

Basanta Kumar Ray Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Jul-21-1965

Reported in : (1966)IILLJ46Cal

Judge : Benerjee, J.

Appellant : Basanta Kumar Ray

Respondent : State of West Bengal and ors.

Judgement :

Banerjee, J.

1. The petitioner was a labour officer under the Government of West Bengal, While serving in that post, the petitioner and two other officers, namely, Smt. Indira De, then an Assistant Labour Commissioner, and Sri D. P. Dutta, a labour officer, were appointed, by the Government of India, as inspectors under the Employees' Provident Funds Act, 1952, by a notification dated 23 July 1952. The relevant portion of the notification is set out below:

In exercise of the powers conferred by Sub-section (1) of Section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Smt. Indira De and Debi Prosad Dutta and Sri Basanta Kumar Roy to be inspectors for the whole of the State of West Bengal for the purposes of the said Act and of any scheme made thereunder, in relation to factories which are

engaged in a controlled industry or in an industry connected with a mine or an oil-Said.

2. The Labour Commissioner, West Bengal, released the petitioner and the two other officers named above to go out on deputation by memorandum dated 16 October 1952, which is set out hereunder:

As directed in the above memorandum I am releasing Smt. Indira De, Assistant Labour Commissioner, Sri B. K. Roy, labour officer, and Sri D. P. Dutta, labour officer, for assuming charges as inspectors under the Employees' Provident Funds Act, 1952. They will hand over charges in this directorate on 21 October 1952.

3. Shortly thereafter, on 13 November 1952, there was a notification made by the Government of West Bengal promoting the petitioner as temporary Assistant Labour Commissioner, in place of Smt. Indira De above named, until further orders. The relevant portion of the notification reads as follows:

The Governor is pleased to appoint Sri B. K. Roy, labour officer, West Bengal, to act temporarily as Assistant Labour Commissioner, West Bengal, from 22 October 1952 until further orders vice Smt. I. De on deputation.

* * * Copy forwarded to the Accountant-General, West Bengal, for information.

Sri Roy will, however, continue to act as inspector under the Employees' Provident Funds Act under the Government of India.

4. The promotion, to any the least, was tantalising because the petitioner was directed to continue as the inspector under the Employees' Provident Funds Act and not to participate in the glories of the promoted post. The chair created for the petitioner thus remained awaiting for him.

5. Now, the transfer of a Government servant from the parent department to another department outside the parent department on deputation or otherwise, counts as foreign service. Rule 100 of the West Bengal Service Rules (Part 1) under the heading ' Foreign Service ' reads as follows:

(1) A Government servant transferred to foreign service shall remain in the cadre or cadres in which he was included in a substantive or officiating capacity immediately before his transfer, and may be given such substantive or officiating promotion in those cadres as the authority competent to order promotion may decide. In giving promotion, such authority shall take into account

(a) the nature of the work performed in foreign service ; and

(b) the promotion given to juniors in the cadre in which the question of promotion arises.(2) * * *

6. The Government of India took into consideration the promotion of the petitioner as an Assistant Commissioner and re-fixed his pay in the deputation post accordingly. The letter written by the Government of India to the Central Provident Fund Com-missioner, dated 23 March 1965, is set out below:

I am directed to refer to your letter No. Adm. 2 (17)/55, dated 14/15 January 1955, on the above subject and to say that the Government of India are pleased to sanction the re-fixation of pay of Sri B. K. Roy, provident fund inspector, West Bengal, at Rs. 250 per month in the scale of pay of Assistant Labour Commissioner, West Bengal, viz., Ra. 250-25-850 with effect from 22 October 1952 and up to the date, he would have actually continued to comate as the Assistant Labour Commiasioner in his parent office, but for his deputation under the Employees Provident Fund Organization In the State, For the aforesaid psriod Sri B. K. Roy will also be entitled to the special pay of 20 per cent of his grade pay subject to the maximum of Rs. 100 per month and the usual allowances admisaible to him locally under the State Government Rules.

7. Affairs in the Labour Department of the Government of West Bengal apparently have slow movement. After the petitioner had put in service in his deputation post for nearly two years and a half, there was a notification, dated 29 April 1955 made by the Government of West Bengal couched in the following language:

The Governor is pleased to place the service of Smt. Indira De, Assistant Labour Commissioner, West Bengal, Sri B. K. Roy, labour officer, West Bengal, and Sri D.

P. Dutta, labour officer, West Bengal, at the disposal of the Employees' Provident Fund Organization on foreign service terms for employment as provident fund inspectors for the State of West Bengal with effect from the date on which they joined their respective posts under the Provident Fund Organization until further orders.

8. To describe the petitioner as labour officer, in the notification quoted above, was inaccurate, because at that time his position in the parent department was that of a temporary Assistant Labour Commissioner.

9. Be that as it may, the petitioner continued to serve in the Employers' Provident Fund Department, as hereinbefore quoted, when an event happened, which caused to the petitioner his present misfortune. Smt. Indira De, who was also on deputation along with the petitioner, went back to her parent department, as Assistant Labour Commissioner, in May 1956. The position of the petitioner in his parent department, after Smt. Indira De had gone back, became a subject-matter of enquiry by the Government of India. An Accounts Officer in the office of the Regional Provident Fund Commissioner, West Bengal, wrote to the Labour Department, Government of West Bengal, a letter, dated 9 June 1956, couched in the following language;

I am to refer to your letter No. 1721/ Die/D/3A-7/55, dated 25 April 1955, wherein you stated that Sri Roy would be continuing as Assistant Labour Commissioner until the reversion of Smt. Indira De. Smt. De has reverted to her parent office with effect from 1 May 1956 forenoon. I would, therefore, request you kindly to intimate this office whether the officer will be reverted to the rank of labour officer and pay of the officer will have to be restricted in that grade.

10. It does not appear what reply the Government of West Bengal sent to the above letter. But the stand taken by the Government of West Bengal is ascertainable from Para. 4 of the affidavit-in-opposition, which I quote below:

I say that the petitioner was a labour officer when he made over charge in the Labour Directorate on 21 October 1952 for taking up the appointment of Inspector under the Regional Provident Fund Commissioner, West Bengal, Subsequently,

he was temporarily promoted as an Assistant Labour Commissioner with retrospective effect from 22 October 1952 by notification No. 3098-Dis/D/3A-28/52, dated 13 November 1952, in place of Smt. Indira De, on deputation. When Smt. Indira De was reverted to the post of Assistant Labour Commissioner under the Government of West Bengal with effect from 1 May 1956, the petitioner ceased to remain an Assistant Labour Commissioner with effect from the same date and as such no formal order was issued reverting him to the post of labour officer, with effect from 1 May 1956.

After reversion of Smt. Indira De, Sri H. K. Biswas continued to officiate as Assistant Labour Commissioner against another vacancy which had occurred in the meantime. The vacancy was reported to the Public Service Commission, West Bengal, for filling up by promotion and the Commission recommended Sri S. K. Bhatta-oharya, a permanent labour officer, for the said vacancy, A formal order reverting Sri H. K. Biswas was, therefore, issued to make room for Sri Bhattacharya.

11. In consonance with the attitude stated above, the pay bill of the petitioner, as submitted by him in May 1956, was 'slashed,' meaning thereby that the same was reduced from what was due to an Assistant Labour Commissioner to the pay and emoluments due to a labour officer. This action, the petitioner characterized, as wholly unauthorized in the absence of a factual order of reversion from his promoted post as an Assistant Labour Commissioner to that of a labour officer.

12. The petitioner made repeated representations to the Government of West Bengal pointing out that his position in the parent department should be maintained and he should not be deprived of his position and prospect in the parent department only because he was on deputation service. The representations went unheeded by the Government of West Bengal. A similar representation made to the Government of India, however, received better treatment and the Central Provident Fund Commissioner wrote the following letter to the Joint Secretary, Labour Department, Government of West Bengal, on 1 March 1957:

A representation of Sri B. K. Roy, provident fund inspector, West Bengal, received through the Regional Provident Fund Commissioner, Calcutta, is enclosed for favourable consideration. It is a fact that Sri Roy should not suffer any loss either in respect of his prospects in his parent department or In status because of his deputation to the Employees' Provident Fund Organization.

13. It does not appear that the recommendation of the Provident Fund Commissioner had any effect on the Government of West Bengal. In October 1959, the petitioner earned a promotion in his deputation service and was appointed to officiate as an Assistant Provident Fund Commissioner. This appears from the order quoted below:

In partial modification of order No. T-181, dated 5 October 1959, Sri B. K. Roy, Provident Fund Inspector, grade I, West Bengal, is appointed to officiate as Assistant Provident Fund Commissioner, West Bengal, with effect from 3 October 1959 on his existing pay and allowances and terms and conditions of deputation for the present.

14. Shortly thereafter, on 28 December 1959, the Government of India wrote to the Government of West Bengal asking for an extension of the deputation period of the petitioner up to the end of February 1960. To the above letter the Government of West Bengal sent the following reply:

I am directed to refer to your letter No. P. F.-1/31/(552) 59, dated 28 December 1959, on the subject noted above and to Bay that the State Government have no objection to the extension of the deputation of Sri B. K. Roy on foreign service terms to the Employees' Provident Fund Organization up to 29 February 1960.

I am, however, to point out, in this connexion that Sri B. K. Roy, permanent labour officer of this Government, had been in deputation to the office of the Regional Provident Fund Commissioner, West Bengal, as Provident Fund Inspector, grade I, since October 1952. It is also learnt that he has been officiating as Assistant Provident Fund Commissioner recently in the office of the Regional Provident Fund Commissioner, West Bengal. His long absence from the parent directorate has already put him at a disadvantageous position, compared to others of his

status who are working in that directorate and are fully abreast of the multifarious developments in the labour situation and labour policy. Even if Sri Roy is now reverted to his parent directorate, it will be very difficult to fit him in as a labour officer. On the other hand, the officer has gathered considerable experience in the work of the Regional Provident Fund Commissioner's office and his continuance there would be to the advantage of both the office and the organization.

In the circumstances stated above, the State Government would suggest that the Government of India may please consider the question of his absorption on a permanent basis in the Provident Fund Organization as Assistant Commissioner.

15. The recommendation contained in the above letter, for permanent absorption of the petitioner in the Provident Fund Department, was not accepted and the petitioner continued to serve on extended deputation in the Provident Fund Department up to May 1961, much against his wishes and representations for being taken back in his parent department. At last, on 6 May 1961, the petitioner was relieved of his deputation and the Regional Provident Fund Commissioner passed the following order:

Sri B. K. Roy, a permanent labour officer of the State Government, at present serving in foreign service terms as Assistant Provident Fund Commissioner, West Bengal, will be relieved of his duties in this office today, 6 May 1961 (afternoon). On being relieved of his duties in this office he is to report for duty to the Labour Commissioner, West Bengal, at New Secretariat Buildings, 1, Hastings Street, Calcutta, after availing himself of the joining time, if any admissible under the rules.

16. After he had joined the parent department, the petitioner was at first posted as labour officer in North Calcutta region and thereafter in South Calcutta and, on 22 July 1961, the following notification was made concerning the petitioners:

The Governor has been pleased to post Sri B. K. Roy, a permanent labour officer of this Government, who was on deputation to the Provident Fund Organization, at headquarters in Calcutta in the interest of public service, as a labour officer, with effect from the date on which he assumed charge of office, on his reversion to this

Government.

17. The petitioner, expected, on reversion from deputation, to remain employed as an Assistant Commissioner of Labour, a post to which he had been promoted as far back as 13 November 1952 and from which position he had never been reverted. He, therefore, protested against his employment as labour officer, which he considered to be an unlawful reduction in rank, particularly because, in the meantime six other officers, namely, respondents 5 to JO, who were junior to him in service, had been promoted as Assistant Commissioners of Labour. He, therefore, took over the charge as labour officer under protest. His protests having gone in vain, he moved this Court under Article 226 of the Constitution, praying: for a writ of mandamus directing the respondents to cancel the orders appointing him as labour officer (namely, the orders annexed to the petitioner and respectively marked with letters ' M,' ' N ' and ' P ') on reversion to the parent department, for a writ of mandamus directing the respondent, Provident Fund Commissioner, to cancel the order which caused slashing of his pay and for a writ of certiorari for the quashing of the impugned orders and obtained this rule.

18. Sri Arun Kumar Dutt, learned advocate for the petitioner, argued two points in support of this rule. He contended, in the first place, that the service of an officer, on deputation in another department, should be treated as equivalent to service in the parent department and satisfactory service of the officer on deputation should entitle him to promotion, which became due to him on seniority-cum-merit basis, on reversion to the parent department. This is also the view expressed by the Supreme Court in *State of Mysore v. M. H. Bellary* 1966-1 L.L.J. 50, although in that case their lordships based their decision on a specific rule in the Bombay Civil Service Rules. It is true that there is no rule in the West Bengal Civil Service Rules, corresponding verbatim to Rule 50 (b) of the Bombay Civil Service Rules, which the Supreme Court had to interpret. But even in the absence of such a rule in the West Bengal Civil Service Rules I am inclined to hold that the principle should be applicable to those covered by the West Bengal Civil Service Rules. An officer who is sent out on deputation, for a period, in public interest, and in the deputed post puts in satisfactory service, should not be deprived of increase in pay and chances of promotion in the parent department for no reason other than the

reason that he had been on deputation. This, in my opinion, is implied in Rule 100 of the West Bengal Service Rules, which I have quoted above. On that principle the employment of the petitioner as labour officer on reversion to his parent department was bad.

19. The other argument of Sri Dutt, in support of the rule, is however, more forceful. The order of 13 November 1952, which promoted the petitioner as Assistant Labour Commissioner on an officiating basis, indicated that the petitioner was to continue in that position until further orders vice Smt. Indira De on deputation. Sri Dutt contended that no such order having had been made, the posting of the petitioner as labour officer, on reversion to his parent department, was bad. Sri Dutt is right in this contention. It appears from Para. 4 of the affidavit-in-opposition, quoted hereinbefore, that there was no order at any time made reverting the petitioner from the officiating position of an Assistant Labour Commissioner to his substantive position as labour officer, Although the petitioner was promoted in place of Smt. Indira De on deputation, that was merely the occasion for the promotion. He was entitled to continue in the promoted post until further orders were made, reverting him to his substantive position as labour officer. In the absence of such an order, the return of Smt. Indira De from deputation did not have the effect of automatically reverting the petitioner. Whoever proceeded on that assumption did not assume correctly. That being the position, the petitioner was entitled to rejoin as Assistant Labour Commissioner, on being relieved from his deputation duty. This, I hold, is the real effect of Rule 100 of the West Bengal Service Rules on the service conditions of the petitioner.

20. It appears, however, that the respondent, State of West Bengal, has since atoned for the injury done to the petitioner and has promoted him as Assistant Labour Commissioner by an order dated 13 November 1962 (the original of the order was produced before me by the learned Government Pleader and I direct that a copy of the order be kept on the record for reference).

21. In the result, I hold that the petitioner was entitled to join as Assistant Labour Commissioner on his reversion to his parent department and to the pay and emoluments of that post, on the theory that he was never reverted from that

officiating post to his substantive post as labour officer. Anything to the contrary contained in the orders made in respect of the petitioner, after he was relieved from deputation, must not deprive him of these advantages. I restrain the respondents from giving effect to such orders to the detriment of the petitioner and contrary to what is hereby held.

22. Now that the petitioner has been made an Assistant Labour Commissioner, I need not direct the respondents to promote him again, but I make it clear that the promotion order, dated 13 November 1962, shall be treated as recognition of what the petitioner had always been since November 1952.

23. This rule succeeds to the extent indicated above. Let a mandate issue accordingly. The petitioner is entitled to the costs of this rule, which I assess at five gold mohurs. Costs shall be paid by respondents 1 and 2.

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