
(1997) 12 GAU CK 0010
In the Gauhati High Court
Case No : Writ Appeal No. 116 of 1996

Kamal Chandra Sarma	Vs	APPELLANT
State of Assam and Ors.		RESPONDENT

Date of Decision : 04-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1998) 1 GLJ 118 : (1997) 3 GLT 604

Hon'ble Judges : M.Ramakrishna, C.J. and D.Biswas, J

Bench : Division Bench

Advocate : M.Singh, M.R.Pathak, D.K.Saikia, B.P.Kataki, Advocates appearing for Parties

Judgement

M. Ramakrishna, C. J.

1. Appellant Nos. 1 to 11 were the petitioners in Civil Rule No. 1331 of 1994 presented before this Court seeking a writ of Mandamus to the respondents by way of a direction to pay equal salary/pay for equal work, regard being had to the grounds taken in the petition. Respondent No.5, the Union of India, was also made a party necessary in the case and respondent Nos. 1 to 4 are all authorities of the State Govt. of Assam. This petition was opposed by the respondents by filing a detailed statement of objection by way of a counter. The learned Single Judge after going through the grounds as well as the stand taken by the State of Assam in their counter and after hearing the learned counsel on both the sides, by an order made on 29th January. 1996. held that there was no case made out for issuance of a writ as prayed for. Thus the writ petition came to be dismissed. Hence this appeal.

2. At the outset, we may mention that the registry at the time of scrutiny of the papers, should have applied the correct law including the provisions of the Code of Civil Procedure to verify as to whether these eleven persons could join together and present one writ petition seeking for reliefs for all the individuals, namely, all the eleven persons, by paying court fees in one petition. It is

unfortunate that the Scrutiny Officer, while scrutinising the papers, did not apply his mind and failed to record proper objections before the writ petition was registered. However, since the writ Court did not raise objections on the above grounds as preliminary objections, we proceeded to hear and dispose of the appeal on merits. Indeed, if we were to apply the correct law, there must be as many appeals as there are petitioners/appellants seeking reliefs in this appeal. Again the registry committed the same mistake which they committed in the writ Court. Again the registry did not apply its mind to verify this factual position and they mechanically posted this matter for hearing. The rules provide that each individual seeking for relief for himself, must present an independent writ petition under Article 226 of the Constitution of India seeking relief individually paying court fees. However, in the event of a large number of persons seeking reliefs which are common to all of them, no doubt, they may prepare the common grounds and present one writ petition, but they have got to pay court fees for as many petitions as there should have been seeking reliefs independently. Similar is the law made applicable in respect of appeals. In other words, apart from not following the procedure as known to law in these matters, the Govt. has been losing revenue by way of court fees.

3. We will now examine the merits of the matter. The joint case of these petitioners/appellants seeking for the relief of salary or pay scale at par with the Deputy Public Analyst of the Public Health Laboratory, Govt. of Assam, was that they wanted to make out a case before the writ Court that the disparity in the pay scales was pointed out in the year 1988, bringing notice of the Govt. of Assam to the anomalies found and carried forward in this respect. It was noticed by the writ Court during the course of its consideration that after the 1975 Revision of Pay Rules (ROP Rules in short), the pay scale of Senior Scientific Officer was revised from Rs.5501100 to Rs.7001425 pm and that of the Scientific Officer from Rs.350925 pm to Rs.5001225 pm.

4. It is also stated that a representation having been made by the concerned persons before the 4th Pay Commission, Assam, 1980, claiming that at least similar pay scales these of the Deputy Public Analyst and Assistant Analyst and suitable upgradation of their pay may be given effect to. In 1988, the recommendation of the Pay Commission by way of revision was in regard to Senior Scientific Officer at the scales of Rs.29754750 and with regard to Scientific Officer at the scale of Rs.22754450 pm and that the same pay scales had been recommended by the said Pay Commission in respect of the Deputy Public Analyst and Assistant Analyst. Indeed, the said pay scales were also recommended by the Pay Commission in regard to the two posts of Public Health Laboratory, Assam without making discrimination. However, on 6.12.90, the Govt. of Assam framed the rules known as the Assam Services (Revision of Pay) Rules, 1990. In this revised Pay Scale Rules, the pay scales recommended by the Commission in respect of the Deputy Public Analyst and the Assistant Analyst of the State Public Health Laboratory were given effect to, but in regard to the Senior Scientific Officer and Scientific Officer of the Directorate of Forensic

Science Laboratory, though accepted, the Govt. in the Rules referred to above, has given different pay scales to them. i.e. pay scales lower than those given to the two officers of the State Health Laboratory, as referred to above. This was considered by the learned Single Judge in the course of his order.

5. The learned Single Judge also considered that thereafter, a forum, established by the aggrieved officers, made representation by way of memorandum to the Chairman of the One Man Anomaly Committee, Assam Pay Commission, 1988. referring to the pay scales recommended by the Assam Pay Commission, 1988. with their request to remove the disparity and to make similar pay scales for them as these given to the officers of the Public Health Laboratory.

6. Unfortunately, by an order made on 14th May, 1993, this claim was rejected vide Annexure G to the writ application. Indeed, even prior to 1988 revised pay scales, this disparity did exist, but it continued to be so because though the Pay Commission, 1988 recommended better scales of pay. the Govt. did not choose to modify/remove the disparity. Neither has the Govt. accepted the recommendations made by the Pay Commission to keep these officers at par with the officers of the Public Health Laboratory. Annexures A and B to the writ petition contain the statements showing the mode of recruitment, educational qualifications, provision for promotion, nature of work, duties and responsibilities in respect of these different categories of posts.

7. The learned Single Judge while considering the legal argument advanced in support of the petitioners, did consider Article 14 of the Constitution which is made applicable for consideration of principle of equal pay for equal work.

8. Considering the stand taken by the Assam State Govt. in its statement of objections by way of counter, the learned Single Judge held that in the light of the law as laid down by the Supreme Court in the case of State of West Bengal & others vs. Hari Narayan Bhowal & others, (1994) 4 SCC 78 that:

"In public services, nature of work in two services or in the same service the nature of the work of the two groups may be more or less same, but merely on that ground they are not entitled to the same scale of pay. It is well known that scales of pay are fixed by expert bodies like the Pay Commissions, which consists of persons having specialised knowledge of the subject. Such Commissions while fixing the scales of pay or revising the same, have to go in depth, not only into the nature of work by members of the same service and members of different services but also various other factors before the scales of pay are fixed. One of the primary concerns of such Pay Commissions is to remove any anomaly and to see that members of different services get scales of pay and other emoluments not only according to the nature of work but also according to educational qualifications, responsibilities of the posts and experience etc. As such, before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages of salary." (Please see paragraph 9 of, the decision)

And following the said principle, the learned Single Judge, arrived at a conclusion that unless a clear case is made out and the Court is satisfied that this scale of pay provided to a group of persons and, on the basis of the materials produced before the Court, that it amounts to discrimination the Court should not take upon itself the responsibility of fixing of scales of pay specially when the different scales of pay have been fixed by the Pay Commission or the Pay Revising Committee having persons as members who can be held to be experts in the field and after examining all the relevant materials. A certain amount of anomaly may be introduced of which the Court may not be conscious in the absence of all the relevant materials before it.

9. Thus the writ Court has reached a conclusion that it would not be safe for the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India to take upon itself this task of interfering with the discretionary power of the Govt., based upon recommendations made by the Commission and thereby giving rise to complications besides creating anomalies.

10. Again the learned Single Judge has referred to the principles of law as laid down by the Supreme Court in the case of Babulal vs. New Delhi Municipal Committee & another as reported in AIR 1994 SC 2214 and held that the facts of this case are different from those of the facts referred to in that case dealing with the disparity of scales of pay as claimed by two sets of persons with a view to establish the disparity invoking the provisions of Article 14 of the Constitution. The learned Single Judge further observed that no clear case has been made out to show that the fixing of different scales of pay in the case of the petitioners amounted to discrimination without there being any justification.

11. Mr. BP Katakya, the learned counsel for the appellants, has not been able to persuade us to take a view different from the view expressed by the learned Single Judge and we do not see any good ground to interfere with the judgment and order made by the learned Single Judge.

12. In the result, the appeal fails and the same is dismissed.

13. However, before parting with this case, it is made clear that, as pointed out by Mr. BP Katakya, the learned counsel for the appellants/petitioners, in the course of the affidavit sworn on behalf of the State of Assam by way of counter opposing the writ petition, in paragraph 4 the Govt./respondents have pointed out:

?However, the Govt. may reconsider the matter of awarding upgraded pay scale as recommended by the 1988 Pay Commission.?

And Mr. Katakya submits that in the event of the petitioners presenting a representation by way of a memorandum to reconsider their cases by the Govt. of Assam, they may do so without being influenced by this judgment. At this point of time, the learned Govt. Advocate brought it to our notice that there was a representation made by the officers' forum seeking to make out a case,

whereas in the instant case, only these eleven persons have filed the case and that this distinction may be noted.

14. In view of the foregoing, we make an observation that in the event of these petitioners/appellants making a representation through a recognised forum to the Govt. of Assam to reconsider their cases, the Govt. may reconsider the same without being influenced by this judgment of ours. Ordered accordingly.