

(1999) 05 DEL CK 0009

In the Delhi High Court

Case No : CW. No. 524, 558 and 3110 of 1997

J. George and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 821 : (1999) 50 DRJ 300

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Rajesh Goyal, for the Appellant; Mr. Sanjay Poddar, Ms. Avnish Ahlawat, Ms. Rekha Palli, Ms. Avnish Ahlawat and Mr. Ajay Gupta, for the Respondent

Judgement

K. Ramamoorthy, J.—In CWP. 524/97, the three petitioners, who are working as Laboratory Assistants in AES Sr. Secondary School, 1 DDU Marg, New Delhi-1, the third respondent have prayed for the following reliefs:-

"In the above noted facts and circumstances of the present case, it is, Therefore, most respectfully prayed that your lordships may graciously be pleased to:-

(i) issue a writ of mandamus or any other suitable writ order or direction quashing the order dated 26th October, 1995 and further to direct the respondent to sanction the petitioners (Laboratory Assistants) with effect from 01.01.1986 with all the consequential benefits.

2. In CWP. 558/97, the three petitioners, who are working as Laboratory Assistants in Mukharji Memorial Senior Secondary School, G.T. Road, Shahdara, Delhi - 32, have prayed for the following reliefs:-

"In the above noted facts and circumstances of the present case, it is, Therefore, most respectfully prayed that your lordships may graciously be pleased to:-

(i) issue a writ of mandamus or any other suitable writ order or direction

quashing the order dated 26th October, 1995 and further to direct the respondent to sanction the petitioners (Laboratory Assistants) with effect from 01.01.1986 with all the consequential benefits.

3. In CWP.3110/97, the four petitioners, have prayed for the following reliefs:-

"In view of the foregoing submissions and having regard to all the facts and circumstances of the case, the petitioners, respectfully prayed for that this Hon"ble Court may be gracious enough to:

(i) issue a writ of mandamus or any other appropriate writ quashing the letter dated 26th October, 1995;

(ii) to direct the respondent to implement the Circular dated 12.8.1987 (Annexure P-2) according senior scale and selection scale to the petitioners with effect from 01.01.1986 along with all consequential benefits;

(iii) to command the respondents to pay all arrears with effect from 1.1.1986 after placing the petitioners in senior scale plus consequential benefits flowing from sr. scale and selection scale along with interest at the rate of 18% p.a. from the date of entitlement till its realization."

4. Petitioners 1 & 2 in CW.3110/97 are working as Laboratory Assistant in IPHG Sr. Sec. School, Jama Masjid, Delhi, the fourth respondent in CW.3110/97. Petitioner No.3 in CW.3110/97 is working as Laboratory Assistant in L.N. Girdhari Lal K.U. Sr. Sec. School, Bagh Diwar, Delhi, the fifth respondent in CW.3110/97. Petitioner No. 4 in CW. 3110/97 is working as Laboratory Assistant in Fatheपुरi Muslim Sr. Sec. School, Delhi, the sixth respondent in CW.3110/97.

5. On the 26th of October, 1995, the Ministry of Human Resource Development, Department of Education, Government of India, passed the following order:-

Sub: Grant of three-tier pay scales to Laboratory Assistants Reference regarding.

I am directed to refer to your letter dated 25.3.95 addressed to the Additional Secretary requesting for a meeting in connection with the above mentioned case and to say that the matter having been considered it has not been possible to accede to the request of your Association and Government of NCT of Delhi has been accordingly apprised with the decision vide letter of even number dated 22.9.1995.

6. Challenging this, the petitioners of all the three writ petitions are claiming the parity of scales of pay with the Primary Teachers and they claim payment w.e.f. 1.1.1986.

7. Mr. Rajesh Goyal, the learned counsel for the petitioners in all the writ petitions, covered a very wide field in his arguments, and I heard the learned counsel for the parties at length. The main thrust of the arguments of Mr. Rajesh Goyal, the learned counsel for the petitioners, was that the Laboratory Assistants are doing the same work as that of the Primary Teachers, and the Primary

Teachers have been given the scales of pay recommended by the Fourth Pay Commission while the Laboratory Assistants have not been given. The learned counsel for the petitioners, Mr. Rajesh Goyal, referred to the Office Order dated 23.10.1998 issued by Navyug School Education Society, New Delhi, which is as under:-

OFFICE ORDER

As per the decision taken by the Board of Governors of Navyug School Education Society in its meeting held on 04.09.98 (item No.7(b)), the pay scale of Lab. Assistant working in Navyug Schools in the pay scale of Rs.1200-2040 (pre-revised) is hereby revised to the pay scale of Rs.1400-2600 (pre-revised) with immediate effect.

8. The learned counsel for the petitioners, Mr. Rajesh Goal referred to the judgment of the Central Administrative Tribunal, Calcutta Bench in "Atin Kumar Das Vs. The Lt. Governor, A&N Islands & Others" dated 3.2.1997, wherein the CAT had directed the respondent therein to give benefit of pay scale of Rs. 1400-40-1600-50-1650-EB-50-1950-EB-2250-EB-50-2300-60-2600 to Laboratory Assistants after completion of 12 years of service. The learned counsel for the petitioners, Mr. Rajesh Goyal, referred to the order dated 23.3.97 of the Central Administrative Tribunal, Calcutta Bench, by which the CAT dismissed the review petition filed by the Union of India for review of the judgment dated 3.2.1997.

9. The learned counsel for the petitioners, Mr. Rajesh Goyal, referred to the following judgments of the Supreme Court for the proposition that once the respondents had treated the Laboratory Assistants, for the purpose of giving allowances and other perks, at par with Primary Teachers, the pay scale also should be the same:-

1. Dr. Ms. O.Z. Hussain Vs. Union of India and others,
2. "Union of India & Others Vs. Bijoy Lal Ghosh & Others" (1988) 3 SCC 362
3. "The West Bengal Factories Services Association & Others Vs. The State of West Bengal & Others" 1988 (2) SLR 485
4. Randhir Singh Vs. Union of India (UOI) and Others,
5. L. Chandra Kumar Vs. Union of India and others,
10. Ms. Avnish Ahlawat, the learned counsel for the Director of Education, the second respondent submitted that the claim of the petitioners is not sustainable in view of the judgment of the Supreme Court in Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, and K. Vasudevan Nair and others Vs. Union of India and others, .
11. Mr. Sanjay Poddar, the learned counsel for the Union of India, the first respondent referred to the judgment of the Supreme Court in National Federation of State NFC (Physical Education) Teacher's Associations and others Vs. Union of

India, , and submitted that for the purpose of the claim of parity, the petitioners should establish that qualifications, duties and responsibilities of the petitioners and the post for which the petitioners are claiming parity are the same. According to Mr. Sanjay Poddar, the learned counsel for the Union of India, the qualifications, duties and responsibilities of Primary Teachers are entirely different from the Laboratory Assistants and under no circumstances the Laboratory Assistants could be treated at par with Primary Teachers, and the sine qua non, for claiming the parity, these three - the qualifications, duties and responsibilities - are not present in this case. Therefore, the writ petitions are liable to be dismissed.

12. In National Federation of State NFC (Physical Education) Teacher's Associations and others Vs. Union of India, , the question, as observed by the Supreme Court, before the Supreme Court was:

"Whether the teachers belonging to the petitioner-Federation are entitled to a pay scale of Rs.440-750 as is applicable to the secondary school teachers with effect from 1-1-73?

The Supreme Court observed:

"From a perusal of the record it is seen that there are no scales one for primary school teacher and another for secondary school teacher. Once this aspect of the matter becomes clear it will follow that the assumption on the part of the petitioners that they have been fixed on the pay scale of primary school teachers is without foundation. The records also reveal that the N.D.S. instructors Junior Grade I were recruited for a specific purpose. Their pay scale of Rs.110-200, was deliberately fixed. There was no mistake about it. That is evident from G.S.R.336 dated 24th February, 1961 issued by Ministry of Education, Government of India. Inasmuch as N.D.S. instructors did not have desirable qualification of diploma from a recognised Physical Training Institute as listed out in the Schedule to the said G.S.R. Notwithstanding the fact that they were assigned the job of Physical Education Teacher, they could not be given the pay scale of Physical Education Teacher of Central Schools because of what is stated above. The Third Pay Commission also did not recommend the revised pay scales for two reasons: (1) They were either temporary or quasi-permanent or (2) were in the process of transfer to the State service. Therefore, the mistake in fixing the scale of pay as alleged by the petitioners is not tenable.

The Supreme Court proceeded and considered:

"As rightly submitted by the learned counsel for the respondent 5 non-gazetted categories of N.D.S. employees namely, (1) Supervisor (2) N.D.S. Instructor Senior Grade I (3) N.D.S. Instructor Senior Grade II (4) N.D.S. Instructor Junior Grade I and (5) N.D.S. Instructor Junior Grade II which later on came to be merged with Junior Grade I with effect from 1-3-71, came to be fixed on different pay scales. Such fixation of pay scale was based on the respective qualifications and experience as per the recruitment Rules. Where, there such is

the position, we are unable to hold that principle of equal pay for equal work would apply. This Court had occasion to point out in *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, :

"The doctrine of 'Equal Pay for Equal work' is not abstract on, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of 'Equal Pay for Equal Work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently.

The Supreme Court further observed:

"This Court had occasion to consider parity in employment and the pay fixation thereof, in *State of U.P. and Others Vs. J.P. Chaurasia and Others*, it was thus held:

"In the present case, all Bench Secretaries may do the same work, but their quality of work may differ. Under the rules framed by the Chief Justice of High Court, Bench Secretaries Grade I are selected by a Selection Committee. The selection is based on merit with due regards to seniority. They are selected among the lot of Bench Secretaries Grade II. When Bench Secretaries Grade II acquire experience and also display more merit, they are appointed as Bench Secretaries Grade I.

Eventually, the Supreme Court held:

"Therefore, where the responsibilities are different and the nature of work is also different the petitioners cannot be heard to contend that they will be entitled to the scale of pay as is applicable to secondary school teachers.

13. In *K. Vasudevan Nair and others Vs. Union of India and others*, the question before the Supreme Court was:

"Whether the Section Officers working in the Indian Audit and Accounts Department are entitled to the same pay scales as are being drawn by the Section Officers in the Central Secretariat?

The Supreme Court referred to the judgment of the High Court where recommendations of the Second and Third Pay Commissions were considered and the High Court observed:

"The aforesaid view of the Second Pay Commission in addition to what has been stated by the Third Pay Commission in its report in paragraph 122 clearly show that the petitioners and the Section Officers in the Central Secretariat Service cannot be treated at par. Mr. Gupta is right when he contends that the Third Pay Commission was wrongly of the view that direct recruitment does not take place to the post of SAS Accountants but it is not disputed that most of the recruitment as SAS Accounts has taken place by way of promotion. Even if the Pay Commission was not correctly informed about the manner of recruitment,

nevertheless the other considerations which weighed with the Pay Commission were relevant considerations and the Pay Commission could rightly come to the conclusion that the two types of posts could not be equated. Another relevant factor which has to be taken into consideration is that when Section Officers like the petitioners are sent on deputation to the different Ministries, they work under the supervision of Section Officers of the Central Secretariat. It is obvious, Therefore, that the Section Officers like the petitioner cannot be equated with the Section Officers in the Central Secretariat Service. The type of work which is performed by the two categories is also different.

The Supreme Court approved the view of the High Court. Therefore, the petitioners cannot claim the reliefs prayed for in the writ petitions.

14. In Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, , there was a cadre of Sub Registrars. They claimed, through a writ petition, before the Calcutta High Court for issuance of a writ of mandamus to grant the Sub-Registrars, the pay scale of Rs.660-1600 with all other privileges granted to State Service Officers. The High Court granted the relief besides granting other reliefs claimed by the Sub-Registrars. The State government challenged the judgment of the High Court before the Supreme Court. The Supreme Court recognised the principle that pay fixation must reflect the nature of duties and responsibilities attached to the post.

15. In my view, the ratio laid down by the Supreme Court would apply to the facts of the cases in hand and the petitioners cannot claim the reliefs prayed for in the writ petition.

16. The decisions relied upon by Mr. Rajesh Goyal, the learned counsel for the petitioner, referred to above, arose in different circumstances and the ratio decidendi in those cases cannot be of any help to the petitioners.

17. In this view of the matter, it is not necessary to go into the various averments made in the writ petitions and the counter-affidavits. I do not find any substance in the writ petitions. All the three writ petitions are accordingly dismissed.

18. There shall be no order as to costs.