

**(2011) 10 MAD CK 0206**

**In the Madras High Court**

**Case No : Writ Petition No. 20895 of 2009**

AR. Ansar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 31-10-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 21, 226, 39

**Citation : (2011) 10 MAD CK 0206**

**Hon'ble Judges : K. Chandru, J**

**Bench : Single Bench**

**Advocate : S. Ramasamy, SC for Ms. N. Kavitha, for the Appellant; M. Devendran, Sr. Panel Counsel, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Honourable Mr. Justice K. Chandru

1. The 10 petitioners have filed the present writ petition seeking to challenge an order of the first respondent Union of India represented by its Secretary, Government of India, Ministry of defence, dated 21.08.2009 and seeks to set aside the same with a consequential direction to refix their scale of pay as Yantriks on par with the scales of pay applicable to the Central Police Organizations like the Central Para Military Force (CPMF) and the Border Security Force (BSF) with retrospective effect. By the impugned order, dated 21.8.2009 issued by the first respondent addressed to the fourth respondent Director General of Coast Guard, the Government of India had sanctioned payment of Coast Guard Yantrik Pay at the rate of Rs.800/- per month to employees working in the Technical Branch of Coast Guard Organization from the level of Yantrik to the level of Pradhan Sahayak Engineer. The said pay will count for all purposes including DA and pension and that it will be effective from 01.01.2006.

2. When the writ petition came up for admission on 14.10.2009, notice was issued to the counsel appearing for the Coast Guard. Subsequently the writ

petition was admitted on 05.11.2009. On an application fixing an early date, this court directed the matter to be listed during August, 2010. But for the reasons best known, the matter was not taken up. On notice from this court, on behalf of all respondents, the fifth respondent has filed a counter affidavit, dated 16.7.2010 together with supporting typed set containing documents in support of the averments made in the counter affidavit.

3. Heard the arguments of Mr.S.Ramasamy, learned Additional Advocate General appearing for the petitioner and Mr.M.Devendran, learned Senior Panel counsel appearing for respondents.

4. The eligibility rules of the year 1979 for recruitment of Sailors in the technical branch provided for direct recruitment to the post of Yantrik with an educational qualification of higher secondary with Science and Maths subjects. The posts of Uttam Yantrik and the Pradhan Yantrik were made as promotional posts. For the years 1980, 1981 and 1982, no direct recruitments were made. The Recruitment Rules were finalized only in the year 1982. The Sixth Pay Commission constituted by the Government of India had approved Rs.800/- per month as Coast Guard Yantrik Pay to all six ranks of Yantriks and communicated by an order dated 21.8.2009. Right from the inception of Coast Guard, the scale of pay of Yantriks though were modelled on the lines of Naval Pay scales, but it was depressed by Rs.5/- upto the rank of Pradhan Yantriks and thereafter at Rs.10/- in the ranks of Sahayak Engineer and Uttam Sahayak Engineer. There was different scale of pay maintained for both Navy ranks and Coast Guard ranks. The following table will show the different scales of pay for similar posts:-

Coast Guard Ranks

Scale of Pay (Rs.)

Navy Ranks

Scale of Pay (Rs.)

Yantrik

295-303

Artificer V

300-308

UttamYantrik

335-351

Artificer IV

340-358

PradhanYantrik

386-436

Artificer III

391-550

Sahayak Engineer

555-630

Chief Artificer

565-640

UttamSahayak Engineer

610-730

MCPO-II

620-740

PradhanSahayak Engineer

725-825

MCPO-I

725-825

5. The revision of recruitment rules for the post of Yantriks in the year 1982 was enhanced from those existing in the year 1979, but no change when scales of pay were made. Thereafter, the pay scales have been revised subsequently in the 4th, 5th and 6th Pay Commissions. An attempt made by the petitioners to compare to the similar post or the post of similar designation of other posts like BSF cannot be accepted. The 6th Central Pay Commission also did not recommend the similar scale for Yantriks and CPMF. Subsequently when an anomaly was pointed out, the matter was referred to the Central Government. Therefore, a Fast Track Committee was constituted relating to scale of pay of Yantricks in the Coast Guard. The Committee's recommendation was accepted by the Government. But, there was no linkage between the Coast Guard and CPMF scales of pay. It was stated that though the 6th Pay Commission made a recommendation for Subordinate Engineering service, in respect of diploma holders in Engineering and other posts, the list of Subordinate Engineering Service did not include the Coast Guard and that for the Navy and CPMF, there was no Subordinate Engineering service.

6. In paragraph 24 of the counter affidavit, it was averred as follows:

24....it is submitted that there is absolutely no relevance to the issue of fixation of pay scale to the petitioners, with reference to Articles 14, 16, 21 or 39(d) of Constitution of India or arbitrary denial of parity in pay equal to the employees of Central Police Organisation. The issue of anomalies in the pay scales of the

Yantriks had been taken up by the Coast Guard Organisation with the Government and the same has been deliberated by the Fast Track Committee who have ultimately recommended a Coast Guard Yantrik Pay @ Rs.800/- pm to all the ranks of the Technical cadre of the Coast Guard. The Central Government on the basis of the recommendations of the Fast Track Committee has sanctioned the payment of the said Coast Guard Yantrik Pay vide GOI / Ministry of Defence letter No.1(1)/2009/D(CG-R) dated 21.08.2009.

7. Though Mr.S.Ramasamy, learned Additional Advocate General contended that there was discrimination in respect of Yantriks working in the Coast Guard alone, it must be noted that the distinction had been maintained by the successive Pay Commission recommendations as seen from the 4th 5th and 6th Pay Commission Reports. Therefore, the attempt made by the petitioner to compare themselves with other or equivalent posts cannot be considered by this court in exercise of power under Article 226 of the Constitution of India. Even within the same Subordinate Engineering Services, the courts have held that there can be different scales based upon educational qualifications.

8. In this context, it is necessary to refer to a judgment of the Supreme Court in State of W.B. v. T.K. Ghosh reported in (2005) 10 SCC 339 and in paragraphs 6 to 9, 11 and 13, the Supreme Court had observed as follows:

6. The learned Division Bench also referred to the findings of the learned Single Judge observing that it had considered the facts and the nature of duties performed by different categories of draftsmen threadbare while holding that draftsmen of different categories performed identical nature of work. We, however, find that in the order of the Single Judge, the nature of work and duties performed by different categories of draftsmen have not even been mentioned, much less discussed threadbare as observed by the Division Bench. On the other hand we find that there is an averment made in the writ petition itself, in paragraph 37, the relevant part of which is quoted below:

The drawing branch is constituted of a Draftsman Grade II and one Draftsman Grade III. The work is allocated to them according to their status, capabilities and list of duties laid down for each grade of draftsmen. The "strengthened" division, Draftsman Grade II is replaced by Draftsman Grade I. This branch deals with the following subjects:

(a) Recording of plans and drawing and maintenance of register of buildings, roads and bridges.

(b) Preparation and scrutiny of estimates, drawings and contract documents from technical point of view.

(c) Maintenance of accounts of survey and drawing instruments in the division. That the Public Works Department Code, Vol. I, 1970 Edn., published by the Government of West Bengal Public Works Department has specified, inter alia, the functions of Draftsmen in Rule 299, Chapter III "Record, Drawings and

## Completion Plans.

7. The above averment made in the writ petition itself indicates that the duties and responsibilities of the draftsmen differ from category to category. The work is also allocated according to their status and capabilities. We find that other further details have not been indicated in the petition but the fact remains that it cannot be said that all the draftsmen despite difference in their capabilities discharge identical nature of work and duties as has been found by the High Court though without discussing or indicating the nature of duty being discharged by them. So far as the same nature of duties is concerned, it will be relevant to refer to prayer (a) made in the writ petition which we quote below:

For a writ of and/or in the nature of mandamus directing the respondents to rationalise the scale of pay of the petitioners by removing the anomalies and to give effect to the Codes and Rules by allotment of full work, responsibility and duty to the petitioners.

8. The learned counsel for the respondents has submitted that this prayer has been made for the duties in addition to normal work so as to make the respondents entitled to special pay and other allowances including cycle allowance and allowance for arduous work. The prayer quoted above itself indicates that the respondents were not being assigned the same work or work of the same nature and responsibility.

9. So far as proposition of law is concerned, there cannot be nor is there any dispute that one would be entitled to equal pay for equal work but that alone is not and cannot be the sole criterion much less where it has also not been established that all the persons of the Subordinate Engineering Services constitute one class of draftsmen performing identical nature of duties. Even though there may be similar nature of work yet distinction is permissible based upon their educational qualifications. In support of this proposition the learned counsel for the appellants has placed reliance upon a decision of this Court in Govt. of W.B. v. Tarun K. Roy<sup>1</sup> more particularly the observations made in paragraph 14 which are as follows: (SCC p. 355)

14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently.

The observation of the proposition in law in the above case is clear that persons having different qualifications though performing similar job can be treated differently.

11. The learned counsel for the respondents tried to distinguish the case on facts but so far as the principle enunciated is concerned, it is quite clear. Yet another decision *State of M.P. v. Pramod Bhartiya*<sup>3</sup> referred to by the learned counsel for the respondents, also holds that such a distinction is permissible depending upon the qualitative difference of the work/duties which are performed by the employees. There is, therefore, no manner of doubt that the educational qualifications may be considered as a valid basis for categorising the employees though discharging similar duties, but possessing different qualifications having bearing on quality of work discharged. As we have already observed, in the case in hand, it could not be established, though so observed by the High Court, that different categories of draftsmen performed identical nature of duties much less of the same quality. The fact that there are different nature of duties, is also established by the averments made in the writ petition itself as referred to in the earlier part of this judgment. Otherwise also it stands to reason that where more than one class of employees are designated as draftsmen, having qualifications ranging from overseers to nil technical qualification or only experience, the duties of higher responsibilities requiring more efficient handling would obviously be assigned to the persons having better and higher technical qualifications rather than to those who have no qualification or have mere experience or some other certificate plus experience. The purpose seemed to be to provide and assign different kinds of duties to different category of officials in the same class based on their qualification.

13. Insofar as it relates to the claim made for the special allowance and any other allowance, namely, cycle allowance and any allowance for arduous duties or workplaces which are not hygienic, suffice it to say that it appears that such duties were not being assigned to the petitioner-respondents which is evident from prayer contained in clause (b) of the prayers made in the writ petition. The factual position is also reflected to the same effect in the averments made in the other parts of the writ petition as well. The kind of observation made by the High Court that the petitioner had been going to such places along with other draftsmen may not be of much help to them. Again we find it difficult to issue any such direction to authorities to take or assign any particular kind of work to the petitioners so as to make them entitled to such allowances.

9. The Supreme Court also held vide its judgment in *S.C. Chandra and Others Vs. State of Jharkhand and Others*, , has held that it is not the province for this court under Article 226 of the Constitution of India to bring pay parity and such approach is erroneous. The Supreme Court also emphasised the need to keep separation of power between three different authorities. It was held in paragraphs 33 to 35 as follows:

33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive

function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen*<sup>9</sup>.

34. There is broad separation of powers under the Constitution, and the judiciary should not ordinarily encroach into the executive or legislative domain. The theory of separation of powers, first propounded by the French philosopher Montesquieu in his book *The Spirit of Laws* still broadly holds the field in India today. Thus, in *Asif Hameed v. State of J&K*<sup>10</sup> a three-Judge Bench of this Court observed (vide paras 17 to 19): (SCC pp. 373-74)

17. Before advertent to the controversy directly involved in these appeals we may have a fresh look at the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles*<sup>11</sup> observed as under: (US pp. 119-20)

All power is, in Madison's phrase, "of an encroaching nature". "Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.

Rigorous observance of the difference between limits of power and wise exercise of power" between questions of authority and questions of prudence "requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic.

That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorised the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

(Emphasis supplied)

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

10. In the light of the above, this court is not inclined to entertain the writ petition. Accordingly, the writ petition will stand dismissed. No costs.