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**(2001) 09 GAU CK 0053**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 537 of 1997

Narendra Kumar Das and Others — APPELLANT

Vs

State of Tripura and Others — RESPONDENT

**Date of Decision :** 07-09-2001

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2001) 3 GLT 39

**Hon'ble Judges :** B.B. Deb, J

**Bench :** Single Bench

**Advocate :** A.M. Lodh, A.Lodh and M. Dutta, for the Appellant; P. Deb Roy, for the Respondent

**Final Decision :** Allowed

## Judgement

B.B. Deb, J.—By this writ petition under Article 226 of the Constitution of India, the petitioners seek for a writ of mandamus directing the respondents to provide them the identical pay scale benefits of Diploma holder Overseers which have been allowed to the proforma-respondent Nos. 3 to 7.

2. The petitioner Nos. 1, 2 and 3 passed the Diploma in Mechanical engineering from Narsingarh Polytechnic Institute in the year 1964, 1965 and 1966 respectively while the petitioner No. 4 did the diploma in Electrical Engineering from the aforesaid Institute in 1966. The course of diploma in engineering was of three years duration. The petitioner No. 1 was appointed in the post of Instructor with a posting at Industrial Training Institute, Kailashahar, North Tripura in the year 1970 by the Director of Industries while the petitioner Nos. 2, 3 and 4 had also been appointed as Instructors in Aug 73 Subsequently the petitioner No. 1 was promoted to the post of Foreman in 1980, After introduction of Revision of Pay Rules, 1988 (shortly ROP, 1988), the petitioner Nos. 2. 3 and 4 have been designated as Senior Instructors and the pay scale of Rs. 1450-3710 had been allowed to them whereas the petitioner No. 1 was given the pay scale of Rs. 1700-3980 in the post of Foreman. In the Director ate of Industries there are

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different posts having different nomenclature but having same and identical qualification and performing identical works. These are Supervisor, Instructor, Store Keeper (Tech), Manager-cum-Overseer Estimator etc. The posts of Manager-cum-Overseer Estimator/Store-keeper (Tech) have been re-designated as Overseer (Industrial Estate) and Overseer (Store) and I the posts of Supervisor and Instructor have been re-designated as Senior Supervisor, Senior Instructor etc. The pre-revised scale of pay prior to ROP, 1988 of all those posts was Rs. 560-1300, but by virtue of ROP, 1988 the, post of Store keeper (Tech) was re-designated as Overseer (Store) and the post of Manager-cum-Overseer was re-designated as Overseer (industry) but for all those posts the pay scale was revised to Rs. 1450-3710 and the pay scale of Foreman was revised to Rs. 1700-3980. The Pro-respondent No. 4 who was initially appointed as Store-keeper (Tech) having the qualification of diploma in engineering like the petitioners was allowed the pay scale of Rs. 560-1300, but being aggrieved, he filed a suit being Title Suit No. 12 of 1994 before the learned Assistant District Judge, North Tripura, Kailashahar claiming the revised pay scale of Rs. 1450-3710 under ROP, 1988, Subsequently, the Government in the Finance Department decided to re-designate the post of Diploma holder Overseers as Junior Engineer Grade-1 with a pay scale of Rs. 2000-4410 w.e.f. 1.3.1996. The suit filed by the pro-respondent No. 4 was decreed by the learned trial court vide judgment dated 27.6.1995. In that suit it was decided that the Diploma holder Engineers who had been working in various capacities with different designations were entitled to the benefit of pay scale of Junior Engineer Grade-1 but since the petitioners have been holding the posts under the nomenclature Senior Instructor (not over seer), their designation remained unchanged having deprived of the higher pay scale benefit meant for Junior Engineers. The Junior Engineers (the erstwhile overseers) having completed 22 years service were automatically upgraded as Assistant Engineers in the pay scale of Rs. 2100-5000 w.e.f. the date of completion of 22 years continuous service. So, according to the petitioners, only due to the different nomenclatures/designations of their posts they hive been deprived of the benefit of pay parity though the petitioners have been performing identical duties with identical qualification comparable to the pro-respondent Nos. 3 to 7 and this is, according to the petition, violative of Articles 14 and 16 of the Constitution of India.

3. The respondents having filed counter-affidavit resisted the claim of the petitioners contending, inter alia, that notwithstanding the identical qualification of diploma in engineering the petitioners entered in service as Instructor subsequently re-designated as Senior Instructor by virtue of ROP, 1988 while the pro-respondents entered in service as Store-Keeper (Tech) Manager-cum-Overseer, Estimator etc. and as such it cannot held that all performed/have been performing identical nature of work with identical responsibilities and as such they cannot claim the pay parity.

4. Upon hearing the learned counsel for the parties and on perusal of the documents it appears that the State respondents attempted to justify the denial

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of the petitioners'' right of equality in the matter relating to pay and allowances on the ground of having held different posts with different nature of works with different degree of responsibilities.

5. It is an acknowledged fact that prior to ROP, 1988 the post of Store-keeper (Tech) and the post of Instructor (Industry) had been provided with identical pay scale of Rs. 560-1300 and the Manager-cum-Overseer was allowed the pay scale of Rs. 600-1440 and vide ROP. 1988 (w.e.f. 1.1.1986), the post of Store-keeper (Tech) was re-designated as Overseer (Store) and Manager-cum-Overseer was re-designated as Overseer (Industry) and the posts of Instructor and Supervisor were re-designated as Senior Instructor, but all those posts had been provided with the identical pay scale of Rs. 14 50-3710, but subsequent to the introduction of ROP, 1988 the Government in the Finance Department vide Notification dated 4.1.1997 introduced the discriminatory treatment by further re-designating the posts of Overseer (Store) and Manager-cum-Overseer as Junior Engineer Grade-1 allowing a higher pay scale of Rs. 2000-4410 and further discrimination was introduced by making avenues for promotion of Junior Engineer Grade-1 to the post of Assistant Engineer while the petitioners'' position remained unchanged.

6. Mr. A.M. Lodh, learned senior counsel appearing on behalf of the petitioners submits that since from the very inception the petitioners though holding the posts under nomenclature Supervisor/Instructor and the pro-respondents were holding the posts of Overseer (Store) and Manager-cum-Overseer had been provided with identical pay scale and they have been possessing identical qualification from the same Institute and even under ROP, 1988 the identical position of the petitioners vis-a-vis pro-respondents remained un-disturbed, but subsequently vide Notification bearing No. F.DI/ESTT/24 (38/ 96/16322-38 dated 4.1.997, the designation of the pro-respondents had been modified to "Junior Engineer Grade-1" and the pay scale was upgraded to Rs. 2000-4410 having ignored the petitioners'' legitimate expectancy of getting equal treatment. Mr. Lodh, learned senior counsel for the petitioners having referred the judgment dated 7.6.1995 passed in Title Suit No. 12/1994 by the learned Assistant District Judge. North Tripura. Kallashahar submits that all the posts of Store-keeper (Tech), Instructor, Manager-cum-Overseer, Foreman are all identical posts having identical qualification and as such they should have been treated identically. In para 7 of the judgment of the aforementioned case. It appear that the learned trial court in that Title Suit held that "all the aforenoted posts were/are basically overseers. But for their proper identification the Authority used to designate them relating to their works. It does not mean that they lost their original character that they were having, i.e. degree or diploma in any Engineering stream." Mr. Lodh led me to the departmental notes available under Annexure-R(2) appended with the counter-affidavit filed by the State respondents. In Note No. 14 among others the below quoted acknowledged position is available :

"In PWD who is appointed as Estimator, and working in the office, but his nature

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of duty is purely in Technical nature and have no bearing with the clerical job. Similarly, the employee, who is diploma holder and degree holder, working in the Industry Deptt. are also performing Technical job as like as in PWD

The diploma holder are performing the job as like as Overseer and Degree holder are performing the Job as like as Asstt. Engineer in PWD. In fact, it seems to be a Engineering Call, in Industry Deptt. Also."

7. Mr. P. Deb Roy, learned counsel appearing on behalf of the State respondents having found no alternative submits that the works performed by the petitioners vis-a-vis the pro-respondents are undoubtedly technical in nature and they virtually have been performing the duties in the engineering cell of the Industry Department having the identical qualification of diploma in engineering in different streams.

8. It is also admitted from the records that the diploma holder engineers who were initially appointed as overseers in PWD have been re-designated as Junior Engineers Grade I and were allowed to be absorbed in the available vacancies of Assistant Engineers on completion of 22 years service as Overseer/Junior Engineer Grade-1. The incumbents entered in service in the Industries Deptt. having the qualification of diploma in engineering against the posts of Storekeeper (Tech), Manager-cum-Overseer and Foreman had been re-designated as Junior Engineer Grade-1 while the incumbents having the identical qualification entered in service as Supervisor or Instructor had been re-designated as Senior Instructor though the nature of work and responsibility of performance are identical in nature that is technical job-performance, but the former group had been flowed higher pay scale on the strength of their being re-designated as Junior Engineer Grade-1 while the latter group was deprived of the same though fundamentally they are born against the identical duty post of course under different nomenclature. The authority while classifying its employees should not see the colour completion, but must see the flash bone and substance. Substantially the petitioners vis-a-vis the pro-respondents initially belonged to same flash group and subsequently also have been performing the works of same blood group having different completion in skin. The outer designation of a particular post cannot be treated to be a decisive factor to deny the equal treatment. The doctrine of equal pay for equal work has to be examined after in-depth study having taken into consideration the qualification, equality, job performance, similarity and degree of identical responsibility. Since the petitioners vis-a-vis the pro-respondents entered the service having identical qualification of diploma in engineering in different streams and ware provided identical pay scale, of course, holding posts under different nomenclature though have been performing technical job similar in nature under the same department, the petitioners cannot be denied the equal treatment in pay parity. The maxim ''equate should be treated equally'' cannot be denied only having pointed out the different nomenclature: of posts held by them.

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9. In my considered opinion, all the diploma holders-engineers who entered in service under Industries Deptt. against different nomenclature of posts having identical nature of technical job are constitutionally entitled to be treated alike. Any departure therefrom would only to be termed as ''hostile discrimination'' and not permissible under the constitutional scheme of ours own.

10. Under the aforesaid discussion, I am of the considered opinion that the petitioners are entitled to be allowed the pay parity benefit at par with that of pro-respondent Nos. 3 to 7 with the corresponding dates the pro-respondents were allowed the higher pay scale benefit.

Notwithstanding the petitioners holding the posts of different nomenclatures, the petitioners should also be treated by the State respondents being Junior Engineer Grade-1 in substance though they are holding the posts under different nomenclatures. The nomenclature of post cannot be allowed to prevail over the substantive nature thereof to defeat the justice.

11. In the result, the writ petition is allowed as indicated above. The pay parity must be allowed to the petitioners in accordance with what was allowed to pro-respondent Nos. 3 to 7 w.e.f. identical dates and that must be done within a period of 45 (forty five) days from today. The petition is allowed with a cost of Rs. 1,000 (Rupees one thousand) only.

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