

(1983) 10 MAD CK 0006
In the Madras High Court

P. Munisamy

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 27-10-1983

Acts Referred:

Citation : (1984) 1 MLJ 128

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—This writ petition has been filed by one Thiru P. Munisamy, who is working as an Amin in the District Court, Madurai

and who is also the President of the Tamil Nadu Amins" Association. He seeks the issue of a certiorarified mandamus to call for the records

relating to the Tamil Nadu Revised Scales of Pay Rules, 1978 and to quash the same so far as it relates to the time-scale of pay relating to Amins,

as entered in item No. 39 at page 136 under the Caption "Judicial Department other than High Court and to direct the respondents to refix the

petitioner"s salary in the time-scale of pay applicable to Senior Bailiffs, as shown in item No. 38 at page 136 under the Caption "Judicial

Department", other than High Court with effect from 1st April, 1978.

2. The case of the petitioner, as set out in his affidavit filed in support of his writ petition is as follows:

The category of employees known as Amins in the Courts situated at Taluk and District Levels are doing the work which is not only equal but also

identical and similar in every respect with that of the work, discharged by the category of persons known as Senior Bailiffs in the Civil Courts at

Madras City. Even though these two categories are executing identical work, yet

the time-scale of pay applicable to these two categories had been fixed differently. The category of persons known as Amins as on date are paid lesser salary for the same work for which the persons known as Senior Bailiffs are given higher salary. This difference, according to the petitioner, is totally arbitrary and not based on any reasonable classification.

The petitioner complains that there is a Constitutional guarantee embodied in Article 39 (3) that there will be equal pay for equal work. Yet the Amins are paid lesser salary than what is paid to the Senior Bailiffs in the Civil Courts at Madras City, even though the work done by both is identical. The petitioner has also pointed out that that the work done by the Senior Bailiffs in the city attached to the City Civil Court, Madras and the work done by the Amins in the mofussil are either similar or identical has been accepted by the Government in G.O. Ms. No. No. 2269, Home Department, dated 8th September, 1979 while fixing the educational qualification for the category of Amins. Taking into consideration the work done by the Amins in the Mofussil and the Senior Bailiffs in the City who are doing the same and identical work, the Government revised the educational qualifications for Amins and the minimum educational qualification was fixed as the basic qualification for direct recruitment to the post of Amin. Therefore, the Government having taken up the stand that the work done by the Senior Bailiffs in the City of Madras and the work done by the Amins in Mofussil are the same in the said Government Order, it is not open to the Government to dispute that fact. Thus the petitioner seeks to enforce the rule of equal pay for equal work in this case.

3. In *Randhir Singh Vs. Union of India (UOI) and Others*, , it has been held that it is no abstract doctrine but one of substance and applicable to every one. The said decision of the Supreme Court applies on all fours in this case. Therefore, the Amins should be held entitled to get the same pay as the Senior Bailiffs in the City Civil Court are getting. Further, the petitioner has pointed out in his affidavit that the post of Amins happens to be the promotion post for Copyists as well as Readers and also Examiners, Record Clerks and Process Servers. Most of the persons working as Amins in various courts now were originally appointed as Copyists or Readers, who were promoted as Amins, while the category of Copyists, and Readers are fewer and lower categories for the post of Amins. The scale of pay of

Copyists has been made equal to that of the Senior Bailiffs by the Second Pay Commission, while the scale of pay of Amins has not been revised at all by the Pay Commission. Though this anomaly of lower category getting a higher scale of pay and the promotion category getting a lower scale of pay was brought to the notice of the Government with a request to remove the said anomaly and a representation was also made to the Third Pay Commission to that effect no change was effected. Subsequently the matter was brought to the notice of one more pay commission. But, till to date no steps have been taken to remove the anomaly and inequality. Since the petitioner is not able to get justice from the Government, he has approached this Court for the relief to which he is justly entitled.

4. Though the notice in this writ petition has been served on the first respondent (the State of Tamil Nadu) on 30th July, 1982 and the second respondent the Registrar, High Court of Judicature, Madras on 30th July, 1982 no counter-affidavit has been filed by them.

5. Learned Counsel appearing for the respondents, however stated that he had received instructions from the second respondents to the following effect.

Prior to the First Pay Commission, the scale of pay of Amins was Rs. 25-2-35-1-45 and there was no time-scale of pay for the Copyists and they were paid a fixed pay of Rs. 30 per month. The first Pay Commission, however, recommended equal scale of pay to the Copyists and Amins, i. e., on the scale of Rs. 70-2-100. Accordingly the Government issued orders revising the scale of pay of Amins and Copyists as Rs. 70-2-100. While the Second Pay Commission was appointed the High Court recommended for revision of scale of pay of Amins as Rs. 90-4-110-3-140 and for the Copyists as Rs. 90-3-120. The Second Pay Commission, however, recommended same scale of Pay of Rs. 150-4-170-5-225 to Amins and Copyists. The Government accepted the recommendations of the Second Pay Commission and revised the scale of pay of Amins and Copyists as Rs. 150-4-170-5-225, by merging the clearness allowance with pay. Subsequently, in pursuance of the representation made by the Copyists, the Government G. O, Ms. No. 762, Home, dated 14th March, 1972 revised the scale of pay of Copyists as Rs. 200-5-250-300, which was the

scale of pay applicable to Junior Assistants. Taking note of the said Government Order, which revised the scales of pay for Copyists, the High

Court recommended to the Third pay Commission in 1977, for revision of the scale of pay of the Copyists, Readers and Examiners, on par with

Junior Assistants and that of the Amins in the mofussil Courts at Par with the Senior Bailiffs in the City as their duties and responsibilities are

onerous and they are doing more or less the same duties in the matter of execution of court's orders as Senior Bailiffs. But, on the recommendation

of the third Pay Commission, the Government in G.O. Ms. No. 1050, Finance, dated 5th October, 1978 revised the scale of pay of Amins lower

than the scales of pay of Copyists, Readers and Examiners, as follows:

1. Junior Assistants. .. Rs. 350-10-420-
15-600.

2. Copyists, Readers and
Examiners. Rs. 325-10-445-
15-550.

3. Amins
Rs. 280-5-320-
10-450.

Therefore, on the representation made by the Tamil Nadu Amins Association, the High Court recommended, taking note of the fact that the work

done by the Amins in the Mofussil, and the Senior Bailiffs in the City are substantially same and identical, for redesignation of Amins as senior

bailiffs. The Amins Association also" made the representation for the revision of scales of pay of Amins at least on par with Copyists, though not

on par with the Junior Assistants. Later, they also made representations to the High Court for revising the scale of pay of Amins on par with the

Senior Bailiffs, which is now identical with the scales of pay paid to the Copyists, Readers and Examiners and the High Court also recommended

for revision of scales of pay of Amins, by fixing the same scale of pay as is applicable to the Senior Bailiffs, Copyists Readers and Examiners.

However, the Government has not so far taken any decision in the matter and no orders have been passed on the question of revision of scales of

pay-sought for by Amins.

6. Learned Government Pleader appearing for the respondents, however, says that he has not received any instructions, one way or other, from

the Government. Therefore, there is no other alternative for this Court except to dispose of this case on the materials now available before it.

7. It is not in dispute that the scale of pay applicable to Amins as per the Tamil Nadu Revised Scales of Pay Rules, 1978 is Rs. 280-5-320-10-

450 and the Scales of pay applicable to the Senior Bailiffs, Copyists, Readers and Amins as Rs. 325.10.455-15-550. It is not in dispute that that

most of the persons who are working as Amins as on date have been promoted from the category of Copyists and Readers. Therefore, the post of

Copyists and Readers is lower and a feeder category for the appointment to the post of Amins. As a matter of fact, in G.O. Ms. No. 236. Home

Department, dated 29th January, 1953 the Government has accepted the position that under the Madras Judicial Ministerial Service Rules,

Copyists included in Class VI of the Madras Judicial Ministerial Service are eligible for promotion to the posts of Amins, Readers, Assistant

Superintendent of Copyists and Examiners. Therefore, it is clear that the category of Copyists are lower category than the category of Amins.

8. The question is, whether the scale of pay fixed for the Amins under the Tamil Nadu Revised Scales of Pay Rules, 1978, which is less than the

scales of pay fixed for Copyists and the Senior Bailiffs working in the City, could be legally sustained.

9. According to the learned Counsel for the petitioner once it is found that the work done by the Amins in the mofussil and the Senior Bailiffs in the

city is the same, then they are to be paid the same salary as otherwise the principle of "equal pay for equal work" enshrined in Article 39 (d) will be

infringed. Learned Counsel for the petitioner also relies on the decision of the Supreme Court reported in *Randhir Singh v. Union of India* (1982) 1

S.C.J. 283 : AIR 1982 S.C. 897 and a recent judgment of Padmanabhan, J., rendered in W.P. No. 2010 of 1980 of this Court, where directions

have been issued to fix the scales of pay of the petitioners therein on par with those who are doing the same or similar duties, whether in the same

Department or different departments thus giving effect to the doctrine of "equal pay for equal work?"

10. In *Randhir Singh v. Union of India* (1982) 1 S.C.J. 283 : AIR 1982 S.C. 897 a Driver-Constable in the Delhi Police force under the Delhi

Administration had complained that the scale of pay applicable to him is considerably less than the scale of pay paid to a Driver in the Railway

Protection Force, who is doing the same duty as the petitioner. A driver in the Railway Protection Force was paid in the scale of Rs. 260-400, but

a driver-constable in the Delhi Police Force was paid in the scale of Rs. 210-270. The petitioner before the Supreme Court, therefore, complained

that as he discharges the same duties as the drivers in other departments, he is entitled to be paid the same scale of pay and that there is no reason

whatsoever to discriminate against the petitioner merely because he happens to be described as constable and is working in the Police Force. The

Supreme Court found that the nature of the work done by the petitioner therein is the same as the work done by the drivers in other departments.

Based on that finding, the Supreme Court held that the principle of "equal pay for equal work" squarely applies to the facts of that case and that

therefore there cannot be any difference in the scales of pay applicable to the persons doing the same or similar work. In the context of the facts,

as stated above, the Supreme Court has observed as follows:

It is true that the principle of "equal pay for 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 Supreme Court further observed:

Questions concerning wages and the like, mundane they may be, are yet of vital concern to them and it is there, if at all that the equality clauses of

the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute

India into a Sovereign Socialist Democratic Republic. Again the word "Socialist" must mean something. Even if it does not mean "To each

according to his need", it must at least mean "equal pay for equal work".

The preamble of the Constitution of the International Labour Organisation recognises the principle of "equal remuneration for work of equal value"

as constituting one of the means of achieving the improvement of conditions "involving any injustice, hardship and privation to large numbers of

people as to produce unrest so great that the peace and harmony of the world are imperilled." Construing Articles 14 and 16 in the light of the

preamble and Article 39 (3), 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 employees.

The said decision of the Supreme Court is applicable to the facts of this case on all fours and if the constitutional goal of "equal pay for equal

work" is to be given effect to, then the petitioner in this case is entitled to the relief sought for by him.

11. In a recent decision, Padmanabhan, J., in N. Chakaravarthy and 14 others v. The Pallavan Transport Corporation Ltd. (Metro) represented

by its Managing Director, Transport House, Madras-2, following the said decision of the Supreme Court, issued a writ of mandamus directing the

same scale of pay to be paid to the Trip Recorders and Time Keepers who are doing exactly the same duties. This decision also supports the case

of the petitioner in this case.

12. In this case the petitioner in his affidavit has claimed that he is carrying out identical duties in the mofussil as the Senior Bailiffs do in the city of

Madras and therefore the Amins have to be paid the same salary as the Senior Bailiffs. The claim made by the petitioner that an amin is doing the

same duty in the mofussil as a Senior Bailiff in the city also finds support in G.O. Ms. No. 2269, Home dated 7th September, 1979. In the said

Government Order it is stated that the Amins are superior in category (when compared with the Junior Bailiffs) and they are doing the work of a

Senior Bailiff. Thus, even the first respondent, the State Government, seems to have accepted the claim of the petitioner that an Amin is doing the

same duty as that of a Senior Bailiff, The said claim made by the petitioner has also not been disputed by the learned Government Pleader, who

appears for the first and second respondents. Therefore, it should be taken that equation of duties should be taken to have been established in this

case. Once, there is equation of duties, then equal pay should be ensured. As has been pointed out by the Supreme Court, equal pay for equal

work is not a mere demagogic slogan and it is a constitutional goal capable of attainment through constitutional remedies, by the enforcement of

constitutional rights. The petitioner, who is in the category of Amins and who is bound to do the same work as the Senior Bailiffs in the city of

Madras, is entitled to be paid the same salary, which is applicable to the Senior Bailiffs. In the said decision of the Supreme Court, the Supreme

Court directed the payment of equal pay to the persons working in two separate departments, one in the Police Force and the other in the Railway

Protection Force. Here, the Senior Bailiffs and the Amins are working in one and the same departments, though they are performing their duties in

different places. The Senior Bailiffs are performing their duties in the city of Madras and the Amins are performing their duties in mofussi W.P. No.

2010 of 1980, Courts. Their duties being the same. If the rule of equality should have any meaning, the persons doing the same work should be

paid the same salary. Here, though the Amins and the Senior Bailiffs are doing the same work, the former is paid a lesser salary and the latter a

higher salary. This clearly offends the principle of "equal pay for equal work" which has been taken as the constitutional goal, in the said decision of

the Supreme Court, which has to be guaranteed to every citizen.

13. The case before Padmanabhan, J., was that when different scales of pay were paid to the Time Keepers and the Trip Recorders working

under the Pallavan Transport Corporation, the Court directed that same scale of pay should be paid to both of them, since they are doing

substantially the same duties. Since the principle of "equal pay for equal duty" is well-established and has been recognised by the Supreme Court in

the above case and also by this Court in W.P. No. 2010 of 1980, the petitioner is entitled to the relief sought for by him in this writ petition,

14. I, therefore, allow the writ petition and direct the respondents to fix the scale of pay for the category of Amins, to which the petitioner belongs,

on par with the senior bailiffs working in the City of Madras, within six months from to-day. The scale of pay so fixed shall be effective from the date when the Tamil Nadu Revised Scales of Pay Rules, 1978 came into force. There will, however, be no order as to costs.