
(2004) 12 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 7951 of 1995

Rin Rajyapatrit Technical Karmachari Mandal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2004) 12 GUJ CK 0015

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : Mukul Sinha, for the Appellant; Hemant M. Prachchhak, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Anant S. Dave, J.—This petition is filed by the petitioner-Bin Rajyapatrit Technical Karmachari Mandal, a recognised Association by the Government of Gujarat, through its President & Secretary, for claiming parity of pay-scale for the cadre of Surveyors in the Town Planning & Valuation Department in the grade of Rs. 1640-2900 at par with the cadre of Additional Assistant Engineers in Roads and Buildings Department, whose grades have been revised with effect from 1.4.1992 and fixed at Rs.1640-2900.

2. According to the petitioners, they made several representations to the respondent-authority so as to treat them at par with the Additional Assistant Engineers in view of the fact that under the earlier two pay revisions, employees of these two cadres were treated at par in view of the fact that they performed the same nature of work, according to the petitioners.

3. It is the case of the petitioners that the recruitment rules for the cadre of Surveyors in the Town Planning & Valuation Department were framed vide notification dated 17.5.1975, as produced by the petitioners at Annexure:A to the petition. According to the petitioners, as per the Gujarat Civil Service

(Revision of Pay) Rules, 1975, cadre of Surveyors was placed in the scale of Rs. 425-700, which was further revised to Rs.1400-2300 by the Gujarat Civil Service (Pay Revision) Rules, 1987.

4. According to the petitioners, recruitment rules framed for the cadre of Additional Assistant Engineer (Civil), vide notification dated 5.7.1982, as produced by the petitioner at Annexure:B to the petition provided certain qualifications and criteria, which are also at par with the recruitment rules framed for the Surveyors of the Town Planning Department. According to the petitioners, basic qualification of Diploma in Civil Engineering is relevant criteria for appointment to the post of Surveyors as well as Additional Assistant Engineers.

4.1 Therefore, looking to the nature of work, functions and responsibility of both the cadres, the respondent-government has treated both the cadres, namely, Surveyors in the Town Planning Department and Additional Assistant Engineers at par in the matter of pay-scales and even Revision of Pay Rules of 1975 and 1987 had given them equal pay-scale of Rs. 425-700 and subsequently of Rs. 1400-2300 by Revision of Pay Rules, 1987.

5. The petitioners have stated that various functions and duties to be performed by the Surveyors and Additional Assistant Engineers are, by and large, of the same nature and the details about the guidelines incorporated by the department of Town Planning are relied on by the petitioners to justify their claim for parity in pay at par with the Additional Assistant Engineers of P.W.D. Department.

6. The main grievance as agitated and stated hereinabove by the petitioners is that the Government of Gujarat, vide notification dated 9.10.92 further revised pay-scales of the cadre of Additional Assistant Engineers (Civil) in the pay-scale of Rs.1640-2900 with effect from 1.4.92. The said notification is produced at Annexure:D to the petition. According to the petitioners, various other departments have also revised pay-scales of Additional Assistant Engineers with effect from 1.4.92, which included Health and Family Welfare Department, Irrigation Department, Water Resources, Investigation Circles and Roads & Buildings Department, while the petitioners belonging to the cadre of Surveyors in the Town Planning & Valuation Department, who were treated as par with the Additional Assistant Engineers uptill ROP Rules of 1987 were not given the benefit of the said notification.

7. Therefore, the petitioners made representations to the government on 16.11.1992 with a request to consider the case of the cadre of Surveyors at par with the Additional Assistant Engineers of all other departments and also to extend the same revision of pay-scale of Rs. 1640-2900. Even the Additional Chief Town Planner had also send his recommendation vide letter dated 25.1.1993 to the Under Secretary, Urban Development & Urban Housing Department with a comparative study of the Rules and nature of work of the cadre of Surveyors and Additional Assistant Engineers (Civil) for the purpose of

deciding the issue of revision of pay-scales and, thereafter, pursuant to the letter of the Chief Town Planner, dated 15.3.1993, asking the petitioner-Association to furnish detailed information regarding the the nature of the work and relevant rules of both the cadres, the Association submitted such information vide letter dated 7.4.1993 and since no decision was taken nor any reply was received, a reminder was also sent by the petitioner0Association on 18.6.1993.

8. However, subsequently, by an order dated 27.7.1993, the government had rejected the demand of the petitioner-Association to revise the pay-scale of Surveyors and denied the benefit of parity in pay-scale.

9. The petitioner-Association was not satisfied with the said reply dated 27th July, 1993, which contained no reasons and, therefore, detailed representation was given on 9.8.1993 to the Additional Chief Secretary of the Urban Development and Urban Housing Department, requesting to review the earlier order and thereafter a reminder was sent by the petitioner-Association on 13.9.1993. However, no reply was received thereafter according to the petitioner-Association. Even an effort was made by the petitioner-Association by making a representation to the Committee formed for the purpose of removing wage anomalies of the government servants and requested the Committee to consider revision of pay-scale of the Surveyors to the pay-scale of Rs. 1640-2900 at par with the Additional Assistant Engineers. Thereafter, reply was received from the Under Secretary of the Urban Development & Urban Housing Department, dated 30th November, 1994, addressed to the Chief Town Planner of the department, where claim made by the petitioner-Association for review of the earlier decision was also rejected. The petitioner-Association had made last effort by way of a representation to the concerned Hon"ble Minister of the department on 20.6.1995.

10. Affidavit-in-reply is filed by the respondent-authority, wherein it is emphatically denied that the members of the petitioner-Association in the cadre of Surveyors in the Town Planning & Valuation Department are not entitled to parity in pay-scale on par with the pay-scale given to the Additional Assistant Engineers of various departments of the State of Gujarat.

10.1 It is stated in the affidavit-in-reply that the State of Gujarat had decided to accept the recommendations of the Fourth Central Pay Commission in principle and set up an expert committee to suggest suitable pay-scales for the pay revision as there were about 54 pay-scales in existence in the State at that point of time, while the Fourth Central Pay Commission had recommended only 29 pay-scales for pay revision.

10.2 Accordingly, expert Committee headed by Hon"ble Mr. Justice S.A. Shah, as His Lordship then was, suggested to follow the principle of scale to scale pay revision instead of post to post pay revision and the government had accepted the recommendations of the expert committee and accordingly pay-scales for the post of Surveyors was given from Rs. 425-700 to Rs. 1400-2300 under the Pay

Revision Rules, 1987 with effect from 1.1.1986.

10.3 It is contended in the affidavit-in-reply and the claim was opposed on the ground that the recruitment rules for the post of Surveyors in the subordinate services of Town Planning & Valuation Department and the recruitment rules for the post of Additional Assistant Engineers are different. In case of Surveyor, incumbent is required to possess [i] Diploma in Architecture or in Civil Engineering of a recognised University or Institution or its equivalent qualification recognised by the government, or [ii] a Bachelor's degree in Arts, Geography, Sociology, Economics or Statistics or bachelor's degree in Law of a recognised University or an Institution or a qualification equivalent thereto recognised by the government. Therefore, the qualification prescribed for Additional Assistant Engineers by way of direct selection only mentions about the incumbent having a Diploma in Civil Engineering of a University or Technical Examination Board or an Institution recognised by the Government of Gujarat or qualification equivalent thereto recognised by the Government of Gujarat and there is no place for a candidate having Bachelor's degree in any of the disciplines other than Civil Engineering or equivalent qualification recognised by the government. According to the respondent, degree in Arts, Geography, Sociology, Economics, or Statistics or Law has no place in the matter of direct selection of Additional Assistant Engineers.

10.4 The respondent-authority has also specifically pointed out different pay-scales given in other posts/cadres as per the educational qualification and the details thereof which are reproduced in the affidavit-in-reply are as under:-

-----	Sr.	Name of Pay
Scales	Remarks	-----
1. Social Worker [i] Rs.1640-2900	i. For those who are post graduates in M.S.W. " [ii] Rs.1400-2300	ii. For others.
2. X-Ray Technician [i] Rs.1400-2600	i. For B.Sc. [ii] Rs.1350-2000	ii. For Others
3. Laboratory Technician [i] Rs.1400-2300	i. For B.Sc. [ii] Rs.1350-2000	ii. For others.
4. Compounder/ Pharmacist. [i] Rs.1350-2200	i. For qualified [ii] Rs. 950-1500	ii. For others.
5. Medical Social Worker [i] Rs.1640-2900	i. For M.S.W. [ii] Rs.1400-2300	ii. For others.
6. Librarian [i] Rs.1400-2300	i. Graduate with Degree/ Diploma in Library Science. [ii] Rs.1350-2200	ii. Graduate with Certificate in Library Science.

According to the respondent, therefore, basic qualifications as per the recruitment rules for the posts of Surveyor and Additional Assistant Engineers are not exactly similar and, therefore, no parity in pay-scale can be given. Even according to the respondents, nature of duties are quite different and they cannot be equated with each other. The Additional Assistant Engineers are performing their duties in various departments as Engineers, while the Surveyors like the members of the petitioner-Association of the Town Planning & Valuation

Department have altogether different types of duties to be performed.

11. Further justification was given by the respondent by stating that on the basis of the principle of scale to scale pay revision adopted by the State of Gujarat, pay-scale of Additional Assistant Engineers has been revised from Rs. 425-700 to Rs. 1400-2300 and pay-scale of Assistant Engineers has been revised from Rs.550-900 to Rs. 1640-2900. Thereafter, on the basis of the recommendations of the High Level Committee, the pay-scale of Assistant Engineers have been revised from Rs.1640-2900 to Rs.2000-3200.

12. Mr. Mukul Sinha, the learned counsel for the petitioner has submitted that the members of the petitioner-Association, working as Surveyors are clearly discriminated by the State authority in fixation of pay-scale on par with the Additional Assistant Engineers of various departments, since the duties performed by the Surveyors of the Urban Development & Urban Housing Department and that of Additional Assistant Engineers of various departments are virtually the same. Not only that, but according to Mr. Sinha, the basic recruitment qualification for the post is almost the same. He further contended that on earlier occasion, Revision of Pay Rules of 1975 and 1987 had given identical pay-scales to both these cadres of Surveyors in the Town Planning & Valuation Department and to the Additional Assistant Engineers of Civil, Irrigation and other departments of the government.

12.1 Therefore, Mr. Sinha submitted that there is no rationale or justifiable qualification under the law to discriminate the petitioner-Surveyors from those of Additional Assistant Engineers of other departments and, therefore, the action of the respondent-authority being unreasonable, arbitrary and discriminatory, the same requires to be quashed and set aside and the members of the petitioner-Association be given pay parity in view of the factual aspects as submitted by Mr. Sinha that performance of duties, recruitment rules and on earlier occasions they were on par with other Additional Assistant Engineers and, therefore, appropriate directions be issued to the respondent-authority.

12.2 Mr. Sinha has drawn attention of this Court to para-10 of the affidavit-in-reply, wherein it is stated by the respondent that the main reason for revising the pay-scale of Additional Assistant Engineer is due to revision of pay-scales of Assistant Engineers from Rs. 1640-2900 to Rs. 2000-3200 and a big gap had arisen between the pay-scales of Additional Assistant Engineer (Rs.1400-2300) and the Assistant Engineer (Rs.2000-3200) and, therefore, the government had revised the pay-scale of the Additional Assistant Engineers from Rs. 1400-2300 to Rs. 1640-2900 with effect from 1st April, 19992.

12.3 According to Mr. Sinha, similar gap also exists, so far as the pay-scales of Surveyors and the promotional post of Planning Assistant in the Town Planning & Valuation Department are concerned, after revision, since the pay-scale of the said promotional post of Planning Assistant is now revised to Rs. 2000-3200 from the erst-while existing pay-scale of Rs. 1640-2900. Such treatment, according to

Mr. Sinha, the learned counsel for the petitioner-Association, by the respondent-authority to the members of the petitioner-Association-Surveyors in the Town Planning & Valuation Department, is unreasonable and arbitrary and they may also be given pay parity on the ground justified by the respondent-authority in para-10 of the affidavit-in-reply, so far as the pay-scale of the Additional Assistant Engineer is concerned.

12.4 Lastly, Mr. Sinha submitted that the petitioner-Association has made detailed representation to all the concerned authorities, including the letter dated 26.6.95, addressed to the concerned Minister requesting to look into the grievances of the petitioner-Association and the same is still pending with the respondent-authorities.

13. Mr. Hemant Prachchhak, the learned AGP, appearing for the respondent-authorities has drawn attention of this Court to the affidavit-in-reply filed by the respondent-authority, wherein it is specifically contended that the revision of pay is to be made by the government on the basis of the recommendations of the expert committee headed by Shri S.A. Shah, the Hon'ble Judge of the Gujarat High Court, and thereafter, the respondent-authority has adopted the principle of scale to scale pay revision instead of post to post pay revision. As per the submission of Mr. Prachchhak, so far as the duties of the Surveyors of Town Planning & Valuation Department and the duties performed by the Additional Assistant Engineers in various departments are concerned, they are totally different and they cannot be equated with each other. It is further submitted by Mr. Prachchhak that with regard to the difference in the recruitment rules of both these categories namely, Surveyors of Town Planning & Valuation Department and Additional Assistant Engineers various departments of the State of Gujarat, the only common feature is holding of Diploma qualification in Civil Engineering and other qualifications remain totally different. As per the submission of Mr. Prachchhak, a surveyor can be appointed even if he possesses the Bachelor's degree in Arts, Geography, Sociology, Economics or Statistics or even Bachelor's degree in Law of a recognised University or an Institution, while such qualification is not prescribed in the recruitment rules for the post of Additional Assistant Engineer. Mr. Prachchhak further submitted that there are other posts/cadres, which have different pay-scales as per the educational qualifications. Mr. Prachchhak has further reiterated what is stated in para-7 of the affidavit-in-reply, where certain posts carry different pay-scales commensurate with the qualification of a candidate.

13.1 Mr. Prachchhak has further submitted that the while recommending pay-scales, the Pay Commission or Pay Revision Committee generally considers the Price Index, Market Price, the demand of a candidate for particular post etc. and, therefore, it is not always obligatory upon the authority to accept such recommendations. In the present case, according to Mr. Prachchhak, recruitment rules for promotion to the post of Surveyors in the Town Planning & Valuation Department and for the post of Additional Assistant Engineers in other

departments of the government are different. Even the nature of duties performed by the employees of both these cadres also cannot be equated and that the decision taken by the government is based on the recommendations of the expert committee and the principle of scale to scale pay revision is adopted instead of post to post pay revision.

13.2 Mr. Prachchhak lastly relied on two decisions namely in the case of Joshi Tushar Tansukhbhai and Ors. v. State of Gujarat, reported in 2004 (1) GLH 656 and in the case of State of Gujarat v. Saurashtra Mazdoor Sangh, reported in 2004 (2) GLH 50, whereby, embargo is put on the exercise of power upon the Court under Article 226 of the Constitution of India and as stated by Mr. Prachchhak with regard to parity in pay-scale, the decision of the expert body is not to be disturbed or to be modified.

14. Heard the learned counsel for the parties. I am unable to accept the submission of Mr. Mukul Sinha, the learned advocate appearing for the petitioner that discriminatory, arbitrary and unreasonable treatment is given to the members of the petitioner-Association in the cadre of Surveyors in Town Planning & Valuation Department and is in violative of Article 14 of the Constitution of India. In fact, on two different occasions, representations submitted by the petitioner-Association have been replied to by the authorities and it was made clear that the decision to revise the pay-scale of Additional Assistant Engineer is taken on the recommendations of the expert committee and the case of the members of the petitioner-Association is totally different and the same cannot be equated on the ground that the recruitment rules for both the posts and cadres, namely, Surveyors in Town Planning & Valuation Department and Additional Assistant Engineers in other departments of the State of Gujarat are different. Even the nature of duties performed by them is also different and in number of posts/cadres, different pay-scales are available though posts remain same depending on the qualification of the candidate. When the decision is taken by the respondent-authority on the basis of the deviation given by the expert committee and particularly stated in the affidavit-in-reply that, since there was gap of about Rs. 900/- between the two posts of Additional Assistant Engineers and the Assistant Engineers, on reconsideration, it was decided that pay-scale of the Additional Assistant Engineer from Rs. 1640-2900 is to be revised to Rs. 2000-3200 so as to bring uniformity in the matter of pay-scale.

15. It is evident from the record that so far as the recruitment rules are concerned, it is rightly submitted by Mr. Prachchhak that recruitment rules of both, Surveyors in Town Planning & Valuation Department and Additional Assistant Engineers in other departments of the government have different qualifications, barring Diploma in Civil Engineering, and, therefore, it cannot be said that both the cadres have identical or same recruitment rules for the post in question. Even looking to the nature of the duties performed by both these cadres, the duties to be performed by Additional Assistant Engineers are quite different than that of Surveyors of Town Planning & Valuation Department and

when the pay revision is undertaken by the government on the basis of the scale to scale pay revision instead of post to post pay revision and applying criteria of qualification to respective posts, it cannot be said that the action of the respondent-authority in not granting pay parity to Surveyors on par with that of Additional Assistant Engineers of other departments is in any manner arbitrary discriminatory or unreasonable and violative of Article 14 of the Constitution of India. Even the recommendations made by the head of the department of the Town Planning & Valuation Department and relied on by the learned advocate for the petitioner Mr. Sinha are about asking for various information of the members of the petitioner-Association regarding their qualifications and nature of duties performed by them and other such activities, and, therefore, it does not confer any right upon the members of the petitioner-Association.

16. However, submission of Mr. Sinha with regard to para-10 of the affidavit-in-reply about the main reason given by the respondent-authority to revise the pay-scale of the Additional Assistant Engineers and that of Assistant Engineers appear to be attractive but not appealing. So far as the promotional post of Surveyors, namely the Planning Assistant is concerned, it has two different pay-scales and, therefore, the criteria adopted by the respondent-authority to revise the pay-scale of Additional Assistant Engineers from Rs. 1640-2900 to Rs. 2000-3200 has no applicability in the facts and circumstances of the case.

17. The submissions of Mr. Prachchhak, the learned AGP relying on the two different case laws one reported in 2004 (1) GLH 656 and another in the same volume at page 50 clearly hold that the power of the Court under Article 226 of the Constitution of India remains circumscribed and when the recommendations are made by the expert authority and decision is taken on the basis of the same by the concerned authority, it is not open for the High Court to replace the view of such expert body. Therefore also, this is not a fit case wherein any direction can be given to the respondent authorities to modify, change or reconsider its earlier decisions.

18. Therefore, the main reason for revising pay-scale of the Additional Assistant Engineers is due to the revision of pay-scale of Assistant Engineers from Rs.1640-2900 to Rs.2000-3200, due to which a big gap that had arisen between the pay-scale of Additional Assistant Engineer (Rs.1400-2300) and the Assistant Engineer (Rs.2000-3200) and, therefore, the government had revised the pay-scale of Additional Assistant Engineer from Rs.1400-2300 to Rs. 1640-2900 with effect from 1st April, 1992. According to the respondent, two different pay-scales are available as per the qualification of the Additional Assistant Engineers and the Assistant Engineers and there was a gap of Rs. 600/- at initial stage and at the last stage, the said gap was increased to Rs. 900/- and, therefore, on reconsideration, the government had granted the pay-scale of Rs. 1640-2900. In case of degree or diploma Surveyor, no such big gap had arisen and considering the facts of recruitment rules, pay-scales of the Surveyors cannot be compared to that of the Additional Assistant Engineers. Lastly, it was submitted that the

promotion post of Surveyor is Planning Assistant and the post of the Planning Assistant is also carrying two pay-scales on the basis of educational qualification. The revision of pay-scales is recommended by the Pay Commission or Pay Revision Committee as appointed by the State Government, normally taking into consideration the Price Index, Market Price, the demand of a candidate for particular post and ultimately, pay-scales are recommended, which may not be finally binding to the concerned authorities.

19. Therefore, looking to the above differences, the members of the petitioner-Association-Surveyors are not entitled to claim parity in the matter of pay-scales on par with the Additional Assistant Engineers and the decision to deny the said pay-scale given to the Additional Assistant Engineers, to the Surveyors by the respondent-authority is arrived at by the respondent after careful consideration of various circumstances and factors, including the recruitment rules, nature of duties and the practical difficulties and the administrative reasons. In view of the above discussion, and observations made hereinabove, no case is made out by the petitioner and, therefore, the petition is required to be rejected and is rejected accordingly. It is declared that the decision of the respondent-authority not to revise the pay-scale of Surveyors - members of the petitioner-Association in Town Planning & Valuation Department cannot be said to be in any manner unreasonable, arbitrary or discriminatory in violation of Article 14 of the Constitution of India. Rule is discharged with no order as to costs.