

(2007) 10 GAU CK 0047

In the Gauhati High Court

Case No : Writ Appeal No. 2 of 2007 [in W.P.(C) No. 1400 of 2005]

Moirangthem Medhabati Devi and Anr.

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Citation : (2008) 3 GLR 416

Hon'ble Judges : B.D.Agarwal, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : Th.Ibohal Singh, Advocates appearing for Parties

Judgement

T. NK. Singh, J.—This appeal is directed against the judgment and order of the learned Single Judge dated 13.12.2006 passed in WP(C) No. 1400/2005, whereby the learned Single Judge rejected the writ petition filed by the appellantswrit petitioners.

2. The appellantswrit petitioners are the regular Observers for Silt Analyst in the Horticulture & Soil Conservation Department, Manipur. The posts of Field Assistants/Assistant Horticulture Inspectors and Observers for Silt Analyst have the same Recruitment Rules and the incumbents of those posts are intertransferable. The volume of work load and responsibilities for those posts are similar. Those posts were enjoying the pay scale of Rs. 950 to 1,500 per month before revision of pay, 1999. But the Governor of Manipur in exercise of powers conferred by the proviso to Article 309 of the Constitution of India made the Rules called the "Manipur Services (Revised Pay) Rules, 1999" and it came into effect from 1.1.96. Further the Governor of Manipur made the Rules called the "Manipur Services (Revised Pay) (1st Amendment) Rules, 1999" vide notification No. 1/115/98PIC, Imphal dated 10th March, 1999 for revising the pay scale for different posts including the posts of Field Assistants/Assistant Horticulture Inspectors and Observers for Silt Analyst in the Horticulture 81 Soil Conservation Department, Govt. of Manipur. Under the said R.O.P. 1999 the pay scale for the trained Field Assistants/Assistant Horticulture Inspectors had been

revised to Rs. 4,000 6,000 per month. But the pay scale for the trained Observer for Silt Analyst was not prescribed and only one pay scale for Observer for Silt Analyst had been prescribed. The relevant portion of the ROP1999 for revising the pay scale for the Field Assistants/Assistant Horticulture Inspectors and the Observers for Silt Analyst in the same department i.e Horticulture & Soil Conservation Department, Govt. of Manipur read as follows :

"Field Assistant/Assistant

Horticulture Inspector. 9501500/

(i) 30504500

(ii) 40006000 For Matriculate + 2 years Training in Integrated Agri Horti/AgriEngg/SC Course.

Soil Surveyor 9501500 30504590

Observer for Silt Analyst

3. The appellants writ petitioners who are the trained Observers for Silt Analyst by basing on their rights guaranteed under article 14 of the Constitution of India and the principle of equal pay for equal work" filed the writ petition, i.e., WP(C) No. 1400/2005 for a direction to the State respondents for allowing them to enjoy the same pay scale, i.e., Rs. 4,0006,000 per month enjoyed by their counter part, i.e. Trained Field Assistant/Assistant Horticulture Inspector in the same department i.e. Horticulture & Soil Conservation Department, Govt. of Manipur.

4. Heard Mr. Ng. Kumar, learned counsel appearing for the appellants writ petitioners as well a Mr. Th. Ibohal Singh, learned Govt. Advocate for the State respondents.

5. For better appreciation of the claim made by the appellants writ petitioners for same scale of pay enjoyed by the trained Field Assistant/ Assistant Horticulture Inspector of the same department, a short factual panorama of the appellants writ petitioners" case will be required to be digested. The appellant writ petitioner No. 1 is an Arts Graduate and the appellant writ petitioner No. 2 is P.U. Science by educational qualification. Both the appellants writ petitioner are in the regular observers for Silt Analyst in the Horticulture & Soil Conservation Department, Govt. of Manipur and they had successfully completed 2 . years Integrated Training Course In Agri/Horti/AgriEngg/SC from the Gram Sevak Training Centre, Iroisemba under Roll Nos. 39 and 40 respectively. In support of this fact the appellants writ petitioners had annexed copies of the certificates issued by the Director, Department of Agriculture, Govt. of Manipur in favour of the appellants writ petitioners for completing the said 2 years Integrated Training Course as Annexure A/4 and 5 respectively in the present Writ Appeal.

6. In supersession of all previous rules issued in this regard and in exercise of power conferred by proviso to Article 309 of the Constitution of India, the

Governor of Manipur made the rules "The Department of Agriculture/Horticulture & Soil Conservation/Command Area Development Authority, Manipur (Field Assistant/Village Extension Worker/Assistant Horticulture Inspector) Recruitment Rules, 1987 vide notification No. 1/1/87R/DP, dated 10.4.1987 (for short "R.R. 1987"). The methods of recruitment are 75% by direct recruitment and 25% by promotion and the essential and other educational qualifications for direct recruitment are: passed Matric/ H.S.L.C Examination equivalent of a recognized Board or University with 2 (two) years integrated training in Agriculture/Horticulture/ Agri Engineering/Soil conservation. Further the Governor of Manipur in exercise of power conferred by proviso to Article 309 of the Constitution of India was pleased to order the adoption of the existing R.R. 1987 for the posts of Field Assistants/Assistant Horticulture Inspector of Horticulture & Soil Conservation/Command Area Development Authority notified under the Govt. notification being No. 1/1/87RR/DP, dated 10.4.1987 for the post of Observer for Silt Analysts in the department of Horticulture & Soil Conservation, Govt. of Manipur w.e.f the date of notification in the Manipur Gazette vide order being No. 1/37/87 (RRYDP, Imphal dated 6.2.1989 and the said order was notified in the Manipur Gazette dated March 8,1989. From March 8,1989 the post of Observer for Silt Analyst/Field Assistant/Village Extension Worker/Assistant Horticulture Inspector of the Agriculture/Horticulture and Soil Conservation/ Command Area Development Authority have the same Recruitment Rules, i.e. R.R. 1987.

7. The volume of the work load and the responsibility for the post of Field Assistant/Assistant Horticulture Inspector and the Observer for Silt Analyst in the same department are similar and also the essential educational qualification and the other qualification for appointments are similar. But it is the case of the appellants/writ petitioners that the discriminatory treatment had been meted out to the appellants/writ petitioners i.e. the Observer for Silt Analyst while revising the pay scale of the Observer for Silt Analyst having Matric/HSLC or above educational qualification and successfully completed 2 years integrated training in Agriculture/Horticulture under ROP 1989, inasmuch as, the pay scale of the Field Assistant /Assistant Horticulture Inspector having Matric/HSLC with 2 years integrated training in Agriculture/ Horticulture/AgriEngineering/Soil Conservation had been revised to Rs. 4,000/6,000 per month while pay scale of the Observer for Silt Analyst having Matric/or above educational qualification and a successfully completed 2 years Integrated Training Course in Agriculture/Horticulture/AgriEngineering and Soil Conservation had been revised to Rs. 3,050 to 4,590 per month.

8. It is now wellsettled that Article 14 of the Constitution of India prohibits the state from denying persons or class of persons equal treatment provided, they are equally and similarly situated. The Article 14 does not prohibit classifications if the classification is legal, valid and reasonable but it prohibits discrimination. The Constitution Bench of the Apex Court had considered the ambit and scope of Article 14 of the Constitution of India in the State of West Bengal v. Anwar Ali Sarkar and Another, AIR(39)1952 SC 75 . Undoubtedly the State of West Bengal

v. Anwar Ali Sarkar is one of the leading cases in this regard. The Apex Court in *State of West Bengal (supra)* held that the classification must not be arbitrary but must be a reasonable one. In order to pass the test two conditions must be fulfilled, namely, (1) That , the Classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. The relevant portion of the observations of the Apex Court through Mr. Justice S.R. Das in *State of West Bengal (supra)* read as follows :

"Para 54. Article 14 of our Constitution, it is wellknown, corresponds to the last portion of S.I. of the Fourteenth Amendment to the American Constitution except that our Article 14 has also adopted the English doctrine of rule of law by the addition of the words "equality before the f law". It has not, however, been urged before us that the addition of these extra words has made any substantial difference in its practical application. The meaning, scope and effect of Art. 14 of our Constitution have been discussed and laid down by this court in the case of *Chiranjit Lalv. The Union of India, 1950 S.C.R. 869*. Although Sastri J, as he then was, and myself differed from the actual decision of the majority & of the court, there was no disagreement between us and the majority as to the principles underlying the provisions of Article 14. The difference of opinion in that case was not so much on the principles to be applied as to the effect of the application of such principles. Those principles were again considered and summarized by this court in *The ft State of Bombay v. .FAT. Balsara, AIR (38) 1951 SC 318 at p. 326*. It is now well established that while Article 14 is designed to prevent a person or class of persons from being sing fed out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of

making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained. The doctrine, as expounded by this court in the two cases I have mentioned, leaves a considerable latitude to the court in the matter of the application of Article 14 and consequently has the merit of flexibility."

9. The Constitution Bench of the Apex Court in *State of Mysore and Another v. P. Narasingha Rao*, AIR 1968 SC 349 observed in Para 19 that:

"It is wellsettled that though Article 14 forbids class legislation. It does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes, Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule."

10. For satisfying as to whether there is a reasonable classification of the Field Assistant/Assistant Horticulture Inspector of the Horticulture & Soil Conservation Department, Govt. of Manipur from the Observer for Silt Analyst in the fact discussed above, by applying the ratio laid down by the Constitution Bench of the Apex Court in *State of West Bengal (supra)* and *State of Mysore and Another (supra)* for prescribing different pay scale, it is required to see the reason for such classification spelt out in the affidavit in opposition filed by the State respondents.

11. The affidavit in opposition filed by the State respondents is short and cryptic. On perusal of the affidavit in opposition filed by the State respondents, it is clear that no reasons have been mentioned for denying the equal treatment to the equal granted under article 14 of the Constitution of India to the appellants writ petitioners in the present factual context discussed above while revising the pay scale. The case of the State respondents in their affidavit in opposition read as follows :

"3. That, I beg to state that 2(two) posts of Observer for Silt Analyst were created vide order No.23/2/80Agri dated 15.4.1981. The then existing d R.R. for the post of FA/equivalent notified vide No. 1/1/87RR/DP dated 10.4.1987 were adopted for the post of Observer Silt Analyst and notified vide No. 1/37/87 (RR) DP dt. 6.2.1989. Notification adopting the R.R. for FA/equivalent for the post of Observer for Silt Analyst was also published in the Manipur Gazette under No.

45, dated 8.3.1989.

The writ petitioners are all Matriculate and as also completed 2 years Integrated Training Course in Agri/Hort/AgriEngg/SC from the Gram Sevak Training Centre/ Iroisemba during the year 1994. As per Service (Revised Pay) Rules, 1999 the pay scale for the post of Observer for Silt Analyst had been revised from Rs. 9501,500 p.m to Rs. 3,0504,590. On the other hand, the scale of pay for the post of FA/AHI had been revised from Rs. 9501,500 p.m to (i) Rs. 3,0504,590 p.m. in the case of those of untrained and (ii) Rs. 4,0006,000 in case of those who have completed the 2 years integrated training course in Agri/Horti/ AgriEngg/SC. As per the schedule of Manipur Service (Revised Pay) Rules, 1999 there was no qualification of trained and untrained in case of the post of Observer for Silt Analyst for the purpose of revision of pay. Only one pay scale was prescribed/adopted at Rs. 3,0504,590 p.m. As per the pay notified under the Manipur Service (Revision Pay) Rules, 1999 for the post of Observer for Silt Analyst the petitioners are not entitled to enjoy the scale of Rs. 4,0006,000 p.m."

12. The principle of "equal pay for equal work" is well established in service jurisprudence. The Apex Court in *Randhir Singh v. Union of India and Others*, (1982) 1 SCC 618 observed that the principle of equal pay for equal work" is not, an abstract doctrine but one of substance. The relevant portion of Para 8 of the SCC in *Randhir Singh* (supra) read as follows :

"8. It is true that the principle of "equal pay or 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 both men and women" means equal pay for equal work for everyone and as between the 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.....

The Preamble to the Constitution of the International Labour Organization recognizes the principle of "equal remuneration for work of equal value" as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled". Construing Article 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

13. The Constitution Bench of the Apex Court in *D.S. Nakara and Others v. Union of India*, (1983) 1 SCC 305 had discussed the ambit and scope of Article 15 and 16 of the Constitution of India. Para 13 and 15 of the SCC in *D.S. Nakara and Others* (supra) read as follows :

"13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in *Maneka Gandhi* case in the earliest stages of evolution of the constitutional law, Article 14 came to be identical with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in *E.P. Royappa v. State of T.N.* it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This court further observed as under :

"From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that is unequal both according to political logic and constitutional law and is therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment".

"15. Thus the fundamental principle is that article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

14. The Apex Court also followed the ratio laid down in *Randhir Singh v. Union of India* (supra) and *D.S.Nakara v. Union of India* (supra) in *Surendra Singh v. Engineer in Chief, CPWD* (1986) 1 SCC 639 and observed that the Central Government, the State Government and like otherwise, all the Public Sector Undertakings are expected to function like model and enlightened employer and argument such as that the Principle of equal pay for equal work is an abstract doctrine which could not be enforced in a court of law should ill come from the mouth of the State and State Undertaking.

15. Normally, whether two posts are equal or should carry equal pay depend upon several factors and it does not just depend upon either the nature of work or the volume of work. Primarily, it requires amongst others, evaluation of duties, responsibility of the respective jobs. Equation of post or equation of pay must be left to the Executive. They are the best judge to evaluate nature of duties and responsibility of post. Reference may be made to *State of UP. & Ors. v. J.P. Chaurasia & Ors.*, AIR 1989 SC 19. The Apex Court in Supreme Court

Employees Welfare Assn. v. Union of India & Ors., AIR 1990 SC 334 held that if unequal pay is based on no classification, it would be violative of Article 14 of the Constitution of India. Para 38 of the AIR in Supreme Court Employees Welfare Assn v. Union of India & Ors. (supra) reads as follows :

"38. It follows from the above decisions that although the doctrine of "equal pay for equal work" does not come within Article 14 of the Constitution as an abstract doctrine, but if any classification is made " relating to the pay scales and such classification is made relating to the pay scales and such classification is unreasonable and/or if unequal pay is based on no classification, then article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of "equal pay for equal work" as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved the doctrine of "equal pay for equal work" will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of equal pay for equal work" as envisaged by Article. 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. Dhirendra Chamoli v. State of U.P. (1986) 1 SCO 637 is a case of "equal pay for equal work" as envisaged by Article 14, and not of the abstract doctrine of "equal pay for equal work"."

16. The Apex Court again discussed the principle of "equal pay for equal work in the State of Orissa and Others v, Balaram Sahu and Others, (2003) 1 SCO 250 and held that equal pay for equal work" would depend not only on the nature or volume of work but also on quality as regards reliability and responsibility as well as different pay scale may be prescribed on the basis of such reliability and the responsibility. As such, on perusal the ratio laid down by the Apex Court in the State of Orissa and others v. Balaram Sahu and others (supra) it is clear that reliability and responsibility are also one of the criteria for applying the doctrine of equal pay for equal work". The ratio laid down in State of Orissa and others (supra) is also followed by the Apex Court in State of Bihar and others v, Bihar State + 2 Lecturers Association and Ors, reported in AIR 2007 SC 1948.

17. Coming back in the present case, it is crystal clear that nature and volume of work, quality of work, reliability and responsibility for the posts of Observer for Silt Analyst are exactly similar with those of the Field Assistant/Assistant Horticulture Inspector and those posts have the same R.R., i.e., R.R. 1987.

18. It is fairly wellsettled that this court while exercising the power for judicial review by invoking article 226 of the Constitution of India over the executive actions of the State in prescribing pay scale of the different posts, it is required to see as to whether there is cogent materials on record in fixing the pay scale for a given post and also the court's interference is absolutely necessary to do

the Justice. Reference may h be made to the decision of this court in Manipur Cooperative Department Officers Association v. State of Manipur and Ors., 1999 (1) GLT 534. The Apex Court in P. Vajravelu Mudaliar v. The Special Deputy Collector for Land Acquisition, West Madras and Another, AIR 1965 SC 1017 (Constitution Bench), observed that legislation is a colourable one, what it means is that the Legislature has transgressed its legislative powers in a covert or indirect manner, if it adopts, a device to outstep the limits of its powers. The Apex court in Dr. D.C. Wadhwa and Others v. State of Bihar and Others AIR 1987 SC 579, held that a constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing any act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the constitutional provision.

19. After taking into consideration of the peculiar facts and circumstances of the present case discussed above in view of the ratio laid down by the Apex Court in the cases discussed above, we are of the considered view that there should not be artificial and discriminatory classification amongst the equals while revising pay scale for the Observer for Silt Analyst, the Observer, Field Assistant and Assistant Horticulture of the same department i.e. Horticulture & Soil Conservation Department, Govt. of Manipur under the ROP 1999 and also that by applying the principle of equal pay for equal work which is a concomitant of Articles 14 and 16 of the Constitution of India, the pay scale of the Observer for Silt Analysis should be revised to Rs. 4,0006,000 as in the cases of Field Assistant/Assistant Horticulture Inspector of the same department i.e. Horticulture & Soil Conservation Department, Govt. of Manipur under ROP 1999. Accordingly, the offending portion of ROP 1999 is set aside.

20. For the reasons discussed above, with great respect to the learned Single Judge, we cannot endorse the view of the learned Single Judge in the impugned judgment and order dated 13.12.2006 passed in WP(C) No. 1400/2005. Accordingly the impugned judgment and order dated 13.12.2006 passed in WP(C) No. 1400/2005 is set aside.

21. In the result, the writ petition is also allowed and the State respondents are directed to revise the pay scale of the observer for Silt Analyst in Horticulture Department, Govt. of Manipur to Rs. 4,0006,000 with effect from 1.1.1996.