

THE STATE OF WEST BENGAL

v.

SHIVANANDA PATHAK

FEBRUARY 11, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.]

Letters Patent (Calcutta High Court)—Letters Patent appeal—Underlying philosophy—Hierarchy of courts—Writ petition seeking promotion to higher post—Single judge holding that promotions to be effected from a certain date—Writ Appeal by certain other affected parties—Judgment modified directing to consider the cases of the affected parties along with the original writ petitioners—Promotions made accordingly—Another writ petition filed by original writ petitioners—Seeking arrears of salary and allowances w.e.f. the date they were directed to be promoted by the Single Judge in the earlier writ petition—Writ petition disposed of directing the authorities to consider cases in accordance with law—Writ appeal preferred—Disposed of by Division Bench comprising the judge who decided the earlier writ petition, holding appellants to have been promoted from the date mentioned in the earlier writ petition—Held—The judge not competent to have presided over the Bench since he had expressed his opinion in the earlier writ petition.

Practice and Procedure—Procedure under Art 226—Not strictly in accordance with CPC; to follow principles of natural justice.

Administrative law—Bias—Meaning and forms—Explained—Judge to have an unbiased mind during hearing—Judicial functionaries not exempt from the rule of bias—Bias on account of judicial obstinacy—Doctrine of necessity.

Judicial Propriety—Single judge passing a judgment in a writ petition—Division Bench overruling the said judgment—Another writ petition filed in the same matter—Writ petition disposed of—Writ appeal—Judgment given by Bench comprising the same earlier judge who had allowed the first writ petition—Held—The judgment constitutes an attempt to revive the directions of the earlier overruled judgment—A judge not to rewrite his own judgment sitting in appeal—The judge should have dissociated himself from the Bench.

A *Maxims—Nemo debet esse iudex in propria sua causa—Applicability of.*

B In the West Bengal Subordinate Labour Service, promotions to the posts of Inspector of Wages etc., were made, fifty percent by direct recruitment and fifty percent by promotion. The Assistant Computers were one of the feeder posts for promotions of the said posts. The respondents, who were working as Assistant Computers filed a writ petition in the Calcutta High Court seeking promotion to these posts. The writ petition came up before a Single judge (Justice 'A'), wherein it was directed that promotions were to be given to the writ petitioners with effect from 13.3.80. A writ appeal was filed against this judgment by certain other affected parties. The Division Bench by its order dated 17-1-1985 modified the Judgment given by the Single Judge and directed that the appellants as also the writ petitioners were to be considered for promotion in accordance with law. Complying with the said directions the State of West Bengal promoted the employees drawn from all categories including the writ petitioner, by its order dated 16.4.85 and 6.6.1985. Two of the original writ petitioners filed another writ petition seeking arrears of salary and allowances with effect from 13-03-1980. The writ petition was disposed of by Single judge holding that there was no ground to interfere in the matter and the authorities would be free to consider the case of the writ petitioners in accordance with law. An appeal was preferred against the said judgment. The said appeal came up for hearing before a Division Bench presided over by justice 'A', who had allowed the first writ petition. The Division bench allowed the appeal with the direction that the writ appellants have to be treated as promoted with effect from 13-03-1980, but were not entitled to any areas of salary from that date. It was further directed that the basic pay in the scale of pay was to be treating 13.3.80 as the date of promotion without affecting the seniority and benefits of persons already promoted. The State of West Bengal challenged the said judgment in the present appeal.

G The appellants contented that Justice 'A' was not competent to have expressed his views sitting in the Division Bench in the same matter between the same parties though initiated on a subsequent writ petition. The direction issued by the Single Judge had ceased to exist as it was modified by a division Bench by issuing a fresh direction. It was further contended that the respondent filed another writ petition seeking enforcement of the old direction which was already overruled and the Single Judge disposed of the Writ H Petition holding that the direction of the Division Bench alone was enforceable,

hence the interference was unnecessary by reiterating his earlier view. A

The respondents contented that the direction given by the Division Bench was innocuous since there was neither a direction for payment of arrears of salary nor they were to affect the seniority of others.

Allowing the appeal, this court B

HELD : 1. It was not competent for justice 'A' to have presided over the Bench in which the impugned judgment was passed as he had already expressed his opinion in the earlier writ petition, which was overruled in the Latters Patent Appeal. He should have disassociated himself from the Bench in keeping with the high traditions of the institution. [829-A] C

2. In the present case there is hardly any difference between the two judgments passed by Justice 'A'. The Judgment passed by Justice 'A' in the first writ petition in which he had given a direction that the respondents shall be promoted with effect from 13.3.80 was set aside; he in the subsequent writ petition gave a declaration that the respondent shall be treated to have been promoted with effect from 13.3.80. Such a declaration was not prayed for and the prayer in the subsequent writ petition was a direction to the State Government for payment of arrears of salary of the higher post with effect from 13.3.80. In the first writ petition Justice 'A' commanded "Promote the respondents with effect from 13.3.80". In the second writ Petition he directed "Treat the respondent as promoted with effect from 13.3.80." The Judgment in the writ appeal arising out of the second writ petition constitutes a crude attempt to revive the directions passed by Justice 'A' in the first Judgment. He garnished the Judgment by innocuously providing that arrears would not be payable to the respondents herein nor will the respondents affect the seniority of others. Such garniture cannot conceal the deceptive innocence, on a judicial security, the paramount purpose was to rewrite the overruled judgment. [828-D-G] D E F

2.1. Judicial functionaries have necessarily to have an unflinching character to decide the case with an unbiased mind. Judicial proceedings are held in open court to ensure transparency. Access to judicial records by way of inspection by the litigant or his lawyer and the facility of providing certified copies of the record are factors, which not only ensures transparency but also instil and inspire confidence in the impartiality of the court proceedings. [825-B] G

2.2. The proceedings under Art 226 are not conducted strictly H

A following the provisions of the Code of Civil Procedure. But are held in accordance with the procedure devised by the High Court itself under which a fair hearing is given before a decision is rendered. Principles of natural justice are observed strictly in letter and spirit. One of the requirements of natural justice is that the hearing should be done by a Judge with an unbiased mind. This principle has also been applied in cases under labour laws or service laws, except where the cases were covered by the doctrine of necessity. [825-C; 827-B]

C *A.K. Kariapak v. Union of India*, AIR (1970) SC 150; *S.P. Kapoor v. State of Himachal Pradesh*, AIR (1981) SC 2181; *Mineral development Limited v. State of Bihar*, AIR (1960) SC 468 and *Financial Commissioner (Taxation), Punjab v. Harbhajan Singh*, [1996] 9 SCC 281, relied on.

D 2.3. In the present case a new form of bias namely bias on account of judicial obstinacy is seen. Bias may be defined as a preconceived opinion or a pre-disposition on pre-determination to decide a case or an issue in a particular manner, so much, so that such pre disposition does not leave the mind open to conviction. It is a condition of mind, which sways Judgments and renders the judge unable to exercise impartiality in a particular case. [825-D-E]

E 2.4. Mistakes may be committed by judges *bonafide* which can be corrected at the appellat stages. This explains the Philosophy behind hierarchy of courts. A mistake committed by a Judge of the High Court can be corrected if Letters Patent appeal is available. But if a Judgment is overruled by the higher court the judicial discipline requires that the judge whose Judgment is overruled must submit to that judgment. He cannot in the same proceedings or in collateral proceedings between the same parties rewrite the overruled judgment because the judgment binds the judge also who has rendered the earlier decision. That judge may have his occasion to reiterate his dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitve of his bias in his own favour to satisfy his egoistic judicial obstinacy. [825-G-H; 826-A-B]

G 2.5. An essential requirement of judicial adjudication is that a judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case before him. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a judge. [826-C]

H 2.6. Bias is a condition of mind and therefore it is not always possible

to furnish actual proof of bias. But the courts for this reason, cannot be said to be in a crippled state. The courts performing judicial functions cannot be exempted from the rule of bias as the presiding officers of the court have to hear and decide contentious issues with an unbiased mind. The maxim *Nemo Debet Esse Judex In Propria Sua Causa* and the principle "Justice should not only be done but manifestly be seen to be done" can be legitimately invoked. [827-E; 828-C]

Manak Lal v. Prem Chand, AIR (1957) SC 425 and *Gurdip Singh v. State of Punjab*, [1997] 10 SCC 641, relied on.

Metropolitan Properties Co v. Lannon, [1968] W.L.R. 815, referred to.

R v. Sussex JJ exp. Mc carthy, [1924] 1 K.B. 256; *In Re Linahan*, 138 F 2nd 650, referred to.

Judicial Review of Administrative Action, by De Smith, [1980] Edn., referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4144 of 1993
Etc.

From the Judgment and Order dated 21.7.92 of the Calcutta High Court in A. No. 1278 of 1988.

Tapas Ray and G.S. Chatterjee for the Appellants.

B. Sen, Dilip Sinha and J.R. Das for M/s. Sinha & Das for the Respondents.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Whether 'judicial obstinacy' can be treated as a form of "bias" is the question which we intend to answer in these appeals. As the answer depends upon the peculiar facts involved in these cases, they are being examined in a little detail.

2. Leave granted in the Special Leave Petition.

3. These two appeals are directed against the judgment dated 21st July, 1992 passed by a Division Bench of the Calcutta High Court comprising of Mr. Justice Ajit Kumar Sengupta and Mr. Justice Shyamal Kumar Sen.

A 4. Promotion to the posts of Inspector of Minimum Wages, Inspector of Trade Unions, other Inspectors, Investigators, Supervisors, etc, constituting the West Bengal Subordinate Labour Service, is regulated by Rules made under Article 309 of the Constitution which were first notified on 25.9.1973 and again on 1.8.1988 with certain modifications. It was provided in the Rules that fifty per cent of these posts shall be filled up by direct recruitment on the basis of the results of the West Bengal Miscellaneous Service Recruitment Examination and the remaining fifty per cent by promotion. Originally, under the 1973 notification, the eligibility for promotion was restricted to the following:

B (a) Confirmed Upper Division Clerk of the Labour Directorate and of the shops and establishments Directorate, Govt. of West Bengal.

C (b) Confirmed Labour Welfare Worker of the Labour Directorate, West Bengal, who were at least Matriculates or had equivalent qualification and had rendered not less than 10 (ten) years continuous service as Labour Welfare Workers under the Labour Directorate.

D (c) Confirmed Assistant Computers in the statistical section of the Labour Directorate, West Bengal.

5. Subsequently, under the 1998 notification, the eligibility was a little expanded and the promotion was to be made from amongst :

E (a) Confirmed Upper Division Clerk of the Labour Directorate, and of the Shops and Establishments Directorate.

F (b) Confirmed Labour Welfare Workers of the Labour Directorate, West Bengal (now placed under the West Bengal Labour Welfare Board constituted under the West Bengal Labour Welfare Fund Act, 1974) Matriculates or have equivalent qualification, who were appointed to the same post prior to the 1st July, 1976, the date on which the West Bengal Labour Welfare Board started functioning, and have rendered not less than 10 (ten) years continuous service in the post of Labour Welfare Workers under Labour Directorate.

G (c) Confirmed Assistant Computers in the Statistical Section of the Labour Directorate.

H (d) Confirmed Upper Division Clerks of the regional offices under the Labour Directorate and under the Shops and Establishments Directorate, Government of West Bengal.

6. Confirmed Assistant computers, thus, constituted, under both the notifications, one of the feeder posts for promotion to the posts in the Subordinate Labour Service. A

7. Six of such Assistant Computers (hereinafter referred to as Respondents) filed a Writ Petition (C.O. No. 6584(W) of 1984) in the Calcutta High Court, setting out therein that although they were eligible for promotion to the posts of Inspector, Investigator and Supervisor etc. of the West Bengal Subordinate Labour Service, the respondents of that Writ Petition, namely, the State of West Bengal, Commissioner of Labour and the Joint Labour Commissioner (Statistics), had promoted only 'the confirmed Upper Division Assistants' to those posts in 1978 and their claim for promotion was completely ignored. It was also stated that although 48 vacancies were available in the Subordinate Labour Service in the Labour Commissioner's Office under the Labour Directorate, the respondents intended to fill up those vacancies by promoting only the Upper Division Clerks and not the persons from other feeder posts, including the Assistant Computers. It was alleged that although only six permanent Upper Division Clerks were available, the respondents, namely, the State Govt., Labour Commissioner, etc. of that Writ Petition intended to fill up the higher posts by promoting the temporary Upper Division Clerks and not the Assistant Computers who being eligible for promotion to the posts under the West Bengal Subordinate Labour Service were entitled to be considered for such promotion. Consequently, they prayed for the following reliefs: D E

- "(a) for a writ of Mandamus commanding the Respondents to promote the petitioners to the next higher posts, namely, Inspectors, Investigators and Supervisors etc. in the West Bengal Subordinate Labour Service under the Labour Directorate, Government of West Bengal and also further commanding the Respondents not to promote the temporary and/or non-confirmed Upper Division Clerks to the said posts; F
- (b) for a Writ of Certiorari directing the Respondents to produce the records of this case to this Hon'ble Court, so that conscionable justice may be rendered; G
- (c) A Rule in terms of prayers (a) and (b);
- (d) An interim order of injunction restraining the Respondents and/or their agents from giving any promotion to the said higher posts namely Inspector, Investigator, Supervisor etc, in the West H

- A Bengal Subordinate Labour Service under the Labour Directorate, Government of West Bengal till the disposal of the Rule;
- (e) Any other order and/or orders as your Lordships may deem fit and proper.”

B 8. This Writ Petition came up for hearing before Mr. Justice Ajit Kumar Sengupta (since retired), who, by judgment dated 21.8.1984, allowed it with the following operative order :

C “In my judgment this is a clear case of arbitrary and discriminatory action on the part of the respondents in depriving at least 9 persons from their legitimate promotion in the West Bengal Subordinate Labour Service. In the result, this application must be allowed. The decision and/or the orders of promotion, if made on the basis of the approved lists, are set aside. The respondents are directed to give promotion the West Bengal Subordinate Labour Service on the basis of the integrated Gradation List (Flag “A” in the file) and shall give promotion to the Assistant Computers including the writ petitioners in the West Bengal Subordinate Labour Service. They are directed to issue the orders of promotion forthwith in terms of this order. The respondents shall give promotion to the Assistant Computer including the writ petitioners to the Subordinate Labour Service with effect from 13th March, 1980 when 29 Upper Division Clerks were promoted ignoring the claim of the Assistant Computers according to the seniority determined on the basis of the said Rules.

Let this order be carried out within two weeks from the date of communication of this order.”

F 9. The direction to promote the present respondents, namely, the Assistant Computers to the Subordinate Labour Service with effect from 13.3.1980 was obviously given for the reason that it came out during the course of the proceedings that the Government, in the meantime, had filled up 31 posts on 13.3.1980 by promoting 29 Upper Division Clerks and 2 Labour Welfare Workers. By another order passed on the same date, namely on 13.3.1980, five promotions more (two Assistant Computers and 3 Labour Welfare Workers) were made.

H 10. This judgment was challenged by a number of affected employees (about 32 employees), who filed an appeal (F.M.A.T. No. 3213 of 1984) before the Division Bench and the latter, namely, the Division Bench, by its judgment

and order dated 17.1.1985, allowed the appeal by the following order:

“After hearing the learned Advocates of the parties and after considering the facts and circumstances of the case, we modify the impugned order of the learned Trial Judge and direct that the authorities concerned shall consider the cases of promotion to the West Bengal Subordinate Labour Service of the appellants as also of the writ petitioners and the added respondents in accordance with law and the prescribed rules including the appointment rules, within three months from date.

It is made clear that we have not expressed our opinion on the merits of the respective cases of the parties.

This order virtually disposes of the appeal. The appeal is treated as on day's list and both the appeal and the application are disposed of as above. There will be no order for costs.”

11. By this order, the direction passed by Mr. Justice Ajit Kumar Sengupta for promotion of Assistant Computers, and that too with effect from 13.3.1980, was substituted by a fresh direction that the cases of Assistant Computers as also those of others would be considered in accordance with law and the prescribed rules, including the appointment rules.

12. In compliance of this direction, the State of West Bengal and other appellants before us, after due consideration, promoted 40 employees drawn from all the three categories of feeder posts, including those, namely, the present respondents, who had filed Writ Petition (C.O. No. 6584 of 1984), by two orders. (i) Order No. 1187 G.E. dated 16.4.1985 and (ii) Order No. 1832 G.E. dated 6.6.1985 to various posts in the Subordinate Labour Service.

13. Two years later, the same persons, namely, the present respondents, except Smt. Shyamali Ghatak (nee Chakraborty), who had earlier filed Writ Petition (C.O. No. 6584 of 1984), filed another Writ Petition (registered as Matter No. 1449 of 1987) in the Calcutta High Court, praying that they may be paid arrears of salary and allowances with effect from 13.3.1980 in terms of the judgment and order dated 21.8.1984 passed by Mr. Justice Ajit Kumar Sengupta. This Writ Petition was disposed of by Mr. Justice Prabir Kumar Majumdar by his judgment and order dated 22.4.1988 by observing, inter alia, as under :”

“I have considered the respective submissions of the parties. It appears

A that the order of the learned trial judge made on the earlier writ petition dated August 24, 1984 was modified and it was observed by the court of appeal that :

B 'After hearing the learned advocates of the parties and after considering the facts and circumstances of the case, we modify the impugned order of the learned Trial Judge and direct that the authorities concerned shall consider the cases of the promotion to the West Bengal Subordinate Labour Services of the appellants as also of the Writ Petitioners and the added respondents in accordance with law and the prescribed rules including the appointment rules within the three months from date.'

C Therefore, it was a direction of the court of appeal upon the concerned authorities to consider the cases of the appellants, writ petitioners as also the added respondents in accordance with law and the prescribed Rules including the appointment rules. Therefore, it appear to me that whatever entitlement, so far as the writ petitioners are concerned, is there in the relevant rules, the petitioners will get it and their claim to the benefits as also seniority will be considered accordingly and in complying such authorities concerned will comply with the direction of the court of appeal as also the learned trial court so far modified by the Court of Appeal.

E In the facts and circumstances of the case, I do not see any ground to interfere in this case and the authorities will be free to consider the case of the writ petitioners as also other persons concerned with the matter in accordance with the directions contained in the order of the appeal court in F.M.A.T. No. 3213 of 1984.

F The writ petition is thus disposed of."

G 14. This judgment was challenged before the Division Bench which, at the time of hearing, incidentally, comprised of Mr. Justice Ajit Kumar Sengupta and Mr. Justice Shyamal Kumar Sen and they, by their impugned judgment dated 21.7.1992, allowed the appeal with the direction that the respondents (appellants before us) shall treat the Assistant Computers to have been promoted to the Subordinate Labour Service with effect from 13.3.1980. It was further directed that although they will not be entitled to any arrears of salary with effect from that date, their basic pay in the scale of pay would be fixed by treating 13th March, 1980 as the date of their promotion without, however, affecting the seniority and other benefits of the persons already promoted to

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the Subordinate Labour Service. The pay so fixed, was made payable to them with effect from July, 1992. A

15. It is this judgment which is challenged before us in both the appeals.

16. Learned counsel appearing on behalf of State of West Bengal as also the counsel appearing on behalf of the appellants in the connected appeal have assailed the judgment not only on merits but also on the technical plea that Mr. justice Ajit Kumar Sengupta having expressed his views when he had decided, as a Single-Judge, the first Writ Petition, namely C.O. No. 6584(W) of 1984, should not have sat in the Division Bench to hear the appeal in the same matter between the same parties though initiated on a subsequent Writ Petition. It is contended that although the direction of Mr. Justice Ajit Kumar Sengupta to the effect that the Assistant computers (some of the respondents herein) shall be promoted with effect from 13.3.1980, had ceased to exist as the appeal against the judgment, in which this direction was contained, was disposed of by the Division Bench by issuing a fresh direction, the respondents herein, filed another Writ Petition seeking enforcement of the old direction of Mr. Justice Ajit Kumar Sengupta by requiring the State Government to pay to them, the arrears of salary of the higher post with effect from that date, namely, 13.3.1980. It is contended that the learned Single-Judge having disposed of this Writ Petition by observing that the direction issued by the Division Bench alone was enforceable, no interference was called for in the matter but Mr. Justice Ajit Kumar Sengupta reiterated his earlier view and held that the respondents shall be treated to have been promoted to the Subordinate Labour Service with effect from 13.3.1980. B C D E

17. Learned counsel for the respondents contended that the direction of the subsequent Division Bench, presided over by Mr. Justice Ajit Kumar Sengupta, that the respondents shall be treated to have been promoted with effect from 13.3.1980 was innocuous inasmuch as neither the arrears of salary with effect from that date was to be paid nor were they to affect the seniority of persons already promoted to the Subordinate Labour Service. In this situation, it is contended, it would not be proper to interfere with the impugned judgment. F G

18. A copy of the Writ Petition filed before the Calcutta High Court by the respondents a second time (being Matter No. 1449 of 1987) has been filed before us. In order to indicate the real controversy involved in that Writ Petition, the relevant paragraphs of that Writ Petitions are reproduced below: H

- A “4. Your petitioner state that against the aforesaid illegalities namely
the denial of promotion seniority and other benefits to the petitioners
as prescribed in law, a writ application was filed on behalf of the
petitioners before this Hon’ble Court which was numbered as C.O.
6584/(W)/84. After hearing of the parties the Hon’ble Mr. Justice A.K.
B Sen Gupta was pleased to allow the said application of the petitioners
directing the authorities to give promotion on the basis of the seniority.
His Lordship was further pleased to direct the authorities to give
promotion to the Writ Petitioners to the sub-ordinate Labour service
w.e.f. 13th March, 1980. His Lordship was further pleased to direct the
C authorities to give promotion to the petitioners to the West Bengal
Sub-Ordinate Labour Service forthwith. But against the said Judgment
of His Lordship Mr. A.K. Sen Gupta and Appeal having the Tender
No. FMAT 3213 was preferred before this Hon’ble Court. The Division
Bench after hearing the parties was pleased to dispose of the said
D appeal directing the Respondent authorities to follow and or to give
promotions in accordance with the above prescribed rules. Therefore
the judgment and the order of the Trial Judge stood upheld.
Accordingly, pursuant to the judgment of the Trial Court, authorities
E promoted the Writ Petitioners on 17.4.85 to the posts of Investigators/
Inspectors under West Bengal Sub-ordinate Labour Services, Labour
Directorate, Government of West Bengal and the petitioners have
been posted in different places in the said posts where they are now
served. A copy of the Judgment in C.O. No. 6584 (W) / 84 passed by
the Hon’ble Mr. Justice A.K. Sengupta annexed herewith and along
with the order passed by the Division Bench in FMAT 3213/84 and
marked as Annexure-“A”.
- F 5. Your petitioners state that now they have been promoted in the
West Bengal Sub-ordinate Labour Services, but as per the order of
this Hon’ble Court they are deemed to be promoted and or in service
since 13th March, 1980. Accordingly, the petitioners are entitled to get
the seniority and also the monetary benefits of West Bengal Sub-
G ordinate Labour Services with retrospective effect from 13th March,
1980.
- H 6. Your petitioners state that there has been arrear dues to the
petitioners since 13th march, 1980. The petitioners made several
representations before the authorities for the payment of the said
arrear dues but the Respondent authorities have not paid the same to

the petitioners. On 12.12.86, the petitioners made a written representation to the Respondent No. 1 along with the statement of arrear dues praying immediate payment of the said arrear dues from 13.3.80 to 16.4.85 and in that letter demanding justice. The petitioners also pointed out that for the above non-payment of the arrear dues, the petitioners were facing acute financial troubles. But uptil now the authorities have done nothing for the grant and or payment of the said dues from 13th March, 1980 to 16.4.85 to the petitioners. A copy of the said representation dated 12.12.86 along with the statements of the said arrear dues are collectively marked as Annexure "B" and B1 to this application.

7. Your petitioners state that the authorities denied equal opportunities of promotion to them. The authorities gave promotions to West Bengal Sub-ordinate Labour Services only from the Upper Division Clerks, even some of these clerks were not confirmed. Thus the authorities denied Computer Assistants and labour Welfare workers of the Labour Department equal promotion seniority and other benefits for a long time. Thus the whole activities regarding promotion was totally illegal and of malafide. That is why the Hon'ble Mr. Justice A.K. Sengupta in C.O. 6584(W)/84 was pleased to direct that the petitioners whose claim for promotion accrued long ago should be deemed to be promoted to West Bengal Sub-ordinate Labour Service on and from 13th March, 1980, because on that date many junior persons and even unconfirmed Upper Division Clerks were promoted to the Labour service. But the petitioners were illegally deprived of the said promotion and or seniority. Thus the petitioners are entitled to the arrear financial benefits and Seniority on and from 13th March, 1980.

8. Your petitioners state that they made series of representations before the authorities for the promotion and payment of their arrear benefits since 13th March, 1980, but the authorities had not yet paid the said arrear. Thus the petitioners have been put to unnecessary financial hardships by the aforesaid non payment of arrear dues."

19. The following prayer was made in the Writ Petition :

"10. Your petitioners humbly state and submit that the authorities illegally withheld their promotion for a long time but only pursuant to the direction and or order of this Hon'ble Court they got promotion in the West Bengal Sub-ordinate Labour service which has been

A illegally withheld for a long time. Therefore, the direction of this Hon'ble Court that the petitioners should be deemed to be promoted since 13th March, 1980 should be complied with by the authorities by paying all arrear benefits and or dues to the West Bengal Sub-ordinate Labour Service to the petitioners immediately, otherwise they will suffer irreparable loss and or injury."

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20. The real question which was, therefore, involved in that Writ Petition was whether the direction given by Mr. Justice Ajit Kumar Sengupta on 21.8.1984 while disposing of the earlier Writ Petition (C.O. No. 6584/(W)/84), was in existence or had ceased to be an operative direction after the disposal of F.M.A.T. No. 3213 of 1984 by a Division Bench on 17.1.1985. The ultimate order passed by the Division Bench in that appeal has already been extracted in the earlier part of the judgment which would show that the direction that in the first writ petition the respondents shall be promoted with effect from 13th March, 1980 was set aside and was substituted by a fresh direction that the cause of the respondents along with other eligible candidates for promotion to the Subordinate Labour Service shall be considered in accordance with law and the prescribed rules including the appointment rules. It was in pursuance of this direction that the State Government considered the matter of promotion and by its order dated 16.4.1985, it made promotions of the eligible candidates drawn from all the three sources (including the respondents who had filed Writ Petition (C.O. No. 6584/(W)/84), to various posts in the Sub-ordinate Labour Service. This order does not indicate that the respondents were promoted with effect from 13th March, 1980; may be this was not indicated as that direction had been set aside in appeal by the Division Bench.

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21. When the respondents claimed arrears of salary with effect from 13th March, 1980 in pursuance of the direction issued by Mr. Justice Ajit Kumar Sengupta through a fresh petition (Matter No. 1449 of 1987) filed in the Calcutta High Court, the learned Single Judge did not grant the relief and instead observed that since the direction issued by Mr. Justice Ajit Kumar Sengupta was modified, it was for the State Government to consider their claims in accordance with the Rules in terms of directions of the Division Bench (Court of Appeal).

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22. An appeal against this judgment was disposed of by a Division Bench which included Mr. Justice Ajit Kumar Sengupta. The question which, therefore, arises is whether Mr. Justice Ajit Kumar Sengupta could sit in the

Division Bench to decide the appeal against that judgment? A

23. All judicial functionaries have necessarily to have an unflinching character to decide a case with an unbiased mind. Judicial proceedings are held in open court to ensure transparency. Access to judicial record by way of inspection by the litigant or his lawyer and the facility of providing certified copies of that record are factors which not only ensure transparency but also instil and inspire confidence in the impartiality of the court proceedings. B

24. Unlike suits, proceedings under Article 226 of the Constitution are not conducted strictly following the provisions contained in the Code of Civil Procedure but are held in accordance with the Procedure devised by the High Court itself under which a fair hearing is provided to the parties concerned before a decision is rendered. In other words, principles of natural justice are observed strictly in letter and spirit. One of the requirements of Natural Justice is that the hearing should be done by a Judge with an unbiased mind. C

25. Bias may be defined as a pre-conceived opinion or a pre-disposition or pre-determination to decide a case or an issue in a particular manner, so much so that such pre-disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the Judge unable to exercise impartially in a particular case. D

26. Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject matter in dispute, or policy bias etc. In the instant case, we are not concerned with any of these forms of bias. We have to deal, as we shall presently see, a new form of bias, namely, bias on account of judicial obstinacy. E

27. Judges, unfortunately, are not infallible. As human beings, they can commit mistakes even in the best of their Judgments reflective of their hard labour, impartial thinking and objective assessment of the problem put before them. In the matter of interpretation of statutory provisions of while assessing the evidence in a particular case or deciding questions of law or facts, mistakes may be committed *bona fide* which are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts. Such a mistake can be committed even by a Judge of the High Court which are corrected in the Letters Patent Appeal, if available. F G

28. If a judgment is over-ruled by the higher court, the judicial discipline required that the Judge whose judgment is over-ruled must submit to that H

A judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, re-write the over-ruled judgment. Even if it was a decision on a pure question of law which came to be over-ruled, it cannot be reiterated in the same proceedings at the subsequent stage by reason of the fact that the judgment of the higher court which has over-ruled that judgment, not only binds the parties to the proceedings but also the Judge who had earlier rendered that decision. That Judge may have his occasion to reiterate his dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitivite of his bias in his own favour to satisfy his egoistic judicial obstinacy.

C 29. As pointed out earlier, an essential requirement of judicial adjudication is that the Judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is pre-disposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a Judge. But Frank, J. of the United States in *In re Linahan*, 138 F. 2nd 650 says:-

D “If, however, ‘bias’ and ‘partiality’ be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even, at infancy, is no blank piece of paper. We are born with predispositions....Much harm is done by the myth that, merely by.... taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.”

E (See also Griffith and Street, Principles of Administrative Law (1973 Edn.) 155; Judicial Review of Administrative Action by de Smith (1980 Edn.) 272; II Administrative Law Treatise by Davis (1958 Edn.) 130.)

F 30. These remarks imply a distinction between pre-judging of facts specifically relating to a party, as against pre-conceptions or pre-dispositions about general questions of law, policy or discretion. The implication is that though in the former case, a Judge would disqualify himself, in the latter case, he may not. But this question does not arise here and is left as it is.

G 31. This Court has already, innumerable times, beginning with its classic decision in *A.K. Karaiyak v. Union of India*, AIR (1970) SC 150, laid down the need of “fair play” or “fair hearing” in quasi-judicial and administrative matters. The hearing has to be by a person sitting with an unbiased mind.

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To the same effect is the decision in *S.P. Kapoor v. State of Himachal Pradesh*, AIR (1981) SC 2181. In an earlier decision in *Mineral Development Limited v. State of Bihar*, AIR (1960) SC 468, it was held that the Revenue Minister, who had cancelled the petitioner's licence or the lease of certain land, could not have taken part in the proceedings for cancellation of licence as there was political rivalry between the petitioner and the Minister, who had also filed a criminal case against the petitioner. This principle has also been applied in cases under labour laws or service laws, except where the cases were covered by the doctrine of necessity. In *Financial commissioner (Taxation), Punjab v. Harbhajan Singh*, [1996] 9 SCC 281, the settlement Commissioner was held to be not competent to sit over his own earlier order passed as Settlement Officer under the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The maxim *Nemo Debet Esse Judex In Propria Sua Causa* was invoked in *Gurdip Singh v. State of Punjab*, [1997] 10 SCC 641.

32. The above maxim as also the other principle based on the most frequently quoted dictum of Lord Hewart C.J. in *R. v. Sussex JJ.*, ex p. Mc Carthy (1924) 1 K.B. 256, 259, that;

“It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done”,

constitute the well-recognised Rule Against Bias.

33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of “real likelihood of bias” or “reasonable suspicion of bias.” de Smith in *Judicial Review of Administrative Action*, 1980 Edn., 262, 264, has explained that “reasonable suspicion” test looks mainly to outward appearances while “real likelihood” test focuses on the court's own evaluation of the probabilities.

34. In *Metropolitan Properties Co. v. Lannon*, (1968) W.L.R. 815, it was observed “whether there was a real likelihood of bias or not has to be ascertained with reference to right minded persons; whether they would consider that there was a real likelihood of bias”. Almost the same test has also been applied here in an old decision, namely, in *Manak Lal v. Prem Chand*, AIR (1957) SC 425. In that case, although the Court found that

- A Chairman of the Bar Council Tribunal, appointed by the chief Justice of the Rajasthan High Court, to enquire into the misconduct of manak Lal, an advocate, on the complaint of one Prem Chand, was not biased towards him, it was held that he should not have presided over the proceedings to give effect to the salutary principle that justice should not only be done, it should also be seen to be done in view of the fact that the Chairman, who, undoubtedly, was a senior advocate and an ex-Advocate General, had, at one time, represented Prem Chand in some case. These principles have had their evolution in the field of Administrative law but the Courts performing judicial functions only cannot be excepted from the rule of bias as the Presiding Officers of the Court have to hear and decide contentious issues with an unbiased mind. the maxim *Nemo Debet Esse Judex In Propria Sua Causa* and the principle "Justice should not only be done but should manifestly be seen to be done" can be legitimately invoked in their cases.

35. Applying these principles in the instant case, it will be seen that although the judgment passed by Mr. Justice Ajit Kumar Sengupta in the first Writ Petition in which he had given a direction that the respondents shall be promoted with effect from 13.3.1980 was set aside, he (Mr. Justice Ajit Kumar Sengupta), in the subsequent writ Petition between the same parties, gave a declaration that the respondents shall be treated to have been promoted with effect from 13.3.1980. Significantly, such a declaration was not prayed for and what was prayed in the subsequent Writ Petition was a direction to the State Government to pay arrears of salary of the higher post with effect from 13.3.1980. To put it differently, in the first Writ Petition, Mr. Justice Ajit Kumar Sengupta commanded "Promote the respondents with effect from 13.3.1980"; in the second Writ Petition, he directed "Treat the respondents as promoted with effect from 13.3.1980". There is hardly any difference between the two judgments. In fact, the second Writ Petition constitutes a crude attempt to revive the directions passed by Mr. Justice Ajit Kumar Sengupta in the first judgment and, curiously, Mr. Justice Ajit Kumar Sengupta, sitting in the Division Bench, wrote, a second time, a judgment which was already over-ruled. He garnished the judgment by innocuously providing that arrears would not be payable to the respondents nor will the respondents affect the seniority of others. But the garniture cannot conceal the deceptive innocence as it is obvious, on a judicial scrutiny, that paramount purpose was to re-write the over-ruled judgment.

- H 36. In view of these facts, we are constrained to observe that it was not

competent for Mr. Justice Ajit Kumar Sengupta to have presided over the Bench in which the impugned judgment was passed as he had already expressed his opinion in the earlier writ petition which was over-ruled. He should have disassociated himself from that Bench in keeping with the high traditions of the institution so as to give effect to the rule that "justice should not only be done, it should manifestly be seen to have been done" apart from sitting in appeal, though collaterally, over his own judgment. A B

37. The appeals are consequently allowed. The judgment and order dated 21.7.1992 passed by the Division Bench of the Calcutta High Court is set aside and the Writ Petition (Matter No. 1449 of 1987) is dismissed without any order as to costs. C

S.N.

Appeals allowed.