

(2006) 03 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No's. 342 (AP) and 6150 of 2004

Bibhutosh Bhattacharjee

APPELLANT

Vs

North Eastern Regional Institute of Science and Technology
and Others

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 3 GLT 164

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : P.K. Tiwari, T. Pertin and J. Purkayastha, for the Appellant; A. Apang and M. Pertin, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Heard Mr. T. Pertin, learned Counsel appearing for the Petitioner, Mr. A. Apang, learned standing counsel for the NERIST and Mr. M. Pertin, learned Addl. CGSC, for the Respondent No. 3.

2. The Petitioner was initially appointed as a Laboratory Assistant in the Audio Video Laboratory in the Electronic and Communication Department of North Eastern Regional Institute of Science & Technology, (for short the "NERIST"), vide order No Est. 115/4/96 dated 8.1.98 issued by the Registrar, NERIST, on contract basis for a period from 8.1.98 to 15.5.98 on a consolidated salary of Rs. 3,000.00 per month from the date of his joining. In the said order of appointment it is also mentioned that the appointment was purely temporary basis and the appointee would have no right to claim further employment or regularization to the post in the institute. It was also stated in the said order that the appointee/Petitioner would be under the administrative control HOD (ECE) and will report to duty to HOD (Electronics). However, on the expiry of the said contract period the Petitioner was re-engaged on the same terms and conditions vide order No. Est. 115/4/96, dated 5.6.98, for a period from 16.5.98 to 5.6.98.

After expiry of the same, vide order No. Est. 115/4/96, dated 16.9.98, he was appointed as technical hand on contract basis on a consolidated wage of Rs. 4,000.00 from the date of joining the post till 5.12.98 and thereafter the same was extended vide order No. Est. 115/4/96, dated 23.9.98, from 16.9.98 to 5.12.98, Est. 115/4/96, dated 18.12.98, for a period from 1.1.99 to 20.5.99, Est. 115/4/96 (Pt), dated 28.4.99, for a period of six months with effect from 1.6.99, Est. 115/4/96, dated 9.12.99 (Pt.), for a period of six months with effect from 1.12.99, Est. 115/4/96 (Pt.), dated 9.6.2000, for a period of 1.6.2000 to 31.12.2000, Est. 115/4/96 (Pt.), dated 28.12.2000, for a period from 1.1.2001 to 30.6.2001, Est. 115/4/96 (Pt)/2159-62, dated 29.6.2001, for a period from 1.7.2001 to 30.6.2002, Est. 115/4/96 (Pt)/2440-46, dated 28.7.2003, for a period from 1.7.2003 to 30.6.2004 and Est. 115/4/96 (Pt)/2870-76, dated 22.6.2004, for a period from 1.7.2004 to 30.6.2005. In this fashion the Petitioner's term of service has been extended from time to time and is continuing till now. It is alleged by the Petitioner that one Shri S.N. Thakur was also engaged on similar terms like that of the Petitioner as Laboratory Assistant on consolidated salary. However, vide order No. Est. 88/4/94, dated 11.2.97, Shri Thakur was appointed as Laboratory Assistant (Chemistry) on regular scale of pay of Rs. 1400-2300/- per month plus other allowance as per rules. The said incumbent has been receiving regular annual increment of pay. Alleging the discriminatory treatment, it is contended that although the service conditions of the Petitioner and Shri Thakur are in the same footing. Shri Thakur has been receiving regular scale of pay whereas the Petitioner has been denied the same. It is averred that the Petitioner is being treated unequally although he and Shri Thakur belong to the same class. It is the case of the Petitioner that having been unsuccessful to receive any positive response at the hands of the Respondent authority, he approached this Court by filing this writ petition.

3. Denying the contentions of discriminatory treatment raised by the Petitioner, an affidavit-in-opposition has been filed on behalf of the Respondent Nos. 1 and 2. In the said affidavit-in-opposition, it is stated, inter alia, that the Petitioner was initially appointed at NERIST vide order dated 8.1.98 on contract basis as Laboratory Assistant for a period of 4? months as stop gap arrangement. Thereafter he was appointed on contract basis on fixed pay as Technical Hand which was extended from time to time and at present he is working as Technical Hand in the Electronic Department of NERIST. It is further stated that Shri Thakur, example of whom has been cited by the Petitioner, is a Post Graduate Degree holder in Chemistry and employed in the Chemistry Department as the lone Laboratory Assistant for assisting in laboratory experiments analytical support, whereas the Petitioner who is only a certificate holder in technical course and has been engaging as a Technical Hand. It is further stated that the Petitioner was never appointed as Technical Assistant except by backdoor method he managed to get the appointment order for 4? months on contract basis on 8.1.98. Later on, by extending the term by subsequent orders he was reengaged as Technical hand only. There are difference between the job performance of the

Petitioner and Shri Thakur and hence the question of application of principle of equal pay for equal work does not arise.

4. On the basis of the respective pleadings, the parties made their submissions. No separate affidavit-in-opposition has been filed by the Respondent No. 3, Mr. M. Pertin, learned CGSC, appearing on behalf of the Respondent No. 3, endorsed the submissions made by Mr. A. Apang, learned Standing counsel for NERIST.

5. In order to decide the dispute at hand it is to be seen as to whether both the Petitioner and Shri Thakur belong to the same class performing the same and similar nature of duty having equal qualification so as to attract the principle of equal pay for equal work.

6. Admittedly, there is a colossal difference in educational qualification between the Petitioner and Shri Thakur. The Petitioner is a certificate holder whereas Shri Thakur is a Post Graduate degree holder in Chemistry. As regards the nature of appointment, Shri Thakur was appointed as Laboratory Assistant vide order dated 11.2.97 on contractual terms in a temporary lien vacancy of one Shri Ramesh in the department of Chemistry. After the resignation of Shri Ramesh, Shri Thakur was appointed as Laboratory Assistant. The work assigned to Shri Thakur is quite different from the Petitioner. Shri Thakur as the lone Laboratory Assistant in the Chemistry department, required to assist in laboratory experiments analytical support, on the other hand, the Petitioner whose qualification is only Pre-University with a technical certificate was assigned various jobs like repair of faulty equipments/appliances etc. The job requirements of both the Petitioner and Shri Thakur are squarely distinct and separate. The Petitioner is now rendering service of a Technical Hand and not of a Laboratory Assistant like that of Shri Thakur. On such considerations, it cannot be said that the Petitioner and Shri Thakur belong to the same class and category requiring to perform the same and similar nature of job having identical qualification.

7. It is no doubt true that there can be no discriminatory treatment in fixing wage or granting scale of pay to the members of a same class and any such discriminatory treatment would be in violation of Articles 14 and 16 of the Constitution of India. However, it is permissible for the authorities to make reasonable classification based on the qualification, nature of work and duty required to be performed in granting higher pay. A classification between two groups of person not rendering the same service can be permitted under the law. The Apex Court in the State of Rajasthan Vs. Gopi Kishan Sen, has upheld the granting of different scale of pay to trained and untrained teachers doing identical duties on the basis of different educational qualifications. Again in the case of State of West Bengal and Others Vs. Debdas Kumar and Others, the Apex Court held, inter alia, that difference of pay for the same cadre post based on educational qualification is permissible.

8. Thus, job performance between the Petitioner having qualification of Pre-

University with a technical certificate as Technical Hand with that of Shri Thakur having Master Degree in Chemistry as Laboratory Assistant in the Chemistry department is totally different, distinct and separate.

9. In view of the aforesaid consideration, the Petitioner has not been able to make out a case of discriminatory treatment entitling him to receive regular scale of pay like that of Shri Thakur. In the result, I do not find any merit in this writ petition and the same stands dismissed, subject to, however, directing the parties to bear their respective costs.