

(2013) 11 DEL CK 0144

In the Delhi High Court

Case No : Writ Petition (C) No. 5842 of 1998

Giri Raj Sharma

APPELLANT

Vs

The Director, Consortium for Educational Communication and
Others

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0144

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : V. Shekhar, Mr. Vishal Sharma and Mr. S. Rana, for the Appellant;
Mamta Tiwari for Mr. Amitesh Kumar for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—On 4.10.2013, the following order was passed:-

1. Petitioner is a Technical Assistant with respondent No. 1 and claims parity with an Engineering Assistant working with Doordarshan.
2. Though a Grievance Redressal Committee states that qualifications are identical for the two posts, however, what are the qualifications of a Technical Assistant for being appointed as such with respondent No. 1 and what are the qualifications required for being appointed as an Engineering Assistant with Doordarshan are not found in the record of this case.
3. Of course, I may state that even after the same qualification and parity of work is there, however, it is not necessary that every institution or every instrumentality of a State must necessarily have identical salary structure for its employees as compared to employees of the central government because an independent organization has its limitations with respect to the finances which are sanctioned to it. Different departments of the same Government when prescribe same qualifications etc. for the different posts, doctrine of "equal pay for equal work" will come in, however, prima facie there cannot be a comparison

between a Government Department and an independent/autonomous organization of the Government.

4. Counsel for the petitioner seeks time to file necessary documents to show at least equality of qualifications for appointment of a Technical Assistant of respondent No. 1 and Engineering Assistant of Doordarshan.

5. Learned counsel will also have to show judgments that there can be parity in pay between the posts of a Government Department and an equivalent post of an autonomous organization.

6. List on 21st October, 2013.

In view of the aforesaid order, a specific query was put to the counsel for the petitioner yesterday as also today as to whether there is any judgment of the Supreme Court or of any other Court which shows that doctrine of "equal pay for equal work" will apply to persons who are posted in different organizations. Learned senior counsel for the petitioner had to concede that there is no judgment, much less of the Supreme Court, which says that doctrine of "equal pay for equal work" will come into effect with respect to different posts in different organizations. In my opinion, doctrine of "equal pay for equal work" by its very nature cannot come into play for similar posts in different organizations because each organization has its own peculiarities with respect to its financial position, and therefore, even all autonomous organizations do not have identical salary structures. Also there is no law that salary structures of independent organizations have to be same as those posts which are found in government departments inasmuch as employees of autonomous organizations and PSUs cannot necessarily as of legal right demand parity for monetary emoluments and salary structures with government servants.

2. In view of the above, the claim of the petitioner for being granted equal pay for equal work to an Engineering Assistant working with Doordarshan on the ground that petitioner's post of Technical Assistant with the respondent no. 1/ CEC has identical qualifications and work/duties cannot be accepted because doctrine of "equal pay for equal work" cannot be invoked to grant of parity of pay-scales between two posts of two separate organizations. I may also state that on the record of this Court there are no rules which are filed of the respondent no. 1 and of Doordarshan to show that what are the qualifications for the posts of Technical Assistant of the respondent no. 1 and an Engineering Assistant of Doordharshan.

3. Counsel for the petitioner placed great stress and reliance upon the Grievance Redressal Committee Meeting Minutes dated 29.4.1999 which states that there is parity between the posts of a Technical Assistant with respondent no. 1 and of an Engineering Assistant working with Doordarshan, and which argument is sought to be buttressed by legal opinion given on 1.7.1979 by an Advocate that the Expert Committee's stand is correct and doctrine of "equal pay for equal work" can be legitimately applied. However, In my opinion the arguments urged on

behalf of the petitioner by placing reliance upon Grievance Redressal Committee Meeting Minutes and legal opinion of an Advocate cannot help the petitioner because this Court has to act in accordance with law and not any Minutes of Meeting of Grievance Redressal Committee or an opinion of an Advocate. As already stated above, there is no law for application of the doctrine of "equal pay for equal work" in different organizations including those organizations which may be instrumentalities of State. In fact, even between two instrumentalities of State or two autonomous organizations or two public sector undertakings even if the posts are identical, legally and necessarily it must be held that both the posts must have the same pay-packages.

4. In fact the Supreme Court in the judgment in the case of Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., has held that Courts substitute themselves for the administrative authorities in deciding what should be the terms of employment, the salary, how promotion should be granted etc of the employees. The relevant paras of this judgment read as under:-

16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

18. In State of M.P. v. Yogesh Chandra Dubey this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case also.

37. Creation and abolition of posts and regularisation are purely executive functions vide P.U. Joshi v. Accountant General. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.

40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment or these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in Rama Muthuramalingam v. Dy. Supdt. Of Police and we fully agree with the views expressed therein.

5. In view of the above, there is no legal basis or legal cause of action to claim application of the doctrine of "equal pay for equal work" much less in the facts of the present case. It was always open to respondent no. 1 to grant a particular

higher salary structure to its Technical Assistants, if it so wanted, but, once respondent no. 1 itself has not granted a particular higher salary structure, this Court in view of the ratio in the case of I.D.P.L's case (Supra) cannot order payment of a particular salary or particular pay package to an employee. In view of the above there is no merit in the petition, and the same therefore dismissed leaving the parties to bear their own costs.