
(1998) 04 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : SWP. 245 of 1990

Kumar Kant

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Citation : (1998) KashLJ 771 : (1999) 1 SCT 755 : (1999) 1 SriLJ 89 : (1999) SriLJ 89

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Judgement

A.Q.Parray,J.

1. The petitioners, who are Sanitary Supervisothers working in Jammu Municipality in the pay scale of Rs. 800201000251050EB301500 with effect from 1st of April, 1987, have stated that their counterparts working as Sanitary Supervisothers in Srinagar, Municipality, Srinagar are getting pay under scale of Rs. 900 1830. The petitioner's claim that their qualification as Sanitary Supervisothers, being the same as the Sanitary Supervisothers of Srinagar Municipality and the mode of recruitment of the petitioners as Sanitary Supervisothers is also the same as that of Srinager Municipality, and thirdly the nature of work and hours of duty of the petitioners are claimed to be the same as that of Sanitary Supervisothers of Srinagar Municipality. Despite these similarities there is a difference in the pay scales of the Sanitary Supervisothers of Jammu Municipality visavis their counterparts in Srinagar Municipality and consequently the other services benefits like pension, provident fund, gratuity etc. are also being affected, it is also claimed that the discrimination in the pay .scales of Sanitary Supervisothers of Jammu

Municipality Visavis Srinagar Municipality is against law, equity, good conscience and natural justice, the petitioners have further submitted that

such a treatment given by respondents 1 and 2 to petitioners is arbitrary, malafide and discriminatory and that the petitioners are being deprived of

their fundamental right of "equal pay for equal work" as enshrined in the Constitution. The petitioners as such have asked for a writ of mandamus

directing respondents 1 and 2 to pay to the petitioners the salary under the pay scale of Rs.9001800 thereby bringing them at par with the Sanitary

Supervisors of Srinagar Municipality who are getting the same scale, and further directions be given to respondents that the Service benefits

may also be given to the petitioner equal to the service benefits of Sanitary Supervisors of Srinagar Municipality, and for any other writ which

the court deems proper.

2. The respondent State having been served, they appeared and file their detailed counter, in the counter filed on behalf of the respondents, they

have stated that none of the fundamental rights, muchless the right of equality of the petitioners, have been violated in any manner regarding "equal

pay for equal work" as enshrined in the Constitution of India. It has been pleaded by the respondents that there are two grades of sanitary

supervisors in Jammu Municipality one is Rs.8001500 and the other is Rs. 11502050. The grade of Rs.8001500 is given to the newly

promoted/appointed persons and there are 28 posts in this scale. The next scale i.e. Rs. 11502050 is given to senior persons on merit and ability,

and there are seven posts in this scale. This means that there are 35 total number of posts of Sanitary Supervisors in Jammu Municipality.

3. It is further submitted on behalf of respondent State that the provisions of different scales in the pay is to provide avenue of promotion to the

staff and to move stagnation and this is to be, treated as an incentive to these persons; meaning thereby that a person who is working in the lower

grades as a Sanitary Supervisor, has the avenues of promotion/incentives for promotion to go to a higher selection grade as a Sanitary Supervisor

as per his work and conduct etc.

4. It is also averred that the nature and duties of the Sanitary supervisors working in Jammu Municipality is not the same as those performing

their duties in Srinagar Municipality. It is also reiterated that the pay scale does

not depend only on the nature of work or on the volume of work

done. It requires among other evaluation of duties and the responsibility of respective posts. The functioning of two posts may be same or similar,

but it may be different in the degree in the performance. The quantity of work may be the same, but quality may be different. It can not

be/determinely by relying upon the averments made in the affidavit and so it cannot be said that nature, duties and functioning of the Sanitary

Supervisothers working in Jammu Municipality as well as Srinagar Municipality are the same.

5. It is also averred that the service conditions of the employees of Jammu Municipality are governed by the Jammu Municipality Subordinate

Service Rules of 1970 and in Srinagar Municipality these are governed by Srinagar Municipality Subordinate Service Rules of 1970. Though

source for both the rules is the same but the two classes of Sanitary Supervisothers have been made in Jammu Municipality one of a lower grade

and other of a selection/higher grade and, accordingly, in Jammu Municipality the pay scales for the post of Sanitary Supervisothers though one

scale is less than those of Sanitary Supervisothers working in Srinagar Municipality, but the fact remains that the other grade of

Sanitary Supervisothers is higher than that of Sanitary Supervisor working in Srinagar Municipality and, as such, there is no violation of the rules

equal pay of equal work.

6. It has also been pleaded that the nature of working and hours of duty of the petitioners and those of Sanitary Supervisothers Working in

Srinagar could not be same of population in view of the density of population and climatic conditions. The evaluation of duties and the

responsibilities of the respective posts are not the same. The functioning of two posts may appear to be the same or similar, but there is a difference

in degree in the performance of the duties. The quantity and quality of the work is also different,

7. The respondents have further pleaded that the appointments and service conditions of sanitary supervisothers working in Jammu Municipality

are different than that of Sanitary Supervisothers working in Srinagar Municipality there is only one running grade of 9001830, whereas in Jammu

Municipality there are two grades one is Rs.8001500 and the other is Rs.

11502050, just to provide avenue of promotion to the staff and to remove stagnation. The higher grade in Jammu Municipality for Sanitary Supervisors has been kept and made available and is to be treated as an incentive to those persons who are to be promoted to the higher grade. So the question of equal pay for equal work does not arise in this case as Jammu Municipality is providing better incentives and service conditions for promotion to Sanitary Supervisors rather than in Srinagar Municipality.

8. The respondents have further, while replying ground(A) of challenge, pleaded that the same is wrong and have denied that the treatment of the petitioners by the answering respondents is arbitrary, mala fide and discriminatory.

9. In ground (b) they have stated the petitioners are not being deprived of their fundamental right of equal pay for equal work as enshrined in the Constitution.

10. With regard to ground (c), it has been pleaded by the respondents that the same is wrong and untenable. The appointments and working conditions of the Sanitary Supervisors working in Jammu Municipality are different and better than those working in Srinagar Municipality. The petitioners are not being paid less than the Sanitary Supervisors working in Srinagar municipality. The petition is false, frivolous and vexatious and merits no consideration. The respondents have prayed for dismissal of the same with costs.

11. The matter came up for arguments on 19th Feb.'98. I have heard the learned counsel for the parties at length, Before I venture to appreciate the arguments advanced by the learned counsel for the parties, I would like to place on record the constitutional mandate regarding the caption equal pay for equal work for both men and women."

12. This being accepted as a "Constitutional goal" capable of being achieved through constitutional remedies, his Lordship Hon'ble Justice

Chinnappa Heddy Judge, while delivering a judgment, which is reported as AIR 1982 SC 879(at P.881 of AIR), observed:

"It is true that the principle of "Equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the constitution proclaims "equal pay for

equal work for both men and women' as a Directive Principle of

State Policy. "Equal pay for equal work for everyone and as between .sexes. Directive Principles as has been pointed out in some of the judgments

of this court, have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the state not to deny

any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all

citizens in matters relating to employment or appointment to any Office under the State. These equality clauses of the Constitution must mean

something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with

the work they do and the pay they get. To them the equality clauses will have some substance if equal means equal pay.

His Lordship has further observed:

It is well known that there can be and there are different grades in a service, with varying qualification for entry into a particular grade, the higher

grade often being promotional avenue for officers of the lower grade, which may be either academic qualifications or experience based on length of

service reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay equal work would

be an abstract doctrine not attracting Article 14 if sought to be applied to them.

In 4 SC Cases 225 at para 712 their Lordship Justice Hegde and Mukerjee, Judges in Keshavananda Bharti Vs. State of Kerala have observed

that Article 39(d) of the constitution proclaims "equal pay for equal work." This Article and other like provisions in the Directive Principles are

conscience of our constitution." They are rooted in social justice. They were intended to bring about a socioeconomic transformation in our

society. Similarly their Lordship Justice Shelat and Justice Grover at Para 596 of the said judgment which corresponding to AIR 1973 SC 1451 at

Para 728 have observed:

The Constitution seeks to fulfill basic needs of the common man and to structure of society.

Their lordships have further observed:

The dominant objective in view was to ameliorate and improve the lot of the common man and to bring about a socioeconomic justice. "In matters

of employment the government of a socialist State must protect the weaker sections it must be ensured that there is no expectation of poor and

ignorant. It is the duty of the state to see that the under privileged or weaker sections get their dues. Even if they have voluntarily accepted the

employment on unequal terms, the state should not deny their basic rights of that the principle of "equal pay for equal work" has to be construed in

the first place. Second, this principle has no mechanical application in every case of similar work. It has to be read into Art. 14 of the constitution.

Art. 14 permits reasonable classification founded on different basis. It is now well established that the classification can be based on some qualities

or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristic must, of course, have a

reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to

promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work

performed by persons of longer experience is superior than the work of newcomers.

13. His Lordship Justice Chinnappa Reddy in the Judgement (supra) AIR 1982 SC 579Sc has also observed that the classification of the officers

into two grades with different scales of pay either on academic qualification or experience based on length of service is sustainable.

14. Apart from that, higher pay scales to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service.

There is selection grade for District Judges. There is senior time scale in Indian Administrative Service. There is super time scale in other like

services. The entitlement to these higher pay scales depends upon senioritycummerit or meritcumseniority. The differentiation so made in the same

cadre will not amount to' discrimination. The classification based on experience is a reasonable classification. It is a rational nexus with t he

objective thereof. To hold otherwise, it would be detrimental to the interest of the service itself.

15. So with this academic background in nutshell about the doctrine of "equal pay of equal work", I further analyze the matter in view of the

arguments advanced and in view of the pleadings made before me. It may be noted that the petition moved by the petitioners is not sustainable and

maintainable in the eyes of law, because the nature of work of Sanitary Supervisors is different in both the Municipalities, though they are designated with the same nomenclature. The very fact that as per creation/ existing strength/ sanctioned strength of the sanitary supervisor in Srinagar Municipality at Serial No:86 of 198788 budget produced before me, there are 90 posts in the grade of Rs.9001830. The very fact that there are 90 sanitary supervisors in Srinagar Municipality as compared to 28 in the grade of Rs. 8001500 and 7 in the grade of 11502050 i.e. total number of Sanitary Supervisors in Jammu Municipality are only 35, which give a skewed picture that the volume of work entrusted to the Sanitary Supervisors of Jammu Municipality is obviously lesser as compared to Srinagar Municipality. Secondly, from population point of view also, Srinagar Municipality is having more population than of Jammu Municipality and to put graphically also Srinagar City is more dirty than Jammu Municipality/City, obviously Jammu Municipality/City has a topographical position that with a shower the whole Jammu town is washed and all the dirt and filth runs down the drains and that leaves the Jammu Municipality cleaner and the work load is also lesser. On the other hand, Srinagar Municipality/Town gets drowned in the snow and rain water, and to clean Srinagar city the help of dewatering pumps is the routine nature of work. The work load/supervisor) of the Sanitary Supervisors in Srinagar Municipality as such is heavier than that of Sanitary Supervisors in Jammu Municipality. The pays/grades in Jammu Municipality are also higher than those of Srinagar Municipality, as the grade which finally the Sanitary Supervisors of Jammu Municipality are entitled is Rs. 11502050 and on the other hand the parity which they claim with the Srinagar Municipality are having pay scales of Rs. 9001830. Infact, the case should have been before this court that the Srinagar Municipality people should have projected their claim on the ground of equal pay for equal work visavis Jammu Municipality people, but the irony would have it that it is the Jammu Municipality Sanitary Supervisors who claim and filed present petition.

16. The learned counsel for the respondents Mr.S.S.Nanda has referred to me AIR 1988 Sc 1291:

11. In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on an intelligible basis.

The same amount of physical work may entail different quality of work, some more sensitive some requiring more tact, some less it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. It has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived at mala fide either in law or in fact. In the light of the averments made and in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved. In that view of the matter this application must fail and it is accordingly dismissed without any order as to costs.

17. Mr.S.S.Nanda has also referred to me AIR 1989 SC 19:

'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 degree 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 equation 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 of 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 to tinker with such equivalent unless it is shown that it was made with extraneous consideration,

18. In the present case, it is true that at one time, Bench Secretaries were paid more emoluments than section officers. But it is not known on what basis they were paid in the higher pay scale and treated as a superior class to section officers. The successive pay commission and even Pay Rationalisation Committee, however, found no support to their superior claim.

The Commissions and Committee have evaluated the respective duties and responsibilities of the two posts. It was found that section officers perform onerous duties and bear greater responsibilities than Bench Secretaries. We cannot go against that opinion and indeed we must accept that opinion. The Bench Secretaries, therefore, cannot claim as of right the pay scale admissible to section Officers.

19. So in the light of the judgments referred at the bar and submission made, it has been desired by their lordships of the Apex Court that the question of equation 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 of 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 considerations.

So in the light of above observations and conclusions arrived at, I do not find any force in the petition which as such is being dismissed.

I leave the parties to bear their respective costs.