STATE OF WEST BENGAL AND ORS. A

v.

TROPICAL SCHOOL EMPLOYEES' UNION AND ORS.

MARCH 21, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.] B

Service Law :

Pay—Claim for parity—Carmichael Institute for Tropical Diseases—Takeover by Government—Constitution of separate cadres of staff of the Institute—Government partly accepting the recommendation of Second Pay Commission taking decision to give the non-gazetted teaching staff U.G.C. Scales—Other staff viz. non medical technical staff and class IV staff falling in Group C and D continued to be paid on par with Government staff—Claim by Group C and D staff for UGC pay scale—Writ—Grant of claim by High Court—Appeal by State—Held the High Court was wholly unjustified in extending the benefit of pay scales prescribed by the UGC to the non-teaching medical staff and also to Class-IV Government employees. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5383 of 1996. E

From the Judgment and Order dated 27.8.93 of the Calcutta High Court in F.M.A. No. 211 of 1991.

Tapas Ray, A. Bhattacharjee and B.R. Talukdar for the Appellants.

M.N. Krishnamani, Abhijit Sen Gupta, J.P. Singh, B.S. Jain and Mrs. V.D. Khanna for the Respondents. F

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides. G

This appeal by special leave arises from the order or the Division Bench of the Calcutta High Court dated August 27, 1993 made in FMA No. 2111/91 confirming the order of the learned single Judge dated January 20, 1987 made in C.R. No. 16484/84. The admitted facts are that the Carmichael Institute for Tropical Diseases in Calcutta, West Bengal at one H

A time was run by a charitable institution. Later it, was run some time as a private institute under a scheme framed by the Government in 1949. Subsequently, on March 4, 1971 the Government had taken over the institute w.e.f. April 1, 1971. The service conditions of these employees were treated on par with the Government servants. On February 15, 1973 the Government constituted separate cadres of the staff working in the B institute. We are concerned in this appeal with two cadres namely, non-medical technical staff and class IV staff. Regarding pay scales of the institute the Government had referred the matter to the second Pay Commission. In 1981, pursuant to the recommendation made by the second Pay Commission which was partly accepted the Government decided to C give to the non-gazetted teaching staff UGC scales and other staff continued to be paid on par with the Government staff as before. It would appear that the other staff made a representation to the Government. The Government carefully considered that representation and on July 9, 1984 it decided that UGC pay scales as enjoyed by the employees of the seven D universities of the state cannot be granted to group C and group D employees of the institute. Subsequently, the respondents came to file their writ petition. It transpires from the record that the Government had not contested before the learned single Judge. Therefore, the learned single Judge allowed the writ petition and directed to grant UGC pay scales to the respondents. On appeal it was confirmed. Thus this appeal by special E leave.

It is not in dispute that the Government had treated the respondents as Government servants and Pay Commission rejected payment of the pay scales prescribed by the UGC to the non- medical technical staff and class F IV employees. It is an admitted position that a Government servant is bound by the pay scales prescribed for the employees of the State. In fact pursuant to the options called for, the respondents had opted to become Government servants. In the resolution of the Government dated February 16, 1973 it was stated as under :

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> "The posts of Non-Medical Technical Personnel and class IV staff as indicated in Appendix I Appendix II shall constitute separate cadres for the School of Tropical Medicine, Calcutta and its attached institutes on the same principles as are applicable in matters of recruitment, promotion, etc. to similar cadres sanc-
H tioned in the Directorate of Health Services and Director, School

of Tropical Medicine, Calcutta shall also fix from time to time the strength of the two cadres in accordance with the principles laid down in the relevant Government order.

It would thus be clear that the respondents belong to two cadres C and D and having become Government servants, they are entitled to draw the scale of pay prescribed by the Government for the posts in C and D cadres. The question is whether they are entitled to the pay scales of the UGC.

Shri M.N. Krishnamani, learned senior counsel for the respondents contented that the teaching staff are receiving the scale of pay prescribed by the UGC and the respondents are assisting the teaching staff. When similar persons working in the universities are receiving the pay scales prescribed by the UGC, the respondents are also equally entitled to the same. We fail to appreciate the stand. The employees of the universities are not the Government servants. They are governed by their regulations and statutes under the respective enactments. The respondents on their own admitted position being the Government servants, cannot get higher scale of pay then prescribed for the post. Under those circumstances, the High Court was wholly unjustified in extending the benefit of pay scale prescribed by the UGC to the non-teaching medical staff and also to Class-IV Government employees.

The appeal is accordingly allowed. The orders of the High Court in the appeal as well as the learned single Judge stand set aside. Consequently, the writ petition stand dismissed. No costs.

T.N.A. Appeal allowed.