
(1997) 07 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 343 of 1996

Paramananda Sarkar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 21-07-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 39

Citation : (1997) 3 GLR 311

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; S. Roy, for the Respondent

Judgement

N.G. Das, J.—The question for decision in this writ petition is whether payment of less salary to a senior than to his junior in the same cadre having the same pay scale is violative of the principle of "equal pay for equal work" enshrined in Article 39(d) read with Article 14 and 16 of the Constitution of India.

2. I have heard Mr. C.S. Sinha, the learned Counsel appearing on behalf of the Petitioner and Mr. Sukdev Roy, the learned Counsel appearing on behalf of the Respondents.

3. To appreciate the contentions canvassed at the bar by learned Counsel for the parties, the facts relevant for the purpose may briefly be stated as under:

The Petitioner who is a Bachelor of Engineer (Electrical) initially joined as an Assistant Director Grade-I on 17th April, 1986 in the pay scale of Rs. 2200-4000/- in the Department of Power, Government of India. Thereafter, the Petitioner appeared before some Selection Committee of Tripura Public Service Commission for appointment to the post of Inspector of Factories. The Petitioner having stood first he got the offer and accordingly he joined the post on 14.5.1990 in the pay scale of Rs. 3200-5600/- under the Department of Labour, Government of Tripura.

4. Similarly, the Respondent No. 6 who stood second in the Interview joined the post of Inspector of Factories on 30.4.1990 in the same scale of pay. But as before joining the post of Inspector of Factories the Respondent No. 6 was serving in the Tripura Industrial Development Corporation Ltd. in the pay scale of Rs. 3200-5600/- he before joining to the new post submitted a prayer to the authority (sic) protection of his pay which he used to draw in Tripura Industrial Development Corporation Ltd. immediately before joining the post of Inspector of Factories, Department of Labour, Government of Tripura. The representation of the Respondent No. 6 was referred to the Government of Tripura in the Finance Department (sic) even though it was initially rejected by the Finance Department, Government (sic) Tripura. subsequently the matter was referred to the Tripura Public Service Commission which by its letter No. F. Ex. 1(B)/62(8)-TPSC/89, dated 17.10.1992 formed that under Proviso (I) (iii) to F.R. 22 the last pay drawn by the Respondent No. 16 in the Tripura Industrial Development Corporation Ltd. (for short T.I.D.C.) might be protected.

5. On the basis of this recommendation the Government of Tripura re-fixed (sic) pay of Respondent No. 6 at Rs. 3,675/- as on May 1, 1990 with the date of next (sic)ement on May 1, 1991. The Petitioner, therefore, approached the Respondents (sic) Submitting a representation for re-fixation of his basic pay at Rs. 3,675/- alike Respondent No. 6 as the Respondent No. 6 is junior to him. But after several representations Respondent No. 2 by his letter No. F. 1 (1)/1F(N)/ESTT/92/337, dated 31.7.1995 (Annexure-8) rejected the prayer of the Petitioner and Respondent No. 5 informed the Petitioner of this rejection by his letter dated 31st August, 1995 (Annexure -9).

6. Aggrieved by this rejection the Petitioner has approached this Court by (sic) of this writ application as according to him the Respondents failed to appreciate the principles of "equal pay for equal work" as embodied under Article (sic)(d) of the Constitution of India.

7. The Respondent No. 1 has resisted this writ petition by filing a counter-affidavit wherein it has been contended, inter alia, that no illegality has been Limited in re-fixing the pay scale of Respondent No. 6 as proviso (I) (iii) to F.R. prescribes protection of pay on joining Government service while holding a (sic)anent post or temporary post (including a post in a body, incorporated or not, (sic) is wholly or substantially owned or controlled by the Government) on an (sic) time scale. It has been averred that T.I.D.C. is wholly controlled by the (sic)ment and as such the Respondent No. 6 who was serving in T.I.D.C. in the scale of Rs. 3200-5600/- is entitled to get pay protection in accordance with (sic)so (I) (iii) to F.R. 22.

8. It is not in dispute that the Petitioner stood first in the Interview and that the Respondent No. 6 stood second. It is also not in dispute that Respondent No. 6 was (sic) higher scale i.e. in the pay scale of Rs. 3200-5600/- while he was rendering (sic)es in the T.I.D.C. But it has been contended by Mr. Sinha, the learned Counsel (sic)ring on behalf of the Petitioner that the Respondent No. 6

being not in a regular (sic)ment service prior to his appointment to the post of Inspector of Factories i.e. the present post the benefit of proviso (I) (iii) to F.R. 22 is not admissible to him.

9. But the contention of Mr. S. Roy, the learned Counsel for the Respondents in this regard is that TIDC is fully financed and controlled by the Government of Tripura and as such it very much comes within the expression "other authorities" of Article 12 of the Constitution of India. Therefore, according to Mr. Roy the provision laid down under proviso (I) (iii) to F.R. 22 is very much applicable to Respondent No. 6 i.e. the Respondent No. 6 is entitled to get the protection of pay.

10. But the contention of Mr. Sinha is that since the Respondent No. 6 was not in regular Government service prior to his joining the present post he is not entitled to get protection of pay by virtue of the provisions of proviso (I) (iii) to F.R. 22. Mr. Sinha has also contended that by re-fixing the basic pay of the Respondent No. 6 at a higher stage than that of the Petitioner the Respondents have violated the principle "equal pay for equal work" as enshrined under Article 39(d) of the Constitution of India.

11. In support of his contention that principle of "equal pay for equal work" has not at all been violated in the present case, Mr. Roy, learned Counsel for the Respondents has referred to a decision of the Supreme Court rendered in the case of State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others, and has drawn my attention to Para 15 of the judgment where their Lordships held that equal pay for equal work does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. Therefore, what is needed to be looked into in the present case is whether the re-fixation of the basic pay of the Respondent No. 6 was done under any valid statutory rules.

12. As already stated the case of the Respondents is that the re-fixation was done as per provisions laid down in proviso (I) (iii) to F.R. 22. Mr. Sinha has submitted that such a question arose and it was referred to the Government of India when the Government of India decided the question which is available under item No. 5 of its decision given in F.R. 22. The relevant decision of the Government of India reads as under:

(5) Counting service in a scale higher than or identical with the parent cadre,

1. Doubts having been expressed as to whether the benefits of proviso (I)(iii) to F.R. 22 in respect of protection of pay and period of increment would be admissible to Government servant on their appointments-directly or on transfer from a post carrying an identical time scale of pay without fulfilment of the

conditions prescribed in that proviso, it was clarified that in such cases the benefits mentioned above will be admissible without fulfilment of those conditions subject to paragraph (2) below.

2. This benefits will not be admissible to an individual who enters Government service for the first time from a post in a body, incorporated or not which is wholly or substantially owned or controlled by Government.

13. Laying emphasis in para 2 as quoted above Mr. Sinha has contended that in view of what has been stated under para 2 by the Government of India in its decision the Respondent No. 6 is not entitled to get the protection of pay as admittedly the T.I.D.C. is not Government but controlled by the Government. The decision referred to by State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others, is not applicable to the present case as the facts in that case would show that the parties were Government servants, But in the case present case, it is an admitted fact that T.I.D.C. in which Respondent No. 6 was serving prior to his joining to the present post has separate Regulations which are available under Annexure-I0 Therefore, even though T.I.D.C. is wholly controlled by the Government the Respondent No. 6 in view of the decision of the Government India as quoted above is not entitled to get benefits of proviso (I) (iii) to F.R. 22 in respect of protection of his pay.

14. In the result, the order dated 25th February, 1993 contained in Annexure-5 re-fixing the pay of Respondent No. 6 at Rs. 3,675/- is quashed. The Respondents are, therefore, directed to recover the additional pay, which has already been paid to the Respondent No. 6 by reason of the order contained in Annexure-5 by suitable installments as it may be too harsh for the Respondent No. 6 to refund the additional salary already paid to him at a time.

15. The petition is accordingly disposed of with no costs.