
(1992) 08 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 8505/1989

Dhiraj Kumar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-08-1992

Acts Referred:

Citation : (1992) 08 PAT CK 0031

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ application the petitioners who are 11 in number have inter alia prayed for issuance of a writ of or in the nature of mandamus directing the respondents to pay to them the scale of pay of Rs. 850-1360 admissible to the Supervisor category of the Bihar State Adult Education Scheme under the Directorate of Adult and Non-Formal Education, Bihar, Patna.

2. The petitioners were all appointed on different dates as Supervisors under the respondent in the pay scale of Rs. 785-1210.

3. According to the petitioners the State Government as per the recommendation of the 4th Pay Revision Commission put the scale of pay of Rs. 785-1210 of Supervisors with effect from April 1, 1981.

4. According to the petitioners another scheme was framed by the State known as "Anganbari" Scheme and the Supervisors appointed under the said scheme have been getting the same scale of pay till 1987.

5. The petitioners have contended that the Supervisors of both the categories discharge similar functions but despite the same whereas the Supervisors of Anganbari Scheme are being granted scale of pay of Rs. 850-1360 with effect from March 13, 1987, the benefit thereof has been denied to the petitioners.

6. The petitioners have filed various documents for the purpose of showing that the nature of the duties and functions performed by them as also the Supervisors under the Anganbari Scheme are the same.

7. In this case a counter affidavit has been filed on behalf of the State wherein it has been contended as follows:-

"That the statement made in Paragraph 8 of the writ petition is wrong and the same is denied. It is stated that the posts of Anganbari Supervisors and Adult Education Supervisors are not similar to each other. The nature of work of the Anganbari Supervisor differs from that of the Adult Education Supervisor. The Adult Education Centres are run only for two hours a day i.e. in the evening from 7.00 P.M. to 9.00 P.M. and the Adult Education Supervisors are supposed to supervise those Centres allotted to them during those two hours only, whereas the Anganbari Centres are run for the whole day, and, accordingly, the Anganbari Supervisors work from 10.30 A.M. to 5.00 P.M. like the other Government employees. Therefore, in view of the fact stated above, the nature of hours also of the Adult Education Supervisors differs altogether from the nature of work of the Supervisors of Anganbari Project.

That it is relevant to mention that the Adult Education Project comes under the Scheme of Rural Functionary Literacy Project ("RFLP" Scheme for short), organised by the Ministry of Human Resources Development Department, Government of India. It is also relevant to mention here that in the scheme, it is clearly mentioned that the administrative supervisory control of the scheme is vested with the State Government and the Union territory administration and they are required to lay down norms and procedure for selection, training and placement of different categories of the Project functionaries in the National Literacy Mission ("NLM" for short). The State Government is expected to administer the sanctioned amount in accordance with the prescribed norms of expenditure in the financial pattern. Any deviation from the norms with regard to the expenditure shall be the full responsibility of the State Government/Union territory. Any expenditure in excess of the prescribed pattern shall be borne by the implementing agency. That it is also relevant to mention here that in this connection, the Ministry of Human Resources Development, Government of India issued a circular No. F-I-2/85-AE (D.II) dated March 23, 1988. In the said circular, it is stated that the post of Field Supervisor in the said scheme has been abolished by the Government of India and according to the new Scheme, the Adult Education Supervisor will be known as Prerak, and they will be authorised to supervise 8 to 10 schools, instead of 30 schools as they are looking after previously before issuance of the circular. In the said circular, it is also stated that the Prerak would be paid an honorarium of Rs. 200/- per month for the services rendered by them to manage the affairs of Jan Shikshan Niyam. It is also stated that the said Rs. 200/- will not be the remuneration for the services rendered in the economic senses, but a symbolic honorarium payable to a part-time voluntary worker. In view of the aforementioned circular, it is clear that the post of Adult Education Supervisor has been abolished by the Ministry of Human Resources Development, Government of India. It is also relevant to mention here that though the scheme was organised by the Ministry of Human Resources Development, Government of India but as the scheme was running in the State

of Bihar, therefore, the State Government on their own gave a regular scale to the Adult Education Supervisor."

8. The respondents have further contended that the matter was sent to the Pay Anomaly Removal Committee and it was found that the qualification of the Adult Education Supervisors and Circle Inspector, Supply Inspector etc., are different. It has further been asserted that the Scheme of Adult Education was organised by the Central Government but after the issuance of Circular No. F-1-2/85 QE(D.II) dated March 23, 1988, the Adult Education Supervisors will have to be accommodated to the posts of Assistant Project Officers and Project Officers and only thereafter they would be given a regular pay scale, like the other State Government Servants.

9. The State of Bihar has further stated that the nature and functions of Adult Education Supervisors and that of Anganbari Supervisors are absolutely different.

10. A rejoinder to the said counter affidavit has been filed wherein it has been contended that the Supervisors of the Adult Education were not only required to supervise the Centres when education is imparted but their work also extends to enlisting of community co-operation and support, to help survey the area and assess the learner's needs, to help in the training programme of instructions, to help prepare flexible, need-based curricula and materials, to plan and organise the programmes, to evaluate and guide the works of centre; to publicise the programme and thus their duties etc. etc.

11. It has therefore, been contended that although it is true that the actual education is imparted for two hours in the evening but they have to do other jobs also during day time, inasmuch as, by reason of their efforts the people have to be motivated to join the said Adult Education Scheme.

12. It has further been slated that the Pay Anomaly Removal Committee did not take into consideration that the job of the Supervisors under the Anganbari Scheme and the Adult Education Scheme are almost identical.

13. The petitioners have further contended that although the Anganbari Supervisors are to supervise the works of Anganbari Centres which are situated in remote areas, the petitioners have also to go to the remote areas for supervising of the Adult Education Scheme.

14. Mr. Yogesh Chand Verma, learned counsel appearing on behalf of the petitioner, had drawn my attention to the report of the Pay Anomaly Removal Committee as contained in Annexure-5 to the reply and submitted that from a perusal thereof it would appear that the petitioners were not considered in the light of the duties and functions of the Anganbari Supervisors.

15. Mr. Verma, has further drawn my attention to a booklet entitled Training of Adult Education Functionaries for the purpose of showing the nature of the job of the Supervisors under the Adult Education Scheme which have been mentioned hereinbefore.

16. There is no doubt that in view of Article 14 read with Article 39(d) of the Constitution of India persons performing similar duties are entitled to be treated alike and be paid the same scales of pay.

17. It is admitted that the petitioners filed their representation for grant of higher scale of pay and the matter had been referred to Pay Anomaly Removal Committee which having considered the matter in all its perspectives, rejected the claim of the petitioners.

18. The writ petition for enforcing "equal pay for equal work" is maintainable only if there has been a violation of principles of equality enshrined under Article 14 of the Constitution of India, in the event the petitioners are able to prove that there has been a discrimination in the matter of applicability of the said doctrine.

19. It must be stated that such a writ petition would not be maintainable for invoking abstract doctrine of equal pay for equal work.

20. In this case, the State has not only contended that the quality and nature of jobs of Anganbari Supervisors and the petitioners are not similar but also stated that their posts have been directed to be abolished by the Central Government and now there would be a change in the designation as also in their work load.

21. In *M/s. Mackinnon Mackenzie and Co. v. Audrey D'Costa*, reported in (1987 LIC. 961) it was held;

"Thus if the settlement can be held to yield in favour of equal remuneration, the same must yield to Articles 14 and 16 of the Constitution. The petitioner must, therefore, be held to maintain this writ application on the ground that they have been denied equality of law and equal protection of law despite the acceptance of a valid settlement, if a discrimination has been created thereunder."

22. In *A.V. Nachane and Others Vs. Union of India (UOI) and Another*, the Supreme Court was deciding a converse case and in that case it was held (p 116):

"But the burden of establishing hostile discrimination was on the petitioners who challenged the Amendment Act and the rules. It was for them to show that the employees of the Life Insurance Corporation and the employees of the other establishments to whom the provisions of the Industrial Disputes Act were applicable were similarly circumstanced to justify the contention that by excluding the employees of the Corporation from the purview of the Industrial Disputes Act.

23. In *Dhirendra Chamoli and Another Vs. State of U.P.*, the writ petition had been initiated on the basis of a letter filed by him and one Rohan Singh who were employees of the Nehru Yuvak Kendra. They claimed that they along with others were engaged by the Nehru Yuvak Kendra as casual workers on daily wage basis, and were doing the same work as were performed by the Class IV employees appointed on regular basis, but were not being given the same salary and

allowances as were being paid to the regular Class IV employees. On behalf of the Government of India, it was stated that the Nehru Yuvak Kendra had been started at different places in the country as temporary organisation and they had not been made permanent with the result that there were no sanctioned posts of Class IV employees and the employees who were engaged in the Nehru Yuvak Kendra were taken as casual employees on daily wage basis. It was, however, concluded on behalf of the Central Government that the persons engaged by the Nehru Yuvak Kendra performed the same duty as was performed by the Class IV employees appointed on regular basis against the sanctioned post. It was argued on behalf of the Central Government that those persons had taken up the employment knowing fully well that they will be paid only daily wages, and, therefore, they cannot get more. This argument was not accepted by the Supreme Court and it was observed that it was an all too familiar argument with the exploiting class and a welfare State Committed to a socialist pattern of society cannot be permitted to advance such an argument.

24. The Supreme Court in that situation held that Article 14 of the Constitution of India declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for the work for equal value. The Supreme Court allowed the writ application and directed the Central Government to pay to those persons who were employed by the Nehru Yuvak Kendra and who were performing the same duties as Class IV employees, the same salary and conditions of service as were being received by the Class IV employees except the regularisation which could not be done since there were no sanctioned posts.

25. In *Randhir Singh Vs. Union of India (UOI) and Others*, the Supreme Court: held (pp. 348-349):

"There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the "powers, functions and privileges of a Police Officer" their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers belong to the different departments and that the principle of equal pay for equal work is not a principle which the courts may recognise and act upon. We have shown that the answer is unsound. The classification is irrational. We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the driver constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from January 1, 1973 the date from which the recommendation

of pay Commission were given effect to."

26. In *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, it was held that the State cannot deny the casual labourers at least the minimum pay in the pay scale of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees.

27. However, in some other decisions the Supreme Court has struck a different view. In AIR 1974 753 (SC) it was held that although the quantity of the work may be the same but the equality may be different which cannot be determined by relying upon the averments in affidavit of interested parties. It was further held therein that equation of posts for equation of pay must be left with the executive government and should be determined by an expert body like Pay-Commission.

The Supreme Court proceeded to hold (p. 318):

"Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judge. There is a senior time scale in Indian Administrative Service. There is super time scale in other like service. The entitlement of these higher pay scales depends upon seniority-cum-merit or merit-cum-seniority, the differentiation so made in the same cadre will not amount to discrimination of the classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself."

28. In *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, , the Supreme Court said:

"There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bonafide, reasonably on an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is, important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But, it follows naturally that equal pay for unequal work will be a negation of that right."

29. It was held:

"The same amount of physical work may entail different quality of work, some more sensitive, some requiring more fact, some less-it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left

with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

30. In AIR 1989 29 (SC) the Supreme Court held as follows (p.75):-

"The nature of work and responsibilities of the posts are matters to be evaluated by the management and not for the court to determine by relying upon the averments in the affidavits of interested parties. We have stressed this point in a recent judgment (in Civil Appeal No. 56 of 1987) AIR 1974 753 (SC) There we said (p. 75):

"The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily, it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degree in the performance. The quantity of work may be the same but quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

4. What applies to the Government and Government servants must equally apply to any management and its employees. If the management for good reason have classified the posts into two categories with different pay scales, the courts generally must accept unless it is demonstrated that it is patently erroneous either in law or fact."

31. In a recent decision in B. Krishna Bhat Vs. Union of India (UOI), , the Supreme Court has refused to issue a writ directing State to implement the directive principles as contained in Article 47 of the Constitution of India on the ground that the same are unenforceable.

32. In Y.K. Mehta and Others Vs. Union of India (UOI) and Another, another Bench of the Supreme Court analysing Articles 14, 16, 311 and 39(d) of the Constitution of India held that the provisions for equal pay for equal work being in Part IV of the Constitution, the same is not enforceable and the Government on its own accord should implement it. The question of discrimination will arise when the State does not implement the same.

33. In V. Markendeya and Others Vs. State of Andhra Pradesh and Others, the Supreme Court held that even if the work performed by two sets of employees are same, but if they have different educational qualifications, one being

graduate supervisors and the other being non-graduate supervisors and as the graduate supervisors have all along been treated as a separate identity from the non-graduate supervisors, the question of granting any relief of equal pay to the non-graduate supervisors under Articles 39(d), 14 and 16 of the Constitution of India does not arise. In that case, the Supreme Court considered a large number of its earlier decisions.

34. Reference in this connection may be made also to the case of *Inder Singh v. Vyas Muni Mishra* reported in 1987 Suppl. SCC 257 *State of Andhra Pradesh v. Sreenivasa Rao* reported in *State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others*, and in *All India Sainik Schools Employees' Association Vs. Defence Minister-cum-Chairman Board of Governors and Others*,

35. Recently, again the Supreme Court in; *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI)* and Another, held upon consideration of its earlier decisions that the doctrine of equal pay for equal work does not come within the purview of Article 14. of the Constitution of India as an abstract doctrine, but if any classification is unreasonable, and/or if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work.

It was held (p.519):

"In other words, where equal pay has brought about a discrimination within the meaning of Article 14 of the Constitution it will be a case of "equal pay for equal work" as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object to be achieved, the doctrine of "equal pay for equal work" will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution the abstract doctrine of equal pay for equal work as envisaged by Article 39(d) of the Constitution has no manner of application nor is enforceable in view of Article 37 of the Constitution."

36. Recently again in *Grih Kalyan Kendra Workers' Union Vs. Union of India and others*, the Supreme Court held as follows: (p.352):

"Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution "equal pay for equal work" has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution."

37. Further yet recently the Supreme Court in the *Secretary, Finance Department and Ors. v. The West Bengal Registration Service Association and Ors.* reported in Judgment Today 1992 (2) SC 27 held that it is well settled that determination

of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission, etc.

38. The Supreme Court held:-

"Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performance of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to coordinate with other departments, "etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job-charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made (iii) the hierarchy of service in a given, cadre, (iv) minimum education/technical qualifications required (v) avenues of promotion (vi) the nature of duties and responsibilities (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt, that equation of post and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given

post and court's interference is absolutely necessary to undo the injustice."

39. In this case, as noticed hereinbefore, the higher scale of pay was granted to the Supervisors under the Anganbari Scheme by the State of Bihar after considering all the functions and duties of the Supervisors thereof, and when the representation was filed by the petitioners the matter had been referred to the Pay Anomaly Removal Committee.

40. It has been pointed out by the State that the natures and functions of the Supervisors under the Anganbari Scheme and the petitioners are different. Their nature of duties and functions are also different. It has further been asserted by the State that the petitioners are now to be absorbed in the regular services of the State of Bihar in a phased manner in the post of Assistant Project Officer and Project Officers

41. Keeping in view of the facts and circumstances of the case, I am of the opinion that the petitioners have not been able to prove that a discrimination has been meted out to them in the matter of grant of equal pay for equal work. If the petitioners feel that their cases have not been considered in the light of the duties and functions performed by the Supervisors under the Anganbari Scheme, the remedy of the petitioners may be to approach the State again but it is not possible for this court to embark upon such an enquiry and to take up the functions of expert body like the Pay Commission and/or Pay Anomaly Removal Committee.

42. In view of the fact that this court cannot grant any relief to the petitioners in this writ application, the writ application is accordingly dismissed but without any order as to costs.