

(2011) 04 GUJ CK 0056
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1561 of 1997 in Special Civil Application No. 688 of 1992 and Letters Patent Appeal No. 1562 of 1997 in Special Civil Application No. 13954 of 1993 and Letters Patent Appeal No. 1565 of 1997 in Special Civil Application No. 6028

State of Gujarat and Another	Vs	APPELLANT
L.M. Chauhan and Others		RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 17
Bombay Police Act, 1951 — Section 28
Bombay State Reserve Police Force Act, 1951 — Section 10, 10(1)
Constitution of India, 1950 — Article 14, 16, 309, 310, 311
Industrial Disputes Act, 1947 — Section 18(3)

Citation : (2011) 04 GUJ CK 0056

Hon'ble Judges : K.A. Puj, J;D.H. Waghela, J

Bench : Division Bench

Advocate : P.K. Jani, Government Pleader, for the Appellant; Jayant P. Bhatt and Biren A. Vaishnav, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—Since common issue is involved in all these five Letters Patent Appeals and since they are heard together, they are being disposed of by this common judgment and order.

2. All these Letters Patent Appeals are filed by State of Gujarat challenging the judgment and order passed by learned Single Judge on 12.12.1996 in Special Civil Applications No. 688 and 1600 of 1992 with Special Civil Application No. 13954 of 1993 with Special Civil Application No. 6028 and 865 of 1994, allowing the said petitions and directing the State Government to pay PSIs (Armed) and PSIs (Wireless) of SRPF, additional pay for the duties actually performed by them on 2nd and 4th Saturdays, Sundays and on public holidays w.e.f. 01.01.1993, within a period of three months from the date of receipt of the writ of the said

order. While allowing the said petitions, learned Single Judge relied on his earlier order passed in Special Civil Application No. 1448 of 1988 dated 17.01.1991.

3. All these Letters Patent Appeals were admitted on 25.08.2003 and interim relief was however granted very late against implementation, execution and operation of the impugned judgment of learned Single Judge. Before that, contempt proceedings were initiated and several orders were passed by the contempt Court.

4. The brief facts giving rise to the present Letters Patent Appeals are that the Respondents-original Petitioners are Armed Police Sub-Inspectors working in various companies of different SRP Groups in the State of Gujarat. A company is divided into Platoons. Each Platoon is commanded by Armed Police Sub-Inspector, who is holding a supervisory post. The Platoon Commander is having Head Constables, Constables and followers, which include Cook, Dhobi, Mochi etc. On 20.06.1979, the State Government provided special compensatory allowance of Rs. 60/- per month to constabulary staff and also provided for special casual leave of 20 days, out of which casual leave of 10 days could be encashed. Thereafter, on 18.12.1985, the State Government rescinded the Resolution dated 20.06.1979 and provided that whenever Constables and Head Constables are called upon to perform duties in situation involving circumstances of public order or imminent threat to it or for VIP arrangement on Sundays, 2nd and 4th Saturdays and public holidays, they should be paid cash compensation equal to one day's salary for every full day's work done by them on such Sundays, 2nd and 4th Saturdays and public holidays. The State Government thereafter resolved vide its Resolution dated 06.01.1986 that those who do not desire to encash Sundays, 2nd and 4th Saturdays and public holidays should be given compensatory off in lieu of their performing duties on Sundays, 2nd and 4th Saturdays and public holidays.

5. In Special Civil Application No. 1448 of 1988, this Court vide its order dated 17.01.1991 directed the State Government to consider the cases of Class IV employees of the SRPF i.e. Waterman, Cooks, Tailor, Washerman, Shoemaker and Barber for giving them additional pay for the duties performed by them. Pursuant to this order, the State Government passed Resolution on 16.10.1991 granting benefit of additional pay for the public holidays, 2nd and 4th Saturdays and Sundays to Cook, Waterman, Tailor, Cobbler, Barber and Washerman. Based on the said Resolution of the State Government, the present Respondents-original Petitioners filed Special Civil Application No. 688 of 1992 seeking direction to the State Government to grant to the Petitioners the benefits enumerated in Government Resolution dated 18.12.1985 w.e.f. 01.01.1986. Learned Single Judge, while disposing of the said petition along with other petitions, by judgment and order dated 12.12.1996 directed the State Government to pay to PSIs (Armed) and PSIs (Wireless) of SRPF additional pay for the duties actually performed by them on 2nd and 4th Saturdays, Sundays and public holidays w.e.f. 01.01.1993.

6. It is this order of learned Single Judge which is under challenge in the present group of Letters Patent Appeals.

7. Mr. P.K. Jani, learned Government Pleader appearing for the Appellants-State of Gujarat has submitted that Learned Single Judge has committed a very grave error of law and facts while equating the two cadres of constabulary with PSIs by applying Article 14 of the Constitution of India. He further submitted that learned Single Judge has committed further error by issuing a positive mandate by providing a special provision for payment of wages and/or salary in absence of any statutory provisions and/or in absence of any parity between the two cadres. Learned Single Judge has committed further error by holding that in view of the decision rendered for constabulary staff, the same is equally applicable to the employees such as Cooks, Waterman, Tailors, Shoe-makers and Barbers. Based on this judgment, learned Single Judge has committed error in applying the same ratio to the cadres of PSIs. The duties performed by these persons and their requirements did not fall in the same class in any manner and/or method and, therefore, there is no basis whatsoever in applying the provisions of Article 14 of the Constitution of India. As a matter of fact, there is no parity between the constabulary staff working in Police as well as in SRP and the employees in the rank of PSI and above who are supervisory Officers. The conditions of service in both the cadres are different and there is no intrinsic comparison or parity between the two cadres.

8. Mr. Jani invited the Court's attention to Bombay State Reserve Police Force Act, 1951 ("the Act" for short) which provides for constitution and regulation of Armed Reserved Police Force in the State. Section 10 of the said Act deals with general duties of members of State Reserve Police Force. It reads as under:

10. General duties of members of State Reserve Police Force-

(1) Every reserve police officer shall for the purpose of this Act be deemed to be always on duty in the State of Gujarat, and any reserve police officer and any member of body of reserve police officer may, if the State Government or the Inspector-General of Police so direct, be employed on active duty for so long as and wherever the services of the same may be required.

(2) Every direction issued under Sub-section (1) shall specify that the duty which any reserve police officer or any member or body of such officers is directed to be employed shall be deemed as active duty for the purposes of this Act.

Explanation: The direction of the State Government or of the Inspector General of Police whether a reserve police officer is required or is on active duty shall be final.

(3) A reserve police officer employed on active duty under Sub-section (1), or when a number or body of reserve police officers are so employed, the officer in charge of such number or body, shall be responsible for the efficient performance of that duty and all police officers who but for the employment of one or more

reserve police officers or body of reserve police officers would be responsible for the performance of that duty will to the best of their ability assist and co-operate with the said reserve police officer in charge of a number or body of reserve police officers.

9. Mr. Jani further submitted that the Act and the Rules framed thereunder provide for appointment of Platoon Commander (PSI) as also Constables and Head Constables. The Rules have been amended from time to time. Considering the provisions of the Act and the Rules, the qualification for appointment of Platoon Commander is Graduate while qualification for Constables and Head Constables is not Graduate. The appointing authority for PSI is Commander. The appointment is by promotion and direct recruitment. The nature of work is of supervisory character. The Constable is to undertake duty within specific hours at a particular location. He cannot move there from. Supervisory staff like Platoon Commander can move around.

10. Mr. Jani further invited the Court's attention to the provisions contained in Section 28 of the Bombay Police Act, which provides of the duties of the Police Officers which reads as under:

28(1) Every Police Officer not on leave or under suspension shall for all purpose of this Act be deemed to be always on duty, and any Police Officer or any number or body of Police Officers allocated for duty in one part of the State may, if the State Government or the Inspector-General so directs, at any time, be employed on Police duty in any other part of the State for so long as the services of the same may be there required.

(2) Timely intimation shall, except in cases of extreme urgency, be given to the Revenue Commissioner and the District Magistrate by the Inspector-General of any proposed transfer under this section, and except, where secrecy is necessary the reasons for the transfer shall be explained; whereupon the officers aforesaid and their subordinates shall give all reasonable furtherance to such transfer.

He also referred to Rule 17 of the Bombay Civil Services Rules, which is set out as under:

Rule 17 Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of Government and he may be employed in any manner required by the proper authority, whether the services required of him are such as would ordinarily be remunerated from the Consolidated Fund of India or of a State or from the revenues of a local fund, or from the funds of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.

11. Considering the above provisions, he submitted that no Govt. servant can leave his headquarters without the knowledge of his superiors nor has he any right to demand that he shall be employed only during office hours. It is only for this reason that the Government servants required to work outside office hours

or on Sundays or holidays are not given overtime allowances.

12. In view of the above distinction, not only in appointment but also in respect of their duties to be performed, Mr. Jani submitted that the State Government is justified in framing separate conditions for separate cadres and the provisions under Article 14 of the Constitution of India cannot be attracted.

13. In support of his submissions, Mr. Jani relied on the following judgments of the Apex Court as well as this Court:

In *State of Punjab and Ors. v. Surinder Singh and Anr.* 2007 (13) SCC 231, it is held that the principle of equal pay for equal work has to be granted only if there is a total and complete identity between the two persons. The Court has also referred to its earlier judgment in the case of *S.C. Chandra and Others Vs. State of Jharkhand and Others*, wherein the Court held that granting pay scale is an executive or legislative function, and not judicial function. There is separation of powers under the constitution between the three organs of the State.

14. In *State of West Bengal and Anr. v. West Bengal Minimum Wages Inspectors Association and Ors.* (2010) 5 SCC 225, the Apex Court held that the principle "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment etc. Comparison merely based on designation of posts is misconceived. The principles relating to granting higher scale of pay on the basis of equal pay for equal work are well settled. The evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts. The burden to prove parity is on the employees claiming parity. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees.

15. In *Haryana State Electricity Board and Another Vs. Gulshan Lal and Others*, the Apex Court held that by application of Article 14 of the Constitution alone, similar relief should not be granted. Equality clause carries with it a positive effect. It signifies treating persons equally who are situated similarly. Those who had been occupying the position of Foreman Grade I and/or Foreman Grade II and other employees who were far below them either for the purpose of seniority or otherwise, could not have been treated equally.

16. In *New Delhi Municipal Corporation v. Pan Singh* (2007) 9 SCC 279, the Apex Court held that Section 18(3)(b) of Industrial Disputes Act, 1947 does not postulate that although the workmen concerned would form different classes, an award made in favour of another class of workmen would automatically be extended to the other. The Court further held that delay and laches are relevant

factors for exercise of equitable jurisdiction.

17. In U.P. State Electricity Board and Another Vs. Aziz Ahmad, the Apex Court held that burden of establishing right to invoke doctrine of equal pay for equal work is on person claiming such right. Burden is on the workman to prove and establish by leading cogent and reliable evidence that job requirements, nature and responsibility of the posts were identical. The documentary evidence had to be placed in support of the same. The principle is that burden of proof is on person who alleges it. When concluding that the posts are identical merely on the basis of pleadings of the parties, such principle cannot be invoked. Pleadings are required to be proved by leading evidence. No reliance can be placed only on pleadings without any cogent evidence in support of the pleadings.

18. In State of Madhya Pradesh and Ors. v. Ramesh Chandra Bajpai 2009 (1) SCALE 619, the Apex Court held that it is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts. The Court further held that it is also well settled that Article 14 of the Constitution carries with it a positive concept of equality. That Article cannot be invoked for perpetuating illegality. To put it differently, an illegal or wrong order passed in one case cannot be made the basis for compelling a public authority to pass similar order in other cases. Even if the State implements an erroneous order passed by the Court, it cannot be precluded from challenging similar order passed in another case, simply because appeal was not preferred in the earlier case.

19. In State of Punjab and Another Vs. Surjit Singh and Others, the Apex Court held that it is no longer in doubt or dispute that grant of the benefit of the doctrine of "equal pay for equal work" depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. The Court further held that the equality clause contained in Article 14 should be invoked only where the parties are similarly situated and where order passed in their favour is legal and not illegal. It has a positive concept.

20. Based on the above judgments, Mr. Jani has strongly urged that there is qualitative difference as regards their reliability and responsibility of Police Sub Inspectors and Head Constables. One is manning a supervisory post while the Head Constable has fixed duties. All Government servants including Police Officers are on duty for 24 hours. Even the Apex Court has upheld the validity of different conditions of service in respect of separate cadres in the society. There can be different perks and there can also be different age of retirement in

respect of separate cadres. He has, therefore, submitted that the impugned judgment and order passed by learned Single Judge deserves to be quashed and set aside.

21. Mr. Jayant P. Bhatt and Mr. Biren Vaishnav, learned advocates appearing on behalf of the Respondents have raised preliminary objection to the submission of new points at the stage of Letters Patent Appeal. They have submitted that the contention with regard to financial burden, recruitment Rules, conditions of service etc. should not be allowed to be raised at this stage. No such contentions were raised before learned Single Judge. No affidavit-in-reply was filed before learned Single Judge. The Appellants did not resist the petitions on any count whatsoever. So far as financial burden is concerned, they submitted that the calculation is merely based on rough estimate. The main assumptions while calculating the arrears are that the Petitioners have worked on all Sundays, Saturdays and public holidays, that the State would be required to pay similar compensation to 2517 PS Is of different categories in regular Police Force. The Reserve Police Force remains in their group headquarters and they are called out only in cases of emergencies like riots, breakdown of law and order situation wherein the regular police force needs assistance of personnel specially trained for such purposes.

22. It is further submitted that the question of financial burden should not be permitted to be raised at this stage in view of the conduct of the Appellant. The following factors were required to be taken into consideration while assessing the conduct of the Appellants:

The impugned judgment was delivered on 12.12.1996 in presence of Govt. Pleader.

23. Copy of the judgment was received by the Appellants on 22.01.1997 as stated in the reply filed by Respondent in Civil Application No. 3057 of 1998 for condonation of delay in filing the Letters Patent Appeal.

24. Letters Patent Appeals were filed on or around 09.12.1997 i.e. after almost one year of the judgment and after more than 10 months of the receipt of the copy of the judgment.

25. Delay in filing appeals was there, yet application for condonation of delay was not filed simultaneously with the Letters Patent Appeal but after four months in April, 1998.

26. In the meantime, Petitioners filed contempt petition being Misc. Civil Application No. 418 of 1998 in March 1998 which was heard on 22.04.1998. The Govt. Pleader appearing on behalf of the Appellants did not point out to the Court that Letters Patent Appeal was already filed on 09.12.1997. The only submission that was made was that no demand was received from the Petitioners.

27. Even though direction was to comply with the judgment within 15 days from the receipt of the demand, no Civil Application for stay of the judgment was

moved.

28. The direction of this Court in Misc. Civil Application was not complied with within the time prescribed by this Court although demands were made. Therefore, another contempt petition being Misc. Civil Application No. 43 of 1999 was filed.

29. Notice was issued making it returnable on 16.02.1999 by which Govt. Pleader asked for time and thereafter the matter was adjourned 7 times for the period between 11.03.1999 to 16.07.1999. No one appeared for the Respondents nor any reply was filed. Annoyed by the casual manner in which the proceedings were undertaken, the Court by its order dated 16.07.1999 directed the Appellants to remain present before the Court on 02.08.1999 on which date, an unconditional apology was tendered which was accepted by the Court.

30. During the hearing of Misc. Civil Application, learned Additional Advocate General asked for time for compliance of the judgment and the Court has granted 8 weeks time to comply with the directions. Despite this direction, the order was not complied with.

31. They further submitted that arrears would not have mounted so much had the directions on 22.04.1998 in Misc. Civil Application No. 418 of 1998 been complied with. The Appellants' indifference and casual manner of taking the proceedings of this Court should not be permitted to be visited on the Respondents on the lame excuse of financial burden.

32. It is further submitted that so far as Section 10 of the Act and Section 28 of the Bombay Police Act and Rule 17 of the BCSR are concerned, the underlying idea in all these provisions is the same, namely, full time of the Government servant is at the disposal of the Govt. Rule 17 of the BCSR has been considered and interpreted by this Court in the case of Bhagwatiprasad Gordhandas Bhatt v. State of Gujarat and Ors. 18 GLR 562. In the said judgment, this Court has observed, inter alia, that the words "in any manner" occurring in Rule 17 cannot be interpreted in such a broad manner as to nullify the guarantee of Article 16 as well as the provisions of Articles 309, 310 and 311 of the Constitution of India.

33. Lastly, it is submitted that all these Letters Patent Appeals should be dismissed firstly on the ground that the petitions were not resisted by the Appellants before learned Single Judge either by filing the reply affidavit or by raising any contention worth the name during hearing and secondly, because the financial burden shown in their submissions is not based on any facts, but on untenable assumptions and thirdly, the financial burden talked of is the result of the casual and indifferent approach of the Appellants. They have, therefore, submitted that no interference is called for in the impugned judgment and order passed by learned Single Judge and all these Letters Patent Appeals deserve to be dismissed with cost.

34. Having heard learned Counsel appearing for the parties and having

considered their rival submissions in light of the relevant statutory provisions and decided case law on the subject, the Court is of the view that learned Single Judge is not right in extending the benefits and directing the State Government to pay PSIs (Armed) and PSIs(Wireless) of SRPF, additional pay for the duties actually performed by them on 2nd and 4th Saturdays, Sundays and on public holidays w.e.f. 1.1.1993. Such directions were issued on the basis of his earlier decision rendered in Special Civil Application No. 1448 of 1988 dated 7.1.1991. It is required to be noted that in Special Civil Application No. 1448 of 1988, the State Government was directed to consider the cases of Class-IV employees of the SRPF i.e. Waterman, Cooks, Tailor, Washerman, Shoemaker and Barber for giving them additional pay for the duties performed by them. It is true that pursuant to this order the State Government had passed Resolution on 6.10.1991 granting benefit of additional pay for the public holidays, 2nd and 4th Saturdays and Sundays to Cook, Waterman, Tailor, Cobbler, Barber and Washerman. However, neither the said decision of learned Single Judge nor the said Resolution dated 16.10.1991 passed by the State Government can be made applicable to the case of PSIs (Armed) and PSIs (Wireless) of SRPF Group. The reason is very obvious, inasmuch as the duty performed by these persons and their requirements did not fall in the same parity in any manner and/or method and there is no basis whatsoever for applying the provisions of Article 14 of the Constitution of India. Even otherwise, there is no parity between the constabulary staff working in the police as well as SRP and that of the employees in the rank of PSI and above who are only supervisory Officers. The conditions of service in both the cadres are different and there is no intrinsic comparison or parity between the two cadres. The mode of appointment of two cadres is totally different. General duties of members of these two groups are totally different. The supervisory staff, both in the police as well as SRP Department are supposed to be on duty for 24 hours, whereas constabulary staff is employed only during specified period. There is also qualitative difference in two cadres with regard to their reliability and responsibility. There are different perks and there is also different age of retirement in respect of separate cadres. There is, therefore, no question of claiming and/or accepting any parity between two cadres and Respondents cannot invoke provisions of Article 14 of the Constitution of India.

35. The objections raised by learned Counsel appearing for the Respondents-original Petitioners with regard to the issues raised by the Appellant in the present Letters Patent Appeals will have no force at all. Simply because the Appellants could not be in a position to raise certain legal issues against the acceptance of the claims of original Petitioners at the stage of hearing of Special Civil Application they would not be precluded from raising the said legal issues before this Court in Letters Patent Appeal. If Petitioners were wrongly or illegally granted certain benefits by learned Single Judge, the present Appellants are well within their right to agitate before the Court that such benefits could not have been granted to them. The question of financial implication is one of the most important questions which cannot be lost sight of while considering any particular

claim put forward before the Court especially when the legality or admissibility of such claim is very much in doubt. The Court have held on number of occasions that the Court should not direct the State authorities to grant a particular pay-scale to any class of employees as it is absolutely an executive or legislative function and not judicial function. There is separation of powers under the Constitution between the three organs of the State.

36. As observed by the Apex Court in its various decisions, some of which are quoted herein above, the doctrine of "equal pay for equal work" can have its application to only those persons, who are similarly situated. Even some time, similarity in the designation or nature of quantum of work is not determinative of equality in the matter of pay-scale. The Courts are supposed to consider the factors like source and mode of recruitment or appointment, qualification, nature of work, value thereof, the responsibilities, reliability, experience, confidentiality, functional need etc. If there is no wholesale identity between the holders of two posts, the equality clause cannot be invoked in the matter of pay-scale.

37. The scope of applicability of Article 14 of the Constitution always carries with it a positive concept of equality, which can never be invoked for perpetuating illegality. Simply because the order was passed by learned Single Judge in Special Civil Application No. 1448 of 1988 on 17.1.1991 and which was accepted by the State Government, it cannot be pressed into service even for the purpose of granting benefit to PSIs (Armed) and PSIs (Wireless) of SRPF. The Respondents in the present appeals are Armed Police Sub Inspectors working in various companies of different SRP Group in the State of Gujarat. As per the administrative hierarchy of SRP Group, the company is divided into platoons. Each platoon is commanded by Armed Police Sub-Inspector, who is holding a supervisory post. The platoon Commander is having Head Constables, Constables and Followers, which include Cook, Dhobi, Mochi etc. Simply because certain benefits are granted to Constable and Followers the same cannot straightway be applicable to the platoon Commender. No parity can be claimed in these two totally different cadres. Learned Single Judge has made an attempt to invoke Article 14 of the Constitution assuming parity between these two totally different cadres. The same cannot therefore be upheld on any count.

38. It is also an admitted position that learned Counsel appearing for the Respondents could not point out any instance where such benefits are granted to PS Is either in the Police Department or in the SRP Group. This being a separate class by itself and considering the nature of duty and status which they held, the Court is of the view that the impugned judgment passed by learned Single Judge is not in accordance with the statutory provisions nor it is in consonance with the judicial principles. The impugned judgment and order is, therefore, quashed and set aside. All these Letters Patent Appeals are accordingly allowed without any order as to costs.

39. In view of disposal of Letters Patent Appeals, Civil Application does not survive and it is accordingly disposed of.