
(2005) 04 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 990 of 1993

Malan Karale and Others

APPELLANT

Vs

Ms. Aloo Chibber and Others

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 226, 39

Citation : (2005) 3 LLJ 133 : (2005) 3 MhLj 723

Hon'ble Judges : S.J. Vazifdar, J;A.P. Shah, J

Bench : Division Bench

Advocate : Apoorva Kaiwar, instructed by Gayatri Singh, S.M. Dandekar, AGP, for the Appellant;

Judgement

A.P. Shah, J.—The alleged violation of "equal work equal pay" doctrine is the principal grievance of the petitioners. The petitioner Nos. 1 and 2 have been working as the house-mother and helper respectively at Balkalyan Nagari, a Unit of the Children's Aid Society, hereinafter for brevity's sake referred to as the "Society". There are in all 20 house-mothers and about 25 helpers employed by Balkalyan Nagari. It is a home set up for the care and protection of destitute children upto the age of 18 years. The 3rd petitioner is a women's organization and 4th petitioner is a recognized union of the employees working in the institutions run by the Society.

2. The petitioners have instituted the present writ petition under Article 226 of the Constitution of India seeking appropriate reliefs mainly on the ground that though the employees in Balkalyan Nagari are doing their duties as housemothers and helpers and doing the same work as being done by their counter parts in other institutions of the Society, they are paid salary far below the starvation wages whereas the employees in other institutions are paid salary on par with the State Government employees and they are also entitled to various other benefits and privileges like dearness allowance, and increments. They are also entitled to various other benefits like privilege leave, sick leave,

casual leave and paid holidays including bonus and medical benefits. However, the employees of Balkalyan Nagari who are mainly destitute women were not extended the same benefits. The reliefs claimed by the petitioners are in the following terms :

"(a) for a mandatory order directing the respondents to implement all the labour laws and to bring the services conditions of the employees at Balkalyan Nagari on par with those of Children's Aid Society and/or State Government employees.

(b) for a mandatory order directing the respondents to extend to the employees of Balkalyan Nagari all the benefits and privileges enjoyed by the employees of Children's Aid Society doing similar work.

(c) for a mandatory order directing the respondents to revive the pay scales and allowances of the employees at Balkalyan Nagari according to the scales payable to the employees doing similar work at Children's Aid Society or those payable to State Government employees whichever is beneficial and as per Resolution No. CAS 1078/46718/X dated 15 May, 1979.

3. Before dealing with the grievance made by the petitioners it would be appropriate to portray the factual background. The 1st respondent Children's Aid Society is registered under the Societies Registration Act, 1860 and has also been treated as a public trust under the Bombay Public Trusts Act, 1950. The Chief Minister of Maharashtra is the Ex-officio President and the Minister for Social Welfare is the Vice President of the Governing Council of the Society. The Society receives grants from the State. In the case of Sheela Barse Vs. Secretary, Children's Aid Society and others, , the Society has been held as an instrumentality of the State and falling within the expression "the State" within the meaning of Article 12. The Society has, therefore, to regulate its activities not only in accordance with the statutory requirements but also act in a manner satisfying the requirements of Articles 14 and 21 as also the Directive Principles of the State Policy.

4. The Society is running 7 institutions including Balkalyan Nagari i.e. (1) Observation Home, Mankhurd, (2) Chembur Children's Home, (3), Home for Mentally Deficient Children's Home, Mankhurd, (4) New Observations Home, Mankhurd, (5) Additional Observation Home, Mankhurd, (6) David Sassoon Industrial School, Mahim, (7) Balkalyan Nagari, Mankhurd. The Commissioner for Women and Child Development Department is in overall charge of the running of the Children's Homes and Observation Homes in Maharashtra including the Children's Aid Society. These Homes are run by the Society under the supervision and control of the Women and Child Development Department. It is seen from the records that the employees of the Society are transferable from one institution to other institution and the services of the employees of 7 institutions are interchangeable. The employees of these institutions excluding the employees of Balkalyan Nagari are treated as State Government employees and their salary is fixed in accordance with the Maharashtra State Service

(Revision of Pay) Rules, 1969. By a Government Resolution dated 15-5-1979 the employees of Children's Aid Society were extended the benefits like privilege leave, sick leave, casual leave, and paid holidays including bonus and benefits in accordance with those enjoyed by the State Government employees. It appears that the State Government has also extended the benefit of 5th Pay Commission to the employees of the other institutions conducted by the Society.

5. At present there are about 45 employees working in the Balkalyan Nagari consisting of house-mothers, helpers, and cooks. They are mostly destitute women who look after the children continuously over a 24 hour period. The Balkalyan Nagari is a Home set up for care and protection of destitute children with the capacity to look after 1275 destitute children. At present there are about 350 children. It has four vocational training centers, three for boys and one for girls and has one medical care center with specialized facilities for speech therapy, dental clinic, occupational therapy, vocational therapy and recreation therapy. This home was set up by the Department of Social Welfare in 1974 and receives funds from the State Government, Central Government and donations from voluntary organizations and individuals.

6. The employees in Balkalyan Nagari are not entitled to basic benefits like privilege leave, sick leave, bonus, medical benefits and various other allowances which other employees are entitled to. They are also not entitled to provident fund, pension and other retiral benefits. Though they are working for more than 10 years the salaries that have been paid to them prior to the filing of the petition was only about Rs. 225 to Rs. 300 per month and maximum was about Rs. 400. The house-mothers are required to look after 25 children but in fact they look after more than 30 to 35 children and are required to work from 5 a.m. till 11 p.m. and if the children fall sick the house-mothers are required to look after them round the clock. The chapati makers and designated as helpers and they are required to work for eight hours. They are not provided with any accommodation and have to work under extremely unhealthy conditions in the extreme heat of the kitchen. They are also not paid any benefits and allowances. The housemaster is provided with quarters inside the premises where he is allowed to stay with his family members whereas the house-mothers are provided with small dingy room with utensils and other belongings of the children piled up inside leaving very little space for the house mothers. The house-master works for 8 hours. His salary is about Rs. 1200 per month. The house-mothers and helpers are given the same food as the children, one vegetable (sometimes same vegetable is served for an entire month), 3 chapatis, dal and rice. There are about 18 workmen who cook and make chapatis. In 1985 insignificant marginal increments were added to the consolidated pay packets of the employees working in Balkalyan Nagari which was still below the starvation wages. It is not disputed before us that the working of the employees at Balkalyan Nagari is similar to that of the employees working at the other institution of the Society. The qualification for the appointment of the house-mothers and helpers are same as in other institutions and procedure for the

employment is also the same. The matter will have to be examined in this background.

7. The respondents have resisted the claim of the petitioners for granting them pay in accordance with the pay scale applicable to other employees working in the other institutions discharging similar functions mainly on four counts :

1) That the house-mothers/matrons working under Juvenile Justice Act, 2002 are governed under Maharashtra Civil Services Rules and they are therefore, responsible under the said Acts and Rules and can be held liable for any act done contrary to the provisions of the said Rules. Whereas no rules are applicable to the housemothers and other employees of Balkalyan Nagari.

2) The Children's Aid Society runs statutory programmes under the Juvenile Justice Act for which Government has sanctioned the staff on regular pay scales and receive 100% grant on pay and allowances from the Government of Maharashtra but the Balkalyan Nagari which is for the welfare of the destitute children under the non-statutory programme for which staff is not sanctioned on regular pay scales like statutory programme and hence they are paid consolidated salary.

3) That the house-mothers are given facility like free shelter, free food and they are not charged for the use of electricity and water.

4) The Children's Aid Society receives grant of Rs. 500 per child per month and 100% grant on pay and allowance of the approved staff from Government for running the statutory programmes under the Juvenile Justice Act. However, they receive Rs. 750 per child per month including staff salary for running Bal Kalyan Nagari and thus only Rs. 250 per child per month can be used towards salary of staff, electricity, water tax, telephone, property tax and other administrative expenses.

8. As regards the first ground that no rules are applicable to the employees working at Balkalyan Nagari and therefore they cannot be held liable for any act contrary to the provisions of the Juvenile Justice Act is in our opinion without any substance. The contention has been raised in the following terms in para 2 of the affidavit of the respondents :

"I say that the Principle of equal pay for equal work is not applicable to the facts of the present case as other House-mothers/Matrons working under Juvenile Justice Act, 2000 are governed under Maharashtra Civil Services Rules and they are therefore responsible under the said Acts and Rules and can be held liable for any act done contrary to the provisions of the said Rules. Whereas, no rules are applicable to the house mothers and other employees of Balkalyan Nagari. There is no retirement age and therefore employees who are overage are still working and getting minimum wages, even though they are not in a position to carry out way work. Some of the employees are 80 and 85 years old and are still getting minimum wages."

9. We fail to appreciate as to why the rules which are applicable to other institutions are not made applicable to the employees of the Balkalyan Nagari. In any event nothing prevented the Society from framing rules and if it has chosen not to frame the rules and some employees are continued beyond the age of superannuation, which is prescribed for the employees working in other institutions, it cannot be a ground to deny the appropriate wages to the employees who are performing similar duties. So long the petitioners are doing the work similar to that performed by the employees of other institutions, from the point of view of equal pay equal work petitioners cannot be discriminated against in respect of the payscales inasmuch they are working under the same employer. The fact that there are no rules framed by the society for the employees of the Balkalyan Nagari is totally irrelevant and immaterial for the purpose of applicability of the equal work equal pay doctrine.

10. The next contention that the employees at Balkalyan Nagari are not working under the statutory scheme and they are working under non-statutory scheme is equally irrelevant. As far as the applicability of the doctrine equal work equal pay is concerned merely because the employees are working in a different scheme cannot be a ground for denying the benefit of pay and wages especially when the employees are discharging identical work as their counter parts from other institutions. For the application of doctrine of equal work equal pay when the similar duties are performed the fact that the institution is run under a non statutory scheme is irrelevant once it is shown that the nature of duties and functions discharged and the work done is similar. As regards the defence that the house-mothers are given free residence and free meals etc is required to be stated only to be rejected. The house mothers are required to look after the children practically from morning till late night and, therefore they are provided with residence and free meals and in our opinion this cannot be a ground for denying them the benefit of equal work equal pay. There is also no substance in the argument that limited grant is received from the Government with regard to the Balkalyan Nagari. Balkalyan Nagari is also part of the activities of the Children's Aid Society which is required to discharge duties under Juvenile Justice Act. We do not see any reason as to why the State Government should not be directed to make applicable the service conditions applicable to other institutions of the society to the petitioners i.e. employees of Balkalyan Nagari.

11. There is no doubt that the employees such as house mothers and helpers and chapati makers as also cooks are employees of the employer doing the work of similar nature in similar institutions. Therefore, the doctrine of equal work equal pay is clearly attracted. Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter on Directive Principles of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal pay for equal work has been implemented by the

Supreme Court in *Randhir Singh Vs. Union of India (UOI) and Others*, , *Dhirendra Chamoli and Another Vs. State of U.P.*, and *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , *Bhagwan Dass and Others Vs. State of Haryana and Others*, , and *Jaipal v. State of Haryana* (1988) 3 SCC 354. In view of these authorities it is too late in the day to disregard the doctrine of equal pay to equal work on the ground of the employment being under a non statutory scheme although it is permanent in nature. The only question is from what date the doctrine of equal work equal pay should be made applicable in the present case. The petitioner claim that they may be given the said scale from the date of their initial appointment. In our opinion having regard to the facts and circumstances of the case the ends of justice would be met if the petitioners are paid difference of wages with effect from the date of institution of the writ petition i.e. 10-2-1993. But it will be convenient to direct the implementation from 1-2-1993. We accordingly allow the petition partly and direct as follows :

i) The respondents are directed to fix the wages of the employees in Balkalyan Nagari in the same scale as that of employees working in other institutions of the Children Aid Society with effect from 1-2-1993. The pay of each of the employee in Balkalyan Nagari shall be fixed having regard to long service with effect from the date of his/her initial appointment by ignoring artificial breaks, if any and fixation shall be made as per the revision of pay.

ii) The amount representing difference in pay of the employees of Balkalyan Nagari as per our order shall be paid to each employees preferably within three months. The respondents are at liberty to apply same rules applicable to other institutions of the society or frame separate rules for Balkalyan Nagari and the employees who have cross the age of superannuation as on the date of this order shall be made to retire forthwith and payment of difference in wages and gratuity, and other dues as per rules shall be released within two months.

iii) Needless to mention that the State Government will discharge their liability of releasing necessary grant to the Society in the light of our order.

iv) The petitioners shall be paid the cost of the writ petition quantified at Rs. 5000/-. Order accordingly.