
(2003) 03 GAU CK 0050
In the Gauhati High Court
Case No : Writ Petition (C) No. 326 of 2000

Dilip Kumar Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

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

Citation : (2003) 3 GLT 13

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : B. Banerjee, for the Appellant; K.C. Mahanta, for the Respondent

Judgement

Amitava Roy, J.—The Petitioner herein has sought to invoke the writ jurisdiction of this Court for parity of pay in the post of Production Assistant in the Department of Cultural Affairs, Government of Assam.

2. I have heard Mr. B. Banerjee, learned Counsel for the Petitioner and Mr. K.C. Mahanta, learned G.A., Assam.

3. To comprehend the grievance of the Petitioner, brief introductory facts are necessary to be stated at the outset. The Petitioner who is a Graduate in Arts apart from being a performing Artist (Singer) has a rich experience in drama and other cultural activities. He had organized and participated in various programmes of the department whereby he had earned laurels for the State. He was appointed as Production Assistant (Drama and Music) in Jyoti Bharati, Tezpur, under the Directorate of Cultural Affairs, Assam, in the pay scale of Rs. 240-380/- P.M. (pre-revised) by order dated 14.9.1983. The requisite educational qualification for the post is matriculation with Diploma from National School of Drama, Delhi or Graduate in Arts with sufficient knowledge in drama and music. There is another post of Production Assistant in Rabindra Bhawan, Guwahati, under the Directorate. While fixing the pay scale for which the Petitioner was appointed, it was so done as prescribed for an L.D. Assistant and was Thus lower

than that fixed for the post of Production Assistant, Rabindra Bhawan, Guwahati. The Petitioner being aggrieved, submitted a representation before the Directorate of Cultural Affairs, Assam, pointing out the anomaly. However, his grievance was not looked into. In the meantime, after joining the post, the Petitioner was entrusted with the works attached there to and was sent on various important assignments outside the State, which he successfully completed to the satisfaction of all concerned. The Petitioner has cited some instances in the writ petition about the same. According to him, he kept on making representations before the concerned authorities ventilating his grievances with regard to anomaly of the pay scale contending that the duties and responsibilities attached to the post of Production Assistant (Drama and Music), Jyoti Bharati, Tezpur and those relatable to the Production Assistant, Rabindra Bhawan, Guwahati, were similar, nay more onerous. According to him, taking note of his pleas, the Deputy Secretary of the Department had put up a note in the Cultural Secretariat being Note No. CAE-137/83 which reveals that a discrimination had been made in the matter of fixation of pay scale for the aforementioned post. The Respondent No. 2 by communication dated 22.8. 1983 (Annexure XII to the additional affidavit of the Petitioner) pointed out to the higher authorities of the department that the post of Production Assistant (Drama and Music), Jyoti Bharati, Tezpur, had been created in the year, 1983 and that the revision of pay that was introduced in between, the pay scale attached to the post was left out of the process. The Respondent No. 2 recommended that the pay scale of the Production Assistant (Drama and Music), Jyoti Bharati, Tezpur, be revised to Rs. 580.00-1165.00/- P.M. to the same effect another communication was addressed by the Respondent No. 2 on 2.2.84. By the said communication revision of pay was recommended for the post of Care Taker, Museum Assistant, Jyoti Bharati and Production Assistant (Drama and Music), Jyoti Bharati, Tezpur. Thereafter by communication dated 28.1.85 though the revision of pay scales of the posts of Care Taker and Museum Assistant has recommended by the communication dated 2.2.84 was effected, the pay scale of the post of Production Assistant (Drama and Music) was revised to Rs. 480.00-800.00/- P.M. in place of Rs. 580.00-1165.00/- P.M. as suggested by the Respondent No. 2.

4. The Petitioner has contended that the action of the state authorities in denying the same pay scale for the Production Assistant (Drama and Music), Jyoti Bharati, Tezpur, as that of the Production Assistant, Rabindra Bhawan, Guwahati, is illegal, arbitrary and discriminatory, inasmuch as, there is no intelligible basis for such a classification and the same has impinged upon his fundamental right guaranteed under Articles 14 and 16 of the Constitution of India. He has maintained that there is no qualitative difference with regard to the reliability and responsibility attached to the said two posts and, therefore, in terms of the principle of "equal pay for equal work" enshrined under Article 39(d) of the Constitution of India, the Respondents are obligated to restore the pay parity for the post of Production Assistant (Drama and Music), Jyoti Bharati, Tezpur. According to him, though the academic qualification for holding the post of

Production Assistant, Rabindra Bhawan, Guwahati, is Diploma in Fine Arts, the person holding the said post is lacking in the same but had been allowed the pay scale of Rs. 580.00-1165.00/- P.M. whereas the pay scale for the post of Production Assistant, Jyoti Bharati, Tezpur, was fixed at 470.00- 800.00/- P.M. The Petitioner has, therefore, prayed for a mandamus directing the State Respondents to ensure parity of pay for the post of Production Assistant, Jyoti Bharati, Tezpur, with that of Production Assistant, Rabindra Bhawan, Guwahati, with effect from the date of his appointment.

5. In the counter filed by the Respondent No. 2, the stand taken is that the duties and responsibilities attached to the two posts are not similar. Apart from the fact that the post of Production Assistant, Rabindra Bhawan, Guwahati, is borne in the establishment of the Head Office of the department and the post of Production Assistant, Jyoti Bharati, Tezpur, is in the district establishment, the responsibility, liability, volume of work and functions attached to the former post is much more than those to the later. Accordingly, as per the Revision of Pay Rules, 1990, the pay scale for the post of Production Assistant, Rabindra Bhawan, Guwahati, was revised to that of Rs. 1285.00-3075.00/- P.M. which was again revised to that of Rs. 3490.00-8100.00 P.M. as per the Revision of Pay Rules, 1998. On the other hand, the pay scale for the Production Assistant, Jyoti Bharati, Tezpur, was revised to that of Rs. 1065.00-2095.00/- P.M. as per the Revision of Pay Rules, 1990 and thereafter to Rs. 1890.00-5725.00 P.M. in terms of Revision of Pay Rules, 1998.

6. The Petitioner, by filing a rejoinder to the writ petition has controverted the above stand of the answering Respondent so far as the aspects of reliability and responsibility attached to the two posts are concerned. According to him, the reliability and responsibility of the Production Assistant, Jyoti Bharati, Tezpur, is much more than that of the Production Assistant, Rabindra Bhawan, Guwahati. While elaborating his stand, the Petitioner has narrated that the Production Assistant (Drama and Music), Jyoti Bharati, Tezpur, is required to produce, compose and direct plays written by various celebrities and to produce musical features, songs composed by them. A book on Jyoti Sangeet has also been composed by the Petitioner as entrusted by the Director of Cultural Affairs, Assam. On a comparison, the work performed by the Production Assistant, Rabindra Bhawan, Guwahati, relates only to drama and, therefore, in no case it can be said that the reliability and the responsibility attached to the said post are higher than that of the Production Assistant, Jyoti Bharati, Tezpur. According to the Petitioner, there is no justification whatsoever for denying the parity of pay and the impugned action of the Respondents amounts to hostile discrimination in violation of Article 14 of the Constitution.

7. Mr. B. Banerjee, in support of the contention raised in the writ petition has assiduously argued that the materials on record clearly demonstrate that there is no qualitative difference in the duties and responsibilities attached to the two posts and, therefore, the impugned action of the State Respondents in denying

the parity of pay for the post of Production Assistant, Jyoti Bharati, Tezpur, is clearly discriminatory and being ex facie unconstitutional is liable to be adjudged as such. He has asserted that as the duties and responsibilities attached to the two posts are similar in all respects, the Petitioner has a right to claim parity of pay by applying the principle of "equal pay for equal work" under Article 39(d) of the Constitution of India. The learned Counsel has maintained that the anomaly in the pay scales is clearly established by the communication dated 22.8.83 and 2.2.84 by the Respondent No. 2 to the higher authorities of the department recommending restoration of parity and there is no acceptable justification for the State authorities to deny the same. The has contended that on one hand the incumbent of the post of Production Assistant, Rabindra Bhawan, Guwahati, is enjoying higher pay scale though he does not satisfy the condition of eligibility and on the other though the Petitioner does not suffer from any such deficiency and is discharging duties with higher responsibility he has been denied equal pay. The learned Counsel has argued that the facts and circumstances clearly proclaim that the State authorities have failed to discharge their Constitutional duties without any justification and, therefore, it is a fit case where this Court would issue a writ of mandamus directing them to provide the pay scale of Production Assistant, Rabindra Bhawan, Guwahati, also to the post of Production Assistant, Jyoti Bharati, Tezpur, with effect from the date on which the Petitioner was appointed to the said post. In support of his submissions, the learned Counsel for the Petitioner has placed reliance on the following authorities-Jaipal and Ors. v. State of Haryana and Ors. (1988) 3 SCC 354 , Ajay Jadhav Vs. Government of Goa and Others, and Indian Council of Agricultural Research Vs. A.N. Lahiri,

8. Contra is the argument of the learned Stated counsel, Mr. K.C. Mahanta, while referring to the stand taken in the affidavit of the Respondent No. 2 has contended with the equal force that the duties and responsibilities attached to the two posts are not similar and the reliability and the responsibilities of the post of Production Assistant, Rabindra Bhawan, Guwahati, is higher than that of the Production Assistant, Jyoti Bharati, Tezpur. He has further pointed out that the post of Production Assistant, Rabindra Bhawan, Guwahati, is at the Head Office of the department, whereas the post of the Production Assistant, Jyoti Bharati, Tezpur, is borne in the district establishment and this also has a bearing on the fixation of pay scale for the two posts. The learned State counsel has argued that the pay scale for the two posts have been fixed after a detailed consideration of all aspects of the matter and this Court in exercise of its power of judicial review would not interfere with the same.

9. Before delving into the rival contentions of the parties, it is worthwhile to notice the revisions of pay scale of the two posts since 1983. As per Revision of Pay Rules, 1983, the revised scale of pay of the Production Assistant, Rabindra Bhawan, Guwahati was Rs. 580.00-1165.00/- P.M. No pay scale was provided for the post of Production Assistant, Jyoti Bharati, Tezpur, by the said Rules. The said post as indicated hereinabove was created by the Government by letter No. CCE.

42/83/4, dated 30.5.83 and the communication dated 28.1.85, the pay scale of Rs. 470.00-800.00/- P.M. was prescribed therefor.

10. In the revision of pay, vide Revision of Pay Rules, 1990, the scale of pay of Production Assistant, Rabindra Bhawan, Guwahati, and that of the Production Assistant, Jyoti Bharati, Tezpur, were revised to Rs. 1285.00-3075.00/- and Rs. 1065.00-2095.00 P.M.

11. By the next revision of pay vide Revision of Pay Rules, 1998, the scale of pay for the two posts were further revised to that of Rs. 3490.00-8100.00/- P.M. and Rs. 2890.00-5725.00/- respectively.

12. Tracing the revision of pay scales as above, it is apparent that for the post of Production Assistant, Jyoti Bharati, Tezpur, the revisions have been effected on the basis of initial scale of pay of Rs. 470.00-800.00/- P.M. The revisions, however, have been pursuant to the recommendations made by the expert body, Assam Pay Commission.

13. In this background, it is now time to turn to the precedents, in Jaipal and Ors. (supra), the Petitioners therein who were working as Instructors under the Adult and Non Formal Education Scheme under the Education Department of Haryana claims/parity of pay with Squad Teachers employed under the another scheme known as Social Education scheme for imparting education to the illiterates in the villages. The Apex Court, on examining the relevant facts with regard to the services of the two groups, namely instructors and Squad Teachers concluded that the nature of the duties and functions performed by the Instructors were similar to those performed by the Squad Teachers. The Apex Court, applying the doctrine of "equal pay for equal work" ruled that the Instructors were entitled to the relief of parity of pay with the Squad Teachers.

14. On an analysis of the relevant facts in Indian Council of Agricultural Research (supra), the Apex Court found that the Respondent therein was doing the same work as a scientist as being performed by the scientists inducted in the ARS scheme of the council though he was not included therein. Noticing further that qualificationwise there was no distinction between the two sets of employees and that their initial source of recruitment was same and further that they were serving under the same employer, it upheld the direction issued by the Service Tribunal (which was assailed before the Apex Court) restoring pay parity between the two categories of employees.

15. The prayer of the Appellant in Ajay Jadhav (supra) for being provided with pay scale of Rs. 1640.00-2900.00/- P.M. accorded to the Teachers Grade I was sought to be resisted on the ground that he did not possess the required qualification for the purpose. The Apex Court, on an examination of the relevant circulars to that effect held that the Appellant had the necessary qualification and that the persons similarly situated like the Appellant were provided with the pay scale of Rs. 1640.00-2900.00 P.M. It was held that the Appellant was thus wrongly denied the said pay scale.

16. In all the cases referred to above and relied upon by the learned Counsel for the Petitioner, the Apex Court, on the particular fact situation had concluded that the person aggrieved was discharging duties with similar responsibilities as those with whom parity of pay was sought for. In none of these cases, the pay scale had been fixed, acting on the recommendation of any expert body dealing with all relevant aspects pertaining to the pay structure, vis-a-vis, the nature of work and responsibilities attached to the posts in the service.

17. In the case in hand, it is not in dispute that the revisions in the pay scales have been effected following a detailed exercise by the Assam Pay Commission and having regard to its recommendation in connection there with. Though the Petitioner has assailed the action of the State Respondents in denying him the same pay scale as that of the Production Assistant, Rabindra Bhawan, Guwahati, there is no attack on the line that the Pay Commission in making its recommendation for the revisions of the pay scales had acted irrationally and without any objectivity. There is also no grievance that the expert body while making recommendations had overlooked relevant factors relating to pay fixation and that the same are perverse and in defence of logic. The factors which normally weigh in the matter of pay fixation include the nature of the work, the extent of contribution of the incumbent of the concerned post, the extent of his responsibility and accountability in the discharge of his duties, the nature of the powers vested in him etc. The process involves value judgment and the pay is fixed as would be commensurate to the duties and responsibilities attached to the post. It is no longer resintegra that equation of posts and determination of pay scales is the function of the executive and not the judiciary and, therefore, the Courts, for want of judicially manageable standards should not venture to embark upon the exercise of job evaluation more particularly when the pay structure has been evolved following such an exercise by an expert body like the Pay Commission. It would only be in an extreme case where the error in fixation of the pay scale is so manifest and the disparity in the pay scales is abhorrent to the doctrine of "equal pay for equal work" in a given fact situation that the Court may interfere. In such cases as well, the attending facts and circumstances should demonstrably proclaim that the denial of parity of pay scale is grossly arbitrary and not justifiable in any view of the matter.

18. In this connection, the observations of Apex Court as recorded in the Union of India and others Vs. Makhan Chandra Roy, are apposite:

The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. 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 degrees 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 question 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 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.

19. The Apex Court in its later judgments has reiterated the same view and I do not wish to burden the judgment by referring to the same. However, reference to one of the latest decisions, which underlines the scope of interference of the Court in such matters, is felt necessary. In the State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, the Apex Court while dwelling on the above aspect held that the claim of "equal pay for equal work" is not a fundamental right vested in any employee though it is a Constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executives to discharge and the Court should approach such matters with restraint and interfere only when on their satisfaction that the decision of the Government is patently irrational and unjust and prejudicial to a section of employees and while taking a decision in the matter, the Government had ignored factors which are material and relevant for a decision thereon. It further held that even in a case where the Court held that the order passed by the Government is unsustainable, a direction should ordinarily be given to the State Government or the authority taking the decision to reconsider the matter and pass appropriate orders. The Court should avoid a declaration granting a particular pay scale and compelling the Government to implement the same, it observed.

20. Turning to the facts of the case in hand, it is noticeable that there are conflicting stands of the parties. Whereas the Petitioner asserts that the duties and responsibilities attached to the post of Production Assistant, Jyoti Bharati, Tezpur, are at par with those of the Production Assistant, Rabindra Bhawan, Guwahati, the State Respondents do not admit the same. Their categorical stand is that the duties and responsibilities of these two posts are not comparable and, therefore, the incumbent of the post of Production Assistant, Jyoti Bharati, Tezpur, is not entitled to the same pay scale as that of Production Assistant, Rabindra Bhawan, Guwahati. That the pay scales for these two posts have been fixed acting on the recommendations of the Assam Pay Commission is not in dispute. The Petitioner, as alluded as above, has not assailed the recommendations on the basis of the Assam Pay Commission on the basis of which the pay scales have been fixed. Though the Petitioner has attempted to provide some material having a bearing on the duties and responsibilities relatable to the post of Production Assistant, Jyoti Bharati, Tezpur, I am of the view that the same cannot be held to be conclusive to uphold the claim of the Petitioner. In view of the statement of law recorded in the consistent judicial pronouncements of the Apex Court, I do not consider it to be a fit case for the

Court to enter into the process of job evaluation of the two posts in the face of the recommendations of the Assam Pay Commission in that regard. This, however should not be construed to be an embargo on the State Respondents to reconsider the claim of the Petitioner for parity of pay. This is so in view of the fact that during 1983-84, the Respondent No. 2, the Director of Cultural Affairs, Guwahati, had recommended for the post of Production Assistant, Jyoti Bharati, Tezpur, the same pay scale as prescribed for the post of Production Assistant, Rabindra Bhawan, Guwahati, by the Revision of Pay Rules, 1983.

21. In the light of the above discussion, I am not inclined to issue any writ of mandamus or direction to the State Respondents to grant parity of pay to the Petitioner. There would, however, be no bar for them to reconsider the case of the Petitioner as indicated hereinabove. The writ petition stands disposed of with the above observations.