
(1988) 04 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 444 of 1987

Nagen Bayon

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 16, 16

Citation : (1988) 2 GLJ 433 : (1988) 2 GLR 1

Hon'ble Judges : B.L.Hansaria, J and J.Sangma, J

Bench : Division Bench

Advocate : B.Dutta, P.Pathak, I.Ali, B.P.Bora, A.Sharma, G.K.Dutta, Advocates appearing for Parties

Judgement

Hansaria, C. J. (Acting)

1. ?Equal pay for equal work? is not a mere demagogic slogan, it is no longer an illusion ; it has now become a well entrenched pulsating and throbbing socialistic principle made applicable to all employees and workers employed, inter alia, by the State and its instrumentalities. Thanks largely goes to Randhir Singh vs. Union of India, AIR 1982 SC 879 in giving articulation to this Directive Principle embodied in Article 39(d) and in pouring full content in Articles 14 and 16 of the Constitution. After this epochmaking decision, the highest Court of the land has applied this doctrine to a large number of cases, to wit, Indrapal Yadav vs. Union of India, 1985 (2) SCC 648; Dhirendra Chamoli vs. State of UP, 1986 (1) SCC 637 ; Surendra Singh vs. Engineerin Chief, CPWD, 1986(1) SCC 639 ; Mackinnon M. & Co. vs. Audrey, AIR 1987 SC 1281 ; Bhagwan Dass vs. State of Haryana, AIR 1987 SC 2049 ; Daily rated Casual Labour vs. Union of India, AIR 1987 SC 1342 ; U. P. IncomeTax Department vs. Union of India, AIR 1988 SC 517 and Delhi Municipal Karmachari Ekta Union vs. P. D. Singh, AIR 1988 SC 519. By these decisions, the doctrine of equal pay for equal work was applied not only to permanent Government servants but even to those who were working temporarily or even as casual employees.

2. We have highlighted this aspect of the constitutional mandate because 238 copyists or typists who are engaged in the work of copying out various orders, judgments, etc. in the offices of the District Judges, Deputy Commissioners, Board of Revenue, Circle Offices etc. are before us in this petition under Article 226 of the Constitution demanding that they should be treated equally is the matter of putting them on a timescale of pay, which similarly situated typists are enjoying. The 238 persons whose cause has been taken up by the All Assam Copyists' Association have been fighting hard at least since 1954 to get them fitted into a time scale of pay, but despite 37 decades which have passed since their first demand they are yet to see the fulfilment of their legitimate demand. This transpires from the letter No. FE.245/54/52 dated 21st March, 1958, of the Finance Department of the Government of Assam and the letter of the Deputy Commissioner, Lakhimpur bearing No. RK. 30666/R dated 2nd June, 1965. We may also state here that the cause of the copyists to grant them a timescale of pay had found favour with the District Registrar, Lakhimpur, Dibrugarh as appears from his letter No. 604 dated 28.8.80. Getting no relief, they have approached this Court to seek redress.

3. It would be useful to point out as to how the copyists were being paid from time to time and what is the present position regarding their emoluments. From the materials before us it is not very clear as to how the copyists were being remunerated prior to 1967, though the petitioners have claimed that they treated as wholetime Government servants from 1942. It, however, seems that in addition to basic remuneration they were getting dearness allowance prior to 1967. Sometime in 1967, their remuneration came to be fixed as per their outturn and 16 paise per folio was fixed as the rate of their remuneration. The copyists demanded higher remuneration and the Pay Committee of 1964 recommended increase in the rate of folio from 16 paise to 20 paise. The copyists made representation to the Government being highly dissatisfied with the rate of increase granted by the Pay Committee. The Government referred the matter to One Man Commission to look into the matter. This Commission felt that revision of the rate to 20 paise per folio made the effective remuneration less than before as no dearness and other allowances were attached to it. The Commission, therefore, recommended a rate of 30 paise per folio as remuneration for the copyists which recommendation was accepted and made effective from 12.4.67. However, other allowances were made inapplicable. Thereafter, the remuneration was raised to 35 paise per folio with effect from 1.12.68 and then to 50 paise with effect from 14.6.74. which was in pursuance of the recommendation of the Assam Pay Commission 1973. The copyists made further representations and for the first time the Government fixed a minimum remuneration to be paid to each of them. This sum was fixed at Rs. 300/ per month with effect from 3.11.79. The minimum was raised to Re. 400/ by Notification of even No. dated 21.9.83 and subsequently to Rs. 650/ by Notification dated 1.12.86.

4. So, the present position is that each of the copyists is getting a minimum of

Rs.650/. Of course, if any copyists can undertake such work which would bring him more than the minimum by copying out more number of folios, the rate of which has been fixed at 50 paise per folio, he would be entitled to get more than Rs. 650/. The case of the Association, however, is that its members hardly get any scope in most of the offices to which the copyists are attached to do such work which would bring more than the minimum. So for all practical purposes the remuneration of the copyists is a sum of Rs.650/per month. It has been implored before us by Shri Sarma that presently even a ClassIV employee of the Government gets a minimum of Rs. 750/ which clearly demands higher remuneration for the copyists for whom the minimum educational requirement is passing of Higher Secondary Examination though some of whom are even graduates.

5. It is thus apparent that the copyists are being denied a fair"* deal. The contention of the respondents is that if copyists are put on regular timescale of pay instead of being paid on piecerate basis there would be reduction in output of work, as the contract system in such matters acts as an incentive to do more work. This was the view of the Pay Committee of 1964 and this is still the thinking of the respondents. To this the simple answer of Shri A.Sarma is that there are a large number of typists engaged in different offices who hardly type out a few papers each day even then they have been put on regular timescale of pay.

6. Before we proceed further let it be stated that because of the decision of this Court in Civil Rule No. 708/81 (Nurul Haque vs. Deputy Commissioner) decided on 6.5.82, there is no manner of doubt that the copyists with whom we are concerned are holders of civil posts. It is also an admitted position that they have been treated as Government servants in all respects being required to be present in the office from 10 AM to 4 PM on all working days like all other Governments. Regular attendance registers are also maintained in respect of their presence in the office and absence without leave renders them liable to disciplinary action. They are appointed against sanctioned posts and are also required to retire at the age of 60. From the various affidavits filed by the petitioners it is also clear that the copyists with whom we are concerned are the only fulltime Government servants who have been denied timescale of pay. This has been the stand of the petitioners and the same has not been denied by the State. Apart from the copyists who are before us, two categories of Government servants have not been put on regular time scale of pay and they are the Mouzadars and Gaonburas. As to them, it is sufficient to say that they are not fulltime Government servants, and as such the copyists cannot be put at par with them.

7. When the present case was heard on 30 11.87, it was brought to our notice that some copyists doing work in the Department of Historical and Antiquarian Studies have been given a timescale of pay maximum of which is Rs. 800/ per month, though the same has been denied to the copyists at hand, and we, therefore, wanted to know as to why the timescale of pay made available to

those copyists should not be granted to the copyists at hand. An affidavit was subsequently filed on 15.12.87 enclosing a letter of the Honorary Director of the aforesaid department which stated, inter alia, that regular pay scale was being given to the copyists in that Department ""due to regular nature of work". Shri Sarma has urged that the nature of work of the copyists at hand is also regular in nature, and so there is no reason to deny them the time scale of pay made available to those copyists. Shri Bora, learned Government Advocate has, however, urged that the educational qualifications of those copyists are entirely different and he referred in this connection to what has been stated in paras 2 and 3 of the letter of the Hony Director, Annexure14. Though it is true that the copyists in that Directorate are required to have a fair knowledge of old manuscripts reading and Sanskrit, but we do not think if for this reason a timescale of pay can be denied to the copyists at hand because many other typists engaged in various other departments are enjoying a regular timescale of pay.

8. The important question which arises while considering the prayer of the petitioner is work done by the members of the petitioner Association can be said to be the same or similar in nature with those who have been put on regular timescale of pay. In this connection, we may refer to Mackinnon's case (supra) where it was stated that while deciding whether a particular work is same or similar in nature with the other work, the authority has to take a broad view, and in ascertaining whether any difference is of practical importance, the authorities should take an equally broad approach because the very concept of similar work implies differences in details ; but this should not defeat claim for equality on trivial grounds. If this approach is adopted we find it difficult to hold that the work of copyists at hand is in a significant way different from those typists engaged in various departments who type out a few letters in a day, manuscripts of which are handed over to them.

9. From what has been stated above, we are satisfied that demand of Articles 14 and 16 is that the copyists with whom we are concerned should also be put on a timescale of pay inasmuch as the nature of work performed by them is not much different from the typists who are engaged in various departments of the Government; and as they are the only wholtime Government servants who have been denied the time scale of pay. We may point out here that if granting of regular timescale of pay is otherwise required to uphold the constitutional guarantee of equality, financial liability should not stand in the way. This was the view expressed in Mackinnon's case (supra). If this applies to a private company, we would think that this would apply, a fortiori, to employees of the Government. We may also point out here that we are concerned only with 238 employees of the Government, and as such the financial liability is not likely to be such which would cause any financial imbalance in the State's budget.

10. Before determining which time scale of pay should be made available to the copyists and from which date, we would like to observe that an eye has to be

kept to see that the output of work of the copyists does not suffer because of putting them on a time scale of pay. We are of the view that this aspect may be taken care of and examined while considering the question of crossing the efficiency bar. If it would be found that any of the copyists has neglected his work, he may not be allowed to cross the efficiency bar. A strict vigilance in this regard would be kept and the case of each copyists shall be examined individually while considering the question of crossing efficiency bar.

11. The next question is as to the time scale of pay which should be made available to the copyists. In this regard, we would think that the scale of pay and other admissible allowances which is presently governing the copyists engaged in the Department of Historical and Antiquarian Studies should be allowed to the copyists at hand also. That scale of pay is Rs. 47012530EB12590EB1568020800/-. Though Shri Sarma mentioned in this connection that the time scale of pay which should be made available ought to be of Rs. 50012560EB 15635EB20875/-. we have however noted that this is the time scale of pay provided for Stenotypists as would appear from Annexure12 ; and so we have not felt inclined to grant this pay scale. In so far as the date from which the time scale of pay should be made available, we are of the view that the same should be with effect from 8.5.87, on which date the present application was filed.

12. In the result, we allow the petition by directing the respondents to make available to the copyists at hand the aforesaid time scale of pay plus other allowances as admissible under the Rules with effect from 8.5,87, May we say that we have allowed the prayer of the petitioner on the hope that there would be no deterioration in the working of the copyists. But if it were to be so, they would render themselves liable to face disciplinary proceeding.

Sangma, J I agree.