

(2010) 03 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 3855 of 2007

State of West Bengal and Another

APPELLANT

Vs

West Bengal Minimum Wages Inspectors Association and
Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 3 ALLMR 432 : (2010) 3 CALLT 69 : (2010) 125 FLR 156 :
(2010) 3 JT 148 : (2010) 4 MPHT 200 : (2010) 3 SCALE 45 : (2010) 4 SCR 367 :
(2010) 3 UJ 1554 : (2010) 2 UPLBEC 929

Hon'ble Judges : Swatanter Kumar, J;R. V. Raveendran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—This question involved in this appeal by special leave is whether the respondents, holding the post of Inspector Agricultural Minimum Wages (for short, 'Inspector - AMW'), were entitled to parity in pay scale, from April 1981, with those holding the posts of Inspector (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (now Revenue Officers). For convenience the post of Inspector-AMW which is the subject matter of this appeal will be referred as the 'subject post'. The other three posts with reference to which parity is sought will be referred to as the 'reference category posts'. For convenience, we give below the pay scales of the four categories of employees :

Sl. Name of Posts 1970 1981 1990 1998 (I Pay (II Pay (III Pay (IV Pay
Commission) Commission) Commission) Commission)

1. Inspector 300-600 380-910 1260-2610 4000-8850 Agricultural (9) (9) (9)
(9) Minimum Wages 2. Inspector, 300-600 with 425-1050 1390-2970
4500-9700 Co-operative higher initial at (11) (10) (10) Societies 330/- 3.
Extension Officer, 300-600 with 425-1050 1390-2970 4500-9700 Panchayat
higher initial at (11) (10) (10) 330/- 4. KGO-JLRO 300-600 with 425-1050

1390-2970 4800-10925 higher initial at (Now Revenue (11) (10) (12) 330/- + Special Officer) pay 50/- 5500-11325 (14) w.e.f. 01-01-08

[Note : The figures in brackets below the pay scale refer to the number of the pay scale]

2. The facts in brief are as follows. The respondents 3 to 295 were employed in or around 1975 as ad-hoc Inspectors-AMW, in Pay Scale No. 9 (300-600). They were subsequently absorbed into regular service and appointed against permanent vacancies. Though Inspectors (Minimum Wages), Inspector (Trade Unions), Labour Inspectors, Supervisor (Labour Welfare), Investigators, Inspectors (Shops & Establishments) also in Pay Scale No. 9 were included in the West Bengal Subordinate Labour Services, Inspectors-AMW were not included in the said Labour Services. The Second Pay Commission recommended the revised Pay Scale No. 9 to the Inspectors - AMW subject to the condition that the minimum qualification for recruitment for the said post should be a University degree. On 28.7.1981, the Government framed the West Bengal Services Revision of Pay and Allowances Rules, 1981 (for short 'RPA Rules 1981') to implement the second Pay Commission Recommendations (effective from 2.4.1981) under which Inspectors-AMW, were assigned Pay Scale No. 9 (380-910). Holders of the post of Inspector (Co-operative Societies), Extension Officer (Panchayats) and KGO-JLRO (Revenue Officers) who were also in Pay Scale No. 9 earlier, but with a higher initial pay of Rs. 330, were granted the higher Pay Scale No. 11 (425-1050).

3. Feeling aggrieved, the respondents filed a writ petition (CR No. 247(W) of 1982) for the following reliefs:

(a) a direction to the state government to revise the pay scales according to law, without discriminating them from Inspectors (Co-operative Societies), Extension Officers (Panchayat), KGO-JLRO etc., and grant them Pay Scale No. 11 (Rs. 425-1050) with special pay and other allowances; and

(b) to quash the RPA Rules 1981, insofar as they related to Inspectors-AMW.

4. The respondents contended that three other categories of posts (reference category posts), were in the same scale of Rs. 300-600 as was applicable to them (Inspectors-AMW) when the RPA Rules, 1970 were in force; that the said three reference category posts were granted Pay Scale No. 11 (Rs. 425-1050) under the RPA Rules 1981 whereas they (Inspectors - AMW) were continued in the Pay Scale No. 9 (Rs. 380-910). It was submitted that as the minimum educational qualification for all four categories of posts were similar and as the pre-revision pay scales of all the four categories of posts were the same, the State could not discriminate by upgrading the pay of the three reference category posts who were earlier in the same Pay Scale, to Pay Scale No. 11, while continuing them (Inspectors -AMW) in the lower Pay Scale No. 9.

5. The State Government resisted the said writ petition, contending that the

functions and duties of Inspectors - AMW were different from the functions and duties of Inspectors (Co-operative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers). It was also pointed out that though the pay scale applicable to Inspectors -AMW and the three reference category posts were the same (Pay Scale No. 9) prior to RPA Rules 1981, there was a significant difference as those three reference categories were started on a higher initial Pay Scale of Rs. 330 instead of Rs. 300.

6. Learned single Judge, by order dated 8.7.1987, disposed of the said writ petition permitting the respondents to make a representation to the appropriate forum, that is, the state government or the Pay Commission. He held that the High Court in its writ jurisdiction cannot take upon itself the responsibility of giving higher scales of pay claimed by the writ petitioners. Feeling aggrieved, the respondents filed an appeal (FMAT No. 2453 of 1987).

7. During the pendency of the appeal, Inspectors-AMW, through their association, made a representation before the Third Pay Commission seeking several reliefs. The Third Pay Commission made its recommendations on 31.12.1988 expressing the view that the existing scale of pay of the Inspectors - AMW, was just and proper and there was no need to upgrade them to a higher pay scale. Therefore, the Pay Commission recommended Pay Scale No. 9 corresponding to the old Pay Scale No. 9 (that is Rs. 380-910 revised as Rs. 1260-2610).

8. Inspectors-AMW and some other aggrieved categories of employees submitted their representations in regard to their grievances against the recommendations of the Third Pay Commission. The State Government therefore, appointed a Pay Review Committee to consider the various representations relating to anomalies. The said Committee, after considering the grievances of the respondents made the following recommendations:

As the same time, however, the Second Pay Commission considered upward revision of pay of quite a large number of post which were in the scale of Rs. 300-600 (as per ROPA Rules 1970) and recommendation the scale of Rs. 380-910. Many Departments have written to us for upward revision of the scale of pay of such posts. In particulars, the Labour Department have recommended upward revision of the scale of pay of posts belonging to West Bengal Subordinate Labour Service from Rs. 380-910/- to scale No. 10 (which corresponds to the unrevised scale No. 11 i.e. Rs. 425-1050). Many of these posts are filled up by promotion cum UDC and other employees drawing pay in Scale No. 9 i.e. 380-910 (as per ROPA Rules 1981).

As per ROPA Rules 1970, the scale of pay of UDCs was Rs. 330-550. The posts referred to in the first paragraph are undoubtedly of higher status than the posts of UDCs. This is corroborated but the fact that the qualification for direct recruitment to these posts are not less than a degree of a recognised university and here the post can only be filled up by promotion and the feeder posts in

many cases are the posts carrying the scale of pay of the UDCs. It is, therefore, felt that a large number of anomalies can be avoided if the revised scale No. 10 (which corresponds to the unrevised Scale No. 11) is allocated to all posts which were in the scale of pay Rs. 300-600 and in some cases Rs. 300-600 with higher initial start at Rs. 330 (as per ROPA Rules 1970) and which were allocated scales of pay less than Scale No. 11 i.e. Rs. 425-1050 in the WBS(ROPA) Rules 1981.

We, therefore, strongly recommend that all the posts which were in the scale of pay of Rs. 300-600 and in a few cases Rs. 300-600 with higher initial start at Rs. 330 and which were awarded the pay scale lower than Rs. 425-1050 as per WBS(ROPA) Rules 1981 may now be awarded the revised scale No. 10 with effect from 1.1.86.

9. The State Government decided not to accept the recommendations of the Pay Review Committee and continue the posts of Inspectors --AMW in Pay Scale No. 9, that is, Rs. 1260-2610. The relevant portion of the said decision (file note) is extracted below:

After careful consideration we have come to the conclusion that the existing scales of pay of these posts are just and proper. Hence we recommend for them, our suggested scales of pay corresponding to their present scales.

Thus it appears that the Third Pay Commission which is a specialised body did not consider it necessary to recommend any upgradation of the scale of pay for the post of Inspector of Agricultural Minimum Wages. The Government accepted the recommendation of the Third Pay Commission and prescribed a revised scale No. 9 (1260-2610) for the post of Inspector of Agricultural Minimum Wage.

The matter was referred to the Pay Review Committee. The Pay Review Committee recommend Scale No. 10 i.e. Rs. 1380-2970 for the post of Inspector of Agricultural Minimum Wages. But this recommendation actually follow from a general recommendation that posts of Inspectors and equivalent which were borne in the scale of pay of Rs. 300-600 as per WBS (ROPA) Rules, 1970 and for which the minimum recruitment qualification is a graduation degree of a recognised University or equivalent should be on scale No. 10 (Rs. 1390-2970). It is, therefore, apparent that the Pay Review Committee did not recommend Scale No. 10 specifically for the post of Inspector of Agricultural Minimum Wages after taking into consideration duties and responsibilities attached to the post. The State Government has not accepted the general recommendation of the Pay Review Committee in regard to the revision of the scale of pay of the post of Inspectors and equivalent which were borne in the scale of pay of Rs. 300-600 as per WBS (ROPA) Rules, 1970 and for which the minimum recruitment qualification is graduate degree of a recognised university. This being the position, any upward revision of the scale of pay of the post of Inspector of Agricultural Minimum Wages will have serious repercussions. The Government is, therefore, unable to accept the recommendation of the Pay of the Pay Review Committee in regard to the revision of scale of pay of the post of Inspector of

Minimum Wages. Accordingly the post should continue to be on scale No. 9 i.e. Rs. 1260-2610.

10. The rules regarding the recruitment of Inspectors -- AMW were amended on 5.6.1995 and these posts were brought under the Labour Department. Consequently, the West Bengal Sub-ordinate Labour Service was also constituted on 23.6.1995 consisting of the following categories of posts: (i) Inspector of Shops and Establishment; (ii) Inspector of Minimum Wages; (iii) Inspector of Trade (Union); (iv) Labour Inspector; (v) Supervisor of Labour Welfare Centres under the Labour Directorate, West Bengal (pleased under the West Bengal); (vi) Inspector, Statistical Assistant, Investigator Scrutiny Assistant, Computer and Computing Investigation in the Statistical Section of the Labour Directorate West Bengal; and (vii) Agricultural Minimum Wages Inspector.

11. In the pending appeal, the respondents amended their writ petition on 8.12.1995 contending that the Third Pay Commission had not taken into consideration the duties and responsibilities of Inspectors-AMW, while recommending that they should continue in the same pay scale, that their grievance in regard to the anomaly was considered by the Pay Review Committee constituted to look into the anomalies and it had recommended that they should be assigned the higher Pay Scale No. 10 (Rs. 1390-2970) and that the State Government had wrongly refused to accept the same; and that they should, therefore, be granted unrevised Pay scale No. 11 (Rs. 425-1050) which corresponded to revised Pay scale No. 10 (Rs. 1390-2970).

12. The Fourth Pay Commission in April 1998 revised the existing pay scales and the new Pay Scale No. 9 was Rs. 4000-8850. In December 1999, the Fourth Pay Commission submitted the second part of its recommendation. Para 2.39.9 relating to Inspectors (AMW) is extracted below:

Inspectors of Agricultural Minimum Wages who are posted at the Block Level for enforcement of minimum wages in Agriculture and other schedule employments and other Labour Laws have demanded upgradation of their Scale of Pay. They are now in Scale No. 9. In view of their duties and responsibilities, we recommend Scale No. 10 for the post.

In view of it, the respondents filed an affidavit in the pending writ appeal submitting that as the Fourth Pay Commission has recommended pay scale No. 10 for the post of Inspectors (AMW) and that though the State Government had accepted the recommendation in regard to several other posts, it had not accepted the recommendation relating to Inspectors-AMW.

13. On 27.1.2005, the Division Bench allowed the writ appeal, set aside the order of the learned single Judge and directed as follows:

The petitioners be given the same scale from the respective date as were given to their counterparts, namely, the four posts under RPA 1981 as well as the corresponding scale under RPA 1986 and the same scale that would be given to

those four posts under the Fourth Pay Commission; and accordingly their pay be fixed and the difference/arrears be paid to the petitioners within six months from the date of service of a certified copy of this order; and be paid accordingly so far as their current salary is concerned in the same scale together with all consequential benefits as are available in law to the respective petitioners.

The said order is challenged in this appeal by special leave.

14. On the contentions urged, the following questions arise for consideration:

(1) Whether the respondents were entitled to the reliefs sought in the writ petition as originally filed?

(2) Whether the respondents are entitled to higher pay scale on the basis of the recommendations of the Pay Review Committee made in the year 1990?

(3) Whether the respondents are entitled to higher pay scale as per the recommendations of the Fourth Pay Commission and, if so, from what date?

Re : Question (1)

15. 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 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. 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. The burden to prove disparity is on the employees claiming parity - vide *State of U.P. and Others Vs. Ministerial Karamchari Sangh*, ; *Associate Banks Officers' Association Vs. State Bank of India and Others*, ; *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, ; *State of Haryana and Another Vs. Tilak Raj and Others*, ; *S.S. Chandra v. State of Jharkhand* 2007 (8) SCC 299; *U.P. State Electricity Board and Another Vs. Aziz Ahmad*, .

16. What is significant in this case is that parity is claimed by Inspectors-AMW, by seeking extension of the pay scale applicable to Inspector (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) not on the basis that the holders of those posts were performing similar duties or functions as Inspectors-AMW. On the other hand, the relief was claimed on the ground that prior to RPA Rules 1981, the posts in the said three reference categories, and Inspectors-AMW were all in the same pay scale (Pay Scale No. 9), and that under RPA Rules 1981, those other three categories have been given

a higher Pay Scale of No. 11, while they - Inspectors-AMW - were discriminated by continuing them in the Pay Scale No. 9. The claim in the writ petition was not based on the ground that subject post and reference category posts carried similar or identical duties and responsibilities but on the contention that as the subject post holders and the holders of reference category posts who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.

17. It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust. The respondents have neither pleaded nor proved that the holders of post of Inspectors (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of Inspector-AMW. Hence, the prayers in the original writ petition could not have been granted. In fact, that is why the learned single Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by expert bodies and the remedy of the respondent was to give a representation to the concerned authority and the court cannot grant any specific scale of pay to them.

Re : Question (2)

18. The Third Pay Commission did not accept the representation of the Inspectors-AMW seeking a higher pay scale. It held that they are entitled only to Pay Scale No. 9. When the respondents made a grievance in that behalf, it is no doubt true that the Pay Review Committee considered the representation and made a recommendation that the posts which were in the pay scale of Rs.

300-600 including those which were in the same pay scale but started with a higher initial start of Rs. 330, should be granted the scale of pay of Rs. 425-1050, as per RPA Rules 1981. The said Committee did not take note of the fact that different posts having the same pay scale, may have different duties and functions and some may deserve a higher pay scale than the others. The Government rejected the recommendation of the said Committee, for valid and justifiable reasons. The State Government categorically stated that the Pay Review Committee's general recommendation that all posts carrying a particular scale of pay should all be given automatically the same higher pay scale could not be accepted, as the Committee did not make the recommendation after considering the duties and responsibilities attached to different categories of posts. Therefore, we are of the view that the State Government was justified in acting on the recommendation of the Third Pay Commission and rejecting the recommendation by the Pay Review Committee.

Re : Question (3)

19. The Fourth Pay Commission has recommended in 1999 that the Inspectors-AMW should be extended the benefit of Pay Scale No. 10. In view of the pendency of the dispute relating to pay scale in the appeal before the High Court, the Government did not take a final decision on the recommendation of the Fourth Pay Commission insofar as the post of Inspectors-AMW.

20. When the matter came up today, learned Counsel for the State submitted on instructions that the State is willing to accept the recommendation of the Fourth Pay Commission and extend the higher Pay Scale No. 10, notionally with effect from 1.1.1996. He also submitted that in the case of several other posts, where similar recommendations had been made, while notional effect was given for the revised pay scale with effect from 1.1.1996, actual financial benefits were given with effect from 1.1.2008; and that the State Government will be willing to give similarly, actual effect (financial benefits) to Inspectors-AMW from 1.1.2008. In view of the said submission, it is unnecessary to examine the third question on merits.

21. For the reasons aforesaid, we allow this appeal and set aside the impugned order of the Division Bench of the Calcutta High Court. However, in view of the submission made by the State Government, we direct the State Government to extend the benefit of Pay Scale No. 10 (4500- 9700) to the Inspectors - AMW, to take effect notionally from 1.1.1996, with actual monetary benefits with effect from 1.1.2008. We make it clear that this will not come in the way of the respondents representing or challenging the date on which the actual effect has been given (1.1.2008) in accordance with law, if they want the actual effect from a date between 1.1.1996 and 1.1.2008.