
(1989) 04 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 1118 of 1986

Dhian Singh and Another	Vs	APPELLANT
National Hydro Electric Corpn. Ltd. and Others		RESPONDENT

Date of Decision : 08-04-1989

Acts Referred:

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

Citation : (1991) 2 LLJ 382

Hon'ble Judges : R.P. Sethi, J

Bench : Single Bench

Advocate : P.R. Sharma, for the Appellant; V.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sethi, J.—General Manager SHEP, Jyotipuram conveyed the creation of the post in work charge cadre in various Circles and

Divisions of SHEP with effect from January 1, 1985 to February 28, 1986, consequent upon which petitioners were treated as senior foremen in

the grade of Rs. 650-1200 vide orders passed on March 3, 1985, retrospectively. The petitioners submit that they were granted the special grade

on account of their length of service inasmuch as they were appointed as foremen in the SHEP in the year 1979. The petitioners received the

benefit of the enhanced pay and grade for 11 months and from December, 1985 they were given reduced pay after deducting an amount of Rs.

319/- from their salary. It is submitted that the petitioners were informed by the respondents vide letter dated February 5, 1986, that their pay

scale of Rs. 650-1200 was inadvertantly mentioned in their promotion order, and that they were entitled to the pay scale of Rs. 700-900. The

action of the respondents has been challenged on various grounds and is held to

be violative of the principles of "equal pay for equal work". It is further submitted that the respondents 2 and 3 did not have the jurisdiction, power or competence to fix the pay scale of the petitioners lower than what is provided in the NHPS Manual. It has been prayed that order of the respondent Annexure P-4 dated December 9, 1985 be quashed and a direction issued to them to disburse the pay of the petitioners as fixed in the pay scale of Rs. 650-1200 with effect from January 1, 1986 along with periodical increments in their pay with effect from January 1, 1986.

2. In the counter-affidavit filed on behalf of the respondents it is submitted that as the writ petition involved disputed questions of law, the same deserved dismissal. No right of the petitioners is claimed to have been violated. It is submitted that the petitioners along with many others recruited in the Project or work charge cadre and not as regular appointees. The work charge establishment means an establishment whose pay, allowances etc., are directly chargeable to works, and their employment is generated out of and by debiting to a specific work. The service conditions of the petitioners and other like work charge employees were governed under the recruitment rules of Government of India and they were appointed in the pay scales based on the recommendations of the 3rd Pay Commission. After giving the circumstances under which the petitioners were appointed, it is submitted that on completion of their eligibility period they were promoted as senior foremen with effect from January 1, 1985. It is alleged that due to certain inadvertent mistake, their pay scale was mentioned as Rs. 650-1200/-whereas in fact it should have been Rs. 700-900.

As the pay scale given to the petitioner was contrary to the rules and regulations, the same was withdrawn vide the order impugned on administrative grounds, and they were placed in the appropriate approved pay scale of Rs. 700-900. It is submitted that as the petitioners were the work charge employees, they were entitled only to be placed in the pay scales prescribed by the respondents. Discrimination as alleged by the petitioners has been denied.

3. Vide CMP No. 3914/1988 the respondents sought permission to file supplementary counter-affidavit. The supplementary counter-affidavit is taken on record.

4. In the supplementary counter-affidavit it has been stated that there was no

post of senior foreman on regular basis as alleged by the petitioners in para 16(i) of the petition. All the persons working as senior foremen in SHEP were in the pay scale of Rs. 700-900, and there was no question of any discrimination between the senior foreman on work charge basis and senior foreman on regular basis. It is further submitted that the NHPC recruitment rules were not applicable to the petitioners as they were appointed on work charge basis and there being no regular post and pay scale of senior foreman in regular cadre the alleged discrimination is misleading and misconceived. It is submitted in para 5 of the supplementary affidavit that the scale of Rs. 650-1200 was applicable to the Assistant Engineers in NHPC Projects who were qualified Engineers with a minimum of three years diploma course and requisite experience in regular cadre.

5. I have heard the learned counsel for the parties and perused the record.

6. It was held in *Randhir Singh Vs. Union of India (UOI) and Others*,

We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay

Commission and not for Courts but we must hasten to say that where all things are equal, that is, where all relevant considerations are the same,

persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of

course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such

officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

7. This doctrine of equal pay for equal work was held to be applicable even to the persons employed on daily wage basis in *Surinder Singh and*

Another Vs. Engineer-in-chief, C.P.W.D. and Others,

The persons employed on a daily wage basis in the Central Public Works Department are entitled not only to daily wages but are entitled to the

same wages as other permanent employees in the department employed to do the identical work. In this, connection, it cannot be said that the

doctrine of "equal pay for equal work" is a mere abstract doctrine and that it is not capable of being enforced in a Court of Law. The Central

Government, the State Government and likewise, all public sector undertakings are expected to function like model and enlightened employers and

arguments that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a Court of law should ill-come from

the mouths of the State and State Undertakings.

8. This principle was held applicable to persons who were appointed on temporary basis by the Supreme Court in Bhagwan Dass and Others Vs.

State of Haryana and Others, wherein it was held:

When the duties and functions discharged and work done by the supervisors appointed on regular basis and those appointed on temporary basis

in the education department are similar, the fact that the scheme under which temporary appointments are made is a temporary scheme and the

posts are sanctioned on an year-to-year basis having regard to the temporary nature of the scheme cannot be a factor which could be invoked for

violating ""equal pay for equal work"" doctrine. Whether appointments are for temporary periods and the schemes are temporary in nature is

irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of ""equal pay for

equal work"" is attracted.

9. It was held by the Supreme Court that when nature of duties and functions performed by two sets of employees were similar, they were entitled

to the same pay scales as functions and duties of such classes of persons were directed to advance the cause to which they were employed. In

Jaipal and Others Vs. State of Haryana and Others, it was held:

Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men

and women. Though Article 39 is included in the Chapter of Directive Principles of State Policy, but it is fundamental in nature. The purpose of the

Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay.

The doctrine of equal work-equal pay would apply on the premise of similar work, but it does not mean that there should be complete identity in

all respects. If the two classes of persons do same work under the same employer, with similar responsibility, under similar working conditions the

doctrine of ""equal work equal pay"" would apply and it would not be open to the State to discriminate one class with the other in paying salary. The

State is under a Constitutional obligation to ensure that equal pay is paid for

equal work. Also, it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of one employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee. So also, the difference in mode of selection will not affect the application of the doctrine of "equal pay for equal work" if both the classes of persons perform similar functions and duties under the same employer.

10. This High Court also dealt with the matter in *Rattan Lal Ganjoo v. State*, 1986 Kash LJ 394 and held that the principle of equal pay for equal work was not an abstract doctrine, but was one of substance which was a constitutional goal receiving its teeth from Articles 14 and 16 of the Constitution of India.

11. In view of the legal position as enumerated hereinabove Mr. V.K. Gupta appearing for the respondents on the basis of the supplementary affidavit tried to argue that as there did not exist the special grade of Rs. 650-1200 for the foreman, the writ petition being misconceived was liable to be dismissed. In the supplementary affidavit Sh. J.N. Kochhar, Chief (Personnel and Administration) SHEP, Jyotipuram, went to the extent of saying that "there being no regular post and pay scale of senior foreman in the regular cadre, the alleged discrimination is misleading and misconceived. That the scale of Rs. 650-1200 is applicable to only Asst. Engineers in NHPC persons who are qualified engineers with a minimum three years diploma course and requisite experience in regular cadre, there is no question of the scale being applicable to any class lower than that of the Asst. Engineer." The supplementary affidavit besides being contradictory to the counter affidavit filled by the same person, namely J.N.

Kochhar is apparently false and incorrect. I have perused the NHPC Personnel Manual wherein vide S. No. 7 Grade of Rs. 550-900 is permissible to Grade II foreman and S. No. 8 grade of Rs. 650-1200 is provided for Grade I foreman. It is regrettable that a responsible officer of the respondent has dared to file a false affidavit in the Court with the sole object of misleading without any sense of responsibility. The said Sh. J.N. Kochhar had completely ignored his previous affidavit filed in the writ petition in which the main plank of defence was that as the petitioners were

on work charge basis, they were not entitled to senior grade of Rs. 650-1200. It is, therefore, proved that there exists a grade of Rs. 650-1200 of the foreman in the regular establishment of NHPC to which the petitioners were promoted vide Annexure A attached with the petition and the benefit of the grade has been deprived to them allegedly on the ground that their pay scale was inadvertently mentioned in their promotion orders. Vide Annexure B the action was taken on the ground that as the said pay scale was not approved for any category of work charge staff, the petitioners were held liable to be placed in the pay scale of Rs. 700-900. It is true that gradation in the service is permissible on the basis of length of service, qualification or exceptional circumstances but the persons similarly situated cannot be discriminated against in the matter of grant of the grades only on the ground that one set of the employees was on the regular establishment whereas the other was on the work charge basis, particularly when the nature of the duties and functions performed by them were identical. The respondents however have not claimed nor brought anything on the record to show that the petitioners were not entitled to be placed in the higher grade on the aforesaid principle. The order impugned in the writ petition being clearly in violation of the fundamental rights as enshrined in Articles 14, 16 and 39(d) of the Constitution of India is liable to be quashed.

12. Accordingly the order impugned No. P&H/ P-III/ 3 (38)/ 85/ 41983 - 42023 dated December 9, 1985 annexure P-IV is quashed and a command is issued to the respondents directing them to disburse the pay to the petitioners as fixed in the pay scale of Rs. 650-1200 with effect from January 1, 1985 on the basis of annexures P-1 and P-2. They are further directed to refund the amount deducted from the pay scales of the petitioners, to the petitioners. The petitioners are further held entitled to periodical increments in their pay with effect from January 1, 1986. The petitioners would also be entitled to the consequential benefits in the form of periodical increments to their pay and also the arrears from January 1, 1986. The petitioners are also entitled to the payment of costs which are assessed at Rs. 500/-

13. I am prima facie satisfied that Sh. J.N. Kochhar Chief (Personnel and Administration) SHEP, Jyotipuram has filed a false supplementary

affidavit in the proceedings with the intention of fabricating false evidence within the meaning of Section 192 of the IPC punishable u/s 193, IPC. A

notice shall be issued to Shri J.N. Kochhar to show cause as to why a criminal prosecution u/s 193, IPC be not launched against him in a

competent Court of jurisdiction. The notice be made returnable within four weeks.