
(1988) 02 CAL CK 0023
In the Calcutta High Court
Case No : A.F.O.O. Tender No. 35 of 1987

State of West Bengal and Others

APPELLANT

Vs

West Bengal Supervisors" and Employees" Association and
Others

RESPONDENT

Date of Decision : 15-02-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 39

Citation : (1990) 2 LLJ 346

Hon'ble Judges : M.N. Roy, J;D.K. Basu, J

Bench : Division Bench

Advocate : Pabitra Kumar Basu, for the Appellant;Sakti Nath Mukherjee,
Lakshmi Kumar Gupta and S.L. Bindsaria for Respondent Nos. 1 and 2 and
Archana Sen Gupta, for the Respondent

Judgement

1. This application in the concerned appeal is at the instance of the appellants viz. the State of West Bengal and their authorities, and is for stay of operation of the judgment and order dated 28th November, 1986 as made and passed in C.O.No.3905 (W) of 1986, by a learned single Judge of this Court.

2. The writ petitioners/respondents (hereinafter referred to as the said Respondents) claimed to be the Supervisors in the whole-time employment of the Adult Education Project and it was their grievance in the proceedings that although all other members of the staff of the said Project have been given a time-bound scale of pay, such scale of pay has been refused to them and in that matter, they have been treated unequally by the authorities concerned. It was also claimed by the said Respondents that as such Supervisors, they, as attached to the Rural Functional Literacy Project under the concerned Directorate of Adult Education in the State, were and are entitled to have their pay, emoluments and scales fixed in the time-bound scale of pay and as such, they could not be given only a consolidated pay of Rs.500/-per month and they would also be entitled to all the benefits like the other regular whole-time employees of the State

Governments.

3. It was contended by the said Respondents, not only before the learned Trial Judge but also before us, that the appellants have practically arbitrarily discriminated them in the matter of payments, by paying them, even though they are attached to the Rural Literacy Project under the West Bengal Government, the consolidated sum of Rs.500/- as mentioned above, while the other employees doing the identical nature of work and they are attached to Farmers' Functional Literacy Project and Non-formal Adult Education Project, have been given the time-bound scale of pay. As such, the said Respondents have further contended all throughout that the entire action and the steps taken by the appellants herein, were, and are violative of equality and equal protection in the matter of public appointment under the provisions of the Constitution of India. There is hardly any dispute that the duties and responsibilities of the Project Officers attached to Farmers' Functional Literacy Project and those of the Non-formal Adult Education Programme, are really akin to those of the said Respondents as attached to the Rural Functional Literacy Project and the contentions of the said Respondents are correct, then the concerned arbitrary action or acts of the appellants herein, cannot be allowed to be continued.

4. There is also no doubt that under the National Adult Education Programme, necessary sanction was given for setting up an establishment of Rural Functional Literacy Project, in terms of a pattern approved by the Government of India in 14 Districts of this State, with 100% Central assistance and by an order of the Governor, the Joint Secretary to the Government of West Bengal, Education Department, on 8th January 1980, was directed to inform all concerned that the Governor was pleased to accord the administrative approval of the opening of one Rural Functional Literacy Project in all the districts of the State except in Calcutta at the specified rate per project and that too, in terms of the pattern as approved by the Government of India, by their notification dated 7th September, 1979 and really in terms thereof, such Project was to have 300 Adult Education Centres in the two contiguous Development Blocks. It would also appear that in terms of the sanction of the pattern as granted, seven categories of posts were created, of which first six categories have been provided with the time-bound scale of pay, whereas the said Respondents, who are Supervisors and in the 7th Category, have only been appointed at a monthly consolidated salary of Rs.500/-.

5. The different time-bound scales as granted to the first six categories of the employees as mentioned above, have not only been indicated in the records as produced with the application, which we are dealing now presently, but they have also been incorporated in the judgment and order as impeached.

6. Before the learned Trial Judge, on the basis of the pleadings, it was contended on behalf of the Respondents in the Rules, who are appellants herein, that the said Respondent writ petitioners having accepted Rs.500/- per month, being the consolidated remunerations, have no right to agitate over the matter again and put forward the necessary grievance, that they have not been granted time-

bound scale of pay. It was also contended by the said Respondent, appellants herein, not only before the learned Trial Judge but also before us that so far as the payment is concerned, they will have to abide by the decision of the Central Government and since the remuneration of the said Respondents at the rate of Rs.500/- per month is on the basis of the directions of such Government, the question of further grade of scale does not and cannot arise at all so far as the said Respondents or their scale of pay is concerned.

7. It was contended by the writ petitioners or the said Respondents not only before the learned Trial Judge but also before us that the decision of payment of monthly salary, even though was in accordance with the terms of the State Government's policy, but in taking such decision, they have indulged in arbitrary discrimination in the matter of due and appropriate fixation of salary of the said Respondents and as a matter of fact, the Central Government by their directives of June, 1979, has categorically directed that fixed salary be paid to all the Office Assistants, Accounts Clerks, Drivers as well as Peons, on the basis of an order dated 8/14th June, 1979. But such submission of the learned Advocate concerned was not accepted by the learned Trial Judge and on consideration and construction of the documents in question, he has really observed that the mention of average salary would not be indicative of the fact that there would be no scale of pay for the purpose of calculation of total quantum of grant, which is to be made available to the State Government under the concerned Programme. But, on consideration of the other submissions as put forward before him, on the question of deprivation in the matter of grant of grade under the self same Project and the differential treatment meted out to the said Respondents in respect of fixation of their scale, the learned Trial Judge has observed that there was, and is, substance in such submissions. While making such observations, he has recorded that there was no affidavit-in-opposition filed before him from the side of the Central Government in spite of opportunities being granted and it has also been recorded by the learned Trial Judge that State Government authorities also did not afford any opportunities to him in that respect, excepting that they only submitted that they have simply carried out the orders of the Central Government, in the matter of fixation of scale of pay of the said Respondents. While making his determinations, the learned Trial Judge has also not accepted the plea of the Respondent authorities before him that the nature of the concerned Project was a temporary one and according to him, the grant of consolidated rate of monthly emoluments to the said Respondents was not any improper and irregular, but the same was arbitrary and created discrimination in respect of the said Respondents in the matter of fixation of their scale of pay. He has of course recorded that the Project itself absorbed the entire staff on year to year basis and has not accepted the other submissions of the State Government authorities as recorded hereinbefore, that the said Respondents, because of their conduct would not be entitled to maintain the petition, was not accepted. It was further opined and observed by the learned Trial Judge that the said Respondents have received unequal treatment in the matter of their employment and fixation

of pay and such action was not only improper, but the same was arbitrary and contrary to all norms. The treating of a section of the employees viz. the said Respondents, differently from others in the matter of fixation of scale of pay, was also found to be bad.

8. In such circumstances, the learned Trial Judge has directed and ordered the Respondents before him, to consider the issue as regards the grant of time-bound scale of pay to the said Respondents as attached to the Rural Functional Literacy Project under the Directorate of Adult Education, Government of West Bengal, in the same line which has been given to all other types of employees and has also directed that such time-bound scale of pay be offered to the said Respondents with effect from 1st April, 1981 and they also be paid arrears, if any. The concerned payment has also been directed to be effected within a period of six months from the date of the order as made. The learned Trial Judge has made it clear that the scale of pay be fixed by the State Government in accordance with their usual practice.

9. The appeal in which the present application of stay is filed, was presented on 5th April, 1987. The main contention in this application by the appellants was that they have fixed the scale of pay of the respective sets of employees, strictly in terms of the pattern as indicated by the Central Government and as such, the scale of pay of the said Respondents has been fixed as Rs.500/-. It was also contended that under the scheme, the financial liability rested and rests with the Central Government, since the same is a sponsored project of the Central Government and the authorities concerned, who are appellants herein, have not made any arbitrary discrimination as alleged, in the matter of such fixation.

10. Mr. RK. Basu, appearing in support of the application, also contended that since the scale of pay in the cases as concerned, have been fixed strictly in terms of the directives or the patterns as mentioned and fixed by the Central Government, there has been no cause or any occasion for claiming any arbitrary discrimination in the matter of concerned fixation as made now by the Central Government. It was made clear by him that if the Central Government now directs fixation of the scale of pay in respect of the said Respondents, not at the rate of Rs.500/-, but also in the time-bound scale, then his clients would certainly give effect to such directions. In fact, Mr. Basu in his usual fairness stated that he also feels that the said Respondents, would also get the same benefits in the matter of fixation of their scale of pay like the other six categories, but his clients at the present moment and without the necessary sanction, were not in a position to take such steps and he made it clear that if the Central Government gives the necessary direction or sanction in the above line, then there would be no difficulty for his clients to fix the scale of pay of the said Respondents in the manner, as they have claimed now. Mrs. Sengupta, who appeared for Respondent 3 the Union of India, also made it known and clear to this Court, that her clients would approve the fixation of time-bound scale of pay in respect of the said Respondents, if the State Government authorities ask for

the same. In fact, it was Mr. Basu's specific and only submission, on the basis of the materials as produced, that there has been no arbitrary discrimination so far the said Respondents are concerned in the matter of fixation of their pay on which fixation has been made in terms of the Central Government's directives or the pattern as has been laid down by them.

11. In reply to the submissions as made by Mr. Basu, Mr. Mukherjee appearing for the said Respondents and opposing the application contended that those submissions were of little substance and assistance and when the said Respondents are performing the same duties and responsibilities like their other counterparts, so in all fairness and more particularly when a Government cannot act arbitrarily, in the matter of fixation of pay of two categories of employees, who perform the same or similar types of works and discharge the same responsibilities, fixing of two different grades or scales for two such categories was not proper. In fact, it was contended by him that in view of the character of their employment and the discharge of their duties, the said Respondents would be entitled to claim equal pay like their other counterparts, since as mentioned therein before, they are performing or discharging the same duties and obligations and also shouldering the same responsibilities.

12. In support of the submissions as above, Mr. Mukherjee referred to the case of *Bhagwan Dass v. State of Havana* 1987 II CLR 229, where the Supreme Court has observed that once the nature and functions and the work of two persons are not shown to be similar the fact that the recruitment was made on one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine. Thus where the supervisors in education department who are temporary Government servants selected from the cluster of a few villages only and the supervisors who are selected by the Subordinate Services Boards after competing with candidates from any part of the country and absorbed as regular Government servants perform similar kind of work, the temporary supervisors cannot be discriminated against in regard to pay scales. Whether equal work is put in by a candidate, selected by a process whereat candidates from all parts of the country could have competed or whether they are selected by a process where candidates from only a cluster of a few villages could have competed is altogether irrelevant and immaterial for the purposes of the applicability of "equal work for equal pay" doctrine. It has also been observed in that case that when the duties and functions discharged and work done by the supervisors appointed on regular basis and those appointed on temporary basis in the education department are similar, the fact that the scheme under which temporary appointments are made is a temporary scheme and the posts are sanctioned on an year-to-year basis having regard to the temporary nature of the scheme cannot be a factor which could be invoked for violating "equal pay for equal work" doctrine. Whether appointments are for temporary periods and the Schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of "equal pay for equal work" is attracted. Mr. Basu wanted to distinguish the

determinations as made in the case under reference in the facts of this case and contended that since the supervisors concerned in that reported decision were appointed by the State and that is not the case here, the observations as made therein, would not be applicable in this case. Such distinction, as sought to be drawn by Mr. Basu, appeared to us to be immaterial in the facts of this case. While on the point, we cannot also lose sight of the determinations in the case of *Surinder Singh v. The Engineer-in-Chief C.P.W.D.* (1986 1 LLJ-403), where the Supreme Court has observed that the persons employed on a daily-wage basis in the Central Public Works Department are entitled not only to daily wages but are entitled to the same wages as other permanent employees in the department employed to do the identical work. In this connection, it cannot be said that the doctrine of "equal pay for equal work", is a mere abstract doctrine and that it is not capable of being enforced in a Court of law. The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouths of the State and State undertakings.

13. On the basis of the observations of the Supreme Court as made in the above case under reference we also feel that the said Supervisors i.e. the said Respondents who are in the 7th category of the list would be entitled to claim a time-bound scale like the other six categories of employees and if that is allowed, the intentions and purpose of the Central Government in fixation of the pattern, which should not discriminate amongst the employees in the matter of their scales and grades of pay, will be duly served.

14. Thus, we find and hold too on the basis of the submissions as made by Mr. Basu and Mrs. Sengupta that there should be no difficulty for the said Supervisors to have their time bound scales in terms of the determinations as made by the learned trial Judge and that also, from the date as mentioned by him. So, we keep it on record that within four weeks from today, the appellants herein should ask for the necessary grant of the time-bound scale for the said respondents from the Central Government authorities, and if and when claim is made, the Central Government authorities, in terms of the submissions as made by Mrs. Sengupta should in all fairness, grant the appropriate time bound scale and not a fixed scale, so far as the said respondents are concerned, and that too also in terms of the directions as given by the learned trial Judge.

15. With the observations as above, we dispose of this application and for the view which we have expressed now, we feel that no useful purpose will be served by keeping the Appeal pending and as such, we treat the same as on day's list and the same disposed of also. Order accordingly.