
(2023) 10 GAU CK 0024

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3481 Of 2021

Malabika Dhar

APPELLANT

Vs

Sate Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 39(d)

Citation : (2023) 10 GAU CK 0024

Hon'ble Judges : Soumitra Saikia, J

Bench : Single Bench

Advocate : K. Sarma, H.K. Das, B. Gogoi

Final Decision : Disposed Of

Judgement

1. Heard Mr. K. Sarma, learned counsel for the petitioner. Also heard Mr. H. K. Das, learned Standing Counsel, Gauhati High Court, for the respondents no.1 to 3 and Mr. B. Gogoi, learned Standing Counsel, Finance Department for the respondent no.4.

2. This writ petition is filed by the petitioner seeking a writ of mandamus from this Court directing the respondent authorities to take necessary steps enabling the petitioner to draw pay scale of the Record Keeper as per the action plan prepared by the Government of Assam on the basis of the recommendation of the Shetty Commission. The petitioner was appointed as Record Keeper in the establishment of the Presiding Officer, Industrial Tribunal, Silchar in the year 1982. She joined the said Department on 19.07.1981 and she has been working there till her retirement in the year 2022. At the time of her appointment the Industrial Tribunals were under the Department of Labour and Employment of Government of Assam. Subsequently, in the year 2010 all the Tribunals including the Labour Courts were brought under the control of the Gauhati High Court and the Judicial Department of Government of Assam. The petitioner was appointed as a Record Keeper vide the appointment order dated 17.07.1982 in the scale of pay of Rs.200-4-224-6-300/- per month plus other allowances as admissible

under the Rules. She joined the service on 19.07.1982 and was still in service at the time of filing the present writ petition. Subsequently, she, however, superannuated in the year 2022. The grievance of the petitioner is that as per the Shetty Commission recommendations, Revision of Pay (RoP) that ought to have been made in respect of the petitioner was not done. According to the petitioner, as per the Shetty Commission's recommendation, pay scale of Record Keeper at scale of Rs.3850-7350 is equivalent to Supervisory Assistant/ UD Assistant/Judicial Peshkar/ Nazir/Stenographer Grade-III and they are the common category posts as reflected in the action plan. The said action plan was prepared by the Government of Assam in terms of the direction of the Apex Court passed on 07.10.2009 in WP(C) No.1022/1989 - All India Judges Association and Others vs. Union of India & Other. The directions issued by the Apex Court were required to be complied with for which purpose the Government of Assam had prepared the action plan. The petitioner was a Record Keeper since her appointment but she had been drawing the pay scale of a Record Arranger which is 2650-5200/- instead of allowing her to draw the pay scale of a Record Keeper which is 3850-7350/- with effect from 01.04.2003 as per the Shetty Commission recommendation. The petitioner made several requests to all the competent authorities, however, her plea was not considered. Referring to a communication dated 11.11.2010, learned counsel for the petitioner submits that by the said communication the Hon'ble Gauhati High Court had communicated to all the District and Sessions judges, the Principal Judges, Family Courts, the Presiding Officers, the Special Judge, CBI Court, the Presiding Officer, Labour Court, Guwahati/Dibrugarh, the Presiding Officer, Industrial Tribunal, Guwahati/Dibrugarh/Silchar, The Judge, Designated Court, Assam, Guwahati and the Chief Judicial Magistrate of all the Districts, the draft action plan submitted by the Government of Assam for furnishing the financial implications/ involvement towards implementation of the Hon'ble Supreme Court of India's directions passed in WP(C) No.1022/1989 on 07.10.2009 relating to the revision of pay scales, etc of the Subordinate Court Staff. Learned counsel for the petitioner submits that as per the said action plan there are a few "common category posts." Under the said common category posts at serial no. 5 Record Keeper is shown in the pay scale of 3850-7350/- whereas at serial no. 11 Record Arranger has been shown in the pay scale of 2650-5200/-.

3. The learned counsel for the petitioner submits that the petitioner was appointed as a Record Keeper under the Industrial Tribunal, Silchar and therefore, her revision of pay ought to have been made in the pay scale available to Record Keeper which is 3850-7350/-. It is submitted that however, she had all along being given the pay scale of Record Arranger which is 2650-5200/- and the benefits as recommended by the Shetty Commission ought to have been given to her in the appropriate pay scale of Record Arranger which is 3850-7350/-. It is further submitted that by the communication dated 18.12.2010, the Judicial Department, Government of Assam informed the Accountant General (A& E) Assam Maidamgaon, Beltola regarding the implementation of the

recommendation of the Shetty Commission in respect of the staff of subordinate Courts with effect from 01.04.2003. It was informed that as per the Shetty Commission, one increment has been granted at the existing pay scale to the each of the holders of the category of posts mentioned therein. The category of posts included Stenographer Grade-I, Supervisory Assistant, UD Assistant, Judicial Peshkar, Record Keeper, Nazir, Stenographer Grade-III, LD Assistant, Civil Copyist/Typist Copyist, Crl. Copyist/ Police Diary Copyist/ Follo Copyist, Record Arranger.

4. It is further submitted that initially when the post was created, it was the post of Record Arranger. Subsequently, when all the Tribunals and subordinate Courts came under the administration of Gauhati High Court, the post of Record Keeper and that of Record Arranger carrying similar duties under similar establishment could not have been given two different pay scales. It is submitted that as the nature of duties and responsibilities of both the posts of Record Keeper and Record Arranger are same, the pay scale should also be equal. Consequently, the benefit of ROP has not been conferred on the petitioner in the appropriate pay scale which is the pay scale of Record Keeper. The petitioner preferred the representation before the Presiding Officer Industrial Tribunal, Silchar as well as before the Registrar General, Guwahati High Court. By a communication dated 06.09.2017 issued by the Registrar (Judicial), Gauhati High Court to the L.R. & Secretary to the Govt. of Assam, Judicial Department, Government of Assam, it was mentioned in the ROP Rules 2010, the pay scale for the post of Record Keeper of Industrial Tribunal is shown as 5200-20200/- in the Grade pay of 1900/- in pay band 2, which corresponds to the pre revised scale of 2650-52000, which is the scale for the post of Record Arranger. However, in the earlier letter of the Judicial Department dated 03.10.2012 (available at Pg.-44 of the paper book), which was issued regarding the sanction for creation of posts, the record keeper is shown as equivalent to the post of UDA. Accordingly, it was requested that appropriate steps in regard to the pay scale of Record Keeper in the Industrial Tribunal, Silchar be taken.

5. Learned counsel for the petitioner submits that the representation preferred by the petitioner did not invoke any response to the grievances raised by the petitioner. It is submitted that the petitioner is entitled to be given the benefits of ROP in the pay scale of Record Keeper and not in the pay scale of Record Arranger. That apart, as reflected from the letter of the Registry of the Gauhati High Court, the post of Record Keeper is shown to be equivalent to the post of UDA. Under such circumstances, learned counsel for the petitioner submits that appropriate direction be granted to the respondent authorities to grant the available benefits under the ROP Rules to the petitioner in the appropriate scale of pay. In support of his contention the petitioner has relied upon the judgment passed by the Apex Court on 07.10.2009 in I.A.No.71A, 135-136, 137-138 & 142 in WP(C) No. 1022/1989, wherein following directions were passed:

".....

i) The high Courts, on judicial/administrative side, will ensure implementation of the recommendations of the Shetty Commission within a reasonable period of one year. The High Court shall permit writ petitions or applications that may be filed by the individual or staff association representing the various members of the staff.

ii) The High Courts shall also see that the recommendations are implemented w.e.f. 01.04.2003.

iii) There shall be benefit of one advance increment on the existing pay-scale instead of initial pay-scale. In many of ht estates, the same benefit has not been given to the members of the staff, the High Court should also see that these recommendations are implemented.

iv) In some of the states based on various other pay commissions Reports, benefits had been given to the members of the staff, these benefits, if any, given shall be in addition to the recommendations given by the Shetty Commission. In any case, if the members of the staff association/subordinate staff getting higher benefits under any of the recommendations of the pay commission/Government orders, they shall be permitted to avail those benefits."

6. The learned counsel for the petitioner also refers to the Notification No. JDJ. 147/2012/17 dated 30.07.2012 whereby the Governor of Assam recommended the financial benefits in the pre-revised pay structure which shall be given effect in the pre-revised pay scale of pay from 01.04.2003 to 31.12.2005. This Notification was issued by the State in pursuance to the order dated 07.10.2009 passed in W.P.(C) No. 1022/1989 by the Apex Court. Under the said Notification, it was stated that this benefit shall be equally applicable to the staffs of corresponding grade and status working in various Courts like MACT/Family Court/ Industrial Tribunals/ Labour Court/ Courts of Special Judge, CBI/ Special Judge, Assam, Judge Designated Court etc which falls within the sweep of the term "Sub-ordinate Judiciary". It is submitted that the said Notification further provides that if any of the employees of Sub-ordinate Courts are drawing under ROP 2010 or any other existing Government order, higher pay benefits once prescribed in the said Notification then they will continue to draw such higher pay benefits. It is further provided that in case of any confusion or difficulty that may arise in implementation of the said Notification, clarification may be obtained from the Judicial Department, Government of Assam.

7. As the petitioner's claims have not been redressed, the present writ petition has been filed with the following prayers:

"a. Issue a Writ or Direction in the nature of Mandamus directing the Respondent Authorities to take necessary steps enabling the petitioner to draw Pay Scale of Record Keeper as per the Action Plan prepared by the Government of Assam on the basis of recommendations of Shetty Commission.

b. Pass any other or further order/orders which this Hon'ble Court may deem fit

and proper under the facts and circumstances of the case.”

8. The respondent nos. 2 & 3 contested the case by filing their counter affidavits. The respondent nos. 2 & 3 disputed the contentions raised by the petitioner.

9. Mr. H.K Das, learned Standing Counsel GHC submits that the contentions of the petitioner are on wrong understanding of the provision of law as well as of the applicability of the Revision of Pay Rules. It is submitted that the pay scale for Record Arranger which is payable to the petitioner has since been revised and whatever benefits accrue to the petitioner in terms of the Revision of Pay has already been granted. It is submitted that the post of Record Keeper created in the establishment of the Industrial Tribunal is different from the post of Record Keeper available under the establishment of District and Sessions Judge. The post of Record Keeper was created in the establishment of the Industrial Tribunal vide notification dated 27.01.1981. It is submitted that although the post was created as a Record Keeper in the Industrial Tribunal but the pay scale granted was equivalent to that of a Record Arranger under the District and Sessions Judge establishment. As such, it has to be accepted that the post of Record Keeper in the Labour and Industrial Tribunal is equivalent to the post of Record Arranger and not to the post of Record Keeper under the District and Sessions Judge. Learned counsel for the respondent nos. 2 & 3 submits that the question of whether the post of Record Keeper in the Industrial Tribunal and the Record Arranger in the District and Sessions Judge establishment is equivalent or not, has to be decided by the competent authority. It is submitted that the claim of the petitioner that the benefits which accrue to the petitioner under the ROP Rules, in so far as, the post of Record Keeper in the establishment of District and Sessions Judge, is required to be conferred to the petitioner as a Record Keeper in the Labour and Industrial Tribunal cannot be accepted. Such submission is opposed to the proposition of parity of pay as well as to the Principle of titrant of pay scales. Merely because the names of the posts are identical that by itself will not confer any right on the petitioner to claim for equal pay without there being any decision by the competent authority thereon. The learned counsel for the respondent nos. 2 & 3 submits that the benefits which had accrued to the petitioner under the ROP as per Shetty Commission recommendation have already been released in the appropriate scale of pay which is available to the petitioner. In support of his contention, learned Standing Counsel GHC for the respondent nos. 2 & 3 has relied upon the judgment passed by the Apex Court.

10. Learned Standing Counsel for the Finance Department also disputes the contention raised by the petitioner. He also submits that the post of the petitioner as a Record Keeper in the establishment of Labour and Industrial Tribunal is not equivalent to the post of Record Keeper in the establishment of District and Sessions Judge and as such her contention that the petitioner is not entitled to the benefit of the ROP as she had been denied the scale of pay equivalent to that of Record Keeper in the District and Sessions Judge establishment cannot be accepted. It is submitted that the petitioner is entitled

to the Shetty Commission benefits as per the existing scale of pay and as such, the increment available to the petitioner in her scale of pay has already been paid. The learned Standing Counsel, Finance Department submits that the petitioner at this stage cannot raise a plea of parity in employment, merely because, of the nomenclature of the posts are similar. In this context, learned Standing Counsel for the Finance Department refers to and relied upon the judgment of the Apex Court rendered in SC Chandra vs. State of Jharkhand reported in 2007 (8) SCC 279.

11. Learned counsels for the parties have been heard and pleadings on record have been carefully perused. Judgments cited at the Bar have been carefully noted.

12. The short question which has arisen in this proceeding is whether the benefits available to the petitioner under the Shetty Commission recommendations read with the direction of the Apex Court rendered in WP(C) No.1022/1989 on 07.10.2009 have been denied to the petitioner. The case projected by the petitioner is that in the action plan prepared by the Government of Assam and which was widely circulated amongst all heads of establishment under the Judicial Department including Presiding Officer of Industrial and Labour Tribunal, refers to some common category posts are shown. Under the said common category posts at serial no. 5 Record Keeper is shown in the pay scale of 3850-7350/- whereas at serial no. 11 Record Arranger has been shown in the pay scale of 2650-5200/-. That apart, it is projected by the petitioner that in the communication dated 06.09.2017 issued by the Registry of this Court whereby the Judicial Department was requested to take appropriate steps in respect of showing the post of Record Keeper to be equivalent to the Upper Division Assistant and thereby, the learned counsel for the petitioner submits that the Registry of the High Court has already accepted the claim of the petitioner that the post of Record Keeper under the Industrial Tribunal is equivalent to the post of UDA in the District Judge establishment and which would consequently mean that the pay scale available to the post of Record Keeper under the Industrial Tribunal is equivalent to pay scale given to the post of UDA under the District Judge establishment which is 3850-7350/-. Under such circumstances, it is contended that the benefits should accrue to the petitioner under the Revision of Pay Scales (ROP) Rules as per the Shetty Commission report and the same ought to have been conferred in the pay scale of 3850-7350/- instead of the present pay scale which is given to the post of Record Keeper under the Industrial Tribunal and which pay scale is equivalent to the post of Record Arranger in the District and Sessions Judge establishment. The petitioner is aggrieved that notwithstanding the recommendation made under the ROP and the acceptance of the Shetty Commission Report, the benefit accrued to the petitioner under the ROP Rules have not been conferred as the Fitment in the revised pay-scale has not been properly worked out in order to confer the benefit due to the petitioner.

13. Before considering the issues raised in the writ petition, it is necessary to

examine the law expounded by the Apex Court as have been relied upon by the counsels at the bar. In *S.C. Chandra (Supra)*, the Apex Court was released of DA with arrears along with interest in respect of the petitioners who are Teachers and Non-Teaching staff of a School run by the Hindustan Copper Limited (HCL). The Teachers and the Non-Teaching staff of the School claimed themselves to be employees of the HCL and a further direction was sought for to the HCL not to close the School and the State Government be directed to take over the affairs of the School in question. Before the High Court, the writ petition as well as the appeal was dismissed as the High Court came to the conclusion that the School concerned was not the dominant object of HCL and therefore there was no relationship of employer and the employees between the management of the HCL and the Teachers and other staff of the School. Therefore, no direction was given and the writ petition was dismissed. The question which arose before the Apex Court is whether a writ of mandamus as prayed for could be issued to the HCL. One of the issues raised before the Apex Court was since the petitioners claimed that they were employees under the Hindustan Copper Limited, they are entitled to the pay and wages and other financial benefits as being paid to other similarly situated employees of HCL. The Apex Court declined to grant any relief to the petitioner. It was held that the principle of equal pay for equal work must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. The persons who claimed the parity should satisfy the Court that the conditions are identical and equal.

14. In *State of Haryana Vs. Charanjit Singh & Ors*, reported in (2006) 9 SCC 321, the Apex Court was examining the claim of "equal pay for equal work", it was held that normally a party claiming equal pay for equal work is required to raise a dispute in this regard. It was held that in any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of materials placed before it, is convinced that there was equal work of equal quality and all other relevant factors are fulfilled, it may direct payment of equal pay from the date of the filing of the respective writ petition. In each such case the court must satisfy itself that the burden of proving that the work and conditions are equal is discharged by the aggrieved employee.

15. In *Steel Authority of India Limited and Ors. Vs. Dibyendu Bhattacharya*, reported in (2011) 11 SCC 122, the Apex Court was yet again examining the claims of parity of pay. The Apex Court held that parity of pay can be claimed by invoking the provisions of Article 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially

different. Granting of parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on the person claiming such right. The Apex Court held that that it is not always impermissible to provide two different pay scales in the same cadre on the basis of selection of merit with due regard to experience and seniority. Non-uniformity would not in all events violate Article

14. The Apex Court held that the Expert Committee has to decide such issues, as the fixation of pay scales, etc. which falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration are found to be bona fide, reasonable, and on intelligible criteria which has a reasonable nexus with the object of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor of deciding the parity of pay. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just and not prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesome identity between the two posts they should not be treated as equivalent and the court should avoid applying the principle of equal pay for equal work.

16. Upon due consideration of the submissions made by the learned counsels for the parties and the law laid down by the Apex Court, it is clear that mere similarity in the nomenclature of the post does not ipso facto entitle the employee to claim for parity of pay scale. For a pay scale to be equivalent there must be a proper evaluation of the nature of work, responsibility, etc by the competent authority which in the facts of the case has not been shown to have been undertaken by the competent authority. There are instances where even where the nature and responsibility of 2 (two) posts are similar, even then, the parity in pay scale cannot be granted as a matter of right unless the competent authority takes a decision in that regard.

17. The writ petitioner nowhere brings into comparison the nature of duties of a Record Keeper in the Industrial Tribunal and the duties of the Record Keeper in the establishment District and Sessions Judge. The person claiming parity must plead all necessary facts and support the claim of the parity of the posts. Such facts are not found to be pleaded in the present proceedings. The respondents have maintained that the similar nomenclatures of the posts are not sufficient to claim parity of pay scale and give the benefit to the petitioner.

18. On the other hand, it is seen that by communication dated 06.09.2017., the Registry of this Court intimated the Judicial Department, Government of Assam to apprise the Registry as to the claims made by the writ petitioner in respect of the grant of benefits under the ROP 2010. However, in reply to the said communication, the Judicial Department merely intimated the Registry of this Court that petitioner would be payable her claims in the slab that she is entitled to. No definitive reply was issued by the Judicial Department as to which scale of pay would be applicable in respect of the petitioner. Because of the lack of clarity from the concerned Department including the Judicial Department, the claim of the petitioner appears to have not been resolved. However, in the affidavit in opposition filed on behalf of the Judicial Department, there is a categorical averment that the petitioner is not entitled to the claims raised in the present writ petition. In the said affidavit, it is stated that the benefits due to the petitioner have already been made available to her in her appropriate scale of pay. This averment in the affidavit, however, does not explain the manner in which the claims of the petitioner have been addressed and conclusion arrived at that the petitioner has not entitled to the claims made.

19. After every Revision of Pay (RoP), the benefits accrued to the employees will have to be decided in terms of the Fitment scales which is an exercise required to be undertaken by the competent authority to work out the benefits allowable or accrued to the various employees in the appropriate payscales. The averments made in the affidavit of the Judicial Department does not reflect whether this exercise was undertaken. To decide upon such claims raised by the petitioner in the present proceedings, a detailed exercise is required to be undertaken by the competent authority to ascertain if the claims made by the petitioner that the benefits which had accrued to her under the RoP have not yet been conferred in the appropriate scale of pay.

20. Under such circumstances, although this Court does not find any ground to grant the prayer made by the petitioner in the present petition. However, in view of the pertinent question which is raised regarding the parity of pay scales in respect of 2 (two) posts having similar nomenclature under the 2 (two) different establishments both under the department of Law and Justice as well as the Administrative control of the High Court, the relief claimed by the petitioner required to be moulded and this Court therefore directs the respondents to adjudicate upon the representations preferred by the petitioner in respect of the claim of parity of pay scale and thereby pass a speaking order upon giving the opportunities to the petitioner. The respondent Judicial Department will therefore consider the claims raised by the writ petitioner and thereupon pass appropriate orders referring to the various provisions of the RoP as well as taking into consideration the notification dated 30.07.2012 issued by the Government of Assam and pass a speaking order. While disposing of the application, the competent authority will clearly indicate the scale of pay in which such benefits were conferred. If upon evaluation of the entire matter, the competent authorities are of the view that the pay scale in the post of Record Keeper in the

Labour and Industrial Tribunal and in the establishment of District and Sessions Judge are to be treated as one and the same, then appropriate orders to that effect should be passed. If such an order is passed then the claim made by the petitioner is required to be entertained and all benefits that accrue to the petitioner should also be granted to her in terms of the Revision of Pay Scale with effect from 01.04.2003. The exercise as directed above should be conducted as expeditiously as possible but within the outer limit of 90 (ninety) days from the date of receipt of a certified copy of the order.

21. Writ petition stands disposed of in terms of the above. No order as to cost.