

(2010) 08 GUJ CK 0187
In the Gujarat High Court

Case No : Special Civil Application No's. 9662 and 10172 of 1996

Bhartiben N. Bhavsar and Others

APPELLANT

Vs

Kulsachiv and Others

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Gujarat Agricultural University Act, 1969 — Section 4

Citation : (2010) 08 GUJ CK 0187

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Sangeeta Pahwa and D.S. Vasavada, for the Appellant; J.R. Nanavati, for Respondent 1, Nikunj Rawal, AGP for Respondents 2-4 and S.A. Desai, for Respondents 5-8, for the Respondent

Judgement

A.L. Dave, J.—These two petitions involve identical questions, and therefore, they are heard together and are decided by this common judgment.

2. The petitioners in Special Civil Application No. 10172 of 1996 and some of the members of the petitioner-Union in Special Civil Application No. 9662 of 1996 were working with the respondent-Gujarat Krishi University [hereinafter referred to as, "the University"] as Laboratory Assistants and were being paid salary in the pay-scale of Rs. 380-600. The said post came to be re-designated from Laboratory Assistant to Laboratory Technician. On 15th March, 1978 the pay-scale of Laboratory Technicians working under the Government came to be revised by the Finance Department of Gujarat State from Rs. 380-600 to Rs. 425-700. Since the Laboratory Technicians in the Government departments and those working in the respondent-University were being paid salary in the same pay-scale, the respondent-University by its Resolution dated 15th February, 1979, revised pay-scale of Laboratory Technicians from Rs. 380-600 to Rs. 425-700. Requisite notifications were issued by the University on 7th May, 1985 and 25th September, 1985 effecting the change. By Notification dated 7th September, 1987, the University revised pay-scale of Laboratory Technicians

from Rs. 425-700 to Rs. 1400-2300. The said revision was approved by the Local Fund Office and the petitioners started drawing the benefit of upward revision in the pay from 30th September, 1989. The petitioners' case is that they were not paid arrears of the above revision in the pay-scale. Later on, the auditors of the Local Fund Office cancelled the earlier order approving grant of pay-scale of Rs. 424-700 to the post of Laboratory Technicians in the University. The University took up the issue with the Government for continuing the pay-scale of Rs. 1400-2300 to the Laboratory Technicians. However, on 6th November, 1996, the University issued a Notification cancelling its decisions to revise the pay-scale from Rs. 380-600 to Rs. 425-700 and from Rs. 425-700 to Rs. 1400-2300, respectively, on the ground that the University had no power to revise the pay-scale of its employees and the Government has disapproved the decision of the University of its revising their pay-scale.

3. On the same day i.e., 6th November, 1996, a circular was also issued to recover the amount already paid to the concerned employees. The said order was passed without affording any opportunity to the petitioner of being heard and thus resulted into the petitions.

4. At the time of admitting these petitions, this Court protected the petitioners against recovery and reduction in the pay-scale.

5. Heard the learned advocates Ms. Pahwa for the petitioners in Special Civil Application No. 10172 of 1996 and Mr. Vasavada in Special Civil Application No. 9662 of 1996; Mr. J.R Nanavati for respondent Nos. 1, 5, 6, 7 & 8 and learned AGP Mr. Rawal for the respondent No. 2-State and respondent No. 4-District Additional Superintendent, Local Audit Department, Nadiad.

6. Learned advocates for the petitioners submitted that the University is invested with powers to decide the scale of pay of its employees under Statute 41 which is in respect of "Other employees" which would mean employees of the University other than officers of the University within the purview of Section 4 of the Act and teachers of the University, including the Laboratory Assistants and attendants. It is also pointed out that Laboratory Technicians in other departments of the Government were being paid the same pay-scale i.e., Rs. 425-700 as can be seen from the Resolutions Annexure-N & N-2 in respect of the Laboratory Technicians employed in Animal Vaccine Institute, Gandhinagar and under the Health Department of the Panchayat, so also, the Health & Family Welfare Department.

7. It is also indicated that the stand of the Government in the affidavit-in-reply is that the rules governing grant-in-aid to the University by the State Government as per GR No. GAU-1372/11/E dated 14th September, 1976 provides that Agricultural University shall not incur expenditure on items of new services or where large expenditure of an approved activity is contemplated as defined in the Bombay Budget Manual "without the prior approval of the State Government" and therefore, Agricultural University cannot revise the pay-scale

of Laboratory Technicians without prior approval of the State Government as it involves financial burden on the State Government. Against this, attention of this Court is drawn towards Resolution of the Government of Gujarat dated 14th September, 1976 which contemplates under the head "New Items of Expenditure" thus - "The scrutiny of the State Government would be restricted to the University's proposal for staffing pattern and pay-scales proposed by the University with the intention of seeing or rather ensuring that scales of pay are not more liberal than that prescribed by the State Government and/or the Indian Council of Agricultural Research and/or the U.G.C Scales, fulfillment of certain budgetary requirement i.e., [a] accommodation in the plan ceiling; (b) preparation of plans and estimates and Council of Agricultural Research's prior approval, if it is a centrally Sponsored Scheme." It was, therefore, contended that scrutiny by the Government is only to the expenditure to ensure that the pay-scales proposed by the University do not exceed the pay-scales received by the other Government employees. The order is, therefore, incorrect and bad in law. It is submitted by the learned advocates for the petitioners that the benefit which was granted has been withdrawn without any tangible reason, and therefore, the order be quashed and set-aside and protection granted and enjoyed by the petitioners by the order of this Court may be confirmed finally.

8. Learned AGP Mr. Rawal has opposed these petitions. He submitted that the petitions are mainly on the principle of equal pay for equal work. The petitioners' case is that because the Government Laboratory Technicians are getting the pay-scale of Rs. 425-700 [revised Rs. 1400-2300], they also must get the same pay-scale as the work performed is of similar nature. Mr. Rawal has submitted that theoretically also equal pay for equal work has now been substantially diluted by the various pronouncements of the Apex Court. He has drawn attention of this Court to the following judgments:

- [1] Union of India (UOI) Vs. Tarit Ranjan Das,
- [2] S.C. Chandra and Others Vs. State of Jharkhand and Others,
- [3] State of Punjab and Another Vs. Surjit Singh and Others,
- [4] State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai,

9. It was contended further that it is for the University to explain how the petitioners and the Laboratory Technicians working in the Government and other departments of it are identically situated and then only the petitioners can insist for equal pay for equal work. Mr. Rawal then, while referring to the Government Resolution dated 14th September, 1976 submitted that the said G.R also provides that, "...Only such items of expenditure by the University shall be eligible for Grant-in-Aid by Government as are contemplated under the various provisions of the Gujarat Agricultural University Act, 1969. The Government will not consider the extension of financial assistance to the scheme which are initiated by the University on their own without prior permission of Government or undertaken by them in consultation with other bodies without any reference to

Government. The State Government shall not stand committed to bear any additional burden caused by an unapproved item of expenditure by the post facto on merits." Mr. Rawal, therefore, submitted that, therefore, the petition may be dismissed.

10. Learned advocate Mr. Nanavati has submitted that the Agricultural University is an autonomous body. It is empowered to employ its persons. It is a University which takes up their services and the University has already submitted that the petitioners are similarly situated as the Laboratory Technicians in other departments. According to him, the budget of the University has to be placed before the State Legislative Assembly. He has submitted that appropriate order may be passed in the petitions.

11. Having heard the rival submissions made by the learned advocates for the parties, at the outset, it may be noted that it would not be right to say that the petitioners are seeking the payscale on the basis of parity by applying the principle of equal pay for equal work. Their contention from the beginning is that the University has the authority to decide the recruitment and pay-scale of its employees. This power is vested in the University by virtue of provisions contained in Statute 41 of the Gujarat Agricultural University Statutes. It does not contemplate taking of any prior permission of the Government. By Resolution, these statutes cannot be given a go-bye. What is sought to be pressed into service is the resolution dated 14th September, 1976. What is pointed out from the said Government Resolution under the head of eligibility for assistance from the State Government by learned AGP Mr. Rawal cannot be read in isolation. The Government Resolution as a whole has to be read and the said GR under the head "New Items of Expenditure" clearly contemplates that the scrutiny of the State Government would be restricted to the University's proposal for staffing pattern and pay-scales proposed by the University with the intention of seeing that scales of pay are not more liberal than that prescribed by the State Government. Now, if Annexures N-1; N-2 & N-3 are seen, they reflect that the Laboratory Technicians in the Government are getting the same pay-scale as was granted by the respondent-University viz., Rs. 325-700 [revised Rs. 1400-2300].

11.1 It is true that the principle of equal pay for equal work has now been given different dimension by various judgments of the Apex Court but that is not the base of these petitions. The petitions are based on power of the authority and jurisdiction in the University to decide the pay-scale under Statute 41. The University is an autonomous body and therefore, it would be governed by the Statutes. Even if it is assumed that because it is financed fully by the Government, the Government may have a say in fixing the pay-scales, it has to be observed that the Resolution dated 14th September 1976 only contemplates that the scrutiny by the Government shall be restricted to ensure that the pay-scale given to the employees of the University does not exceed the pay-scale given to the other government servants or similarly situated persons. In the

instant case, it is established by the petitioners that they were granted and are drawing salary, under the protection of this Court, not in excess of the salary being drawn by similarly situated persons in government service. The decision cited by the learned AGP Mr. Rawal on the question of development of law on the principle of equal pay for equal work, therefore, would not be of any help to the respondent-State. The University can be presumed to have fixed the pay-scale after considering the nature of work and the work-load.

12. In light of the foregoing discussion, the Order dated 6th November, 1996 [Annexure-L] deserves to be quashed and set-side to the extent that it cancels the grant of pay-scale of Rs. 425-700 and the revised pay-sale of Rs. 1400-2300.

13. The petitioners are under protection of this Court's order and are getting the same pay-scale which was granted to them by order dated 30th September, 1989 [Annexure-G] and they shall continue to get the new pay-scales as granted by the said order. Since the new pay-scales given to the petitioners are upheld by this Court, the question of recovery does not survive. Rule is made absolute accordingly with no order as to costs.

13.1 It is indicated that some of the petitioners have retired and the order of their pension shall be computed as per the revised pay-scales which were enjoyed by them as per the order dated 13th September, 1989 and subsequent revisions. This exercise would be undertaken expeditiously but not later than six months from the date of receipt of this order in any manner.