

(2006) 07 RAJ CK 0082
In the Rajasthan High Court

Rajasthan Ground Water Subordinate Service Association and
Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 4 RLW 3400

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—The Rajasthan Ground Water Subordinate Service Association alongwith its three members (hereinafter referred to as the petitioners") has filed this writ petition seeking a writ of mandamus directing the respondents to upgrade the pay of Technical Assistant (Hydrogeology, Geophysics) in the pay scale of Rs. 6500-10500 from the date Rajasthan Civil Services (Revised Pay Scales) Rules, 1998 (in short "the Rules of 1998") came into force and quashing and setting aside Annexure 7 dated 14.6.2002 whereby their representation was rejected.

2. I have heard Mr. Vinay Jain, learned Counsel appearing for the petitioner and Mr. N.M. Lodha, learned Additional Advocate General for the State.

3. Learned Counsel for the petitioner Mr. Vinay Jain has submitted that the petitioners are working on the post of Technical Assistant (Hydrogeology, Geophysics) in the Ground Water Department of the State. There is a similar post in Central Ground Water Board with the nomenclature of Senior Technical Assistant. He has referred to a comparative statement enclosed to the writ petition as Schedule A to show similarity in these posts on the basis of educational qualification, nature of work and the fact that recruitment to both the posts is 100% by direct recruitment. Another comparative statement of pay scales cited by him has been enclosed with the petition as Schedule B with the

help of which he has contended that two posts were always in the similar scale of pay in the Pay Scale Rules, 1969, 1976, 1983, 1987 and 1989. It was for the first time that under the Rules of 1998 the State Government granted the scale of Rs. 5500-9000 to the petitioners while Senior Technical Assistants working in the Central Ground Water Board at the same time were granted scale of Rs. 6500-10500. The Central Government appointed Fifth Central Pay Commission to give its report relating to structure of emoluments, allowances, conditions of service and retirements benefits of employees. In para 90.25 of the said report, it has been said that pay scale of Senior Technical Assistants were not commensurate with the qualifications prescribed for appointment and the functional responsibilities and therefore Commission recommended that these posts may be placed in the replacement scale of pay corresponding to Rs. 2000-3599 in place of 1640- 2900. It was pursuant to acceptance of such recommendation of the Fifth Pay Commissioner by the Central Government that the Senior Technical Assistants were allowed the pay scale of Rs. 6500-10500. The State of Rajasthan however while implementing the recommendation of the Fifth Pay Commission did not replace the post of Technical Assistant (Hydrogeology, Geophysics) in scale of Rs. 2000-3500 in place of Rs. 1640-2900 and accordingly granted to them scale of pay corresponding there to namely Rs. 5500-9000. It has been submitted that the petitioners were entitled to similar treatment as was given to the Senior Technical Assistants by the Central Government while granting them the new scale of pay which corresponds to the scale of Rs. 2000-3500. It has been submitted that these two posts have always been treated at par and paid in the same scale of pay. This anomaly has arisen only because the State Government has accepted the recommendations of the Fifth Pay Commission only in part. The petitioners therefore submitted a representation to the Government on 27.2.1998 which was forwarded to the Ground Water Department for examination. The then Chief Engineer of the Ground Water Department vide letter dated 18.4.1998 recommended for removal of this anomaly and grant of pay scale of Rs. 5500-10500 to the post of Technical Assistant. The Government thereupon called for further details from the Chief Engineer who submitted a comparative chart of both the posts indicating the procedure for recruitment, minimum educational qualification, earlier pay scale, revised pay scale. The Chief Engineer vide letter dated 29.4.1998 submitted a detailed chart indicating all details with regard to two posts including selection process, minimum educational qualification and revised pay scales of the two employers. The Government had been receiving similar request for removal of anomaly in respect of various posts for other departments. The Government initially constituted a single member Committee known as Sisodia Committee but thereafter when he could not submit his report, another committee headed by Shri Yatendra Singh, IAS (Retd.) was constituted who submitted his report to the Government. However, the Government has not taken any steps for implementation of the recommendation of the said Committee. In view of this, the petitioners served a notice for demand of justice on 24.9.2001 and thereafter the petitioners have filed S.B.C. Writ Petition No. 4620/04 which was disposed of

by the Court vide its order dated 7.1.2002 with the direction to the respondents to consider the representations of the petitioner and pass final order in accordance with law. The Government finally rejected the representations/applications vide order dated 14.6.2002.

4. In support of his argument, Shri Vinay Jain learned Counsel for the petitioners has relied upon a catena of Supreme Court judgments. First of all, learned Counsel has placed reliance on the judgment of Supreme Court in the case of *Randhir Singh Vs. Union of India (UOI) and Others*, which was a case where lower scale of pay was being given to the drivers in Delhi Police Force than those in Delhi Administration and Central Government. The Hon''ble Supreme Court on the principle of "equal pay for equal work" held that it constitutes unreasonable classification and therefore was violative of Articles 14 and 16 of the Constitution of India. Learned Counsel has also relied upon the judgment of the Hon''ble Supreme Court in the case of *National Museum Non-gazetted Employees' Association and Another Vs. Union of India (UOI) and Others*, It was a case in which the Gallery Attendants in the National Archives located at New Delhi claimed parity in pay with Record Attendants in National Archives also located at New Delhi. Both the establishments were under the control of the Central Government. The Hon''ble Supreme Court directed that their service conditions be equated.

5. Reliance has also been placed by the learned Counsel on the Supreme Court judgment in the case of *Y.K. Mehta and Others Vs. Union of India (UOI) and Another*, which in fact was a case where the Staff Artists of Doordarshan initially appointed on contract basis were later treated like regular government servants and were performing similar nature of work as performed by their counterparts in Film Division. The Hon''ble Supreme Court held that Staff Artists of Doordarshan were government servants and entitled to same pay scale as provided to their counterparts in the Film Division under the same Ministry of information and Broadcasting.

6. Shri Vinay Jain, learned Counsel for the petitioners then relied upon the case of *Jaipal and Ors. v. State of Haryana and Ors.* reported in (1988) 3 SCC . 354 in which case also the instructors under Adult and Non-formal Education Scheme of Education Department of State of Haryana were claiming parity of pay with Squad Teachers under Social Education Scheme of Education Department of State of Haryana itself. The Hon''ble Supreme Court having held that two categories of employees were performing similar nature of work although there was difference in the nature of their appointment, directed that instructors be paid same pay as paid to Squad Teachers.

7. Learned Counsel then relied upon the judgment of the Hon''ble Supreme Court in *Bhagwan Das and Ors. v. State of Haryana and Ors.* reported in (1987) 4 SCC 534 wherein the petitioners had claimed parity of pay on the basis of "equal pay for equal work" because both the set of employees were found to be discharging similar nature of duties and working under the Government of Haryana. Learned

Counsel also relied upon the judgment of the Hon"ble Supreme Court in Grih Kalyan Kendra Workers" Union Vs. Union of India and others, which was again a case for grant of parity of pay on the principle of "equal pay for equal work". Reliance was then placed on the decision of the Hon"ble Supreme Court in the case of Supreme Court Supreme Court Employees Welfare Association and Supreme Court IV Class Employees Welfare Association Vs. Union of India (UOI) and Another, which was a case wherein the employees of the Supreme Court were claiming higher scale of pay than what was admissible to the staff working in the Delhi High Court. The Hon"ble Supreme Court noted that the corresponding posts of High Court of Delhi were already getting revised pay scales whereas issue with regard to refund of pay scale of the petitioners was still pending. It was therefore directed that pay scales of the petitioners may be revised at par with the pay scale of the Delhi High Court. Learned Counsel further relied upon the decision of this Court in the case of State of Rajasthan v. Mrs. Kirti Chhabra reported in 1992 (2) W.L.C. 488 wherein the learned Single Judge of this Court allowed the petition again on the principle of "equal pay for equal work" on the premise that the duties, responsibilities, obligations and powers of the incharge of Libraries of the High Court both at Jodhpur and Jaipur are same and the quantum of work involved at both the places is also the same. The judgment of the learned Single Judge was upheld by the Division Bench. Reliance is then placed on another Division Bench decision of this Court in the case of Padam Kumar Jain, President, RJS Association, Jaipur v. State of Rajasthan reported in RLR 1987 (11) 807 wherein the members of the Rajasthan Judicial Services, were claiming parity of pay scale with the members of RAS, RACS and RPS cadres who were being paid selection scale and super-time scale also. The Division Bench while allowing the writ petition directed the State Government to allow such scale to Judicial Officers at par with the Administrative Officers.

8. Lastly, learned Counsel has relied upon the judgment of Supreme Court in the case of State of Mizoram and Another Vs. Mizoram Engineering Service Association and Another, . In this case the State of Mizoram on recommendations of the Fourth Central Pay Commission decided to grant scale of Rs. 5900-5700 to the existing incumbents on the post of Chief Engineer. The Hon"ble Supreme Court held that discrimination between Individual Chief Engineer and his successors was impermissible and therefore directed that the same scale of pay would be paid to the successors as well.

9. On the other hand, Mr. N.M. Lodha, learned Additional Advocate General appearing for the respondent-State has argued that the respondents have already considered the grievance raised by the petitioners in their representation and rejected the same by speaking order passed on 14.6.2002. It has been submitted that although there may be similarity in the minimum educational qualification for appointment on the post of Technical Assistant (Hydergeology, Geophysics) and Senior Technical Assistant working in the Central Ground Water Board but their duties and responsibilities are not similar and therefore it is not

possible for the State Government to grant a higher scale of pay to the petitioners. It has been submitted on the basis of equality of posts, the said employees cannot compare them with the employees of the Central Government because the State Government has its own limited resources and autonomy in prescribing pay scales for its employees. There are instances that for many similar posts, the pay scales of Central Government employees and the employees of the different states and State of Rajasthan are not same. Moreover, there is dis-similarity in the work and responsibilities between two posts. The State of Rajasthan has accepted the recommendations of Fifty Pay Commission keeping in view its financial resources. It has been submitted that the Technical Assistants working in the Ground Water Department get the additional benefit of selection scale on completion of 9, 18 and 27 years of service whereas there is no such benefit available to Senior Technical Assistants working in the Central Government. While the Technical Assistants working in the Ground Water Department get the scale of 6500-10500 and 8000-13500 on completion of 9, 18 and 27 service respectively, the Senior Technical Assistants working in the Central Government on completion of 12 years and 24 years get senior and selection scale respectively under the Assured Career Progression Scheme (ACP Scheme). The Technical Assistant of the State Government gets the scale of Rs. 6000-13500 on completion of 18 service whereas no such benefit is available to Senior Technical Assistants working with the Central Government till he completes 24 years of service.

10. In regard to the recommendations of the Yatendra Singh Committee, Shri N.M. Lodha, the learned Additional Advocate General has argued that the matter is still under consideration of the State Government. At the same time, he has argued that it is for the government whether or not to accept the recommendations of the Committee having regard to its resources and other financial implications. Merely because the petitioners are required to possess the minimum qualification of Post Graduate degree at the entry level, they cannot claim higher scale of pay. If this demand were to be accepted, it would give rise to such similar demands from different services of the government where the employees are required to possess Post Graduate degree at the entry level and are being paid the same scale. It is not possible for the State Government to meet the ever increasing demands of its employees from its limited resources, giving complete go by to other activities and priorities. It has been submitted that the petitioners are not entitled to compare their posts, work and pay scale with that of Drilling Foreman/Drilling Supervisor having the scale of 5500-10500. Reason for this is that the qualification for direct recruitment on the post of Drilling Foreman is Diploma in Mechanical Engineering with three years experience in drilling operations with water well rotary drilling of at least 12000 ft. and qualification for direct recruitment on the post of Drilling Supervisor is Diploma in Mechanical Engineering with two years experience in drilling operations with percussion drilling rig of at least 2000 ft.

These two posts cannot be categorised as lower in pedestal to that of Technical

Assistant. It has been denied that the post of Technical Assistant carries more responsibility than these two posts.

11. The learned Additional Advocate General has argued that there was no case of discrimination against the petitioners and therefore there was no violation of Articles 14 and 16 of the Constitution of India. He has therefore prayed that the writ petition may be dismissed.

12. Mr. N.M. Lodha, learned Additional Advocate General appearing for the State has further argued that upgradation of pay scale cannot be claimed as a right and this issue is not amenable to judicial review. He has argued that merely on the similarity of the nature of jobs, the doctrine of "equal pay for equal work" cannot be invoked. The petitioner has not placed on record any material to show similarity in the nature of work and the similarity for scale and responsibilities. No specific duties of work and responsibilities have been furnished by the petitioners. According to him these are all administrative questions and this Court should not interfere in such matters.

13. He has relied upon the judgment of the Hon"ble Supreme Court in the case of Government of West Bengal Vs. Tarun K. Roy and Others, wherein their Lordships while considering scope of judicial review in matters where parity of pay was claimed on the doctrine of "equal pay for equal work" held that the said doctrine does not contemplate that only because the nature of work is same, irrespective of their educational qualification or source of recruitment or other relevant considerations, the said doctrine would be automatically applied. In exercise of its power of judicial review the Court cannot hold that matriculates with a certificate from I.I.Is or simple graduates in science would be entitled to hold the posts of sub-assistant engineers.

14. Mr. Lodha has also relied upon the judgment in the case of State of Haryana Vs. Jasmer Singh and others, wherein their Lordships held that principle of "equal pay for equal work" was not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations or even in the same organization. Learned Counsel also relied on the judgment in the case of State of U.P. and Ors. v. J.P. Chaurasla and Ors. reported in AIR 1989 SC 19 wherein it was held that whether two posts are equal and should carry equal pay, the Court should not normally interfere with the opinion of Pay Commission and the decision taken on that basis by the government. He has also relied upon the judgment of the Hon"ble Supreme Court in the case of AIR 1989 29 (SC) wherein their Lordships held that on classification of posts into different categories with different pay scales should be determined by the Management and interference by Court in such matters was not permitted. Mr. N.M. Lodha then relied upon recent judgment of the Hon"ble Supreme Court in the case of State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., wherein their Lordships held that doctrine of "equal pay for equal work" had no mechanical application in every case since Article 14 provides for reasonable classification based on qualities of characteristics of

persons recruited as against those who were left out.

15. I have given my conscious consideration to the arguments advanced by both the learned Counsels and perused the record.

16. On the question of parity of pay claimed by the petitioners with Senior Technical Assistants of the Central Ground Works Department, it may be stated that no government servant for that matter can insist upon being paid in a particular pay scale. It is best left to the discretion of the government to decide as to which posts should be paid in what pay scale. In doing so, the government would also have discretion to decide as to what pay scale should be paid to different posts in a given subordinate service in a particular department. If the post of Technical Assistant in the Government of Rajasthan was being paid in similar scale of pay of the post of Senior Technical Assistants of the Central Government and with the change of policy by the Central Government now, a difference has come to occur between pay scales of these two posts, this by itself cannot be taken to have caused any discrimination to holders of the posts of Technical Assistants of the State Government. Such being the policy decision of the government would always be guided by its financial constraints and resources.

17. It is the prerogative of the government to decide as to which posts should be given, what pay scale and which posts should be categorized as Gazetted or non-gazetted/subordinate post. In doing so, the Government has to keep in view various factors including those of nature, duties and responsibilities of the post, educational qualification prescribed for recruitment, method of recruitment, avenues of promotions, its financial resources and the effect it would have on lower and higher posts in the self same department and analogous posts in other departments. Reference in this connection may be made to the following observations of the Hon"ble Supreme Court in case of Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, wherein it was observed as under:

12. We do not consider it necessary to traverse the case-law on which reliance has been place by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the execution and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realize that job evaluation is both a difficult and time-consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept

in view for job evaluation may include (I) the work programme of his department (II) the nature of contribution expected of him (III) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (IV) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (V) the extent of powers vested in him (VI) the extent of his dependence on superiors for the exercise of his powers (VII) the need to coordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so, care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruit, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasize that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reasons that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrar to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice.

18. Hon'ble Supreme Court in the subsequent case of State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, while following its aforesaid earlier decision made following observations on complex nature of these very issues in para 10 of the judgment which is extracted hereunder:

10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of

which have been noted by this Court in the decided case, are to be considered in keeping view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government. In the context of the complex nature of issue involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to drive deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre.

19. Hon"ble Supreme Court in the case of State of U.P. and Others Vs. J.P. Chaurasia and Others, categorically ruled that the equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The Court should not try to linker with such equivalence unless it is shown that it was made with extraneous consideration."

20. In this case, Hon"ble Supreme Court also observed that factors justifying differentiation in the scale of pay depend upon evaluation of duties and responsibilities, besides quantity and quality. It held that Courts were not suited to evaluate and compare this on the basis of affidavits and pleadings.

21. Their Lordships of the Supreme Court in case of Union of India (UOI) and Another Vs. P.V. Hariharan and Another, while examining similar question, observed as under:

It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a

cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board.

22. While considering this very argument in the context of doctrine of "equal pay for equal work", Hon"ble Supreme Court in State Bank of India and Another Vs. M.R. Ganesh Babu and Others, observed as under:

... Functions may be the same but the responsibilities make a matter of degree and there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bonafide, reasonably and rationally, is not open to interference by the court.

23. There is another reason why the relief prayed for by the petitioners cannot be accorded. Firstly, because the parity cannot be claimed in the matter of scale of pay with employees of another employer. Such parity cannot be claimed merely on the basis of similarity or resemblance between nomenclature of two posts. No material or data have been placed on record by the petitioner as to what is the nature and duties discharged by the Senior Technical Assistants working with the Government of India, what is the qualification prescribed for their recruitment, what are avenues of promotions available to them. In order to claim parity of pay on the principle of "equal pay for equal work" one is required to plead and prove all these factors. The petitioner has completely failed to establish any of these factors. Moreover the paramount factor remains that Senior Technical Assistants working with the Central Government are so working with another employer and not with the State Government and therefore there can be no question of any discrimination, particularly when each of them constitutes a different class by itself.

24. Moreover, the respondents in their reply to the petition have also submitted that the Technical Assistants working in the Ground Water Department get the additional benefit of selection scale on completion of 9, 18 and 27 years of service whereas there is no such benefit available to Senior Technical Assistants working in the Central Government. While, the Technical Assistants working in the Ground Water Department get the scale of 5500-10500 and 6000-13500 on completion of 9, 18 and 27 service respectively, the Senior Technical Assistants

working in the Central Government on completion of 12 years and 24 years get senior and selection scale respectively under the Assured Career Progression Scheme (ACP Scheme). The Technical Assistant of the State Government gets the scale of Rs. 8000-13500 on completion of 18 service whereas no such benefit is available to Senior Technical Assistants working with the Central Government till he completes 24 years of service.

25. In view of the aforesaid discussion, the present writ petition being devoid of merit is liable to be dismissed and is hereby dismissed. Parties to bear their own costs.