

(2011) 03 GAU CK 0077
In the Gauhati High Court
Case No : Writ Petition (Civil) No.248 of 2004

Dwijen Sinha and Ors.

APPELLANT

Vs

Tripura Jute Mills Ltd.and Ors.

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Citation : (2012) 2 GLR 92

Hon'ble Judges : U.B.Saha, J and A.C.Upadhyay, J

Bench : Division Bench

Advocate : Mr. C.S. Sinha for the petitioners., Mr. D.P. Kundu and Mr. S. Chakraborty for the respondents., Advocates appearing for Parties

Judgement

U.B. Sahaj.

1. The instant writ petition is filed by the petitioners, eleven in numbers, who are holding the post of Charge Hand under the respondent No.1, Tripura Jute Mills Ltd., an undertaking under the respondent No. 3, the Department of Industries and Commerce, Government of Tripura, for a direction to provide them the revised pay scale of Rs. 42008650 instead of revised pay scale of Rs. 33007100 with effect from the date on which the Revision of Pay Scales, 1999 of Tripura Jute Mills was effected with all other consequential benefits and also for further direction to revise the existing pay scale of Rs. 70021 with modified pay scale of Rs. 13003200 in lieu of the pay scale of Rs. 10202620 and also for quashing the provisions of Tripura Jute Mills Employees (Revised Pay) Rules, 1999 so far as the petitioners are concerned.

2. Heard Mr. C. S. Sinha, learned counsel for the petitioners as well as Mr. D. P. Kundu, learned Advocate General, Tripura assisted by Mr. S. Chakraborty, learned Additional Government Advocate appearing for the State. None appears for the respondent Tripura Jute Mills.

3. The brief facts needed to be discussed for disposal of the writ petition are as follows :

The petitioners are holding the post of Charge Hand and enjoying the pay scale of Rs.70021. While the petitioners were holding the post of Charge hand, the respondents Government revised the pay Rules of Tripura Jute Mills Employees (Revised Pay) Rules, 1999 which came into force with effect from 1.4.1999 whereby and whereunder the Petitioners were provided with the pay scale of Rs.33007100. The petitioners being aggrieved thereby made a representation on 18.12.1999 and thereafter on 23.6.2000 to the authorities concerned for providing the pay scale of Rs.42008650 commensurating to the post of Charge Hand in place of the pay scale of Rs.33007100, wherein they mentioned, inter alia, that in the pay revision of 1986, the pay of the Charge Hand was higher than the Mistri, but in pay revision of 1999, both the Mistri and Charge Hand have been made at par in their pay scale which is unreasonable and is required to review to provide the higher scale of pay to the Charge hand than the Mistri which was not allowed to the petitioners. Being aggrieved by the action of the respondents Tripura Jute Mills, they have approached this court by filing this writ petition wherein they prayed for relief as stated supra.

4. The respondents Tripura Jute Mills and its Managing Director filed their counteraffidavit wherein it has been admitted relating to the representation of the petitioners and also contended that the prerevised pay scale of the petitioners was Rs. 70021 and the pay scale of other workers who was under the control of the petitioners was Rs.67018. But as per ROP Rules, 1999, both the categories has been provided the pay scale of Rs. 33007100. It is also contended that the Managing Director of the Tripura Jute Mills sent the proposal of the petitioners to the Director of Industries and Commerce, Government of Tripura stating the grievances of the petitioners for providing them the pay scale of Rs. 42008600 in place of the pay scale of Rs.33007100, but the Government did not consider the said proposal as claimed by the petitioners.

5. The State respondents did not file any counteraffidavit" to controvert the claim of the petitioners.

6. Mr. Sinha, learned counsel for the petitioners while urging for the relief sought for submits that in the Revision of Pay Rules, 1999, the provisions so far as the petitioners are concerned are unreasonable, unfair and contrary to the provisions of article 14 of the Constitution since in the said Rules, the petitioners were provided the pay scale which is lower than the pay scale of Loader Mistri, Loom Mistri, Winding Mistri, Finishing Mistri, OH Mistri, etc., who are working under the Petitioners. He also contended that the petitioners were holding the post of Charge Hand which is of similar status of the post of Head Sardar having pay scale of Rs. 70021 prior to the revision of pay, but subsequently in the Revision of Pay Rules 1999, the higher pay scale of Rs. 13003220 was provided. But the authority did not provide the same benefit in revision of pay scale of the petitioners, i.e., Rs.70021 which is unreasonable and unfair.

7. Mr. Kundu, learned Advocate General Tripura while countering the argument of Mr. Sinha would contend that there is no wrong in the Revision of Pay Rules, as

the petitioners in this writ petition nowhere stated as to why and how the action of the authority is unreasonable and unfair. Mere quoting of an word "unreasonable" in the petition would not have ipso facto entitled to the petitioner to challenge the provisions of ROP Rules. He also contended that the status of the petitioners as Charge Hand has remained intact and there is also no change of the legal relationship between the employer and employees. Unless the status is challenged, an employee has no right asking for a particular pay scale and the employer is also not duty bound to provide any particular scale. In support of his aforesaid contention so far relating to the status, he placed reliance on the judgment of the Apex Court in the case of *Roshan Lal v. Union of India*, AIR 1967 SC 1889, wherein the Apex Court held that the hallmark of status is the attachment to a legal relation of rights and duties imposed by the public law and not by mere agreement by the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. The revision of pay being a legislative action, the employer has the right to change the ROP from time to time considering the nature of job of the employees as well as financial implication and involvement.

8. Learned Advocate General further contends that pay parity is an executive function to be carried out by the expert body not by the court. Court can interfere with the action of the employer Government only when the decision of the Government is patently irrational, unjust or prejudicial or in any way affect any of the articles which provide fundamental rights of a citizen employee. His another contention is that granting of a pay scale or even a higher pay scale is normally evaluated on the basis of duty and responsibility of different posts and determination of pay scale is a complete executive function to be carried out by expert bodies and the court has no such expertise and therefore, it would not be proper to evaluate just comparativeness of a post. He also contended that burden of disparity is to be proved by the employee concerned who is claiming a parity with other posts and in support of his aforesaid contention, he placed reliance on para 12 of the judgment rendered by the Apex Court in the case of *State of West Bengal and Anr. v. West Bengal Minimum Wages Inspectors Association and Ors.*, (2010) 5 SCC 225, wherein the Apex Court taking note of the case of *State of U.P. v. Ministerial Karamchahi Sangh*, (1998) 1 SCC 422, *Associate Banks Officers' Assn. v. SBI*, (1998) 1 SCC 428, *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72, *State of Haryana v. Tilak Raj*, (2003) 6 SCC 123, *S. C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279 and *U.P. SEB v. Aziz Ahmad*, (2009) 2 SCC 606 held that burden to prove disparity in pay is on employee claiming parity.

9. Relying on paragraph 23 of the aforesaid judgment of the Apex Court, he contended that the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities and extend such higher scale to those categories of posts. The Pay Commission has two functions; to revise the existing

pay scale by recommending revised pay scales corresponding to the prerevised pay scales, and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, according to him, the Pay Commission is not only to revise the existing pay scale recommending higher pay scale, but also make recommendation to lower down a pay scale considering the nature and duties and functions attached to the posts, even on earlier occasion the said posts was given certain more benefits than that which they were entitled to.

10. As Mr. Kundu relied upon paras 24 and 25 of the said judgment, it would be proper on our part to reproduce the same. Hence, those paragraphs are reproduced hereunder :

"24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the prerevised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.

25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust."

11. Learned Advocate General also placed reliance on a decision of the Apex Court in the case of Secretary, Finance Department and Ors. v. West Bengal Registration Service Association and Ors., 1993 Supp (1) SCC 153, particularly paragraph 12, wherein their Lordship of the Apex Court stated that the equation of the posts and 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 Commissions, etc., but that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action. Courts must, however, realize 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 performances 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 job

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 broadbanding 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 rationalization 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 educational/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 facts 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 subRegistrars 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 posts 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.

12. Referring to the aforesaid paragraph 12 of the Secretary Finance Department (*supra*), Mr. Kundu tried to remind us regarding our power of judicial review so far as the fixation of pay scale under job evaluation are concerned.

13. In response to the submission of the learned Advocate General, Mr. Sinha submits that the case laws referred by the learned Advocate General are relating to equal pay for equal works and on equation of posts, and facts of those cases are totally different than the case in hand. Therefore, those cases have no application so far as the case of the petitioners are concerned.

14. Having heard the learned counsel for the parties and on perusal of the pleading of the parties, the questions fall for determination are (i) Whether the provisions of ROP Rules so far as the petitioners are concerned is unreasonable and unjust and contrary to the Constitution? (ii) Whether the court can ask the employer authority to provide a particular pay scale to its employees? (iii) Whether a group of employees working under another group of employees can be provided with the same pay scale even though on earlier occasion higher pay scale was provided?

15. It appears from the record that at one point of time admittedly, the petitioners were provided the pay scale of Rs.70021 at par with the holder of the post of Head Sardar, but subsequently the pay scale of the petitioners was lowered down than the Head Sardar. It is also admitted position that the holders of the post of Mistri were provided a pay scale of Rs. 67018 which were lower than the pay scale of the petitioners prior to ROP 1999. More so it is also admitted position that the respondents Tripura Jute Mills upon receipt of the representation of the petitioners placed the same to the State Authority but the State Authority after considering the claim of the petitioners negated the same. Hence, the writ petition falls for consideration on the aforesaid questions.

16. We are in full agreement to the submission of Mr. Kundu so far as the law laid down in Roshan Lal Tandon (supra) referred to by him relating to hallmark of status which is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement by the parties. There is also no doubt that the Government has power to unilaterally change the Recruitment Rules as well as Revision of Pay Rules while reevaluating the nature and duties of the employees concerned.

17. We have already quoted the relevant paragraph of State of West Bengal (supra) as referred to by the learned Advocate General. There is also no quarrel with the proposition laid down by the Apex Court regarding the functions of the pay Commission in what manner the Commission can revise the existing pay scale or recommend the revised pay scale corresponding to the pre-revised pay scale, even there is no quarrel that the Pay Commission while exercising its power at the time of recommending the pay scale have the power even to lower down the scale of a group of employees even though those employees were getting higher pay scale subject to reasons have been given for lowering such pay scale.

18. In paragraph 25 of the State of West Bengal (supra), it is noted that one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust.

19. In the instant case, there is no doubt that duties of the Head Sardar and Charge Hand are holding two different posts and discharging the different duties. Their functions are also not identical. Therefore, it cannot be said that mere providing a higher pay scale to the Head Sardar is either unreasonable or unfair or unjust. Therefore, on that count, the petitioners are not entitled to the higher pay scale as sought for. The petitioners also in the writ petition did not specifically stated the reasons why the actions of the authorities for not providing them the higher pay scale as sought for is unreasonable, but in their petition, the petitioners specifically stated in paras 4 and 5, inter alia, that the petitioners apprised the Managing Director that by the Revised Pay Rules, 1999 they have been provided with the revised pay scale of Rs.33007100 which is the revised pay scale of all categories of Mistries such as Loader Mistri, Carpenter, Loom Mistri, Winding Mistri, Finishing Mistri, OH Mistri, etc., They also apprised the Managing Director that all categories of Mistries are working under the petitioners and as such providing them the pay scale of Rs.33007100 at par with the Mistries is quite unjustified and unreasonable. It is also stated that holding of modified pay scale of the petitioners" post of Charge Hand and the pay scale of all categories of Mistries who are under their control have been made similar in Revised Pay Rules of T. J.M.L in the pay scale of Rs. 10202620, is unjust and unreasonable, the petitioners being downgraded.

20. While responding to the aforesaid contention of the petitioners, the respondents Tripura Jute Mills nowhere denied the allegations of the petitioners, rather the Managing Director of the Tripura Jute Mills sent the proposal to the Director of Industries and Commerce, Government of Tripura stating the grievances of the petitioners for getting the pay scale of Rs. 42008650 in place of the pay scale of Rs. 13003220 which would be evident from Annexure RI to the Counter of the respondents Tripura Jute Mills.

21. The State respondents did not come up with a specific counter. Therefore, so far as the factual aspect is concerned, this court is not in a position to help the State respondents except questions of law raised by the learned Advocate General. When the employer Tripura Jute Mills by way of sending the representation of the petitioners supported the case of the petitioners, it was the State who has to counter the claim of the petitioners by way of filing the counter affidavit, but that has not been done. Therefore, it cannot be said that the claim of the petitioners are fully unjustified and unreasonable when they are holding the posts which is supervisory post of Mistries but getting a scale equal to a scale provided to Mistries, even when they are in higher status position.

22. We have already stated that Mr. Kundu, the learned Advocate General tried to remind us regarding the power of judicial review. We have no quarrel to the submission of the learned Advocate General, particularly, that the job evaluation is a very difficult task for a court which has no expertise for job evaluation and at the same time, it is also settled position that when an expert body like the Finance expert considered the various pay scales and prescribed in the pay

revision and the Government accepted the same taking note of the facts that the pay revision was proposed by an expert body, the court should not raise any question regarding the purpose of expert body and the decisions of the Government. But at the same time, the court cannot also shut its eyes when the petitioners are getting the pay scale at par with the employees whose services are supervised by them, i.e., the persons who are in lower grade than the petitioners. In *Secretary, Finance Department (supra)*, the court while referring to the history of the service of the Service Association, the respondents therein, noted that the reduction of number of pay scales is permissible and 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.

23. There is no doubt that the various posts can be clubbed together and provided a particular scale even different than the earlier pay scale and unequal too. But question is this whether in the instant case, the Government considered the pay scale for the petitioners clubbing the posts of the petitioners and the subordinate Mistries in the same grade or not. We are not getting any materials from the pleadings that the Government while prescribing for lowering down the pay scale of the petitioners at par with the Mistries who are subordinate to them went for broadbanding the posts, even no reason on the face of the challenge has been assigned as the State has not filed any counteraffidavit.

24. We have no hesitation to state that the petitioners who are discharging the supervisory function over the employees holding the post of Mistri, are entitled to higher pay scale than the Mistries if the State Authority did not resort to broadbanding of the posts of the petitioners with the posts of Mistries as stated orally by the learned Advocate General at the time of hearing. But the court can give only an observation and opinion as the court has no power to direct the State Government to provide a definite higher pay scale as sought for by the petitioners, particularly, when it is a settled position of law that the fixation of pay scale is within the domain of the policy maker, the executive authority and revision of pay scale is also done by the expert bodies who are expert in fiscal matter. Therefore, we have to leave the matter to the authority concerned.

25. Taking note of the decisions of the Apex Court in *A.K. Binda v. Union of India*, (2003) 5 SCC 163 and the decision in *Officers and Supervisors of I.D.P.L. v. Chairman and M.D., I.D.P.L.*, (2003) 6 SCC 490, wherein the Apex Court also considered the case of *A.K. Bindal*, wherein it was held that the employees of the Government company have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government.

26. When an expert body like the Pay Commission has considered the pay scale of a particular group of employees, the remedy of that group of employees would only to bring the anomaly, if any, to the notice of the authority. Here in the

instant case, it appears that the petitioners made a representation before the appropriate authority and the appropriate authority sent the same to the Director of Industries and Commerce, who is the Head of the Nodal Department. But ultimately, the case of the petitioners was not considered, as it appears from the counter of the respondents Tripura Jute Mills. But regarding such statement of negation to the claim of the petitioners, the State as not filed any counter, we are not in a position to make any comment on the stand of the State Government. According to us, prima facie, it appears from the record that the grievance of the petitioners as raised in their representation were not placed by the authority to whom the respondents Tripura Jute Mills sent the representation. Had it been placed pointing out that the petitioners are supervising the works of the Mistries, namely, Loader Mistri, Carpenter, Loom Mistri, Winding Mistri, Finishing Mistri, OH Mistri, etc., who were provided the lower pay scale while revising the pay scale of the petitioners in the ROP Rules, 1999, then the expert authority might have considered the same.

27. In view of the above discussion, we are of the opinion that the petitioners may file a representation before the Secretary, Finance Department, Government of Tripura along with the copy of the order and writ petition through the Managing Director, Tripura Jute Mills for redressal of their grievance and upon receipt of the same, the State Authority before whom the representation of petitioner would be placed may constitute an Anomaly Committee which may consider the grievance of the petitioners on its own merit keeping in view of the fact that the petitioners are supervising the work of the Mistries having enjoyed earlier a lower scale than the petitioners. It is expected that such representation may be considered at an early date, preferably within a period of three months from the date of receipt.

28. With the aforesaid observation and directions, the writ petition is disposed of.