

(1990) 08 CAL CK 0001
In the Calcutta High Court
Case No : F.M.A. No. 73 of 1987

State of West Bengal and Others

APPELLANT

Vs

Arabinda Bhattacharya and Another

RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39(d)

Citation : 95 CWN 825

Hon'ble Judges : S.K. Hazari, J;G.N. Ray, J

Bench : Division Bench

Advocate : Sadhan Gupta, for the Appellant; Milan Bhattacharya, for the Respondent

Judgement

G.N. Ray, J.—This application is directed against the judgment passed by the learned trial Judge in Civil Rule No. 5831(W) of 1981. By the aforesaid judgment, the learned trial Judge allowed the writ petition by directing the appellants to pay higher scale of pay to Sri Arabinda Bhattacharya and Sri R.N. Biswas, who are the respondents herein, with effect from 1961. It appears that Sri Arabinda Bhattacharya was appointed as Amin in the year 1955 in the Office of the Land Acquisition Department Birbhum on a scale of Rs. 50-60/. On 1st September, 1956, he was appointed as a Surveyor-cum-Draftsman in the pay Male of Rs. 55-100/. He, therefore, joined as Surveyor in 1958 and became seniormost in the Land Acquisition Office, Berhampore. Subsequently, he was transferred to Burdwan L.A. Office in 1973 and continued as a Surveyor. He has contended that because of his transfer, he was not taken into consideration for selection grade but the next man in Berhampore L.A. Office was given the selection grade and he suffered a prejudice for being deprived of the said selection grade. It is the case of Sri Bhattacharya that he was appointed subsequently as Surveyor in terms of Rule 4(i)(b) of the West Bengal Surveyore Temporary Service Rules. 1966. It has been contended by Mr. Bhattacharya that he was entitled to higher scale of pay in terms of the revision of pay scales in 1968 but he was fixed at a lower scale of pay of Rs. 100-140/-. Such scale was revised in 1970 under the 1970 Pay rules

and the petitioner was again discriminated and placed in a lower scale of Rs. 180-350/-. The petitioner made representations against such discrimination in 1962 and also in 1971 but such representations remained unanswered. The writ petitioner No. 2, Sri R.N. Biswas was initially appointed as Surveyor in the then East Bengal and after partition of the country, he came to West Bengal and was transferred to L.A. Department under the Collectorate Office at Burdwan and was placed in the scale of Rs. 55-100/-. In 1961, when the pay scales of the Government Servants were revised, he was fixed at the scale of Rs. 100-140/- and when such scales were further revised, he was again discriminated against and his representations remained unanswered. It has been contended by the writ petitioners that they being pre-1961 appointees the State Government cannot discriminate the petitioner with other pre-1961 surveyors in the matter of fixation of scales of pay since revised from time to time and the discrimination meted out to them offends Articles 14 and 16 of the Constitution of India. The writ petitioners, therefore, prayed for fixation of their scales of pay in the scale of Rs. 175-325/- and then in the scale of Rs. 300-600/- with effect from; 1970 and selection grade at Rs. 560-825/- with effect from. 1974 and to pay all arrear dues on the basis of such re-fixation. The learned trial Judge was of the view that, there was no reasonable basis to discriminate the writ petitioners with other, pre-1961 Surveyors and they were entitled to the scale of pay as was offered to such surveyors and in that view of the matter, he allowed the writ petition. Mr. Sadhan Gupta, the Learned Counsel appearing for the appellants has submitted that different scales of pay have been given to the surveyors on the basis of their educational qualification and professional expertise. He has submitted that Draftsmen and surveyors having different qualifications have been given different scales of pay. For the said purpose, the Draftsmen with the qualification of Overseer and Draftsmen with pass certificate from the Government College of Arts and its equivalent and Draftsmen with practical experience have been treated differently and have been given different scales of pay. Similarly, the surveyors with qualification of Overseer and Sub-Overseer having pass certificate from Government Art School or its equivalent and surveyors with practical experience have been treated differently and have been given different scales of pay. The Pay Commission being an expert Body have considered the qualification and expertise of different Overseers and Draftsmen on the basis of their educational qualification and professional training and on such consideration, have recommended different scales of pay. Such difference in the scales of pay have been upheld by successive Pay Commissions since 1961. Mr. Gupta has contended that simply because the petitioners were Surveyors prior to 1961, they cannot claim same scales of pay as were offered to other Overseers or Draftsmen because such employees have better educational and professional qualification. Mr. Gupta has submitted that duties and functions being performed by the different groups of employees may apparently appear similar but there may be difference both quantitatively and qualitatively and such difference depends on various factors including the educational qualification, professional expertise and experience. It is an accepted position in law that on

consideration of educational qualification, professional expertise and experience, employees though apparently performing similar duties can be given different scales of pay. By virtue of higher educational qualification, professional expertise and experience, an employee is capable of rendering the duties and functions qualitatively in a better" manner. Mr. Gupta has contended that evaluation of the duties and functions of different groups of employees when apparently it appears that they are discharging similar type of duties, require a close scrutiny and an in depth study of various factors. Such assessment should always be done by persons having expertise in the matter. He has contended that the Court of law is not equipped with the expertise, necessary for such evaluation and as a matter of policy, the Court should refrain from evaluating the same. Mr. Gupta has submitted that the Supreme Court in no uncertain term has indicated that such evaluation should be made by Expert Bodies like Pay Commission etc. and the Court should not tinker with such evaluation when made by Expert Bodies but unfortunately, the learned trial Judge has attempted to evaluate the performance of Surveyors having different educational and professional expertise and on such evaluation has come to the finding that the writ petitioners have, been discriminated ever since 1961 because they perform duties and functions similar to the other Surveyors overlooking the fact that the other Surveyors have better educational and professional qualification and as such they are expected to perform their duties in a more efficient manner. In this connection large number of decisions of the Supreme Court have been cited by Mr. Gupta and reference may be made to the decision made in the case of State of Uttar Pradesh vs. J.P. Chowrasia, reported in AIR 1989 SC 19 and the decision made in the case of Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, . He has also referred to the decision of the Supreme Court made in the case of Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, Mr. Gupta has also relied on the decision of the Supreme Court made in the case of Tarsen Ali Goutam vs. State Bank of Patiala, reported in AIR 1981 SC 30 . It has been held in the said decisions that the doctrine of "equal pay for equal work" is not a fundamental right and Article 39(d) read with Articles 14 and 16 of the Constitution of India enjoins the State that where all things are equal, persons holding identical posts should get similar pay for similar work. The Supreme Court has, indicated that such doctrine is riot an abstract one and it is open to the State to prescribe different scales of pay having regard to the educational qualification, duties and responsibilities. The Supreme Court has also highlighted that qualitative difference in regard to the degrees of responsibilities can also be a factor giving different scales of pay. It has been indicated by the Supreme Court in the decision in J.P. Chowrasia's case that in the matter of evaluation of a post, determination by Expert Bodies like Pay Commission cannot be whittled down. Such Expert Bodies would be the best judge to evaluate the nature and duties of the post and the Court should not tinker with such determining unless it is shown that it was made on extraneous consideration. The Supreme Court has also held that while considering the doctrine of "equal, pay for equal work", it has to be borne in mind that it is open to the State to

classify the employees on the basis of qualification, duties and responsibilities of the concerned posts. If the relevant factors have a reasonable basis and/or nexus with the objective sought to be achieved, the State would be justified in prescribing different scales of pay. Mr. Gupta has contended that educational qualification has been held to be a valid basis for classification between different groups of employees and in this connection, he has referred to the decisions of the Supreme Court made in the cases of *State of Mysore and Another Vs. P. Narasing Rao*, ; *The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another*, and *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . Mr. Gupta has, therefore, contended that the writ petitioners not possessing same educational qualification and professional expertise as in the case of others Surveyors or Draughtsmen, who have been given higher scale of pay, cannot claim similar scale of pay and the learned trial Judge has misconceived the doctrine of "equal pay for equal work" by overlooking that such doctrine is dependent on various factors, which make the incumbent of a post dissimilar to another incumbent of the same post on account of educational qualification, professional expertise etc. He has, therefore, submitted that the judgment of the learned trial Judge should be set aside by allowing this appeal.

2. Mr. Milan Bhattacharya, the Learned Counsel appearing for the writ petitioner-respondents has, however, submitted that the appellants were parties to the writ petition but they failed and neglected to produce appropriate materials before the learned trial Judge to substantiate that there were justifications in giving different scale of pay to the writ petitioners. It was only in this appeal, fresh materials have been sought to be produced in an attempt to improve the case. He has referred to the decision of the Supreme Court made in the case of *Bharat Singh and Others Vs. State of Haryana and Others*, for contending that a party raising a point must plead not only relevant facts but also state facts by way of evidence in proof of facts pleaded. He has contended that the appellant's are trying to make a new case to uphold the discriminatory scales of pay on the score of difference in educational qualification although such case was not sought to be made out before the learned trial Judge. Mr. Bhattacharya has also referred to the decision of the Supreme Court made in the case of *M/s. Mackinnon Mackenzie and Co. Ltd. Vs. Audrey D'costa and another*, in support of the contention that in sustaining the difference scales of pay, a broad based principle is to be followed. He has contended that in order to defeat a just claim of the writ petitioners, the appellants are trying to take resort to a technical view that there is a possibility of qualitative difference in output of work. Such an attempt should not be allowed by the Court of appeal. It may be noted in this connection that Mr. Gupta appearing for the appellants has also submitted that not only the writ petitioners are not entitled to get higher scale of pay as held by the learned trial Judge, the decision given by the learned trial Judge is likely to open a floodgate of litigation, encouraging large number of employees in various departments of the State Government to institute similar legal proceeding for higher scale of pay. Mr. Bhattacharya has submitted that opening of a floodgate

of litigations because of a decision on merit in a particular case cannot be any concern for the Court if justice in the case warrants the decision. In this connection, he has referred to the decision of the Supreme Court reported in AIR 1982, SC 189 where it has been held that if in law, a relief is to be given, the consequence should not be concern of the Court. Mr. Bhattacharya has contended that there cannot be any dispute with the legal propositions since well settled by the decisions of Supreme Court that on the basis of difference in the qualitative output of the work rendered by two sets of employees apparently performing similar duties, a different scale of pay may be given by treating them not similarly circumstanced but in the instant case, there is no material to substantiate that there is really any difference. It is only unfortunate that on successive occasions, the Pay Commissions have recommended different scales of pay without making any conscious application of mind to the relevant facts. He has submitted that the learned trial Judge has given cogent reasons in upholding the claim of the Writ petitioners and the decision being fair and just, should not be interfered with in this appeal. After considering the respective contentions of the Learned Counsels appearing for the parties, it appears to us that the position in law in the matter of different treatment of the employees on account of qualitative difference in the output of work is well settled and summarised in the decisions referred to hereinbefore. On the basis of educational qualification and professional expertise, persons holding similar posts may be treated differently in the matter of scales of pay. Articles 14 and 16 have inbuilt flexibility and a rational difference in the nature of work from the quantitative and qualitative aspect can be objectively evaluated. The Supreme Court has indicated that such evaluation should be left to the Expert Body having competence to evaluate the duties and functions of a post and Pay Commission has been held to be an Expert Body having competence to make such evaluation. It appears to us that different scales of pay have been recommended by successive Pay Commissions not on any extraneous condition but on the basis of educational qualification and professional expertise. In our view, on such qualification and professional expertise, it can be reasonably held that the qualitative nature of work of the holders of a post is likely to be different thereby warranting different scales of pay. Such difference in the capability in rendering qualitatively better performance makes the holder of the post dissimilar to another person holding the same post. When two incumbents are not similarly circumstanced and there is an objective basis to treat them not similarly circumstanced having nexus to the object for which the distinction is to be made, it will not be illegal to give different scales of pay to such employees and Articles 14 and 16 should not be offended for such different treatment. We are, therefore, inclined" to hold that by giving different scales of pay to the writ petitioners and other persons holding the same post having better educational and/or professional qualification, no illegality has been committed for which interference by the Writ Court is called for. We, therefore, allow this appeal and set aside the judgment passed by the learned trial Judge. It however, appears to us that the writ petitioners entered the service long back and they have either retired from service on super

annulations to are on the verge of retirement. They have rendered long and useful service to the State Government and it is reasonably expected that by their long experience, they have sufficiently acquired technical expertise similar to others having better technical qualification, we reasonably hope that the State Government will take into consideration the cases of the writ petitioners with sympathy and with a little humane approach and try to find out how best the grievances of the writ petitioners may be fulfilled, if necessary, by giving special personal pay to them so that they have the satisfaction that their long meritorious service has been recognised.

There will be no order as to costs.

S.K. Hazari, J.

I agree.