

(2011) 07 DEL CK 0026

In the Delhi High Court

Case No : Writ Petition (C) 1533 of 1998

Braham Prakash Dutta and Another

APPELLANT

Vs

Railway Protection force and Others

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 6 ILR Delhi 576

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.K. Dubey, Nitin Kumar Sharma and Rahul Trivedi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—At the outset, it may be noted that the Petitioner No. 2 has died during the pendency of the writ petition, as told to us by the learned Counsel for the Petitioners, and his legal heirs have not sought substitution by moving any application. Thus, qua Petitioner No. 2, the writ petition stands dismissed as having abated.

2. We proceed to consider the matter pertaining to the claim of Petitioner No. 1.

3. Working as an Inspector Grade-I (Prosecution) under RPF, the first Petitioner claims parity with the Senior Public Prosecutor working with CBI and Delhi Police. The grievance is that Inspector Grade-I (Prosecution) with RPF are placed in the pay scale of Rs. 2000-3200, and Senior Public Prosecutor with CBI and Delhi Police are in the pay scale of Rs. 3000-4500. Seeking parity with the Senior Public Prosecutor and alleging discrimination, and stated that the principle of "equal work: equal pay", stands attracted; Petitioner No. 1 seeks a mandamus to be issued that he be placed in the pay scale of Rs. 3000-4500.

4. Suffice would it be to state that the law pertaining to placement of posts in pay scales is: It is with the domain of the executive to determine as to in what

scale of pay a post has to be placed and since it is a matter of expert opinion, courts intervention has to be slow and that the court cannot assign to itself the role of an expert. But, where it is apparently manifest that two posts are identical, it would be a denial of Article 14 to those who are placed in the lower pay scale. In said eventuality, it would be within the domain of a writ court to issue appropriate directions.

5. As observed by the Supreme Court, in the decision reported in State of Haryana and Another Vs. Tilak Raj and Others, ; it is only where there is complete and wholesale identity between a group of employees claiming identical pay scales, only then it can be said that the principle of "equal pay for equal work" would be attracted.

6. As held in the decision reported as State Bank of India and Another Vs. M.R. Ganesh Babu and Others, equivalence of posts has not to be judged merely with reference to mere volume of work. The touch stone on which equivalence has to be determined would be to consider the source of recruitment, educational and other qualifications required, as also the qualitative as also the quantitative nature of jobs.

7. Proceeding on the facts, it would be relevant to note that as per the writ Petitioner, Public Prosecutor Grade-II are appointed under RPF having LL.B. degree with 5 years work experience as an advocate and their counter parts under CBI and Delhi Police required, apart from a LL.B degree with 7 years work experience as an advocate. Appointment of Public Prosecutor Grade I in RPF is by promotion from Public Prosecutor Grade II. Appointment as Senior Public Prosecutor under CBI and Delhi Police is from amongst those advocates who, apart from having a bachelor degree in law have 7 years work experience.

8. Thus, it is apparent that with respect to the source of recruitment, there is difference in the appointment of Public Prosecutor Grade I in RPF and Senior Public Prosecutor employed by CBI and Delhi Police.

9. With respect to the nature of the job to be performed, as pleaded by the writ Petitioner, Public Prosecutor Grade I with RPF deal with prosecution only with respect to 26 offences as under:

S.N. Section Description of Offences Maximum imposition of imprisonment and fine (Rs.) *

1. 137 Fraudulently travelling or attempting to travel without proper pass or ticket. 6 months 1,000

2. 141 Needless interference with means of communication. 1 year 1,000

3. 142 Penalty for transfer of tickets 3 months 500

4. 143 Penalty for unauthorized carrying on business of procuring and supplying of Railway tickets. 3 years 10,000

5. 144 Prohibition on hawking and begging 1 year 2,000
6. 145 Drunkenness or nuisance 6 months 500
7. 146 Obstructing Railway Servant in his duties 6 months 1,000
8. 147 Trespass and refusal to desist from trespass. 6 months 1,000
9. 150 Maliciously wrecking or attempting to wreck a train. 2 years for first offence. 7 years for second offence. Death or imprisonment for life. *
10. 151 Damage to or destruction of certain Railway Property. 5 years or fine or both *
11. 152 Maliciously hurting or attempting to hurt persons travelling by Railway. 10 years. *
12. 153 Endangering safety of persons travelling by Railway by willful act or omission. 5 years *
13. 154 Endangering safety of persons travelling by Railway by rash or negligent act or omission. 1 year or fine or both. *
14. 155 Entering into a compartment reserved or resisting entry into a compartment not reserved. * 500
15. 156 Travelling on roof steps or engine of train. 3 months 500
16. 157 Altering or defacing pass or ticket. 3 months 500
17. 160 Opening or breaking a level crossing gate 3 years or 5 years *
18. 161 Negligently crossing unmanned level crossing. 1 year *
19. 162 Entering carriage or other places reserved for female. * 500
20. 164 Unlawfully bringing dangerous goods on a Railway 3 years 1,000
21. 166 Defacing public notices 1 month 500
22. 168 Commission of offence by the children endangering safety of person travelling on Railway * 500
23. 172 Railway servant being in a state of intoxication 1 year or fine or both *
24. 173 Abandoning train etc. without authority 2 years 1,000
25. 174 Obstructing running of train etc. 2 years 2,000
26. 175 Endangering the safety of persons 2 years 1,000

10. It be highlighted that 15 out of 26 offences are punishable up to 1 year or with fine. 7 out of 26 offences are punishable with imprisonment above 1 year and up to 3 years and only 4 are punishable with imprisonment beyond 3 years.

11. It is apparent that the prosecution conducted by the Senior Public Prosecutor

Grade I with RPF relate to petty offences.

12. We need not highlight the offences under the Indian Penal Code which are dealt by Senior Public Prosecutors with CBI and Delhi Police. To a person having elementary knowledge of the Indian Penal Code it would be apparent that serious offences punishable up to death or with life imprisonment, which are quite a few in numbers, require to be dealt with by the Senior Public Prosecutor employed by CBI or Delhi Police.

13. We find considerable qualitative difference in the duties performed and further note that the nature of litigation prosecuted by the Senior Public Prosecutor Grade I is much lower in qualitative character.

14. Law requiring complete and wholesale identity before the principle of equal pay for equal work can be applied; this being missing in the instant case, we are of the opinion that the claim of the Petitioner No. 1 cannot be sustained.

15. We note the argument of learned Counsel for the Petitioner that the Railway Protection Force has itself recommended to the 5th Pay Commission that the prosecution branch be brought at par with that of Delhi Police and Central Bureau Investigation and thus, cannot take a stand to the contrary. It is pleaded that the department would be bound of estoppel.

16. It does happen, to keep the employee happy, when money has not flown from his pocket the employer makes a recommendation to Finance Wing and supports the claim of the employee. It is the Finance Wing which considers whether the purse should be loosened or not. For the purpose of court jurisdiction, it would be the reasoning of the Finance Department which would matter. Similarly, it is the reasoning of an expert body which would be considered by the court and not of a by-standing body. That apart, while recommending parity, Railway Protection Force simply stated that its Prosecution Wing be brought at par with that of Delhi Police and CBI, but gave no justification for the same.

17. Decision relied upon, being the judgment reported as Union of India (UOI) and Others Vs. Dineshan K.K., ., is not applicable in the present case. Observations herein that the department having accepted the principle of equal pay for equal work could not retract said stand in the pleadings before the court, has to be understood with respect to the fact that the department therein i.e. Assam Rifles, concurrence to which was accorded by the Ministry of Home Affairs, had with respect to the work of a Radio Mechanic brought out that Radio Mechanic employed with Assam Rifles perform qualitatively and quantitatively identical work as is performed by the Radio Mechanics in the Central Paramilitary Forces. A complete and wholesale identity was brought out in the recommendations made by the Assam Rifles as also the Ministry of Home Affairs. It was under said circumstances that the Supreme Court held that having given good reason to support the claim before the Central Pay Commission, merely pleading to the contrary would not be a justified ground to be taken by the

department.

18. We dismiss the writ petition but refrain from imposing any costs.