

(2006) 08 CAL CK 0023

In the Calcutta High Court

Case No : A.P.O. No. 98 of 2003 and W.P. No. 1410 of 1993

Satyabrata Das and Others

APPELLANT

Vs

Calcutta Metropolitan Development Authority and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 1 CHN 406 : 110 CWN 1023 : (2007) 113 FLR 270

Hon'ble Judges : Tapan Mukherjee, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : P.K. Tarafdar, Indrajit Dasgupta, Pannalal Bandopadhyay and Amrita Kumar, for the Appellant;Sumit Panja and Sk. Fazlul Haque, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Petitioners were engaged by the State as Master Roll Workers in Public Health Engineering Department in 1970s. They were discharging the duty of night-guard and/or khalasi under the Work Charge Establishment of the State. On and from May 1, 1975 the petitioners were transferred to Calcutta Metropolitan Development Authority (hereinafter referred to as "CMDA"). In 1980 they were absorbed in a regular basis by CMDA by an order passed on July 25,1980. Another group of Master Roll Workers who were working as pump operators on daily wage basis were regularized by CMDA as pump-cum-valve operators by an order dated July 25, 1980 with retrospective effect from August 1, 1979. The petitioners were also regularized in the post of night-guard/khalasi in CMDA. They were, however, discharging additional duty of pump operating. They made a grievance for higher scale of pay. The Grievance Committee went into the controversy and resolved the issue by extending additional pay to the petitioners for discharging additional function of pump operating. Such additional pay of Rs. 20.00 per month was extended to the petitioners by order dated May 24, 1984 with retrospective effect from May 1, 1975 the date when they were transferred to CMDA. The petitioner accepted

such position for a considerable time and thereafter demanded equal pay with the regular pump operators on the plea that they were discharging function similar to the pump operators and moreover those pump operators who were also Master Roll Workers were extended higher scale although they were junior to the petitioners in the matter of their initial entry. Such representation was not adhered to by the CMDA. Hence, the writ petition.

2. According to CMDA as per ROPA, 1981 the Pay Commission fixed scale of pay for three different categories being khalasi, guard and pump-cum-valve operators. The Pay Commission being an expert body considered the respective works of the employees working in such category and fixed different pay scales for them.

3. The learned Single Judge dismissed the writ petition after finding that the work done by the petitioners was not identical to the other group of workers being pump operators and as such they were not entitled to identical pay scale. The learned Judge also held that there had been an inordinate delay in approaching this Court. The learned Judge also held that those two groups belonging to two different cadre were not entitled to identical pay scale. It was observed by the learned Single Judge that in 1984 the representation of the petitioners was considered by the appropriate committee whereby special pay was extended to the writ petitioners. Their petition in 1993 after 9 years was grossly belated.

4. Being aggrieved by the said order of dismissal this appeal was filed by the writ petitioner.

5. The appeal was heard by us on the above mentioned date.

6. Mr. P. K. Tarafdar, learned Counsel appearing in support of the appeal, contended before us that since the writ petitioners/appellants were operating the pumps and such duty was identical to the pump operators there was no reason why they should not be extended the identical pecuniary benefit. Mr. Tarafdar also contended that initial entry of the petitioners and the other group of workers were on daily wage basis. They were discharging identical functions when they were absorbed in regular post. Hence, there should not be any discrimination. Mr. Tarafdar, however, could not give us any satisfactory explanation as to the delay in approaching this Court. He further contended that in case of a similarly circumstanced employee being one Ratan Ghosh another learned Single Judge extended the benefit and appeal preferred from the decision of the other learned Single Judge was allowed to be dismissed for default by CMDA and ultimately the said employee was extended the benefit of identical pay scale. The orders pertaining to Shri Ratan Ghosh were included in the supplementary paper book where from it appears that the case of Ratan Ghosh and Others was considered by the Industrial Tribunal which published an award rejecting the claim of the petitioners in the said case. The award of the Tribunal was under challenge before the learned Single Judge. The learned Single Judge after going into

controversy extended the benefit by upsetting the award of the Industrial Tribunal.

7. In support of his contention Mr. Tarafdar relied upon the following decisions:

- (1) Dhirendra Chamoli and Another Vs. State of U.P.,
- (ii) Bhagwan Dass and Others Vs. State of Haryana and Others,
- (iii) Delhi Municipal Karamchari Ekta Union (Regd.) Vs. P.L. Singh and Others,
- (iv) U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India (UOI) and Others,

8. Mr. Sumit Panja, learned Counsel appearing for CMDA, opposing the appeal contended that to determine the issue of equal pay for equal work one should consider the nature of work performed by two categories. In the instant case the petitioners were discharging the duty of night-guard/ khalasi whereas the other group of workers were appointed as pump-cum-valve operators. Hence, the doctrine of equal pay for equal work would not apply in the instant case and the learned Single Judge rightly rejected such contention of the petitioners/appellants. Mr. Panja also contended that since the petitioners were discharging additional duty for pump operating they were extended special pay. Such extension of special pay was not challenged by the petitioner for a considerable period and the challenge to the same after 9 years was rightly rejected by the learned Single Judge.

9. Mr. Panja, in support of his contention cited the following decisions:

- (i) Randhir Singh Vs. Union of India (UOI) and Others,
- (ii) State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another,
- (iii) State of Punjab and others Vs. Surinder Kumar and others,
- (iv) State of Tamil Nadu and Another Vs. M.R. Alagappan and Others, etc.,
- (v) Union of India and Others Vs. Shri Ram Gopal Agarwal and Others,
- (vi) State of Bihar and Others Vs. Kameshwar Prasad Singh and Another,

10. We have perused the pleadings. We have carefully examined the judgment and order impugned. We have also considered the rival contentions of the parties. It might be true that the petitioners and the other group of employees were engaged by the State as Master Roll Workers on daily wage basis. They were, however, asked to discharge different functions. It might be true that the petitioners in addition to their original duty were performing the job of pump operating. For such additional work they were extended additional pay. Such additional duty might be similar to the other group of employees. Such singular factor, in our view, could not entitle the petitioners to claim identical pay with the pump operators. In all the four decisions cited by Mr. Tarafdar the Apex Court

considered the situation where temporary employees were discharging identical duties with the regular employees. The Apex Court deprecated such practice and asked the Government to regularize them in the sanctioned post with identical pay. These decisions, in our view, cannot be of any assistance to us to consider the subject controversy.

11. Three Apex Court decisions cited by Mr. Panja are, however, relevant.

(i) *Randhir Singh Vs. Union of India (UOI) and Others*, Considering the claim for equal pay for equal work the Apex Court observed that such controversy should be gone into by the expert bodies like Pay Commission and not by the Court. Their Lordships were, however, of the opinion that once all things were found equal and all relevant considerations were found same persons holding identical posts could not be treated differentially in the matter of their pay on the ground that they belonged to different departments. In the instant case the petitioners were appointed as night-guard or khalasi whereas the other group were appointed as pump operators. Their appointment as such in the regular post, in our view, is relevant and not their initial entry as temporary employee. The petitioners did not raise any objection when the other group were regularized as pump operators and the petitioners were regularized as night-guards or khalasi. Hence, to decide the question whether the petitioners would be entitled to claim pay at par with the pump operators their absorption in a regular post, in our view, is the relevant factor which is to be considered.

(ii) *State of Tamil Nadu and Another Vs. M.R. Alagappan and Others, etc.*, In the instant case while considering identical grievance the Apex Court came to a finding that the two groups of employees discharging different functions cannot be extended equal pay even though they may be substantially discharging the same type of duties. This view of the Apex Court is squarely applicable in this case and would support the decision of the learned Single Judge.

(iii) *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, In this case the Apex Court was of the following view:

The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly, wrong judgment passed in favour of one "individual does not entitle others to claim similar benefits.... When judgment of the High Court in the writ petition filed by one incumbent claiming his seniority was contrary to law and was liable to be dismissed, the High Court erred in allowing writ petition of another incumbent seeking fixation of his seniority on the basis of the earlier judgment.

12. Considering the subject controversy and applying the ratio decided by the Apex Court as discussed above we are of the view that the learned Single Judge approached the problem accurately and there is no scope of disagreement. The

contention of the appellant that other similar circumstanced persons were extended benefit in view of the decision of the learned Single Judge in the other writ proceeding, in our view, is not tenable in view of the decision of the Apex Court in the case of Kameshwar Prasad Singh (supra).

13. The appeal fails and is hereby dismissed.

14. There would be no order as to costs.

15. Urgent xerox certified copy would be given to the parties, if applied for.

Tapan Mukherjee, J.

16. I agree.