




IN THE HIGH COURT OF SIKKIM AT GANGTOK
(WRIT JURISDICTION)

Writ Petition (C) No. 9 of 2009

Smt. Indira Pillai @ Sharma,
Legal Officer,
Scheduled Caste, Scheduled Tribe and
Other Backward Classes Development
Corporation Ltd. (SABCCO),
Sonam Tshering Marg,
P.O. Gangtok,
East Sikkim. ... **PETITIONER.**

- Versus -

1. The Board of Directors,
represented by and through its
Managing Director, SABCCO,
Sonam Tshering Marg,
P.O. Gangtok, East Sikkim.
 2. The Managing Director,
Scheduled Caste, Scheduled Tribe and
Other Backward Classes Development
Corporation Ltd. (SABCCO),
Sonam Tshering Marg,
P.O. Gangtok, East Sikkim.
 3. Scheduled Caste, Scheduled Tribe and
Other Backward Classes Development
Corporation Ltd.,
represented by and through its
Managing Director,
Sonam Tshering Marg,
P.O. Gangtok, East Sikkim.
 4. Shri Binod Ghatani,
Assistant Manager,
Scheduled Castes, Scheduled Tribes &
O.B.C. Dev. Corporation Ltd.,
Sonam Tshering Marg,
P.O. Gangtok, East Sikkim.
 5. Shri Arun Gurung,
Assistant Manager,
Scheduled Castes, Scheduled Tribes &
O.B.C. Dev. Corporation Ltd.,
Sonam Tshering Marg,
P.O. Gangtok, East Sikkim.
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6. Shri Durga Mangar,
Assistant Manager,
Scheduled Castes, Scheduled Tribes &
O.B.C. Dev. Corporation Ltd.,
Sonam Tshering Marg,
P.O. Gangtok, East Sikkim.
7. Shri Kishore Shrestha,
Assistant Manager,
Scheduled Castes, Scheduled Tribes &
O.B.C. Dev. Corporation Ltd.,
Sonam Tshering Marg,
P.O. Gangtok, East Sikkim.

... **RESPONDENTS.**

For the Petitioner : Mr. A. Moulik, Senior Advocate with Mr.
N. G. Sherpa, Advocate.

For the Respondents : Mr. J. B. Pradhan, Additional Advocate
General with Mr. Santosh K. Chettri,
Asstt. Govt. Advocate.

BEFORE : HON'BLE MR. JUSTICE BARIN GHOSH, CHIEF JUSTICE.

Last Date of Hearing: 29.06.2010.


Date of Judgment: 08.07.2010.

J U D G M E N T

Ghosh, CJ.


Respondent no. 3 is a Government company within the meaning of the Companies Act, 1956 and is an authority within the meaning of Article 12 of the Constitution of India. Petitioner and private respondents are employees of respondent no. 3. On 19th May, 2001, private respondents were appointed as Field Officers; whereas on 1st October, 2001, petitioner was appointed as Legal Officer. The

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scale of pay of Field Officers and of Legal Officer was Rs.5500-175-9000. Petitioner, as contended by her, accepted the appointment without prejudice to the pay scale.

2. By a letter dated 17th February, 2004, petitioner represented to respondent no. 2 to the effect that the pay scale of other officers and staff of respondent no. 3 is in conformity with the officers and other employees of the Government but for the post of Legal Officer equal and equitable pay scale has not been allowed despite repeated requests. Similar representations were made by petitioner on 1st July, 2004 and 30th September, 2004. In her representation dated 5th December, 2005 made to respondent no. 2, petitioner represented that the pay scale of Law Officer is Rs.9000-300-13800. She made a further representation dated 28th August, 2006. As stated in paragraph 6(g) of the counter affidavit filed by respondent no. 2, the said representations of petitioner for rectification/correction of her pay scale in conformity with the post of Law Officer of certain other institutions, were put up to the Board, but due to some reasons or other, the same got deferred. On 21st June, 2006, respondents no. 5, 6 and 7 made a joint representation to the Hon'ble Chief Minister, Government of Sikkim with a request to promote them to the post of Assistant Manager. On 11th October, 2006, respondent no. 4 made a representation to respondent no. 2 for promotion to the post of Assistant Manager followed by a representation to the Hon'ble Chief Minister dated 19th October, 2006, making a similar request. Ultimately, in the Agenda for 21st Board meeting of respondent no. 3 to be held on 5th January, 2007, the following two Agendas, amongst others, were included: -



"Up-gradation of the Post of Field Officers to the Post of Assistant Managers. - In order to enhance the performance of the Corporation it has been felt necessary to upgrade the post of Field Officers to Assistant Managers and thereby giving them more responsibility and also making them accountable for the duties they perform. The need to have Assistant Managers is of vital importance to the Corporation because there is a dearth of officers in the Corporation to handle important day to day work and also be responsible and accountable for the same. Earlier the various project works were handled by respective Project Managers, where as, at present there is only one Project Manager to look after the entire project and administration work. It would only burden the Corporation if new recruits are appointed hence in the interest of the Corporation it would be advisable to up-grade the post of Field Officers to Assistant Managers on seniority, merit and need basis.

Upgradation of the Post of Legal Officer to Assistant Manager (Legal) - Smt. Indira Pillai has made several requests that she may be allowed to draw the Pay Scale that is in conformity with the post held. She was appointed to the post of Legal Officer but given the Pay Scale of Rs.5500-175-9000 whereas the Post of Legal Officer elsewhere carries the higher pay scale. She is a graduate with Honors in Economics with an additional qualification of LLB and had completed one year training in Advocacy and thereafter practiced in the Court of Law before joining SABCCO. She has already completed more than four years in the present scale and taking into consideration her qualification and experience her request may be kindly considered by the Board."

3. Decisions on the said two Agendas taken at the 21st Board meeting of respondent no. 3 held on 5th January, 2007 are as follows:-

"To place four Field Officers Shri Kishore Shrestha, Shri Arun Gurung, Shri Durga Manger and Shri Binod Ghatani as Assistant Managers on probation for six months.

To correct the scale of Legal Officer and place her for six months on probation."

4. By four several Office Orders all dated 21st February, 2007, the afore mentioned decision of the Board of respondent no. 3 pertaining to private respondents, was given effect, the texts whereof are identical and reproduced below in relation to respondent no. 4: -



"In accordance with the approval of 21st Board of Directors Meeting held on 5th January 2007, the Management is pleased to place Shri Binod Ghatani as Assistant Manager-IV SABCCO in the next higher pay scale of Rs.7000-225-11500.

He shall be on probation for 6 (six) months. Confirmation of his promotion to the post will be subject to the satisfactory performance.

This order is superset all other previous office orders."

5. By an Office Order also dated 21st February, 2007, the said decision of the Board pertaining to petitioner was implemented. The text of the said Office Order is as follows: -


"In accordance with the approval of 21st Board of Directors Meeting held on 5th January 2007, the Management is pleased to correct the pay scale of Smt. Indira Pillai as Legal Officer SABCCO and placed in the pay scale of Rs.7000-225-11500.

She shall be on probation for 6 (six) months. Confirmation of his correction of scale is subject to the satisfactory performance.

This order is superset all other previous office orders."

6. Subsequent to issuance of the said Office Orders, petitioner as well as private respondents started drawing salaries in the pay scale of Rs.7000-225-11500. In the writ petition, petitioner is claiming that since the Board of Directors of respondent no. 3 has corrected the pay scale of petitioner, the correction should be reflected from the date of commitment of the mistake, i.e., the date, petitioner was appointed as Legal Officer on 1st October, 2001. In the counter affidavit, respondent no. 2 has contended that the Board of Directors of respondent no. 3 never directed to provide petitioner any arrears, increment or seniority. In other words, it is the contention of respondent no. 2 that the correction of pay scale of petitioner should be deemed to be prospective. In the counter affidavit filed by the said


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respondent, it has also been contended that private respondents were appointed prior to petitioner in the same scale of pay and, accordingly, they should be deemed to be senior to petitioner and if retrospective correction is effected, the same will also alter the seniority vis-à-vis petitioner and private respondents. Private respondents in their joint representation dated 14th October, 2008 made out to respondent no. 2 that if the request of petitioner is adhered to, similar rectification to their scale of pay should also be effected.


7. Learned counsel, appearing in support of writ petition, submitted that in Police Department of the Government of Sikkim, Legal Assistants were entitled to the pay scale of Rs.1820-3200, which, on being revised, stands at Rs.7000-225-11500 and similarly, the scale of pay of Legal Officer in the State Bank of Sikkim is Rs.7000-225-11500. It was contended, to which there appears to be no dispute, that respondent no. 3 has not yet framed any Service Rule. It was also contended that in such view of the matter, respondent no. 3, being an extended arm of the Government, should, in the absence of rules to that effect, be deemed to have adopted the applicable Government Rules and in terms thereof, the scale of pay of Legal Officer of respondent no. 3 cannot be anything but Rs.7000-225-11500 and as such, petitioner should be deemed to have been given a wrong pay scale at the time of her appointment by mistake, which has since been corrected and, accordingly, respondent no. 3 should be directed to pay up and clear the arrears due to petitioner on that account.






8. In the writ petition, it is also the contention of petitioner that inasmuch as, on consideration of 7 years of service, private respondents have been given one promotion, taking into account petitioner has also served respondent no. 3 for a period of 7 years, she is also entitled to a promotion and accordingly, the said respondent should be directed to consider grant of a promotion to petitioner.


9. With the writ petition, petitioner has brought on record documents, which are not being disputed, suggesting that Legal Assistant in the Police Department is entitled to pay scale of Rs.7000-225-11500 and at the same time, a Legal Officer in the State Bank of Sikkim is also entitled to the same scale of pay. However, it is not the contention of petitioner in the writ petition that she is entitled to equal pay for equal work done. In other words, petitioner has not brought on record relevant factors to ascertain whether the job responsibility, qualification and accountability of Legal Assistant in the Police Department of the Government and of Legal Officer of State Bank of Sikkim is similar to those of Legal Officer of respondent no. 3. At the same time, there is no dispute that in the agenda note for the 21st Board meeting of respondent no. 3, it was categorically indicated that post of Legal Officer elsewhere carries higher pay scale and accordingly, the decision on the said agenda was to correct the pay scale of Legal Officer. Therefore, it appears that, being alive of the situation that the scale of pay of Legal Officer of respondent no. 3 was incorrect, the same was corrected. The question is, when a mistake is corrected, should the correction be treated to have obliterated the mistake? In the common parlance, to correct is to remove error. In the instant case, it appears that an error was removed by correction.






Since the word "correct" is a verb, it should denote removal of the error when the action of correction is taken and accordingly, in the common parlance, it is prospective, i.e. from the date of correction. However, the word "correct" also denotes an action of making a thing accurate, appropriate, confirming to accepted standards. In the circumstances, correction of pay scale of petitioner may be prospective or may not be and in absence of a clear indication by the Board of respondent no. 3, I cannot find any fault on the part of respondent no. 2 in proceeding on the basis that the correction was prospective, particularly when the correction was accompanied by a direction to place petitioner on probation for 6 months. Fact remains that when petitioner was appointed, she was appointed as Legal Officer and it was indicated that she shall be on probation for an initial period of one year. On 3rd October, 2002, it was held out to petitioner that she has successfully completed probation period and accordingly, she was regularised as Legal Officer. It is unknown in service law jurisprudence that when scale of pay of an officer is altered to his/her benefit, he or she earns the rigor of a further probation. In the circumstances, I think, respondent no. 3 and its Board of Directors should, within a period of 3 months from today, express their mind relating to correction affected to the pay scale of petitioner and in particular, whether the same was intended to make the pay scale of Legal Officer of respondent no. 3 appropriate and confirming to accepted standards and, accordingly, from the date of her appointment as Legal Officer or it was only a correction of a mistake and, accordingly, the correction shall take effect from the date of its correction with reasons in support thereof.






10. From the pleadings of the parties, it is clear that job responsibility of private respondents, their qualifications and accountability are quite different from the job responsibility, qualification and accountability of petitioner. They cannot be compared. Accordingly, there is no scope of proceeding on the basis that either petitioner is senior or private respondents are senior. The fact, however, remains that private respondents joined respondent no. 3 prior to the petitioner joining respondent no. 3 and at the same time, the corrected pay scale of petitioner is equal to the pay scale of private respondents upon upgrading them to or upon placing or promoting them as Assistant Managers. To the counter affidavit filed by respondent no. 2, an organisational structure of respondent no. 3 as on 21st November, 2001 has been furnished, wherefrom it appears that Field Officers and Legal Officer were considered to hold posts at the same level. With the said affidavit the latest organisational structure of respondent no. 3 has also been furnished. There it has been shown that Field Officers, on being promoted, would become Assistant Managers, whereas the post of Legal Officer is equal to the post of Assistant Managers. The said state of affair also clearly demonstrates that the posts of Field Officers and the post of Legal Officer have been treated separately all throughout by respondent no. 3 and, accordingly, there cannot be any comparable seniority in between Field Officers and Legal Officer.

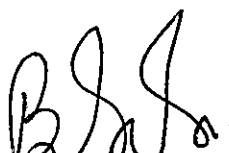
11. It appears to me that because private respondents joined respondent no. 3 as Field Officers prior to petitioner joining respondent no. 3 as Legal Officer in the same scale of pay, while correcting the





mistake in the scale of pay of Legal Officer, private respondents were also given the benefit of the corrected scale of pay of Legal Officer, however, by upgrading or promoting them to the posts of Assistant Managers, without making any effort to ascertain whether, in fact, they are eligible to be promoted to the posts of Assistant Managers. In other words, while lifting the private respondents from the posts of Field Officers to the posts of Assistant Managers, no effort was made to ascertain whether private respondents or any of them deserved the upliftment. In the circumstances, as it appears to me, only on the consideration that private respondents joined respondent no. 3 before petitioner, they were also given the same pay scale given to petitioner upon correction but since there was no scope of correction of the pay scale of Field Officers, private respondents were shown to have been promoted to the posts of Assistant Managers. They, thus, got an undue advantage, which, in result, has opened the door for petitioner to seek a promotion. The basic reason for the faux pas is non-creation of cadre rules by respondent no. 3. In order to stop repetition of the matter dealt with herein, I direct respondent no. 3 to create cadre rules as quickly as possible, but not later than 3 months from today.

12. With the direction as above, the writ petition is disposed of.


Chief Justice
08.07.2010

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