

(1998) 03 CAL CK 0041

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A.T. No. 689 of 1995

State of West Bengal and Others

APPELLANT

Vs

The West Bengal State Audio Visual Technicians Association
and Others

RESPONDENT

Date of Decision : 24-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39

Citation : (1998) 2 CALLT 154

Hon'ble Judges : Satyabrata Sinha, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Mr. L.K. Gupta and Mr. Jaydip Kar, for the Appellant; Mr. Kalyan Bandopadhyay and Mr. Kishore Dutta, for the Respondent

Judgement

S.B. Sinha, J.—This appeal is directed against a Judgment and order dated 28.4.94 passed by a learned single Judge of this court in C.O. No. 10522 (W) of 1991, whereby and whereunder the said learned Judge directed as follows:--

"In the circumstances, the respondents are hereby directed to give the petitioners cinema operators and others of the same category the aforesaid pay scale of Rs. 360-815 instead of their existing pay scale of Rs. 280- 617 and also to give the Assistant Operators and others belonging to the same category the immediately lower pay scale of Rs. 340-750. The respondents are directed to issue necessary administrative orders in that respect within a month from the date of communication of this order and thereafter the petitioners will be given fixation of pay including the subsequent fixation according to rules under the ROPA Rules, 1990. The petitioners shall be paid all arrears within 6 months from the date of communication of this order."

2. The fact of the matter is in a narrow compass.

3. The petitioners filled a writ application before this court claiming salary on a pay scale of Rs. 425-1050. In support of their aforesaid claim the petitioners had

placed before this court the nature of functions performing by them and importance of the said functions. They have also placed the pay scale of different categories of employees. The question as regards fixation of scale of pay came up for consideration before the Third Pay Commission and their scale of pay was fixed at Rs. 280-670. While disposing the writ application, a learned Judge of this court in his Order dated 29th July, 1988, *infer alia* held :-

"It has not been disputed by the respondents that the case of the petitioners was not considered according to the degree of skill, strain of work experience involved, training required, responsibility undertaken. Accordingly, I hold that the pay scale of the petitioners had not been fixed properly after taking into consideration the relevant facts as laid down by the Supreme Court in the aforesaid Judgment. In that view of the matter, I direct the respondents to deal with and dispose of revision of pay scale and conferring them the pay scale of Rs. 425-15-470-20-670-25-820-30-910-35-1050 which is annexure I to the petition, keeping in view the factors which were required to be taken into consideration as laid down by the Supreme Court in the case of *Delhi Veterinary Association v. Union, of India and Ors.* within three months from today. The Rule is disposed of accordingly. There will be no order as to costs. If the certified copy of the above order is applied for, the same should be given forthwith to the parties."

4. Pursuant to the aforementioned Judgment, the matter was considered by the Finance Secretary, who in terms of the order dated 5.6.89 as contained in annexure "G" to the writ application, did not find any ground for revision of scale of pay of the petitioners and thus rejected their representation. The instant writ application was there after filed by the writ-petitioners questioning the said order. The learned trial Judge keeping in view the Judgment of the apex court reported in *Delhi Veterinary Association Vs. Union of India (UOI) and Others*, and *Paschfmftanga Rajya Krishi Prajukt Sahayak Samtty v. State of West Bengal* reported in 1993(1) CLJ 295 proceeded to compare the work performed by the petitioner vls-a-vls the other employees and came to the aforementioned conclusion. The learned trial Judge also commented that the Secretary of finance committed an error in holding that the petitioners are not entitled to the said scale of pay as he failed to take into consideration as to what other scale of pay would have been suitable for them . The learned trial Judge further took into consideration the fact that even an Oil Engine Mechanic had been given a higher scale of pay to that of the petitioners.

5. Having heard the learned counsel appearing on behalf of the parties, we are of the opinion that this court in exercise of its jurisdiction under Articles 226 of the Constitution of india cannot usurp the role of expert committee. The State Government has constituted Pay Commissions which is the expert body for fixation of scale of pay. Such fixation of a scale of pay, it goes without saying, has to be done upon proper Job evaluation, qualifications, experience and other relevant factors, A person can claim the same or a higher scale of pay only if the Jobs performed by both the categories are comparable not only in respect of

quantum of work but also experience, qualifications, mode of recruitment and several other relevant factors. The apex court recently in *Associate Banks Officer's Association v. State Bank of India & Ors.* reported in AIR 1998 SC 32 has held that unless persons claiming equal pay for equal work are in comparable position considering the responsibilities of the other unit, the said doctrine cannot be taken resource to nor the provisions of Articles 16 and 39(d) of the Constitution of India would apply. We, however, find some force in Mr. Bandopadhyay's argument that the order dated 29.7.93 passed by B.P. Banerjee, J,. In the earlier writ application filed by the petitioner should have received serious consideration at the hands of the Secretary, Finance Department of the State of West Bengal.

6. We are, therefore, of the considered view that the interest of Justice will be sub-served if the cases of the petitioner be considered afresh by the 4th Pay Commission which body has been constituted by the State of West Bengal and the said Commission being an expert body, in our opinion, would not only be in a position to fix proper revised scale of pay so far as the petitioners are concerned, but would also be in a position to consider keeping in view the relevant factors as to what scale of pay the petitioners ought to have fitted in when the Second and Third Pay Commissions submitted their report. In the event, the said Commission comes to the conclusion that the petitioners have been meted with injustice and keeping in view the fact that their qualifications, experience, source of recruitment etc. they, since the very inception, were entitled to a higher scale of pay and they were unjustly deprived therefrom, it would be open to them to make recommendation of higher scale of pay with retrospective effect. Such recommendation may be considered by the State of West Bengal in its proper perspective and while doing so, the learned members of the Commission may consider the writ petition and the other relevant materials placed before them and if it is considered necessary, one of the representative of the writ petitioner association may also be heard.

7. We have passed the aforementioned order keeping in view the fact that when an expert committee is already in seisin and has been undertaking a similar job for the purpose of revision of scale of pay, the recommendation of the said Commission in terms of this order shall go a long way in mitigating sufferance of the petitioners getting proper benefit. The State Government shall also furnish relevant particulars before the Pay Commission in this regard.

8. For the reasons aforementioned, this appeal is allowed tn part and the writ petition of the petitioners are disposed of with the aforementioned directions,

9. Let a plain copy of the operative portion of this Judgment duly countersigned by the Assistant Registrar(court) be handed over to Mr. Jaydip Kar, learned counsel for the appellant on usual undertaking.

Xerox certified copy of this Judgment, if applied for urgently, should be supplied on priority basis.

K.J, Sengupta, J.

10. I agree.

11. Appeal allowed in part