
(2020) 11 JH CK 0025
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1118 Of 2020

Md. Ziaul Hoda

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 04-11-2020

Acts Referred:

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

Citation : (2020) 11 JH CK 0025

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Jalisur Rahman

Final Decision : Allowed

Judgement

1. Heard Mr. Jalisur Rahman, learned counsel for the petitioner and Mr. Anshuman Kumar, learned counsel appearing for respondent-State.
2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.
3. The petitioner has preferred this writ petition for quashing of order dated 01.11.2019 contained in annexure-5 whereby the grant of pay-scale of Rs. 5,000-8000/- has been denied by the respondent no. 2.
4. Learned counsel for the petitioner submitted that petitioner has earlier moved in W.P.(S) No. 3742 of 2008 for issuance of an appropriate writ in the nature of mandamus and for direction to the respondents to grant the higher pay scale of Rs. 5,000-8,000/- on the doctrine of 'equal pay for equal work' at par with other similarly situated employees working as Treasury Clerks in the District Treasury Godda. The petitioner is working as Treasury Clerk in the District Treasury, Godda since, 1994 having come on deputation after 1979 from the District Collectorate is getting lesser pay scale of Rs. 4,000-6,000/- as substantive scale whereas

other category of employees who are working as Treasury Clerk and who have also come from the District Collectorate and working as Treasury Clerk and other similarly situated persons of Board, Corporation etc and those appointed and working on compassionate grounds, all are working as Treasury Clerk have been provided pay scale of Rs. 5,000-8,000/- but the petitioner has been deprived from the said benefit. Others have been given benefit of pay - scale of Rs. 5,000-8,000/- in the light of judgment of this Court in the case of "Satyendra Kumar Dubey Vs. State of Jharkhand & Others" reported in 2007 (1) JCR 92 (Jhr) and the same was affirmed by the Hon'ble Supreme Court and at that point of time, those were similarly situated to the petitioner, when they have been given the benefit of pay- scale of Rs. 5,000-8,000/- on the basis of doctrine of 'Equal Pay for Equal Work' vide Resolution contained in memo no. 3621/vi dated 19.12.2007 by the Finance Department, Jharkhand, Ranchi w.e.f. 01.01.1996. The petitioner is working in the Treasury since 1994 prior to that Resolution.

5. Mr. Jalisur Rahman, learned counsel for the petitioner submitted that in view of Resolution dated 09.05.2005 issued by the Finance Department, Government of Jharkhand, the employees who have been deputed in the District Treasury from the District Collectorate not for a temporary and short period but for a fixed period because the job of a Treasury Clerk is different and entails a different knowledge. He further submitted that the employees who have brought from District Collectorate prior to 1979 have already been absorbed by the Government and have been given pay-scale of Rs. 5,000-8000/- on the doctrine of 'equal pay for equal Work. He submitted that the persons who have been absorbed after several years of grant of pay-scale, have been given pay-scale of Rs. 5,000- 8,000/- but the petitioner who has been working since 1994, the said benefit has not been provided to the petitioner. He submitted that non- payment of the same is discriminatory in nature. He submitted that the case of the petitioner is fully covered with case of " Satyendra Kumar Dubey (supra) case. Earlier case of the petitioner was remanded back on considering the case of "Satyendra Kumar Dubey" in view of annexure-8 of that writ petition whereby petitioners were recommended for higher pay scale by Treasury Office, Godda. Now by the impugned order the case of the petitioner has been rejected. Learned counsel for the petitioner submitted at bar that the petitioner has been reverted back to the collectorate a few months back.

6. Per contra, Mr. Anshuman Kumar, learned counsel for the respondent-State submitted that the petitioner who is working in the District Treasury, Godda since 1994 have come on deputation after 1979. The petitioner was having getting lesser pay scale of Rs. 4,000-6,000/- as substantive scale whereas other category of employees, who are working as Treasury Clerk and who have also come from the District Collectorate and working as Treasury Clerk and other similarly situated persons of Board, Corporation and those appointed and working on compassionate grounds, all are working as Treasury Clerk in the pay-scale of Rs. 5,000-8,000/- but the petitioner has not been provided the same benefit as the petitioner was working in the Treasury since 1994 after being

deputed from District Collectorate. He further submitted that "Satyendra Kumar Dubey" was provided the same pay-scale in view of the fact that his case was affirmed by the Hon'ble Supreme Court but the petitioner has not been provided the same pay-scale on the doctrine of 'equal pay for equal work' vide Resolution of the Finance Department dated 19.12.2007 w.e.f. 01.01.1996. He submitted that employees who have already been absorbed in the Treasury prior to 1979 have already been given said benefit and in that view of the matter, the case of the petitioner is fit to be rejected.

7. The Court has examined the documents on the record. The writ petition being W.P.(S) No. 3742 of 2008 was disposed of vide order dated 22.08.2019 taking into account the fact that the petitioners in that case vide Annexure-8 have been recommended for higher pay-scale by the Treasury Officer, Godda. In "Satyendra Kumar Dubey Vs. State of Jharkhand & Others" reported in 2007 (1) JCR 92 (Jhr), in para 6 it has been observed as under:

"6. In view of the above, I hold that the impugned notification classifying the petitioner on the basis of source of recruitment with those who were recruited from different sources and similarly those who are recruited/appointed on being transferred from corporation but ultimately comprising the same category of service cannot be treated differently in the matter of pay scale merely because their source and method of recruitment is different. Once the employees merge into one single cadre irrespective of source of recruitment and perform the same or similar duties, they cannot be treated differently and with hostility nor any one or some of them can be denied equal pay scale. Such an action is arbitrary and violative of Article 14 besides the doctrine of equal pay for equal work. Impugned notification is hereby quashed to the extent it provides different pay scale to the Accountants of Treasury who are appointed on compassionate ground after 1979. Respondents are also directed by a writ in the nature of mandamus to allow the pay scale of Rs. 5,000-8,000/- to the petitioner w.e.f. 1.4.1997 as has been allowed to the Accountants appointed prior to 1979. No orders as to costs."

8. The said order passed in "Satyendra Kumar Dubey" (supra) has been affirmed up to the Hon'ble Supreme Court. Pursuant to that the similarly situated persons have been provided the benefit of the pay-scale of Rs. 5,000-8,000/-. In para 11 of the counter-affidavit, it has been admitted that "who are similarly situated to the petitioners have been given pay-scale of Rs. 5,000-8,000/- but the petitioner cannot be given equal pay on the basis of doctrine of "equal pay for equal work" vide Resolution dated 19.12.2007 by the Finance Department, Government of Jharkhand w.e.f. 01.01.1996." Thus, in the counter-affidavit, it has been admitted that other similarly situated to the petitioner has been provided the same benefit. The petitioner was working with the Treasury since 1994. The persons who were deputed to the Treasury have been provided the same pay scale of Rs. 5,000-8,000/-. The employees who have been deputed in Treasury for a fixed period because the job of the Treasury Clerk is different and entails a different knowledge, have been provided the said benefit pursuant to judgments

of the Hon'ble Patna High Court in C.W.J.C. No. 8894/2002, 9078/2002, 8967/2002, 8539/2002 and 9113/2002. The petitioner has worked with the Treasury since 1994 and only reason for which he has been deprived of the said benefit is due to this litigation. The petitioner has been reverted back to Collectorate recently. This is not a case where petitioner has worked for a shorter time on deputation. Thus, the petitioner is working with the Treasury for substantial time. There is no doubt that equation of pay-scales must be left to the Government and on the decision of the experts and the Court should not interfere with it. The case in hand it is admitted position that the petitioner has worked with the Treasury since 1994 till some earlier months of 2020. So the petitioner has worked with the Treasury at least for 26 years. It proves that duties and functions attended by the petitioner and other employees are similar. The petitioner is entitled for parity of pay-scale at least for the period he has worked with the Treasury since 1994 till his deputation in the Collectorate. In this regard reference may be made to the case of "Punjab State Electricity Board & Another Vs. Thana Singh and Others" reported in (2019)4 SCC

113. The relevant para of the said judgment is quoted here-in-below:-

"19.The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales. After referring to a number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court in SAIL, held as under:- (SCC p. 131. Para 22) "22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of 'equal pay for equal work' as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. 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. (Vide U.P. State Sugar Corpn. Ltd. Vs. Sant Raj Singh, Union of India V. Mahajabeen Akhtar, Union of India V. Dineshan K.K., Union of India V. Hiranmoy Sen, Official Liquidator V. Dayanand, U.P. SEB V. Aziz Ahmad and State of M.P. V. Ramesh Chandra Bajpai.)"

9. The Court is conscious of the fact that a differential scale on the basis of educational qualification and the nature of duties is permissible. However, it is equally clear that if two categories of employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by

some cogent reasons. In the case where the nature of duties is similar the same needs to be extended to the petitioner. It is already reported that identical similarly situated persons have already been provided the said benefit and the "Satyendra Kumar Dubey) (supra) has been affirmed by the Hon'ble Supreme Court. In view of the admission made in para 11 of the counter-affidavit, benefit is there to the similarly situated persons and pursuant to judgment of the Hon'ble Patna High Court the same benefit is there, the petitioner cannot be allowed to be discriminated. The petitioner is entitled for similar pay-scale on the doctrine of 'equal pay for equal work' at least for the period he has worked with the Treasury.

10. As a cumulative effect of the discussions made above, the impugned order dated 01.11.2019 is quashed. The petitioner shall be entitled for pay scale of Rs. 5,000-8,000/- for the period he has worked with the Treasury Office, Godda. The respondents are directed to pay the difference amount to the petitioner within twelve weeks.

11. The writ petition stands allowed and disposed of. Pending I.A, if any stands disposed of.