

(2010) 01 AHC CK 0136

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55464 of 2002

Ram Lakhan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0136

Hon'ble Judges : V.K.Shukla, J

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by petitioners for quashing of the order dated 26.10.2002 passed by Chief Secretary Government of U.P. at Lucknow rejecting the demand of petitioners for according them salary as is admissible to Surveyor/Assistant Surveyor of other department and further prayer has been made that a writ in the nature of mandamus be issued directing respondent No. 1 to publish Surveyor Service Rules of Irrigation Department ignoring the order dated 13.2.1998 wherein post of Surveyor/Assistant Surveyor has been declared to be dead cadre.

2. Brief background of the case is that petitioners were appointed somewhere in the year 1983 to 1985 on the post of Surveyor/Assistant Surveyor in Tubewell Division of Irrigation Department. Petitioners have come out with the case that qualification, source of selection, nature of work/duty obligation are similar to the work and conduct of Surveyor/Assistant Surveyor of other Department of the Central and State Government. In this background on the basis of equal pay for equal work, similar salary should be made admissible to petitioners also. Petitioners have contended that Surveyor Association espoused the said case before Samta Samiti in the year 1989 and Samta Samiti submitted its report to the Chief Secretary in the year 1989 recommending therein to remove the anomalies in pay of Surveyor/ Assistant Surveyor of the Irrigation Department for paying similar pay of the other Department of Central Government and State Government. It has been stated that thereafter on the said recommendation of

the Samta Samiti and on the basis of direction of Chief Secretary of Samiti, Pay Scale Committee was constituted on 19.8.1990 comprising of Chairman Chief Engineer (Nalkoop World Bank); Sanyojak Sadasya, Staff Adhikari (Nalkoop World Bank) and Member Staff Adhikari. Said Committee asked Pramukh Abhiyanta (Engineer in Chief) Irrigation Department to submit its report and on 5.4.1991, State Government asked the Pramukh Abhiyanta (Engineer in Chief) Irrigation Department for removing anomalies in pay scale of Surveyor/Assistant Surveyor of Irrigation Department. Pay Scale Committee submitted its report wherein it has been stated that qualification, work and duties of the Surveyor/Assistant Surveyor of Irrigation Department are similar to other Department of the Central Government and Forest Department of State of U.P. and said report was sent to State Government on 12.4.1991 for providing Government acceptance. On 10.3.1995 Joint Secretary, Irrigation Department also called the proposal of pay scale for Surveyor/ Assistant Surveyor. It has been stated that thereafter it was resolved for publication of Surveyor/Assistant Surveyor Service Rules of the Irrigation Department. Petitioners have further contended that pursuant to same recommendation dated 10.5.1995 was sent. Petitioners have further contended that in spite of said recommendation being made nothing was done and in between decision was taken to declare the post of Surveyor/Assistant Surveyor as dead cadre on 13.2.1998. Petitioners have further stated that as nothing was being done, Civil Misc. Writ Petition No. 10687 of 2002 (Ram Lakhan and others v. State of U. P. and others) had been filed and said writ petition has been disposed of vide judgment and order dated 19.3.2002 with a direction that Chief Secretary to decide the matter. Petitioners have further contended that thereafter detailed representation was moved and order dated 26.10.2002 has been passed rejecting the claim of the petitioners.

3. Counter affidavit has been filed and therein stand has been taken that pursuant to order dated 19.3.2002 passed by this Court matter was taken up by Chief Secretary of Government of U.P. and decision was taken on 26.10.2002. Details have also been given that for carrying survey work, Surveyor/Assistant Surveyor have been inducted and accepting the eligibility criteria, subsequent to the same decision has been taken on 13.2.1998 for declaring the said cadre as dead cadre. Details have also been furnished that functioning of Surveyor of the Irrigation Department is altogether different to the functioning of Surveyor of other department and as far as posts which are available in the Irrigation Department of Surveyor/Assistant Surveyor in the State of U.P. there is no corresponding post available in the Central Government and in this background on the "basis of recommendation made by Samta Samiti w.e.f. 1.1.1986 as per Samoadh pay scale (attached pay scale), has been accorded and same has been revised.

Details have also been given as to under what circumstance decision was taken to declare the cadre in question as dead cadre.

4. Rejoinder affidavit has been filed and therein it has been stated that

qualification for appointment on the post of Surveyor/Assistant Surveyor are identical, and same are provided by Government Order dated 21/24.9.1983 and 15.12.1983. In respect of cadre being declared as dead cadre, averments have been mentioned that it is malafide move. It has also been stated that post of Surveyor/Senior Surveyor/Superintendent Surveyor are continuing in the Irrigation Department since 1960. Post of Assistant Surveyor has been created in the year 1963 whereas World Bank Pariyojana started in the year 1980, in this background it has been sought to be suggested that petitioners have got no concern about same motives has been sought to be imputed in respect of nonimplementation of the Rules.

5. Supplementary counter affidavit has also been filed and therein copy of the Government Order dated 8.1.2007 and 4.7.2002 and copy of the recommendation and copy of charts have been appended.

6. Supplementary rejoinder affidavit has also been filed and therein copy of the judgment passed by this Court and copy of the Government Orders have been appended.

7. After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

8. Sri P.C. Singh, learned counsel for the petitioners contended with vehemence that in the present case order dated 26.10.2002 passed by Chief Secretary, Government of U.P. proceeding to reject the claim of the petitioners for grant of similar pay scale as admissible to Surveyor/Assistant Surveyor of Forest Department is based on mere surmises and conjecture and no real exercise whatsoever has been undertaken as is formulated under the policy holding the field to see and ensure that on the basis of principle of equal pay for equal work petitioners and other similarly situated incumbents are entitled for similar salary and similar pay scale, as is admissible to incumbents of other State Department in this background order which has been passed is unsustainable and is liable to be quashed.

9. Countering said submission learned Standing Counsel Sri A.K. Upadhyay, on the other hand contented that fixation of p"ay scale etc. is the job of expert and in said process nature of work and duties as well as various other factors including mode of selection, eligibility criteria are to be looked into by the experts and here requisite exercise has been undertaken and thereafter claim of the petitioners has been rejected, as such writ petition as it has been framed and drawn is liable to be dismissed as expert body has already taken decision and whatever pay scale was admissible same has been made admissible to the petitioners and same has been correspondingly revised also.

10. After respective arguments have been advanced factual position which is emerging in the present case is that petitioners have been performing and discharging their duties as Surveyor/Assistant Surveyor. Petitioners have set up their claim for ensuring them similar pay scale as was admissible to Surveyor/

Assistant Surveyor of the Forest Department. On 10.5.1995 Pramukh Abhiyanta (Engineer inChief) Irrigation Department had made recommendation for ensuring said pay scale to Surveyor/Assistant Surveyor of the Irrigation Department as was admissible to Surveyor/Assistant Surveyor of the Forest Department.

11. Demand was being raised by State Government employees that State Government employees should also be accorded similar pay scale as corresponding staff of Central Government establishments were being paid. State Government in its wisdom in the year 1988 constituted Samta Samiti for said purpose. Said Samta Samiti in its wisdom on the basis of material produced before it qua the posts qua which corresponding posts were available in the Central Government, same pay scale was made admissible and wherever Samta Samiti found that in the Central Government establishments Corresponding posts are not available then recommendations were made to ensure pay scale as per Sambadh pay scale (attached pay scale). Pursuant to the said recommendation, attached formula pay scales were made admissible. Prior to 1.1.1986 pay scale which was admissible to Surveyor was of Rs. 354550 and Assistant Surveyor of Rs. 330495 and w.e.f. 1.1.1986 it was revised to Rs. 9501500 and Rs. 8251200 and subsequently revised pay scale of the said cadre has been Rs. 30504590 and Rs. 27504400 as per recommendation of Pay Commission (1997/1999). The Chief Secretary has proceeded to mention based on the principle that as equalisation was to be seen visavis corresponding posts available in the Central Government, as such whatever fixation has been made, same has been made accordingly and attached pay scale has been accorded after 1.1.1986, there is no provision of inter se comparison of posts within the State qua different departments.

12. Hon''ble Apex Court in the case of State of Haryana and others v. Charanjit Singh and others, AIR2006 SC161 has clarified legal position visaviz equal pay for equal work by mentioning same has no mechanical application in every case. Relevant extract of aforesaid judgement paragraphs 17 and 18 are being extracted below:

"17. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture and Technology and Tarun K. Roy, lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation.

The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference [1997 AIR SCW1057; 2003 AIR SCW 3382; 2003 AIR SCW 2513] in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ Court can lightly interfere. Normally, a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.

18. As stated above in all these cases the High Court has followed a Full Bench decision of that Court. The Full Bench has also observed that the essential ingredient is similarity. This would be correct. However, at one stage the Full Bench observes that even if some dispute is raised. That would be wrong law. In each case the Court must satisfy itself that the burden of proving that the work and conditions are equal is discharged by the aggrieved employee.

13. Hon"ble Apex Court in the case of Union of India and another v. S.6. Vohra and others, 2004 SCC (L&S) 363 has taken the view that High Court on the judicial side should not ordinarily issue writ of or in the nature of mandamus to Central/State Govt. to comply with the decision of the Chief Justice but should instead refer the matter back to Central/State Govt. with suitable directions and only exceptional cases High Court on the judicial side should interfere and that too with care and circumspection.

"52. The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefore. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not ad idem, the matter should be discussed and an effort should be made to arrive at a consensus.

53. We are further of the opinion that only in exceptional cases the High Court may interfere on the judicial side, but ordinarily it would not do so. Even if an occasion arises for the High Court to interfere on its judicial side, the jurisdiction of the High Court should be exercised with care and circumspection.

54. As the matter has been pending for a long time and keeping in view the fact and the situation obtaining herein, namely, the officers holding the post of Private Secretaries to the Judges have been given a particular scale of pay, we are of the opinion that it is not a fit case wherein this Court should exercise its discretionary jurisdiction."

14. On the parameter as given, in the present case this much has not been disputed that on 10.5.1995 recommendations were made by PramukhAbhiyanta, (Engineer inChief) Irrigation Department in favour of the petitioners. This much has also not been disputed that in Central Government there are no corresponding posts available and as such said benefits has not at all been given to the petitioner and other similarly situated incumbents. Petitioners have been claiming parity with Surveyor/Assistant Surveyor of the Forest Department. In the order dated 26.10.2002 which has been passed by Chief Secretary therein it has been mentioned that after 1.1.1986 there is no provision for inter se comparison of post with other State department employees and comparing post of one department to post of another department is prohibited.

15. Chapter V of the recommendation of the Samta Samiti, 1989 clearly proceeds to mention at pages 22 to 23 of the supplementary Counter Affidavit that where corresponding posts are not available in the Central Government then attached pay scale should be accorded. It has also been provided that at the point of time when the provision is being made for according attached pay scale then apart from other relevant considerations three relevant circumstances shall also be kept in mind. Clause 5.5 (C) clearly proceeds to mention that there should not be enough difference in reference of posts departmental inter se department of the State. Thus, Clause 5.5 clearly reflects that even at the point of time when attached pay scale is to be accorded some exercise is to be undertaken and therein complete prohibition is not at all there rather consideration is envisaged qua inter se comparison of the pay scale of the other departments also, so that it is ensured and there is no much disparity in grant and fixation of pay scale. Consequently, in the facts of the case decision which

has been taken by Chief Secretary, Government of U. P. suffers from manifest error on the face of it.

16. Consequently, order dated 26.10.2002 passed by Chief Secretary, Government of U.P. is hereby quashed and set aside. Matter is remitted back to be decided afresh in accordance with law preferably within four months from the date of delivery of judgment.

17. With the above observations and directions present writ petition is allowed.

18. No orders as to cost.