

(1990) 08 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A.T. No. 3612 of 1986

State of West Bengal and Others

APPELLANT

Vs

West Bengal Process Server's Central Association and Others

RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1990) 2 CALLT 251

Hon'ble Judges : Sachi Kanta Hazari, J;Ganendra Narayan Ray, J

Bench : Division Bench

Advocate : Arun Motisal and Sekhar Mustafi, for the Appellant;K.K. Moitra and A. Lahiri, for the Respondent

Final Decision : Dismissed

Judgement

Ganendra Narayan Ray, J.—This appeal is directed against the judgment dated September 24, 1986 passed by the learned trial Judge in Civil Rule No. 5131 (W) of 1981. By the said judgment, the learned trial Judge allowed the writ application and issued direction to treat the Process Servers who are the writ petitioners at part with the Seal Bailiffs servings in the City Civil and Sessions Court at Calcutta as well as the Presidency small Causes Court at Calcutta and to give the writ petitioners, the same pay scale, which was being enjoyed by the Seal Bailiffs with effect from April 1, 1981. The learned trial Judge also gave direction to pay arrear dues to the writ petitioners on re-fixation of their pay scales within a period of 60 days of the re-fixation of the pay scales. Being aggrieved by the said judgment, the State of West Bengal and the Secretary, Finance Department, Government of West Bengal have preferred the instant appeal.

2. The writ petitioners were the West Bengal Process Server Central Association represented by its General Secretary and also some of the Process Servers serving at different stations in West Bengal. The Writ petitioners contended that the main duty of the process servers is the execution of orders passed by the

Civil and Criminal Courts, statutory Tribunals and other Judicial and/or quasi-judicial Institutions. The process servers execute the orders, decrees or warrants issued by different Courts and Tribunals including District Courts and Courts of the Sub-ordinate Judges, Munsifs, Judicial Magistrates and other statutory Tribunals and Revenue Courts. It has been contended that in course of executing the orders of the Revenue officers, the Process Servers are required to realise the revenue of the defaulters and deposit the same in different Nationalised Banks. There is no limitation on the amount for such a realisation in execution of decree. It has been contended that the process Servers discharge a very responsible duty even at the cost of personal safety and security in protecting and securing large amount of money to be deposited at a later date. In course of such execution of decree the Process Servers also act like a Receiving Officer and issue proper and valid receipts on behalf of the Government of West Bengal. In Paragraphs 11 and 11 (a) of the writ petition, the duties discharged by the Process Servers have been enumerated. It has been further stated by the writ petitioners that as the Process Servers are entrusted with the job of the realisation of decretal amount or revenue in execution of decrees and certificates issued by the appropriate authorities, the Process Servers are required to furnish a cash security for Rs. 2500/- and a fidelity bond for Rs. 700/- and a guarantee for Rs. 1500/-. The writ petitioners have contended that the duties to be discharged by the Seal Bailiffs attached to the City Civil and Sessions Court at Calcutta and Presidency Small Causes Court, Calcutta are similar to the duties performed by the Process Servers attached in other Courts or Tribunals. The Process Servers and the Seal Bailiffs perform similar onerous duties and there is no difference in the quantitative and qualitative nature of duties being performed by both the said employees of the Government. It has been contended that unfortunately, although Process Servers and the said Seal Bailiffs perform similar duties, they have not been treated similarly in the matter of scales of pay and higher scale of pay has been offered to the Seal Bailiffs. Such discrimination, according to the writ petitioners, is without any basis whatsoever and offends Articles 14 and 16 of the Constitution of India. It has been contended in the writ petition that despite representations and demands made by the process Servers Central Association to remove the discrimination in the matter of pay scales and to fix the pay scale of the Process Servers at par with the Seal Bailiffs, the Government of West Bengal failed and neglected to undo the discrimination meted out to the process Servers.

3. The learned trial Judge has, inter alia, held that there was no materials to establish that the Process Servers and the Seal Bailiffs were not similarly circumstanced and they had not been performing identical nature of duties. Accordingly on the principles of "Equal Pay for Equal Work", which is a well-settled doctrine of law, and a solemn assurance in the Constitution, the Process Servers must get pay scale equal to the pay scale given to the Seal Bailiffs. The learned trial Judge has also held that simply because the Seal Bailiffs submit their returns in English and the Process Servers submit their returns in regional

language, there is no difference in the nature of the duties being performed by them. The learned trial Judge has come to the finding that any discrimination in the matter of pay scales given to the Seal Bailiffs and to the Process Servers is totally arbitrary and without any basis. In that view of the matter, the learned trial Judge allowed the writ petition and passed the direction as indicated hereinbefore.

4. Mr. Motilal, the learned Counsel appearing for the appellants has very strongly contended that the Seal Bailiffs and the Process Servers are not similarly circumstanced. Because of the intricate nature of duties required to be performed by the Seal Bailiffs, the minimum educational qualification for the Seal Bailiffs is higher than that of Process Servers. He has submitted that even if it may apparently appear that the Process Servers and the Seal Bailiffs are performing similar nature of duties, there may be real distinction in the qualitative aspect of the duties being performed by the two sets of employees. He has submitted that various factors are required to be taken into consideration for determining the exact nature of duties being performed by a particular group of employees. Such exercise should not be made by the Court of law must be left to the expert bodies, who have the expertise to evaluate the nature of duties being performed by the concerned employees. Mr. Motilal has submitted that the Pay Commission has taken into consideration of the representations made by the Process Servers for getting equal scale of pay but has not accepted such demand. The Supreme Court has held that the Pay Commission is an Expert Body competent to evaluate the nature of duties being performed by different groups of employees. He has submitted that the Pay Commission is composed of persons having expertise in different fields. Such Pay Commission on consideration has not come to any conclusion that the duties being performed by the Process Servers are similar both quantitatively and qualitatively with the duties being performed by the Seal Bailiffs. Precisely, for the said reasons, the Pay Commission has not recommended the same scale of pay to the Process Servers. He has submitted that the question of "equal pay for equal work" has often troubled the High Courts and Supreme Court and various decisions have been made. If a reference is made to such decisions it will be quite apparent that the High Courts and the Supreme Court have laid down that there may be difference in the qualitative output of the work of the concerned employees and on such consideration, the employees can be treated differently in the matter of giving different scales of pay. Educational qualification has been accepted to be a basis for different scales of pay in appropriate cases, on the footing that persons having better educational standard are likely to give better qualitative work. In this connection, Mr. Motilal has referred to a very recent decision of the Supreme Court made in the case of AIR 1989 29 (SC) In the said case, the duties being performed by Technicians Gr-II and Gr-III were taken into consideration and it has been held that although apparently-the duties being performed by the said two "groups of Technicians may appear to be the same but there is qualitative difference in the output of the work. He has also referred to another decision of

the Supreme Court made in the case of Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, . In the said decision, question of scales of pay amongst the Stenographer" in Customs and Excise Departments and Stenographers in Central Secretariat were taken into consideration but it has been held by the Supreme Court that there may be different in the quality of the work and the responsibility required to be maintained amongst the different groups of Stenographers and for that reason different scale of pay may be given without offending the rule of equality guaranteed by the Constitution of India. He has also referred to another very recent decision of the Supreme Court made in the case of S.C. Employees Welfare Association v. Union of India reported in . Similar view has been expressed by the Supreme Court in the said decision. Mr. Motilal has also referred to another decision of the Supreme Court made in the case of State of Uttar Pradesh v. J.B. Chowrasia reported in AIR 1989 S.C. 19 where also a similar view has been taken by the Supreme Court. Mr. Motilal has, therefore, submitted that the Seal Bailiffs attached to City Civil and Sessions Court at Calcutta and the Presidency Small Causes Court at Calcutta, where complicated cases are decided and in execution of various orders passed by such courts the Seal Bailiffs are to discharge more onerous duties and responsibilities. Such duties and responsibilities are not always required to be performed by the Process Servers, who are attached to different Court and Tribunals. As more onerous duties are required to be performed by the Seal Bailiffs, the minimum educational standard for recruitment to the post of Seal Bailiffs is higher. Mr. Motilal has submitted that unfortunately, the learned trial judge has tried to be evaluate the duties and responsibilities being performed by the Seal Bailiffs and the Process Servers and on the basis of his own assessment of such evaluation, the impugned judgment has been passed by the learned trial judge. Mr. Motilal has submitted that if on the basis of the materials produced in the writ proceedings, the learned trial judge was not satisfied that sufficient materials have been placed before the Court to establish that there was no difference either quantitatively or the qualitatively in the duties performed by the said two groups of employees, the learned trial Judge should have referred the matter for assessment by an Expert Body.

5. It may be stated in this connection that the matter was taken up for hearing and the matter was adjourned on the prayer of Mr. Motilal to enable the appellants to furnish the materials alleged to have been placed before the Pay Commission so as to establish that the relevant materials for evaluating the nature of duties by the said two groups of employees had been taken into consideration by the Pay Commission. But despite adjournment taken, such records have not been placed before the Court.

6. Mr. Moitra, the learned Counsel appearing for the writ petitioners-respondents, in his fairness has submitted that there may be a case when apparently the nature and duties being performed by the two sets of employees may appear to be similar but on closer scrutiny, it may transpire that there is qualitative

difference in the nature of duties and for such qualitative difference in the nature and duties, a different scale of pay may be given to a group of employees performing onerous duties. Mr. Moitra has however submitted that the law is well-settled by the High Courts and the Supreme Court of India that on the basis of higher academic qualification and/or professional expertise and length of experience an employee is capable of rendering the duties in a better way and the qualitative output of such duties may be different from the duties performed by other group of employees lacking in such educational qualification, professional training or other expertise and experience. In such circumstances, it will not be unjust to give different scales of pay to the employees performing duties and responsibilities, which though apparently appear to be similar, are basically dis-similar either on quantitative aspect or on qualitative aspect of the matter. But Mr. Moitra has submitted that a bald statement to the effect that the duties and responsibilities are dissimilar, cannot be accepted by a Court of law. The writ petitioners have enumerated the nature of duties being performed by the Seal Bailiffs which reveal that the duties are similar. It was the bounden duty of the respondents in the writ proceeding, who are the appellants in this appeal to establish by placing relevant materials before this Court that the nature of duties are difference and such difference has been evaluated by the Expert Body.

7. Simply because the Pay Commission has not recommended for similar scale of pay, it cannot be held as a matter of course that the Pay Commission being an Expert Body has considered the relevant materials and on proper evaluation of the nature and duties of the Process Servers and Seal Bailiffs, has recommended different scales of pay. Mr. Moitra has submitted that in the writ proceeding before the learned trial judge, proper materials should have been placed but for reasons best known to the State Government, such materials have not been placed before the learned trial judge. Although, normally, the court of appeal should not give the liberty to improve the case by placing relevant materials at the stage of hearing this appeal, such opportunity has been given on the prayer of Mr. Motilal. But no material has been placed even before the Court of appeal to substantiate that there are relevant factors for holding that the duties and functions of the said two sets of employees are dissimilar and any Expert Body, including the Pay Commission, has considered such relevant materials. He has, therefore, submitted -that in the facts of this case, no interference is called for in this appeal

8. After considering the respective contentions of the learned Counsels appearing for the parties, it appears to us that the position in law relating to different scales of" pay to different groups of employees, who apparently perform similar duties and functions have been correctly placed by the learned Counsels for the parties. There is no manner of doubt that evaluation of difference in duties and functions require an indepth study of such duties and functions by an Expert Body having expertise for such evaluation and Court, should not embark upon such evaluation. But if no material is placed before the Court to indicate that there are differences in the nature of duties performed by the two groups of employees,

either quantitatively or qualitatively and it is also not established that an Expert Body has considered the relevant materials and has evaluated the nature of duties and on such evaluation has held that the duties and functions though apparently similar are not similar, the Court will not be unjustified in holding that there is no material warranting to hold that the duties and functions are dissimilar. A bald statement by the concerned authority that the duties are dissimilar, cannot always be accepted as correct. In the instant case, it appears to us that the appellants have failed and neglected to place relevant materials before the learned trial judge and also before the Court of appeal to substantiate that the nature and duties of the Process Servers and the Seal Bailiffs are different. In the circumstances, we do not think that the learned trial judge was wrong in holding that the scale of pay of the Process Servers should be the same as has been offered to the Seal Bailiffs with effect from April, 1981.

9. We, therefore, find no reason to interfere in this appeal and the appeal is accordingly dismissed without any order as to costs. We, however, give liberty to the appellants to give effect to the judgment passed by the learned trial judge within a period of 4 months from today.

S.K. Hazari, J.

10. I agree.