
(2002) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No. 392 of 1999

Shyamlal Likhar

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 1 MPLJ 81

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : A.M. Naik, with Rajeev Raghuvanshi, for the Appellant; Sudha Shrivastava, Panel Lawyer for Respondent No. 1 and Tapan Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

The petitioner is aggrieved by the inaction on the part of the respondents in not granting him higher pay scale as per the recommendation of Vohra Pay Commission.

It is the case of the petitioner that he is working as a Museum Assistant in the Zoology Lab of the respondents University. The said post of Museum Assistant is a technical post and his duties are to preserve all zoological specimen's in the lab and to take care of the preserved animals and species in the Museum. The work is purely technical in nature and similar work is being performed by Museum cum Harvarium Keeper in the Botany Department.

It is the case of the petitioner that one Shri Govind Ballabh Goswami, who was working as Store Keeper was promoted as Museum cum Harvarium Keeper and he was in the pay scale of 280-480 according to Pandey Pay Commission which was revised to 740-1180 as per Chaudhary Pay Commission report and the petitioner was also holding the same grade when he was appointed as Museum

Assistant on 1-4-1985.

It is contended by the petitioner that the work being performed by the petitioner and the work of Shri Govind Ballabh Goswami are exactly identical in nature except that the petitioner is to work in the Zoology Lab and the said Shri Goswami is working in the Botany Lab. It is the case of the petitioner that all the persons who were doing technical work were granted stepping up of pay by giving five increments as per resolution dated 19-6-1998 passed in the Executive Council of the University and the said benefits have been extended to Shri G.B. Goswami and Shri K.K. Jwardhar Artist-cum-photographer only on the ground that they are doing technical work. Annexure P/8 is a copy of the said resolution. It is the case of the petitioner that similar treatment is not being extended to the petitioner and it is only denied to him on the ground that the benefit is only extended to technical staff employed in the University and the petitioner is not doing any technical job.

The respondents have filed their return and it is contended by them that the petition is belated and has been filed after 16 years, and therefore, no relief could be granted to him. It is also stated that the petitioner is not entitled to the benefit as the work performed by the petitioner and Museum cum Harvarium Keeper is entirely different. Except for the aforesaid averments nothing has been brought on record by the University to justify the differentiation.

I have heard learned counsel for the parties. As far as the defence of the respondents and the arguments advanced by the counsel for the respondents to the fact that the petition is belated cannot be sustained. The cause of action for claiming the relief arose when the Executive Council decided to grant benefit to Shri Goswami and other employees on 19-6-1998, Annexure P/8 and the present petition which has been filed immediately thereafter is within the period of limitation. As far as the claim of the petitioner is concerned the petitioner in his rejoinder has brought on record the documents and pleadings with regard to the nature of the duties being performed by the petitioner and an Harvarium Keeper working in the Botany Department.

In reply to the averments made by the respondents in their return that the petitioner's job and job of Museum cum Harvarium Keeper is different. It has been stated by the petitioner in paras 2 and 3 of his rejoinder as under:-

2. That, as to paragraph 4(e) of the return it is submitted that the post of Museum Assistant is also equally technical. Museum Assistant works in Zoology Department whereas Museum-cum Harvarium keeper/Museum Keeper works in Botany Department.

The nature of the work of Museum Asstt. and Museum-cum harvarium keeper/Museum Keeper is basically common and there is no difference between the nature of work of the two Museum Keeper collects plants from different plant habitats. The Museum Asstt. of Zoology also collects animals from different sources. This collection is more difficult because the animals are mobile and

therefore, various techniques have to be employed for collection of different types of animals. For collection of birds, nets have to be used and for collection of insects etc. trapping (by FANDA/PINJARA) has to be done. For collection of snakes different method have to be used. One has to go to sea shores and rivers to collect marine and fresh water animals. For fixation of different types of animals different techniques have to be used e.g. insects are very delicate. They are killed by deadly potassium cyanide which has to be used with great expertise and therefore animal collection is a highly specialized skilled work. Collection of poisonous snakes is a highly risky job. For collection of plant material one has to go to the known source and collect them easily. Now since the whole plant cannot be preserved in a jar. Therefore the preparation of harvarium sheet is in practice. In this way the plant collection does not involve great skill or risk of life. Museum Assistant has also to prepare detail inventory of the collected specimens and get the specimen identified by Animal Taxonomists. He has to write various details of animal namely generic and specific names, common name, family and short classification, place of collection and date of collection etc. He has to preserve the animals suitably in formaline and has to take care of insects etc. which are quite fragile very frequently. Some specimens are subjected to attack of parasites and have to be protected against infection of fungi etc. Some specimen have to be preserved by stuffing which is itself a very technical expertise which one learns after long experience, Museum Asstt. has to maintain updated information as per the national and international norms. Museum Asstt. is also responsible for producing the animal specimens on demand by teachers, research scholar, M.Sc. and M.Phil students.

A comparative study of Museum-cum-Harvarium Keeper/Museum Keeper and Museum Asstt. will show that there is no difference between duties. Moreover, the Museum Asstt. in Zoology has a harder, risky and specialized work to do as compared to plant collector as there are varieties of animals and each variety has to be dealt specifically which is not the case with plant.

Thus, the contents of paragraph 4(e) are denied being incorrect. Moreover there is no post of Museum-cum-Harvarium Keeper in the prescribed set up. Infact, the promotion of Govind Vallabh Goswami was made from the post of Store Keeper to the post of Museum Keeper vide order dated 21-11-1978 in the grade of 280-480. Copy of this order is Annexure P-5A. The petitioner is also described in his pay-slips as Museum Keeper. Copies are contained in Annexures P-5B and P-5C.

That as to paragraph 4(g) of the return it is respectfully submitted that the petitioner has claimed the payscale of 1940-3300 on account of parity with Govind Vallabh Goswami and Kishore Kumar Jwardar under the prescribed set up. Both these persons were in the lower pay scale as compared to the petitioner. They were upgraded by 5 steps on the ground that their posts are technical. Since the post of the petitioner is also technical he also deserves a similar treatment and is therefore, entitled to the payscale granted to these two

persons vide Annexure P-8. The designation of Laboratory Assistant was changed to Laboratory Technician and the payscale of 205-375 in the Pandey Pay Commission was revised to 635-950 under the Chaudhary Pay Commission as is revealed in the order dated 6/25th August 1986 contained in Annexure P-6A. It is clearly mentioned in Annexure P-8 that all the employees performing the technical works in the school of studies of Jiwaji University are to be given the benefit of payscale by up-gradation.

The aforesaid averments has not been refuted by the respondent. Even though the rejoinder was filed on 29-3-2001, the respondents have not refuted the same on the contrary the documents and other material produces indicates that Museum cum Harvarium Keeper and Museum Assistant are of equal pay scale, and a common seniority is maintained. They are all treated as Lab. Technicians. From the material on record it is clear that the duties being performed by the petitioner and the Harvarium Keeper are similar in nature except that they performed duties in different labs namely Botany and Zoology. That apart there seems to be no difference in duties and responsibilities. Even though series of judgment on the principle of equal pay for equal wages were cited before me by Shri A.M. Naik, Senior Advocate appearing for the petitioner. It is not in dispute that the principle of equal pay for equal wages has received judicial recognition and it has to be understood that it is a principle incorporated in Article 14 of the Constitution of India and it is not in more abstract doctrine, but a principle of the substance. For the purpose of invoking the aforesaid doctrine what is to be seen is the nature of the work and whether the employer is common. When all employees perform identical nature of work under a common employer the principle has to be applied and relief has to be granted. It is only in cases where the employers are different and the nature of duties and other factors are different, that court has refused to give relief to employees.

A perusal of resolution Annexure P/8 indicates that the decision to give higher pay scale by stepping up of pay by 5 stages was taken not on the basis of evolution of duties and responsibilities, but on the basis of the fact that persons are doing technical nature of job. In the view of the matter also from the nature of duties which the petitioner is performing, it has to be held that he is also doing technical nature of work and infact he is also a technician and that being so the same relief has to be granted to the petitioner also. In this regard a division bench of this Court while considering in the case Satish Chandra vs. Jiwaji University, 1982 W.N. 443 has observed that the work of Museum Keeper in Botany Department and that of Museum Keeper in Zoology Department are technical in nature and both are technical posts.

In the present case from the material on record, it is seen that the benefit has been granted to all such persons who are performing technical nature of job in the University infact the petitioner's case is that all such persons who are performing technical nature of job have been granted the benefit in pursuance to the State Government Directive and there is no reason why the same should be

denied to the petitioner.

Considering the aforesaid and in view of the fact that the petitioner is also doing work which is purely technical in nature the contentions of the respondents cannot be accepted. The material on record indicates that persons who are doing technical work like Museum Keeper, Artist-cum-photographer, Draftsmen, Store Keeper and Lab Technician have been granted the same benefits. But, the same is denied to the petitioner. Petitioner in this connection has referred to the resolution Annexure P/8 which indicates that the benefits have been given to all the employees working in the school of studies of the respondent University performing technical work.

Considering the totality and the facts and circumstances and taking into consideration the nature of duties being performed by the petitioner and the circulars issued by the State Government as contained in Annexure P/6 to P/8 with regard to grant of benefit of Lab. Assistant, the petitioner is entitled to the relief claimed by him in the present petition. Accordingly, the petition is allowed.

The respondents are directed to extend the benefit of upgradation or grant of stepping up of pay or increments to the petitioner as has been done in the case of other employees like Museum cum Harvarium Assistant and other technicians in pursuance to the resolution Annexure P/8.

Petition is accordingly allowed.