
(2010) 09 GAU CK 0094
In the Gauhati High Court
Case No : WP (C) No. 594 of 2004

Chingsubam Ningol

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 04-09-2010

Acts Referred:

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

Citation : (2011) 4 GLR 611

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Advocate : R.K. Nokulsana Mr. H. Devendra, for the Appellant;

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—By this writ petition, the Petitioner, Assistant Research Officer, Man Power Planning, Government of Manipur, is praying for a direction to revise the pay scale of Assistant Research Officer, (now Research Officer) of the Directorate of Manpower Planning, which is a part of the Planning Department, Government of Manipur at par with her counterpart, i.e., Research Officers working in other part of the Planning Department, Government of Manipur, i.e., at the scale of Rs. 6500-10500 per month w.e.f. 1.1.1996 as given to her counterpart Research Officers, Planning Department, Government of Manipur.);

2. The factual matrix, sufficient for deciding the matter in issue in the present writ petition is, briefly noted.

The Directorate of Manpower Planning is a part of the Planning Department, Government of Manipur and there is/are same Recruitment Rules and other conditions of service for different categories of officers or/staff working in the Directorate of Manpower and other parts of the Planning Department, Government of Manipur. This fact is not denied by the State Respondents by filing affidavit in opposition.

3. The petitioner was appointed as Assistant Research Officer in the scale of Rs.

800-40-1360-EB-45-1675 plus usual allowances on ad hoc basis vide order of the Governor of Manipur being No. 2/4/81-MP and E, Imphal the 19th November, 1984 (Annexure A/1 to the writ petition); and pursuant to the said appointment order dated 19.11.1984 Petitioner joined his service as Assistant Research Officer in the Directorate of Manpower Planning. Subsequently, the ad hoc service of the Petitioner as Assistant Research Officer in the Directorate of Manpower, which is under the Planning Department was regularised vide order of the Government of Manipur being No. 2/4/84-MP and E, Imphal 31st December, 1986. The post of Assistant Research Officer in the Directorate of Manpower, Government of Manipur had been redesignated as Research Officer and so also the post of Research Officer in the other parts of the Planning Department had been redesignated as Research Officer vide order of the Government of Manipur being No-2/4/84-MP and E (Pt.II) Imphal, 19th July, 1990 at the pay scale of Rs. 2500-4225 per month. The Assistant Research Officers (designated as Research Officer) working in the Directorate of Manpower Planning, which is a part of the Planning Department, Government of Manipur and the Research Officers of the other parts of the Planning Department are doing the same work and their responsibilities are also equal. The pay scale of Research Officer had been revised from time-to-time under different Manipur Services (Revised Pay) Rules. Under the Manipur Services (Revised Pay) Rules, 1989 (CROP 1989") the pay scale of Research Officers working in the Directorate of Manpower Planning and the Research Officers of other parts of the Planning Department was revised from Rs. 1640-2900 to 2400-4225 per month treating the employees of the different Directorates under the Planning Department, Government of Manipur, to be equal in all respects.

4. In the course of time, another revision of pay had been made under the Manipur Services (Revised Pay) (First Amendment) Rules, 1999 (CROP 1999"). Under the ROP 1999, pay scale of the Assistant Research Officer (designated as Research Officer) (i.e., post of the Petitioner) in the Directorate of Manpower Planning was revised from Rs. 1640-2900 to Rs. 5500-9000 per month, whereas that of the Assistant Peseai Officer (designated as Research Officer) working in other parts of the Planning Department, Government of Manipur was revised from Rs. 1640-2900 to Rs. 6500-10500 per month. The petitioner is very much aggrieved by the said arbitrary revision of pay, i.e., ROP 1999 wherein different pay scales had been prescribed for the Research Officers working in the same Department, i.e., Planning Department inasmuch as the pay scale of the Petitioner had been revised from Rs. 1640-2900 to Rs. 5500-9000 per month whereas that of the Research Officers working in other parts of the Planning Department had been revised to Rs. 6500-10500 per month; hence, the present writ petition

5. As early as April 1985 under the letter of the Under Secretary, Planning, Government of Manipur being No. 1/2/83-MP and E. Imphal 19.4.1985 had informed the Department of Personnel, Government of Manipur, i.e., the Deputy Secretary (DP), Government of Manipur, that the Manpower Planning, is now

working as a, separate entity, i.e., as a Directorate. But the Directorate of Manpower Planning: s under the Planning Department, i.e., the Secretariat Organisation and also there is no separate Recruitment Rules for the post under the Directorate of Manpower Planning and the post under the Secretariat Organisation, i.e., Planning Department and also the nature of work and other job requirement attached to those posts are the same with those of; "similar posts in the Secretariat Organisation of the Planning Department. For easy reference the said letter of the Under Secretary, Planning, Government of Manipur dated 19.4.1985 (Annexure A/9 to;he writ petition) is quoted hereunder:

No.I/2/83-MP&E

GOVERNMENT of MANIPUR

SECRETARIAT: DIRECTORATE of MANIPUR PLANNING AND SPECIAL EMPLOYMENT SCHEMES

To

Imphal, dated the 19th April, 1985. The Deputy Secretary (Director, Rural Development and Paichayati Raj) Government of Manipur. Subject: R/Rs of the Posts of Research Assistant and Assistant Research Officer in Manipur Planning Department.

Sir,

I am directed to say that Manpower Planning is now working as a separate entity from the Secretariat Organisation. Non-Gazetted Posts created in this directorate are filled as per existing E/Rs of the similar posts in the Scale of Pay of Rs. 720-1470 and one post of Assistant Research Officer in the Scale of Pay of Rs. 800-1675 have been created and these posts have been filled up on ad hoc basis as per R/Rs of similar posts in Planning Department. Since these posts are Class-II Gazetted requisitions are to be sent to MPSC for filling up on regular basis. So far as R/Rs for these posts have been framed. The nature of work and other job requirements attached to the post are the same with those of the similar posts of Research Assistant and Assistant Research Officer in the Planning Department, Manipur. The scale of pay are also the same. In order to fill up these posts on regular basis the existing R/Rs of the posts of Research Assistant and Assistant Research Officer (copy enclosed) in the Planning Deptt. may, it is considered, be adopted so that the ad hoc cases may finally be disposed of during May 1985 as per instructions of Deptt. of Personnel.

I am, therefore, to request you kindly to agree to the proposal and decision of D.P. with due notification of adoption be communicated at an early date.

Yours faithfully, Sd/- (N.C. Singh) Under Secretary (Pig) Government of Manipur.

6. In *Roshan Deen Vs. Preeti Lal*, the Apex Court observed that purpose of power conferred in High Court articles 226 and 227 of the Constitution of India is to advance justice, not to thwart it. Even when justice is the by-product of an

erroneous interpretation of law, High Court ought not to wipe out such injustice in the name of correcting the error of law. Apex Court in *Air India Statutory Corpn.v. United Labour Union and Ors.,* (1997) 2 SCC 165 held that the founding fathers placed no limitation of fetters on the power of the High Court under article 226 of the Constitution except self-imposed limitation. The arm of the court is long enough to reach injustice whenever it is found. In *State of Maharashtra Vs. Digambar*, the Apex Court held that the power of the High Court to be exercised under article 226 of the Constitution, if it is discretionary, its exercise must be judicious and reasonable admits of no controversy.

7. The Apex Court in *State of Maharashtra Vs. Association of Court Stenos., P.A., P.S. and Another*, held that the High Court in its discretionary jurisdiction under article 226 of the Constitution cannot itself examine the nature of the work of its employees and issue as mandamus directing a particular pay scale to be given to such employee. The court, further, clarifies that this may not be construed as total ouster of jurisdiction of the High Court under article 226 to examine the nature of duties of an employee and apply the principle of equal pay for equal work" in appropriate case.

8. The Apex Court in *K.T. Veerappa and Others Vs. State of Karnataka and Others*, held that court should interfere with administrative decision pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factor. Para 13 of SCC (KT Veerappa) is quoted below:

13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. and Union of India v. S.B. Vohra*. There is no dispute nor can there be any to the principles as settled in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

9. It is fairly well settled that the same nomenclature of different posts is not enough to come to the conclusion that the incumbents of those posts are doing the same work and had the same responsibilities. Quality and responsibility of work may be different; it is not just a comparison of physical activities and application of the principles of equal pay for equal work requires consideration of various dimensions of a given job. The accuracy required and dexterity that may be equally made out from job-to-job.

It cannot be judged by the same volume of work. There must be qualitative difference as regards reliability and responsibility. Normally, a party claiming equal pay for equal work should be required to raise a dispute in this regard before any direction could be issued by a court. The court must see that there are necessary averments and there is a proof. If the High Court is on the basis of material basis before it convinced that there are equal work of equal pay and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. Mr. Nokulsana, learned senior counsel for the Petitioner, regarding this point had relied on the decision of the Apex Court in *State of Haryana and Others Vs. Charanjit Singh and Others*, etc. etc., wherein the Apex Court held in para 19 of the SCC as follows:

19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of *Jasmer Singh*, *Tilak Raj*, *Orissa University of Agriculture and Technology* and *Tarun K. Roy* lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principles of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job-to-job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus, normally the applicability of this principle must be left to be evaluated and determined by an

expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.

10. The Apex Court in *State of West Bengal and Anr. v. West Bengal Minimum Wages Inspectors Association and Ors.*, (2010) 5 SCC 225 held that the principle of equal pay for equal work is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees. Para 19 of the SCC in *West Bengal Minimum Wages Inspectors Association's case* (supra) read as follows:

19. The principle "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees.

11. In the present case in hand, the case of the Petitioner is not denied by the State Respondents by filing affidavit in opposition that the Research Officer of the Directorate of Manpower, which is a part of the Planning Department, Government of Manipur and the Research Officer working in other parts of the Planning Department have the same -nature of job and same or similar nature of duties and also responsibilities to be discharged, experience, method of recruitment are also the same. Therefore, in the given case under the principle of equal pay for equal work, even though, not the fundamental right but it is a constitutional goal, the pay scale of the Research Officers of the Directorate of Manpower and Research Officers of the other parts of the Planning Department, Government of Manipur should be same and earlier also there was same scale of pay.

12. It is the consistent decision of the Apex Court that the court should approach

such method with restraint and interference only if they are satisfied that decision of the Government is patently irrational, unjust and prejudicial to any particular sections of employees. In the instant case, from the materials available on record and also on the admitted facts mentioned above, this Court is of firm view that decision of the Government for revision of pay scale of the Petitioner, i.e., Research Officer lower than that of the Research Officer working in other parts of the same Department, is patently irrational, unjust and prejudicial.

13. It is the decision of the Apex Court in *Randhir Singh Vs. Union of India (UOI) and Others*, that there should be same pay scale for the Drivers working under the same administration, i.e., Delhi Administration. In *Randhir Singh's* case (supra) the Drivers of the Department/Office other than those in the Police Force under the Delhi Administration are allowed to enjoy the higher scale of pay even if all the Drivers under the Delhi Administration are doing similar work and duties. The Driver in the Delhi Police Force, basing on the principle of equal pay for equal work claimed similar scale of pay as had been paid to the Drivers under different Departments/organisation under the Delhi Administration and their claim had been entertained by the Apex Court. Para 8 of the SCC in *Randhir Singh's* case (supra) read as follows:

8. It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions like nature, leave the millions of people of this country untouched. Questions concerning wages, and the like mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again

the word "Socialist" must mean something. Even if it does not mean "to each according to his need", it must at least mean "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code, Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide International Labour Law by Istvan Szazy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognizes the principle of "equal remuneration for work; of equal value, as constituting one of the means of achieving the improvement of conditions" involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled. Construing articles 14 and 16 in the light of the Preamble and article 39(d), we are of the view that the principle "equal pay for equal work" is deducible from those articles and may be properly applied to cases of unequal scales of pay based on - no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

14. The ratio laid down in Randhir Singh's case {supra} axe followed in D.S. Nakara and Others Vs. Union of India (UOI), , Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, , State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, and Alvaro Noronha Perriera v. Union of India, (1993) 4 SCC 408 and held that the principle of "equal pay for equal work" has gained judicial recognition. The principle is not an abstract doctrine but one of substance. Parameter for invoking the doctrine would include, inter alia, nature of work and common employer. Paras 10,11 and 12 in the case of Alvaro Noronha Perriera's case (supra,) read as follows:

10. The principle of "equal pay for equal work" has gained judicial recognition. The principle incorporated in article 14 when understood from the angle provided in article 39(d) of the Constitution is held to be the recognition of the aforesaid doctrine. It has been held in Randhir Singh v. Union of India that the principle "equal pay for equal work" is not an abstract doctrine but one of substance. Their lordships pointed out:

To the vast majority of the people in India the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.

11. The parameters for invoking the said principles would include, inter alia, nature of the work and common employer. There can be no two views that the

nature of work of District and Sessions Judges is the same though in some areas pendency of cases would be higher than others. Differences in the backlog are not uncommon even in two different stations of the same Territory, may, in two different courts of the same station. Such lopsidedness is hardly the ground to conclude that the nature of work done by one judicial officer at one place is different from other. The duty hours would be substantially the same, the powers to be discharged are in a way different, whether they are District Judges in Goa or in Delhi. It would be a futile exercise to make an endeavour for drawing a distinction between the work pattern at the two different places, for such differences are discernible everywhere. But that would not make the nature of work different. It was not necessary to cast the burden of proof on the Appellants to establish.

The pendency of litigation or the norms fixed for disposal of cases by the Delhi Court to enable comparison between the nature of duties and the responsibilities carried by the officers of the Delhi Territory and the Goa Territory.

12. One admitted fact which looms large is that till hike in the pay scale was brought about in 1982 for Delhi Judges the parity maintained as between the Union Territories of Goa and Delhi applied to the same cadre of judicial officers. Nobody doubted till then that the nature and dimension of work discharged by the officers of the same cadre of judicial officers at two different Territories were different from any perceptible standard. It is for the contesting Respondents to show that there was change in the nature of work which necessitated the Government to keep two different levels of pay to the same officers working at two different places.

15. The Apex Court in a case from this Court in Union of India (UOI) and Others Vs. Dineshan K.K., held that when there is no dispute regarding qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of the posts is ex facie irrational, arbitrary or unjust, it is open to the court to interfere. Para 10 of the AIR in Dineshan K.K.'s case (supra) read as follows:

10. Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on, other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission, etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the court as it may upset the balance and cause avoidable ripples in other cadres as well [Vide Secretary, Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, and State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, Nevertheless, it will not

be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the Appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex facie irrational, arbitrary or unjust it is open to the court to intervene.

16. For the foregoing reasons, the impugned ROP 1999, only the offending portions of which impugned in the present writ petition, are hereby quashed. The Respondents are directed to revise the scale of pay of the Petitioner as Assistant Research Officer, now Research Officer, to Rs. 6500-10500 per month and other allowances w.e.f. 1st day of January 1996 as given to other the Research Officers, and also the arrear pay and allowances shall also be paid within a period of three months from the date of receipt of certified copy of this order.

Writ petition is allowed, accordingly.