
(2012) 07 CAL CK 0177
In the Calcutta High Court
Case No : Writ Petition No. 15424 (W) of 2002

Debal Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309, 39(d)

Citation : (2013) 1 CHN 281

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Kishore Dutta, Swapan Kumar Kar and Nabankur Paul, for the Appellant; S.S. Arefin, for the Respondent

Final Decision : Allowed

Judgement

Ashoke Kumar Dasadhikari, J.—The subject-matter of dispute, raised by the writ petitioners being the drivers of Kanchrapara Municipality, is refusal to grant pay scale-VI in their favour although same scale was allowed to the State Government drivers. Mr. Dutta, learned Counsel appearing for the writ petitioner submits that the writ petitioners are discharging similar duties like the State Government drivers. He further submits that the State Government itself have allowed the Scale-VI pay scale to the drivers of the Zilla Parishad and K.M.D.A. but the petitioners who are serving as drivers in Kanchrapara Municipality are deprived of the same on the alleged plea that the State Government employees are covered under Article 309 of the Constitution of India whereas the writ petitioners are governed under the statutory rules governing the Municipality.

2. Mr. Dutta submits that the plea is not at all correct. He submits that it is admitted position that there were judgements of this Hon"ble Court delivered on earlier occasion in favour of granting pay Scale-VI to the drivers of some other Municipalities which are also accepted and approved by the concerned respondents and Scale -VI of pay scale was given which would appear from the order passed by the Principal Secretary, Finance Department, Government of

West Bengal.

3. Mr. Dutta submits that the reason disclosed for refusal to grant Scale-VI of pay scale in favour of the writ petitioners are contrary to the rules of equity which has become a fundamental right now in view of the Hon''ble Supreme Court judgement. He cited the judgement reported in Union of India (UOI) and Others Vs. Dineshan K.K., Mr. Dutta submits that it is the right of the writ petitioners to get pay scale-VI which was given to the State Government's drivers.

4. Learned Counsel appearing for the State submits that although there was direction for filing affidavit, but they have failed to file the same. However, he submits that the order passed by the concerned authorities is lawful and valid. He submitted that the writ petitioners are guided by different rules but not guided under Article 309 of the Constitution of India. Therefore, they cannot claim the same benefit as was given to the State Government drivers.

5. Heard the learned Counsel appearing for the parties and considered the materials available on record. It appears that so far the discharging of duties of the writ petitioners is concerned, there is no finding of the concerned authorities that the State Government drivers are discharging higher responsibility or high degree of reliability or service rendered by the State Government are different from that of the writ petitioners who are employed by the Municipal office.

6. It appears that there are judgements in similar case where this Hon''ble Court has allowed the relief to the other drivers working in the other Municipalities which was recorded by the concerned respondents in its order, It also appears that the only ground for refusal taken is that the writ petitioner being the drivers working under the Kanchrapara Municipality are guided by the different rule and as such they are not at all entitled to get pay Scale-VI which is granted to the drivers of the State Government.

7. It appears from the annexure disclosed in the writ petition that the Government authorities have granted similar scale of pay to the drivers of the Zilla Parishad and also to the drivers employed in K.M.D.A. who are guided by other statutory rules. It appears that the ground for refusal is not at all legally sustainable ground.

8. In this regard it would be very relevant to note the ratio of the Hon''ble Apex Court judgement in case of Dineshan K.K. (supra) wherein it was held that the equal pay for equal work has reached the status of a fundamental right. Though it is the task of the expert body like the Pay Commission to determine pay structure, yet judicial review is not altogether excluded. The relevant paragraphs 12, 14 and 17 are quoted hereunder:-

12. The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the directive principles of the State policy in Article 39(d) of the Constitution. In Randhir Singh vs. Union of

India a Bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through Constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in *D.S. Nakara vs. Union of India*. Thus having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed status of a fundamental right.

14. In *SBI vs. M.R. Ganesh Babu* a three-Judge Bench of this Court, dealing with the same principle, opined that principle of equal pay is dependent upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. The functions may be the same but the responsibilities do make a difference. It was held that the judgment of administrative authorities, concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

17. Tested on the touchstone of the aforementioned broad guideline and not cast-iron imperatives, we are of the opinion that in the present case, on the pleadings and the material placed on record by the parties in support of their respective stands, the High Court was justified in issuing the impugned directions.

9. Therefore, the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a Court of law. Equal pay must be for equal work of equal value but Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the Court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled.

10. In view of the Hon'ble Apex Court decision it is to be seen, although it is the function of expert body, that the claims of the writ petitioners are justifiable on the basis of available records with necessary proof that there is equal work of equality. In similar cases this Court on earlier occasion came to a conclusion that there is no difference between the employees of the Municipalities who are similarly equated with the employees of the State Government. In view of the above decision it is clear that there is no dissimilarity and/or difference of

functions between the State Government drivers and the drivers of the Municipalities.

11. In my view, so far the determination of equal work of equal equity is concerned, there is no dispute raised by the Principal Secretary, Finance Department, Government of West Bengal. Therefore, in my view, the writ petitioners should be allowed Scale-VI of pay scale.

12. The respondent authorities are directed to give this benefit in favour of the writ petitioners within a period of eight weeks from the date of communication of this order.

13. The effect would be given from the date of this order. However, it is made clear that for the period spent in this order the writ petitioners would be given notional benefit without any financial benefit. They will not be granted any financial benefit for the earlier period.

14. The impugned order passed by the Principal Secretary, Finance Department, Government of West Bengal is set aside. The writ petition is, thus, allowed. There would be no order as to costs.