of Ranjit Basu v. State of West Bengal and Ors. reported in

1982 (2) C.L.J., page 416, which relates to challenge of the order of transfer.

21. The petitioner in that case was at the material time the Chief Bengali Reporter in the West Bengal Legislative Assembly. Upon representations made by the other Reporters against the petitioner the Speaker of the West Bengal Legislative Assembly passed an order directing the petitioner not to enter into the Chamber of the Assembly until further orders. Thereafter, the Speaker placed the service of the petitioner at the disposal of the Department of Information and Cultural Affairs for appointment as News Reporter in that Department. By another order passed by the Governor, the petitioner was appointed as News Reporter in the Information and Cultural Affairs Department. The petitioner had challenged his transfer from West Bengal Assembly and appointment in the Department of Information and Cultural Affairs, West Bengal.

22. In the said case, Sabyasachi Mukharji, J. (as His Lordship then was), held as follows:-

'd.(i) An employee cannot be transferred out of his cadre or establishment against his wish.

(ii) When appointment is made to a specified post or a specified group of posts, no transfer can be justified merely because the pay is not being affected.

(iii) The Government servant cannot be asked to perform duties which were never expected of him when he was recruited.

(iv) An expectation of further promotion cannot be wiped out by moving a Government servant around e. A cadre is the strength of a service or a part of service sanctioned as a separate unit. The Assembly Secretariat staff clearly form such a separate unit.

f. The action releasing the petitioner from the West Bengal Legislative Assembly virtually amounted to termination of service of the petitioner in violation of the provisions of his legal rights.'

23. In the next place, Mr. Ghosal referred to a decision of Division Bench of this Court, consisting of Sankar Prasad Mitra, C.J. and Salil Kumar Datta, J. in the case of State of West Bengal v. Sanit Ranjan Roy, reported in 1975 (2) LIC 1705.

24. In the said case, it has been observed by Their Lordships as follows:

'The post of Inspector of Shops and Establishments is a statutory post with certain additional powers which are not found in the posts of other subdivisions, (viz, Inspector of Minimum Wages, Inspector of Trade Unions and Supervisor of Labour Welfare Centers) of the West Bengal Subordinate Labour Service constituted by notification dated November, 14, 1964. The Rules of appointment of Inspectors of Shops and Establishments have been framed under powers conferred by the Act while the rules in the three other categories have been framed under Article 309 proviso of the Constitution. In none of these rules there is any provision for appointment by way of transfer of persons belonging to the other category of service.'

25. By the said judgment Their Lordships had affirmed the judgment delivered by A.K. Sen, J. dated December 24, 1973, in Civil Rule No. 2475 (W) of 1973, whereby the Rule was made absolute.

The facts in the said case are as follows:-

'The petitioner in response to an advertisement issued by the Public Service Commission on January 19, 1961, applied for the post of Inspector of Shops and Establishments under the Shops and Establishments Act, 1940. The petitioner was selected and was appointed in that post from October 6, 1961, and since then the petitioner has been serving the Government in the said post. By an order dated June 8, 1973, the petitioner was transferred from Burdwan to Durgapur and was posted 'as a Supervisor of Labour Welfare Centres in the same service with effect from the date he assumes charge until further order.' The petitioner challenged this order of transfer as being made in violation of the condition of his service, as according to him he could not be transferred from the post of Inspector under the Shops and Establishments Act, which constitute a separate and distinct cadre from the other cadres of the West Bengal Subordinate Labour Service.'

26. In the said judgment, it has been further held by the Division Bench that, there was no scope for interchangeability of the posts of Inspector of Shops and Establishments with posts of the other categories of the service, which in view of the different rules of appointment have been kept separate and distinct categories in the West Bengal Subordinate Labour Service.

27. Referring to the aforesaid decision, Mr. Ghosal submits that in view of the observations made by the Division Bench in the aforesaid case, the petitioner cannot be transferred from the post of Technical Officer from the Headquarters, as the said post is not transferable.

28. Thereafter, Mr. Ghosal referred to another Division Bench decision of this Court, consisting of D.N. Sinha and SA. Masud, JJ. in the case of State of West Bengal and Ors. v. Hirendra Nath Banerjee, reported in : AIR1967 Cal285 . In the said case the order of transfer of the petitioner Hirendra Nath Banerjee from the post of Registrar of Rent Controller's Court to the post of Certificate Officer under Bengal Public Demands Recovery Act in a certain Revenue Division, was the subject matter of challenge.

29. In the said case, the Division Bench held that the transfer was illegal and the post of a Registrar of Rent Controller's office, when it was held by a person, who did not belong to cadre post, was non-transferable.

30. Mr. Prabir Kumar Roy Chowdhury, Bar-at-Law, appearing with Mr. Udayan Ray, learned Advocate, on behalf of the respondents, once more referred to the recruitment rules and qualifications required for the post of 'Technical Officer' as well as 'Handloom Development Officer' and submitted that there was no specific prohibition in any rule, prohibiting such transfer and, as such, it cannot be suggested that the petitioner is not entitled to be transferred, as Handloom Development Officer.

31. In this context, he further submitted that the scale of pay, of the Handloom Development Officer being the same, and channel of promotion being same, as it would be evident that from ; the post of Technical Officer, a person is entitled to be promoted as 'Assistant Director', so also from the post of 'Handloom Development

Officer', a person is also entitled to be promoted to the post of 'Assistant Director', there is no : infirmity in the order of appointment of the petitioner, as Handloom Development Officer.

32. Therefore, it has become necessary for this Court to adjudge the following points:-

(a) Whether the petitioner, who is discharging his duties as Technical Officer, can at all be transferred to the post of Handloom Development Officer or not?

(b) Whether under the garb of fresh appointment as Handloom Development Officer, the petitioner can be directed to be posted at Aliporeduar, as Handloom Development Officer, and whether this is coming within the definition of transfer, within the meaning of Rule 24 of West Bengal Service Rules, Part-I or not.

(c) Whether in view of the observations made in the case of State of West Bengal v. Santi Ranjan Roy (supra), the petitioner can be unilaterally transferred from the post of Technical Officer to the post of Handloom Development Officer and/or whether the posts are interchangeable?

33. It appears that at the time of admission of the writ petition on May 15, 1992, Susanta Chatterji, J. issued Civil Order and directed the parties to maintain 'status quo', relating to the service of the petitioner till May 27, 1992 and relevant recruitment rules relating to the service condition of the petitioner were directed to be produced.

34. From the order sheets it further appears that on July 22, 1992 after a contested hearing a judgment was delivered by Sustant Chatterje, J. on that date. From the order dated July 22, 1992 it appears that His Lordship had accepted the oral submissions of Mr. Roy Chowdhury, learned Advocate for the respondents and was prima facie satisfied that the petitioner who was appointed in the post of 'Technical Officer' which post is at par with the post of Handloom Development Officer and under Rule 24 of the West Bengal Service Rules, Part-I, a Government employee can be transferred from one post to another and His Lordship had no occasion to deal with other points, on the basis of filing of affidavits.

35. Thereafter, after change of determination, the writ petition came up for hearing before me and an application for further interim order having been made before me on July 28, 1992, this Court directed that the main writ petition should be disposed of at an early date and the writ petition was heard on August 5, 1992 and September 8, 1992, when hearing was concluded.

36. On the basis of the pleadings, it appears that the petitioner was initially appointed in the post of Technical Assistant, Grade-I on September 1, 1987 on the basis of the recommendation of the Public Service Commission and since then the petitioner has been discharging his duties as Technical Assistant Grade-I and Technical Officer, under Hosiery Section.

37. In my view, the recruitment rule dated May 13, 1982, relating to the appointment to the post of Technical Officer as well as to the post of Handloom Officer, clearly shows that the qualifications required for the post of Technical Officer and for the post of Handloom Development Officer, are not same and identical, as referred to hereinbefore.

38. Therefore, in my view, the recruitment rules not being the same the writ petitioner cannot be transferred unilaterally from the post of Technical Officer to the post of Handloom Development Officer at Aliporeduar, by an 'order of appointment' and not 'transfer' as mentioned in the impugned notification dated May 4, 1992, which is Annexure 'B' to the writ petition.

39. Further, in my view, the respondents have no power to make any fresh appointment of the petitioner as Handloom Development Officer at Aliporeduar, as the petitioner had been appointed as Technical Assistant Grade-I and thereafter discharging his duties as Technical Officer, which post is attached to the Headquarters at Calcutta, in view of the Notification No. 2737-Oct. (VI) dated July 10, 1981, disclosed in Annexure 'D' to the application for further order, and, as such, the said appointment in the post of Handloom Development Officer, at Aliporeduar cannot be sustained in law.

40. On the basis of the pleadings, as adduced by the both the parties, further I am of the view that the impugned notification dated May 4, 1992, appointing the

petitioner, as Handloom Development Officer at Aliporeduar, cannot be treated as 'an order of transfer', as the post of Technical Officer, which is attached to Headquarters, is not interchangeable with the post of Handloom Development Officer.

41. More so, I am of the view, that without promoting the eligible incumbents for which a list has been disclosed, in the affidavit-in-reply, by the petitioner, who are 10 in number, to the post of Handloom Development Officer, the respondents are not entitled to redesignate the petitioner to the said post of Handloom Development Officer, by making a fresh appointment in that post, in view of the observations made in the case of *Ranajit Kumar Basu v. State of West Bengal* (supra).

42. Regarding the submissions of Mr. Roy Chowdhury that if the petitioner is allergic towards his new designation of Handloom Development Officer, the petitioner can move with his own designation as Technical Officer, on this point this Court is of the view that whether the petitioner is at all entitled to be appointed as Handloom Development Officer, is the subject matter of this writ petition and as such the writ petitioner is not entitled to be appointed as Handloom Development Officer, is the subject matter of his writ petition and as such the writ petitioner is not entitled to get 'any concession' offered by the respondents.

43. In the result, the writ petition is entitled to succeed.

44. The impugned notification dated May 4, 1992, appointing the writ petitioner as Hand-loom Development Officer at Aliporeduar, is set aside.

45. The consequential order of release, if any, passed releasing the petitioner from the said post of Technical Officer, is also set aside and the petitioner will be entitled to resume his duties as Technical Officer, Hosiery Section, Handloom and Textile Directorate, Calcutta, forthwith, preferably within 48 hours, on the basis of this order.

46. If the petitioner was 'on leave' by reason of non-continuation of the order of status quo by this court, the respondents are directed to regularise the 'leave account' of the writ petitioner, after allowing him to join the post of Technical

Officer, Hosiery Section, Handloom and Textile Directorate, Calcutta.

The writ application is allowed.

There will be no order as to costs.

Let plain copy of the operative part of this judgment, countersigned by the Assistant Registrar (Court), be supplied to the parties, on usual undertaking.

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