

(2001) 08 GAU CK 0027

In the Gauhati High Court

Case No : Writ Appeal No. 84 of 2000 in WP (C) No. 205 of 1999

State of Tripura and Another

APPELLANT

Vs

Dr. Jogiraj Dutta and Others

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2002) 94 FLR 127 : (2001) 2 GLT 612

Hon'ble Judges : B. Lamare, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B.R. Bhattacharjee, AG and S. Chakravorty, for the Appellant; K.K. Maitra, A.K. Deb, C.S. Sinha and K. Deb, for the Respondent

Judgement

1. This Writ Appeal is directed against the judgment and Order dated 1.8.2000 of the learned Single Judge in W.P.(C) No. 205/99.

2. The facts briefly are that the respondents are members of the Tripura Veterinary Service Grade V. After completing Higher Secondary (+2) state, they undertook studies of Bachelor of Veterinary Science (for short "BVSc"), Thereafter the y were appointed in the Tripura Veterinary Service Grade V and have been working as Veterinary Assistant Surgeon under the Animal Resource Development Department. By notification dated 7.12.1992 the pay scale of Tripura Veterinary Service Grade V (for short "TVS Grade V") has been fixed at Rs. 2100 - Rs.4530 per month. This was less than the pay scale of Medical Officers Grade V which was Rs. 2100 -Rs. 3000.00 (SL) - Rs.5000 per month. The members of the TVS Grade V demanded pay parity corresponding to pay scale of the members of the Tripura Health Services (for short "THS Grade V"). The 4th Tripura Pay Commission considered the said claim and recommended that identical scale of pay be allowed to the TVS Grade V and THS Grade V. Thereafter, the Tripura State Civil Service (Revision of Pay) Rules, 1999, was notified by the notification dated 6.2.1999 revising the pay scale of State Government employees including that of TVS Grade V and the THS Grade V.

Under the said Tripura State Civil Service (Revision of Pay) Rules, 1999, the pay scale of THS Grade V was fixed at Rs.7800 - Rs. 15100 per month with advance benefit after 4 years of Rs. 10,000 - 15,000 and pay scale of TVS Grade V was fixed at Rs.7400 - Rs. 13,000 with advance benefit after 8 years at Rs.10,000 - Rs.15,100 per month. The respondents challenged the aforesaid fixation of pay scales of members of TVS Grade V at lower than that of the THS Grade V as discriminatory in the Writ Petition (Civil) No. 205/99 before the learned Single Judge in the said writ petition, the respondents also challenged the decision of the State Government in allowing the members of the THS Grade V non-practicing allowance but at the same time not allowing the said non-practicing allowance to the members of the TVS Grade V. The appellants filed their affidavit in opposition in the said writ petition opposing the prayer in the writ petition. After hearing the learned counsel for the parties, the learned Single Judge by the impugned judgment and order dated 1.8.2000 allowed the writ petition setting aside the notification dated 6.2.1999 of the Government of Tripura relating to TVS Grade V and directed the appellants to give effect to the revised pay scale in terms of the recommendations of the 4th Tripura Pay Commission including recommendation on anomalies in respect of the Animal Resources Department. By the said Judgment and Order the learned Single Judge also directed the appellants to consider the issue of admissibility of non-practicing allowance to the members of the TVS Grade V and pass a reasoned order. Aggrieved by the said judgment and order dated 1.8.2000 of the learned Single Judge, the appellants have filed this appeal before the Division Bench of this Court.

3. Mr. B. Bhattacharjee, learned Advocate General, Tripura, submitted that the learned Single Judge ought not to have directed the appellants to give effect to the revised pay scales in terms of the recommendation of 4th Tripura Pay Commission in the impugned judgment. He submitted that although the qualifications of persons appointed to TVS Grade V are virtually at par with the qualifications with the persons appointed to THS Grade V, responsibilities of a Medical Doctor belonging to THS Grade V is much more than the responsibilities of a Veterinary Surgeon belonging to TVS Grade V and, therefore, the work carried on by the members of the THS Grade V and the work of TVS Grade V are not equal. Mr. Bhattacharjee contended that the 4th Tripura Pay Commission did not arrive at independent findings that the responsibilities and duties of the members of the THS Grade V and those of the members of TVS Grade V are equal and the 4th Tripura Pay Commission recommended the same pay scales for the two services by only mentioning that the 5th Central Pay Commission had also recommended the same treatment of Veterinary Service and Health Service. Mr. Bhattacharjee further submitted that as a matter of fact, the recommendations of 4th Tripura Pay Commission were not accepted by the Government and the pay scales of different employees belonging to THS Grade V and TVS Grade V were revised and fixed on the basis of the recommendation of an Administrative Committee and while the pay scale of the members of TVS Grade V was fixed at Rs.7,450 - Rs.13,000 per month the pay scale of THS Grade

V was fixed at Rs.7800 - 15,100 on the basis of the recommendation of the Administrative Committee. The learned Advocate General relied on the decision of the Supreme Court in the case of Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, in which Stenographer (Grade-I) who were attached with officers in the scale of Rs. 2500-2750 (Level 1) sought parity with the pay scale of Stenographers attached to the Joint Secretaries and officers above the rank in a writ petition under Article 32 of the Constitution and the Supreme Court, inter alia, held that equal pay for equal work is a fundamental right but equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. After making the aforesaid observations, the Supreme Court held that although there was similarity of functional work of Stenographers (Grade I) attached with the level 1 officers and the Stenographers attached to the Joint Secretaries and above that rank, there was dissimilarity of responsibilities, confidentiality and relationship with public etc. and accordingly, dismissed the writ petition.

4. Mr. Bhattacharjee further submitted that in State of W.B. and Others Vs. Hari Narayan Bhowal and Others, the Supreme Court further held that the principle of equal pay for equal work can be enforced only after persons claiming satisfy the Court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equals as unequal. He also cited the decision of the Supreme Court In Union of India and another Vs. S.K. Sareen, in which it was, inter alia, held that it is for the petitioners to substantiate their right to equal pay or plea of discrimination. Mr. Bhattacharjee submitted that in the said decision, the Supreme Court set aside the order of the Central Administrative Tribunal directing the Central Government to pay Private Secretaries attached to Vice Chairman, Central Administrative Tribunal, the same scale of pay as drawn by the Private Secretaries attached to the Ministers and Judges of the High Court and remitted the matter back to the Tribunal for fresh disposal in accordance with law. According to Mr. Bhattacharjee, the writ petitioners-respondents had not been able to establish before the learned Single Judge that they belong to the same class as the members of the THS Grade V and that the nature of work was identical in all respects with the work of the members of the THS Grade V. He further argued that the learned Single Judge having himself found some differences between the two services should not have directed payment of equal pay to the members of the TVS Grade V in terms of the recommendation of the 4th Tripura Pay Commission. Mr. Bhattacharjee submitted that in Union of India (UOI) and Another Vs. P.V. Hariharan and Another, the judgment of the Central Administrative Tribunal, Ernakulam Bench, holding that Tool room assistants in the Integrated Fisheries Project of the Fisheries Department, Government of India, were entitled to parity in pay with Tool Room Assistants in the Central Institute of Fisheries, Nautical and Engineering Training Department was challenged and the Supreme Court while setting aside the order of the Tribunal

remitted the matter back to the Tribunal observing that the change of pay scale of a category has a cascading effect as several other categories similarly situated as well as those situated above and below put forward their claims on the basis of that change and the Tribunal should realise that interfering with the prescribed pay scale is a serious matter. Finally, Mr. Bhattacharjee cited the decision of the Supreme Court in *State Fishery Officers' Association, State Fishery Officers' Association, W.B. and Another Vs. State of W.B. and Another*, in support of his submission that in a policy decision of a Government which have financial implications directions normally should not be given by the Court to the Government as such policy matter falls within the executive domain.

5. In reply, Mr. KK Maitra, learned counsel for the respondents, submitted that the grievance of the respondents with regard to disparity in scales of pay of the members of the THS Grade V and TVS Grade V has to be understood in the background of certain facts. He stated that pursuant to the recommendations of the 3rd Tripura Pay Commission, a notification dated 26.9.1988 was Issued by the Government of Tripura revising the scales of pay of the employees and in the said notification the scale of pay of Veterinary Assistant Surgeons in the Department of Animal Husbandry was made equal to the scale of pay of Medical Officers of the THS Grade V. But within 10 days thereafter a corrigendum dated 6.10.1988 was issued lowering the said scale of pay of Veterinary Assistant Surgeons. The respondents made a grievance before the Anomaly Committee set up by the Government of Tripura after the recommendations of the 3rd Tripura Pay Commission. While the anomaly committee was examining the aforesaid grievance of the respondents, the 4th Tripura Pay commission was constituted and one of the terms of reference of the 4th Tripura Pay Commission was to consider the anomalies of scales of pay of 1988 pay revision and take into account the report submitted by the anomaly committee. The 4th Tripura Pay Commission in accordance with the terms of reference considered the anomalies arising out of revision of scale of pay of 1988 and recommended in its report that identical scale of pay be provided to initial grade of THS Grade V and TVS Grade V , Mr. Maitra argued that once an expert body such as the 4th Tripura Pay Commission recommended for identical scale of pay in the initial grade of TVS Grade V and THS Grade V, the refusal by the Government to grant such identical scale of pay on the recommendation of the Administrative Committee is arbitrary and discriminatory and violative of the rights of the respondents under Article 14 of the Constitution. In support of his submission, he cited the decision of the Supreme Court in *Purshottom Lal and others v. Union of India and another*, AIR 1973 SC 1088, in which it has been held that if the Government does not implement the report of the Pay Commission regarding some employees only it commits breach of Articles 14 and 16 of the Constitution. He also relied on the decision of the Supreme Court in *Laljee Dubey and Others Vs. Union of India (UOI) and Others*, in which it was similarly held that implementation of recommendation of Pay Committee in case of some of the employees only belonging to the same group is discriminatory.

6. Mr. Maitra next submitted that in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, the Supreme Court held that the purpose of rule of natural justice is to prevent miscarriage of justice and one fails to see why those rules should be made inapplicable to administrative enquiries and whenever complaint is made before a Court that some principles of natural justice have been contravened, the Court has to decide whether observance of that rule was necessary for a just decision on the facts of that case. Mr. Maitra pointed out even though the decision regarding recommendation of pay of the TVS Grade V was an administrative decision, due opportunity should have been given to the representatives of the TVS Grade V before the Government turned down the recommendation of the 4th Tripura Pay Commission to grant identical scale of pay to THS Grade V and TVS Grade V. He referred to the observations of the Supreme Court in Kralpak's case that to prevent abuse of administrative powers and to see that it does not become new despotism, the Courts are gradually evolving the principles to be observed while exercising such powers. According to Mr. Maitra a new principle should be evolved in this case that persons likely to be affected by the decision with regard to scale of pay should be given opportunity to put forward their case.

7. In reply to the submission of Mr. Bhattacharjee, learned Advocate General, that the scale of pay granted to the THS Grade V if granted to the TVS Grade V would involve financial consequences for the State. Mr Maitra stated that the total number of members of TVS Grade V personnel are only 165 and it will cost the exchequer an additional burden of Rs.64,000.00 only approximately, if scale of pay identical to THS Grade V is granted to TVS Grade V. Mr. Maitra further submitted that in any case as has been held by the Supreme Court in All India Imam Organisation and others v. Union of India and others (1993) 3 SSC 584, financial difficulties of an Institution cannot be above fundamental rights of a citizen. Mr Maitra cited the decision of the Supreme Court in Hans Raj Arora v. Union of India and others 1988 SCC 564 , wherein the Supreme Court turned down the contention of the Union of India that it would involve additional financial liability for the Railway administration to grant building advance to some of the Railway employees by holding that if the employees are entitled to be considered for building advance, the Railway administration has to increase the budgetary allocations and there was no justification for withholding the relief to the employees. Mr. Maitra also referred to the decision of the Supreme Court in The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, wherein a contention was raised by Chandigarh Administration that it will find it difficult to bear the additional burden if the claim of the employees for parity of scale of pay was accepted, but the Supreme Court rejected the said contention by holding that it is for the authorities running the administration to find out ways and means of procuring funds for the purpose.

8. In reply to the submission made by Mr. Bhattahcarjee, learned Advocate General, that the work of Medical Officers of THS Grade V and the work of Assistant Surgeons of TVS Grade V are not equal. Mr. Maitra submitted that for

the purpose of equal pay for equal work it is not necessary that there should be complete identity of work of the aforesaid two services. In *Jaipal and Others Vs. State of Haryana and Others*, Mr. Maitra pointed out, the Supreme Court has held that the doctrine of equal pay for equal work would apply on the premises of similar work but it does not mean that there should be complete identity in all respects. He further submitted that similarly in *S.B. Mathur and Others Vs. Chief Justice of Delhi High Court and Others*, the Supreme Court held that for treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions. Mr. Maitra also cited the decision of the Supreme Court in *Grih Kalyan Kendra Workers' Union Vs. Union of India and others*, where it was held that while considering the question of equal pay for equal work, it is not necessary to find out similarity by mathematical formula but there must be a reasonable similarity in the nature of work, performance of duties, the qualification and the quality of work performed by them. In *Shri Alvaro Noronha Ferriera and Others Vs. Union of India and Others*, the Supreme Court held that parameter for invoking the principle of equal pay for equal work would include, inter alia, nature of work and common employer and the Supreme Court further found the nature of work of District and Sessions Judge in territories of Delhi and Goa was the same and the duly hours and the powers discharged by them were also the same and held that pendency of litigation and norms fixed for disposal of the cases in the Courts of two territories cannot be a reason for not granting equal pay to the District and Sessions Judge of Goa and the District & Sessions Judges of Delhi territory.

9. Mr. Maitra finally submitted that a public authority cannot take inconsistent stands. He referred to the observations of the Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, that public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order. He also cited the decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, for the proposition that an executive order will satisfy the requirements under Article 14 of the Constitution only if it is reasonable and fair. He also relied on the " decision of the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, wherein it was held that discretion of the Government relating to the condition of service governing the employees has to be exercised in accordance with reason and fair play and not capriciously. According to Mr. Maitra, the Government may have the discretion to decide what scale of pay should be given to its employees, but such discretion has to be exercised in accordance with reason and fair play and in accordance law. He further contended that where the Government exceeds its powers or commits error of law or violates the principles of natural justice while taking a decision, the Court can in exercise of its powers of judicial review interfere with the decision of the Government as has been held by the Supreme Court in *Tata Cellular Vs. Union of India*, Mr. Maitra argued that since by the

impugned judgment the learned Single Judge has in exercise of his powers of judicial review interfered with the decision of the Government relating to scale of pay of initial grade of TVS (Grade V) and has issued appropriate direction to fix the scale of pay in accordance with the recommendation with the 4th Tripura Pay Commission, the present appeal against the said Impugned judgment of the learned Single Judge should be dismissed.

10. From the authorities cited by Mr. Bhattacharjee, learned Advocate General, Tripura for the appellants and Mr. Maitra, learned counsel for the respondents, the following propositions of law can be called out:

(i) The right of an employee to equal pay for equal work is a fundamental right under Articles 14 and 16 read with Article 39(d) of the Constitution.

(ii) The petitioner who claims before the Court that the work done by him is equal to the work done by the employee under the same employer must establish that claim before the Court by a relevant materials.

(iii) Only if the Court comes to a clear finding on the basis of relevant materials that the work done by the petitioner is equal to the work done by such other employee under the same employer, the Court can direct the employer to fix the same scale of pay for the petitioner as that of the other employee.

(iv) For granting such relief, however, it is not necessary for the Court to hold that the work done by the employee and such other employees under the same employer is the identical or same but the Court must come to a finding that the nature of work, the equality of work, the responsibility and reliability attached to the work, the quantity of work and other aspects relevant to the fixation of scale of pay are similar and there is no intelligible criteria to differentiate the employee from such other employees working under the same employer having rational nexus with the object sought to be achieved;

(v) One relevant material for the Court for coming to such finding is the recommendation of an expert body such as the Pay Commission;

(vi) The Government has a discretion to accept or not to accept the recommendation of the Pay Commission regarding fixation of scale of pay of its employees but if it accepts the recommendations with regard to some employees of a group but does not accept the recommendations with regard to some other employees of the Government belonging to same class or group, it amounts to discrimination violative of Article 14 of the Constitution;

(vii) Once the Court come to a conclusion on the basis of relevant materials that the fundamental right of the petitioner stands violated if he is not granted the same scale of pay as that of some other employees who are doing equal work, financial constraint of the Government cannot be a defence against such Infringement of fundamental right.

(viii) The approach of the Court, however, has to be very cautious and careful in

deciding claims for equal pay for equal work as the order of the Court allowing such a claim will have cascading effect Inasmuch as other categories of employees may make such claims for equal pay for equal work on the basis of the orders passed by the Court.

11. In the light of the aforesaid propositions of law, we may now examine as to whether the learned Single Judge was right in directing the appellants to give effect to the revised scale of pay in terms of the recommendation of the 4th Tripura Pay Commission including recommendation on anomalies in respect of TVS Grade V of Department of Animal Resources and Development and in setting aside the impugned notification dated 6.2.1999 relating to TVS Grade V. A reading of the impugned judgment would show that the learned Single Judge had issued the aforesaid direction as he had found that the 4th Tripura Pay Commission after study of the jobs of the Veterinary Assistant Surgeon of TVS Grade V and a Medical Officer of THS Grade V under the Tripura Administration found the jobs to be of same and similar nature. The observations and recommendations of the 4th Tripura Pay Commission on which the learned Single Judge relied on are extracted here in below:

DEPARTMENT : ANIMAL RESOURCE DEVELOPMENT

REPORTED ANOMOUS POST : V.A.S. (TVS GR V) SCALE OF PAY : RS. 2100 - 4530

REFERENCE POST : GR-V MEDICAL OFFICER SCALE OF PAY : RS. 2100-3999 (SL) - 5000

REASON FOR TREATING THE POST ANOMOLOUS OBSERVATIONS OF THE COMMISSION

Submitted that : The Recruitment Rules (RR) provide :

(i) The basic qualification is same for both the posts (i) For both the posts the basic qualification is HS (+2 stage).

(ii)

The level of functioning and responsibility is the same for both the posts.

(ii)

Successful completion of B.V.Sc. course and MBBS course inclusive of internship Is required for recruitment to the post of TVS Gr-V and THS Gr-V respectively. The duration of the Internship Is one-year for MBBS course; whereas, it is six-months for B.V.Sc. course.

(iii)

Both the post belong to the lowest stratum of the respective Cadre Service. But. lower scale of pay has been allowed to V.A.S.

(iii)

Besides, candidates for both the course are selected through joint entrance examination

(iv)

So it Is proposed that the scale identical to that of Gr-V Medical Officer (THS Gr-V) should be allowed to the TVS Gr. V.

(iv)

Further, the Fifth CPC has recommended the same scale of pay for the Veterinary Surgeon as that of General Duty Medical Officer and Dental Doctors.

Considering all these aspects, the Commission finds that there exists an equivalence between the two posts and feels that both the post should be treated on the same footing.

RECOMMENDATIONS

The scale of pay identical to that of Gr-V Medical Officer (THS Gr-V) be allowed to the post of VAS (TVS Gr-V)

15.73. We, have also observed that despite having similar functional level and almost similar recruitment qualification identical scales have not been allowed to the initial grade of different technical cadre services. For example, incumbents at the initial grade (Gr-V) of Tripura Health Service and Gr-IV of Tripura Dental Service have been allowed the scale of Rs. 2100-5000 with SL Rs. 3000-5000 whereas those at the initial grade (Gr-V) of Tripura Veterinary Service have been allowed the scale of Rs. 2100-4530. In this connection, it is worthwhile to note the observation of the Fifth CPC, which is "We observe that a degree in Veterinary Science is comparable to an MBBS degree and holders of those degrees in both cases are registered and authorised to practice medicine, authenticate health certificate and give evidence as experts under the Indian Evidence Act we also feel that there is no apparent reason to keep one of the two categories in a lower status."

15.98. Identical scales of pay be allowed to the Initial grade of Tripura Veterinary Service and Tripura Health Service. The Fifth Central Pay Commission (CPC) has also recommended the same treatment. In the words of Fifth CPC, "We, therefore, recommend that posts requiring a degree of B.V.Sc. & AH with registration in the Veterinary Council of India as the minimum essential qualification may be placed in a common entry grade corresponding to the existing entry scale applicable to General Duty Medical Officer and Dental Doctors under the Government of India."

The observations of the 4th Tripura Pay Commission on the anomalous post of Veterinary Assistant Surgeon (TVS Gr-V) would show that the Commission found that the post of TVS GR V and THS GR V carried the basic qualification of HS (+2). The Commission further found that for recruitment to the post of TVS Gr-V successful completion of B.V.Sc. course including internship was required and

similarly for recruitment to THS GR V successful completion of MBBS course including internship was required but the duration of internship for MBBS course was one year whereas the duration for internship for B.V.Sc. course was six months. The Commission further found that the candidates for both the B.V.Sc and MBBS course were selected through the Joint Entrance Examination. The Commission further observed that the 5th Central Pay Commission had recommended the same scale of pay for Veterinary Surgeon and that of General Duty Medical Officers and Dental Doctors. Considering all these aspects, the Commission was of the view that there exists equivalence between the two posts and both the posts should be treated on same footing and accordingly recommended that the scale of pay identical to that of Grade V Medical Officer (THS Gr V) be allowed to the post of Veterinary Assistant Surgeon (TVS Gr-V). In paragraph 15.73 of its recommendation quoted above, the Commission further observed that despite having similar functional level and similar recruitment qualification, identical to scale of pay . has not been allowed to initial grade of different technical cadre services and one of the examples given by the Commission for its aforesaid observation was that the incumbent in the initial grade-V of Tripura Health Service and Grade IV of Tripura Dental Service have been allowed scale of pay of Rs. 2100-5000 with SL Rs. 3000-5000 whereas those at the initial grade (Gr-V) of Tripura Veterinary Service have been allowed Rs. 2100-4530. The Commission further observed in the said paragraph that degree of Veterinary Science is comparable to MBBS Degree as holders of those Degree in both the cases are registered, are authorised to practice medicine, authenticate health certificates and give evidence as experts under Indian Evidence Act and hence there is no apparent reason to keep one of the two categories in a lower status. Finally in paragraph 15.98 quoted above, the Commission has observed that the 5th Central Pay Commission recommended that the post requiring a degree of B.V.Sc. & AH with registration in the Veterinary Council of India as the minimum essential qualification may be placed in a common entry grade corresponding to the existing entry scale applicable to General Duty Medical Officer and Dental Doctors under the Government of India. With the said observations, the 4th Tripura Pay Commission has recommended the Identical scales of pay be allowed to the initial grades of Tripura Veterinary Service and Tripura Health Service.

12. The aforesaid observations and recommendations of the 4th Tripura Pay Commission would show that the Commission had come to a definite finding that the basic qualification of HS(+2) for selection to the MBBS and B.V.Sc course and the degree in Veterinary Science and MBBS and that the functional level of Medical Officer (THS G-V) and a Veterinary Assistant Surgeon in TVS Gr V are similar. But there is no discussion or Finding whatsoever by the 4th Tripura Pay Commission in its observations and recommendations quoted above that the nature of the work, responsibility and reliability attached to the work, the quality and quantity of work of the Medical Officer (THS Gr V) and the Veterinary Assistant Surgeon are similar. Hence the findings of the learned Single Judge in

the impugned judgment that the 4th Tripura Pay Commission after considering in depth the jobs of Tripura Veterinary Service Gr V and Tripura Health Service Grade V under the Tripura Administration have been found to be the same and similar in nature, with great respect to the learned Single Judge, is an error of record.

13. In *Federation of All India Customs and Central Excise Stenographers (Recognised) V; Union of India and others (supra)*, the Supreme Court, inter alia, held that equal pay depends upon the nature of work done and it cannot be judged by only the same volume of work because there may be qualitative differences as regards reliability and responsibility. In *Jaipal and others v. State of Haryana and others (supra)*, the Supreme Court, however, observed that it is not necessary that there should be complete identity in all respects but if the two classes of person do the same work under the same employer with similar responsibility under the similar working conditions, the doctrine of equal pay for equal work will apply and the State should not discriminate one class with other in paying similar salary. In *Grin Kalayan Kendra Workers" Union v. Union of India and others (supra)* the Supreme Court further held that while considering the question of equal pay for equal work, it is not necessary to find out similarity by mathematical formula but there must be a reasonable similarity in nature of work, performance of duties, quality and quantity of work performed by them and it is permissible to have classification of service based on hierarchy of post and scale of pay, value of work, responsibility and experience but the classification must be reasonable in relation to the object sought to be achieved. Since the aforesaid observations and recommendations of the 4th Tripura Pay Commission do not show reasonable similarity in the nature of work, performance of duties, quality of work and quantity of work performed by Medical Officers of Tripura Health Service Grade-V and Veterinary Assistant Surgeon Grade-V, in our considered opinion, the direction of the learned Single Judge to pay Veterinary Assistant Surgeon Grade-V the same pay as that of Medical Officers of Tripura Health Services Grade-V on the basis of the recommendations of the 4th Tripura Pay Commission was not in accord with the decisions of the Supreme Court discussed above.

14. Further, it appears from the records produced before us that the recommendations of the 4th Tripura Pay Commission were considered by an Officers" Committee and pay revision was ultimately done by the Government on the basis of the recommendations made by the Officers" Committee. Thus, this is not a case where the recommendations of the Pay Commission have been implemented with regard to some employees under the Tripura Government but have not been implemented with regard Veterinary Assistant Surgeons in TVS Grade-V so as to amount discrimination, violative of Article 14 of the Constitution. But the recommendations of the 4th Tripura Pay Commission for identical scale of pay for Assistant Surgeons of TVS Grade V and the Medical Officers of THS Grade V have not been considered by the Government in the light of the law laid down by the Supreme Court on the right of the employees to

equal pay for equal work under Article 14 and 16 read with Article 39(d) of the Constitution discussed in this judgment.

15. In the result, we set aside the impugned judgment of the learned Single Judge on WP(C) No. 205/99 and direct the Government to examine through an expert body as to whether the nature of work and duties, qualify and quantity of work etc. performed by the Veterinary Assistant Surgeons of Tripura Veterinary Service Grade-V are reasonably similar to those of Medical Officers of Tripura Health Services Grade-V and they are to be given identical scale of pay in accordance with the law relating to equal pay for equal work as laid down by the Supreme Court discussed in this judgment. The Government will also examine through such expert body whether non-practicing allowance should also be admissible to Veterinary Assistant Surgeons of Tripura Veterinary Services Grade-V as has been granted to the Medical Officers of Tripura Medical Services Grade-V. The expert body will consider any representation that may be submitted by the respondents either individually or collectively through their association. After the expert body submits its report, a copy of the said report will be furnished to the respondents and It will be open for the respondents to submit their representations against the said report either individually or collectively through their association. Thereafter, the Government will take decision on the report submitted by the expert body after considering such representations of the respondents. The entire exercise as directed above will be completed within a period of six months from the date of receipt of a certified copy of this order by the Principal Secretary to the Government of Tripura, Department of Finance.