

(2013) 09 MAD CK 0343

In the Madras High Court

Case No : W.A. No. 2429 of 2011 and M.P. No. 1 of 2011

A.R. Ansar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0343

Hon'ble Judges : N. Paul Vasanthakumar, J; M.M. Sundresh, J

Bench : Division Bench

Advocate : S. Ramaswamy, for Ms. N. Kavitha, for the Appellant; M. Devendran, SCGSC for Respondents 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—These writ appeals are directed against the order of the learned single Judge made in W.P. No. 20895 of 2009 dated 31.10.2011. W.A. No. 2429 of 2011 is preferred by the first petitioner in the writ petition and W.A. No. 2430 of 2011 is preferred by the third petitioner in the writ petition. As both the writ appeals arise from the very same order in writ petition, these writ appeals are being dealt with by this common judgment. In the writ petition the appellants have prayed to quash the order dated 21.8.2009 passed by the first respondent and for a direction to the first respondent to refix the scales of pay of the petitioners as Yantriks, on par with the scales of pay applicable to Central Police Organisations like the Central Para Military Force (CPMF) and Border Security Force (BSF) with retrospective effect from the relevant dates applicable.

2. The case of the appellants before the learned single Judge as could be seen from the averments made in the affidavit filed in support of the writ petition are as follows:

(a) The appellants were appointed as Yantriks by direct recruitment in the scale of pay of Rs. 950-1500 (pre-revised pay scale) as per the Amended Recruitment Rules, 1982 under the Commander, Coast Guard Region (East), Chennai-9, the

5th respondent herein. The qualifications of the appellants are Matriculation and three years Diploma in Electronics Engineering.

(b) Appellant in W.A. No. 2429 of 2011 was promoted to the post of Uttam Yantrik in the scale of pay of Rs. 1200-1800 and on 1.1.1997 he was further promoted to the rank of Pradhan Yantrik in the scale of pay of Rs. 1400-2300, revised to Rs. 5000-8000. He was further promoted to the post of Sahayak Engineer on 22.11.2000 in the scale of pay of Rs. 5500-9000 and from 16.11.2006 he was further promoted to the rank of Uttam Sahayak Engineer in the pay scale of Rs. 6500-10500. While serving at Vizag Chetak Flight (CG), ICGS Visakhapatnam under the control of the 5th respondent, this writ petition was filed.

(c) The appellant in W.A. No. 2430 of 2011 was first appointed on 27.10.1994, and after periodical promotions, he was holding the post of Uttam Sahayak Engineer at the time when the writ petition was filed.

(d) According to the appellants, the educational qualification as per the Amended Recruitment Rules issued in the year 1979 was 10+2 (Science and Mathematics), which was amended in the year 1982 to the effect that the person must possess Matriculation and Diploma in Engineering.

(e) The grievance of the appellants are that though the essential qualification for appointment for the post of Yantrik was revised in the year 1982 (7.4.1982), the corresponding pay scales remain unchanged and the duties of Yantriks are technical and supervisory in nature.

(f) On 12.5.1997, the appellants submitted a representation before the respondent to upgrade the scale of pay as per the recommendation of the 5th Central Pay Commission.

(g) By Supplementary Recruitment Orders published as 30 of Gazette Notification (Part II Section), Ministry of defence dated 12.1.1988, the post of Yantrik was made a promotional post, for which the posts of Pradhan Navik and Uttam Navik (General Duty) were made the feeder categories. Even after the said Gazette notification, the pay scale was not revised in comparison with the pay scale given to Central Police Organisations like CPMF and BSF, though the role of Coast Guard is similar to Central Police Organisations and their pension rules are governed under the Central Civil Services Rules.

(h) According to the appellants, in the 4th Central Pay Commission, the pay scale of Engineering Diploma Holders in Central Police Organisations was fixed at Rs. 1400-2600, and for Coast Guard Engineering Diploma Holders at Rs. 950-1900. Similarly, in the 5th Central Pay Commission, the scale of pay for Central Police Organisation Diploma Engineering Holders was fixed at Rs. 5000-8000 from 1.1.1996 and Rs. 5500-9000 with effect from 10.10.1997, whereas the pay scale for the Coast Guard Engineering Diploma Holders was fixed at Rs. 3050-4090 from 1.1.1996 and Rs. 4000-6000 with effect from 10.1.1997. The 6th Central

Pay Commission also has not recommended any change in the pay scale of Yantriks (Engineering Diploma Holders).

(i) The appellant along with another person filed writ petition before the Circuit Bench at Port Blair of Calcutta High Court in W.P.(AN) No. 45 of 2001 and prayed for equal pay on par with the Sub-Inspectors and Inspectors of BSF, relying upon the recommendations of the 5th Central Pay Commission. The said writ petition was disposed of by order dated 4.12.2001 giving direction to the Secretary to Ministry of Defence, Government of India, to decide within three months, as to whether the scales of pay payable to Yanktriks was properly and correctly fixed at the time when the qualification of Yanktriks was enhanced, and if not fixed, the correct pay scale, which may appear to be appropriate, was directed to be fixed. The Ministry of Defence by order dated 28.8.2002 stated that it was not possible to make any change in the existing scales of pay of Yantriks in the Coast Guard.

(j) The said order was challenged in W.P.(AN) No. 160 of 2002 before the Circuit Bench at Port Blair of Calcutta High Court. The said writ petition was disposed of by order dated 14.7.2003 with a direction to reconsider the stand taken, within a period of three months, with an observation that there was nothing before the Court to show that a clear case of hostile discrimination was made out for improving the pay scale of Yantriks and Uttam Yantriks.

(k) After the said remand, by order dated 9.10.2003, the Ministry of Defence had taken a stand that there was no possibility of effecting any further change in the pay scales of Yantriks. An appeal was preferred against the order passed by the Circuit Bench of Port Blair dated 14.7.2003 in MAT No. 16 of 2003, which was dismissed on 16.6.2004 with an observation that the writ petitioners may make an additional representation to the Secretary to Ministry of Defence and the adverse observation made in the judgment of the learned single Judge may not stand in the way for reconsideration. The SLP No. 8522 of 2005 filed against the said order in appeal was also dismissed as withdrawn on 15.5.2007 with liberty to approach the High Court.

(l) A further representation was submitted on 28.6.2004, which was rejected by the Ministry of Defence on 25.10.2004. Thereafter W.P.(C) No. 4720 of 2006 was filed before the High Court of Delhi to implement the recommendations of the 5th Central Pay Commission, which was withdrawn with liberty to file fresh writ petition in the Calcutta High Court on 5.4.2006.

(m) According to the appellants, the Director General of Coast Guard on 15.2.2003 sent a detailed suggestion to the Chairman, 6th Central Pay Commission, stating that the Scale of Pay of technical cadre was not revised, when the educational qualification was revised while amending the Recruitment Rules in the year 1982.

(n) Again W.P.(AN) No. 121 of 2001 was filed before the Circuit Bench at Port Blair of High Court of Calcutta praying for fixing the scale of pay on par with the

Central Police Organisations like CPMF and BSF. By order dated 24.11.2008, the said writ petition was dismissed on the ground that the writ petitioners were presently posted at Chennai and Mumbai and the Court at Port Blair has no jurisdiction.

(o) Hence the writ petitioners have filed writ petitions before this Court in W.P. No. 29965 of 2008 to fix the scale of pay on par with the scale of pay applicable to the Central Police Organisations, and this Court by order dated 30.4.2009 taking note of the submissions made by the respondents that a Fast Track Committee was constituted, which is looking into the matter, directed to expedite the said process by Fast Track Committee.

(p) The said Fast Track Committee considered the issue and ordered to pay a sum of Rs. 800/- to the Diploma Holders and not being satisfied with the order passed to that effect, by order dated 21.8.2009, the appellant and others filed W.P. No. 20895 of 2009 contending that sanctioning of a sum of Rs. 800/- per month uniformly to all Yantriks without considering their claims for parity in pay with CPMF and BSF is discriminatory and on non-application of mind; that the appellants have a right to seek equal pay for equal work under Article 39(d) read with Article 14 of the Constitution of India; and that, the respondents have failed to consider the educational qualification, nature of work, source of employment, which are similar to those of CPMF and BSF.

3. The said prayer was opposed by the respondents 1 to 5 by filing a detailed counter affidavit stating that the Recruitment Rules framed in the year 1979 was reviewed after a period of three years, that was in the year 1982 and for direct recruitment for the post of Adhikari/Sahayak Engineers was allowed by abolishing the post of Navik and Yantriks, and the remaining posts were ordered to be filled up by promotion/deputation. In the 6th Central Pay Commission, the Government of India has approved Rs. 800/- per month as Coast Guard Yantrik pay to all six ranks of Yantrik cadres by order dated 21.8.2009 and the appellants are not justified in comparing the pay scale of BSF and CPMF. There was no enhancement of qualification in the year 1982 as there was no recruitment to Yantrik cadres prior to the revision of rules in the year 1982. The fixation of pay of Rs. 800/- per month to the employees working in the technical branch of Coast Guard from the level of Yantrik to the level of Pradhan Sahayak Engineer would count for all purposes including dearness allowance and for pension. The Central Pay Commission or Expert Body, verified/evaluated by the staff of different organisations, and their recommendations are to be approved by the Government of India and the Fast Track Committee in this case after analysing the recommendations, fixed an additional sum of Rs. 800/- per month to all cadre staff working in the technical branch of Coast Guard Organisation.

4. The learned single Judge, considering the rival submissions dismissed the writ petition by holding that a distinction had been maintained by the successive Pay Commission recommendations in respect of Yantriks, working in Coast Guard technical branch to that of Central Police Organisations like BSF and CPMF, and

therefore this Court is not entitled to compare the said posts as equivalent to Yantriks. The learned Judge relying upon the Supreme Court Judgments held that fixing of pay scale to staff of different departments is the prerogative of the Government and the Courts have no power to compare the mode of recruitment/nature of work and for fixing the scale of pay. As against the said order, these writ appeals are preferred.

5. The contentions of the appellants are that when qualification was enhanced, the scale of pay has not been revised, and when identically placed persons in BSF and CPMF are given higher scales of pay, not giving the same scales of pay to Yantriks, is in violation of Article 39(d) of the Constitution of India, i.e., the principle of equal pay for equal work and Article 14 of the Constitution of India.

6. The said contention is opposed by the learned Senior Counsel appearing for the department by contending that based on the recommendation/report of the Ministry of Defence, the Fast Track Committee considered the issue and increased the pay scale in each category of Yantriks, and a sum of Rs. 800/- per month with dearness allowance and other benefits were ordered, and the appellants cannot compare their duties and responsibilities with that of BSF and CPMF personnel, and their nature of duties, working pattern, are entirely different. Therefore, the principle of equal pay for equal work cannot be applied, and prayed for dismissal of the writ appeals.

7. We have considered the rival submissions made by the learned Senior Counsel appearing for the appellants as well as learned counsel appearing for respondents 1 to 5.

8. The facts narrated above clearly establish that repeated directions were issued by the Circuit Bench at Port Blair of Calcutta High Court to consider the issue/claim of Yantriks seeking revision of pay scales. Ultimately, the Ministry of Defence suggested to consider the said issue by the Fast Track Committee, which is an expert body constituted by the Government to deal with the grievances of the Yantriks regarding the pay fixation and the said Committee deliberated the issue of revising the pay scales of Yantriks by taking into account the educational qualifications, recruitment rules, hierarchal structure of the organisation (Coast Guard), duties and responsibilities attached to the posts, etc., and the Expert Committee came to the conclusion that the posts of Yantriks are not comparable with BSF/CPMF in terms of the recruitment rules, hierarchal structure, etc., and they cannot claim pay parity with posts in BSF/CPMF, and if the proposal of Ministry of Defence to grant grade pay of Rs. 4,200/- to both Yantriks and Uttam Yantriks are agreed to, four grades in the hierarchy of technical cadre of ICG vice Yantrik, Uttam Yantriks, Pradhan Yantriks and Sahayak Engineers will be placed in the same revised pay structure of Grade pay of Rs. 4,200/- in PB-II. Therefore, the Committee resolved not to agree to the suggestion of the Ministry of Defence and further recommended to grant a sum of Rs. 800/- per month to the staff working in technical branch of Coast Guard organisation from the level of Yantriks to Pradhan Engineer and the said amount will count as pay for all

purposes, including dearness allowance and for pension.

9. The said expert body, Fast Track Committee, having analysed the nature of duties performed by Coast Guard staff, and other personnel working in BSF and CPMF, specifically found that their recruitment rules, educational qualifications, hierarchical structure, duties and responsibilities are different and there are functional difference in the organisations. Thus, the appellants are not entitled to contend that they are to be treated as persons employed in BSF and CPMF for the purpose of fixing their scales of pay.

10. It is a well settled proposition of law that for applying the principle of equal pay for equal work, there must be similarity in posts in qualification, selection procedure, nature of duties and responsibilities, and there cannot be any functional difference. The Expert Body, having found that there is functional and other differences, this Court is not entitled to take a different view.

11. The learned single Judge following the Judgments of the Supreme Court reported in (2005) 10 SCC 339 (State of West Bengal v. T.K. Ghosh) and S.C. Chandra and Others Vs. State of Jharkhand and Others, , rejected the claim of the writ petitioners/appellants and dismissed the writ petition.

12. The Honourable Supreme Court in the decision reported in Union of India (UOI) and Others Vs. Jagdish Pandey and Others, emphasised the factors to be considered by Courts while considering the claim of pay parity of staff. In paragraph 14, the Supreme Court held thus,

14...There has to be a substantial difference in method of recruitment, eligibility, duties and responsibilities before substantial disparity in scale can be justified....

The said proposition is reiterated in the decision of the Supreme Court reported in S. Sivaguru Vs. State of Tamil Nadu and Others etc. etc., , wherein it is held that the relevant factors to be considered for the grant of equal pay for equal work are nature of duties of posts, responsibilities and powers exercised by the Officer holding a post, the extent of territorial and other charge held or the responsibilities discharged, etc., and if there is complete identity of all facts, there may not be any discrimination.

13. In these cases, as noticed by the Fast Track Committee, there is no similarity of duties and responsibilities, etc., and the appellants having been appointed in Coast Guard Service, they are to be treated as separate category for the purpose of pay fixation. The learned single Judge was right in relying on the decision arrived at by the Expert Body viz., Fast Track Committee, constituted by the Government of India, Ministry of Finance, and dismissed the writ petition. We are unable to find any reason to interfere with the said order of the learned single Judge. In the result, the writ appeals are dismissed and the order of the learned single Judge dated 31.10.2011 is confirmed. No costs. Connected miscellaneous petition is also dismissed.