
(2000) 08 GAU CK 0033
In the Gauhati High Court
Case No : Civil Rule No. 56 of 1993

Subhas Lodh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 07-08-2000

Acts Referred:

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

Citation : (2000) 3 GLT 56

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : B. Das and A. Bhattacharjee, for the Appellant; P. Deb Roy, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—The writ Petitioner was appointed as a Constable in the State Police Service on 28.9.1982. In this petition, he has sought for directions from this Court calling upon the Respondents to allow the Petitioner the scale of pay and allowances as Constable driver with effect from 17.10.82 and also to allow him graded pay scale at two stages with effect from the date when he had completed 10 and 18 years of service.

2. Heard Mr. B. Das, learned senior Counsel for the Petitioner. Mr. Das submitted that the Petitioner was appointed by the Superintendent of Police, South Tripura vide order dated 8.2.85 as Driver Constable against the existing vacancy and was further allowed him to draw driving allowance with effect from y 17.10.82. The said benefit given by the then Superintendent of Police was subsequently withdrawn by the State Government with retrospective effect and the amount paid as driving allowance was recovered from him. According to Mr. Das, the State Government having admitted in their affidavit-in-opposition that the Petitioner has been discharging the function of a Constable driver with effect from 17.10.82 cannot withdraw the benefit given to him by the then Superintendent of Police as it would amount to violation of the Petitioner's right

under Articles 14 and 16 of the Constitution. Mr. Das also to augment his above contention referred to a decision of the Supreme Court in *Grih Kalyan Kendra Workers' Union Vs. Union of India and others*, In Paragraph 6 of the above judgment the Supreme Court observed as follows:

6. Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive principles of State Policy as contained in Article 39(d) of the Constitution "equal pay for equal work" has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate, of equality in Articles 14 and 16 of the Constitution. Equal pay for equal work and providing security for service by regularising casual employment within a reasonable period has been accepted by this Court as a Constitution goal to our socialistic pattern. It has ceased to be a judge made law as it is the part of the constitutional philosophy which ensures a welfare socialistic pattern of a State Providing equal opportunity to all mid equal pay for equal work for similarly placed employees of the State. This Court has zealously enforced the fundamental right of equal pay for equal work in effectuating the constitutional goal of equality and social justice in a number of decisions. See: *Randhir Singh v. Union of India*, *Daily rated Casual Labour Employed under P and T Department v. Union of India*, *Dhirendra Chamoli v. State of U.P.*, *Surinder Singh v. Engineer-in-Chief, CPWD*, *R.D. Gupta v. Lt. Governor, Delhi Administration*, *Bhagwan Dass v. State of Haiyana*, *Jaipal v. State of Haryana* *T Dharwad District P.W.D. Literate Daily Wage Employees Association v. State of Karnataka*. Therefore, die principle of equal pay for equal work even in an establishment which is an instrumentality of a State is applicable to its full vigour.

3. It would appear from die aforesaid observation of the Supreme Court that the Principle of equal pay for equal work has been given the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality enshrined in Articles 14 and 16 of the Constitution. The Supreme Court also reiterated its" earlier decision with regard to equal pay for equal work providing for security of service by regularising casual employment within a reasonable period. The Supreme Court further observed that the above decision has ceased to be a judge made law as it is the part of the Constitutional philosophy which ensures a welfare socialistic pattern of a State providing: equal opportunity to all and equal pay for equal work for employees similarly situated.

4. It would appear from the averment in paragraph 14 of the affidavit-in-opposition of the State that the Petitioner, although appointed as a Constable, has been discharging the duties of a Constable driver with effect from 17.10.82. It further appears that the then Superintendent of Police allowed him driving allowance with effect from 17.10.82 by an order dated 12.4.85. This relief given by the Superintendent of Police was later on withdrawn by the State on the ground that it was the Assistant Inspector General of Police, who was authorised under the law to be the appointing authority of the Driver Constable and not the

Superintendent of police.

5. No where in the affidavit, the State has pleaded that the Petitioner is not competent and eligible to be a Driver Constable. Rather from paragraph 15, I find that the State has admitted that the Petitioner has duly completed the training in driving and maintenance at Central School of M.T. Border Security Force, Madhya Pradesh, However, by way of precaution, the State has pleaded that the Tripura Police Drivers (Recruitment and Conditions of Service) Rules, 1979 is not applicable in respect of the writ Petitioner and as such the post of Driver Constable which are to be filled up according to the provisions of the said Rules stand on the way of Petitioner's claim for time-scale in the post of Driver Constable. But this contention was not pressed during the course of argument.

6. The peculiar feature of the case is that the State has in clear language admitted that the writ Petitioner has been discharging the functions of the Driver Constable with effect from 17.10.82. This means that the State is availing of his services as Driver Constable from the very day he joined the service as Constable. It is perhaps on consideration of this aspect that the then Superintendent of Police vide order dated 8.2.85 allowed him to draw the driving allowance and also appointed him as Driver Constable. I do not find any material on record to indicate any lapse and deficiency on the part of the writ Petitioner for which he could have been deprived of the benefits given to him by the Superintendent of Police. He was holding an ordinary rank in the police hierarchy and he is not supposed to know the intricacies of the service laws. The Superintendent of Police was his immediate and Supreme Boss and the appointment order was issued by the Superintendent of Police. If there was any irregularity in issuing the appointment order, it was for the State to take due precaution to correct it at the very moment when it came to their notice, instead of withdrawing the benefits given to the writ Petitioner. Here, for the reasons given above. I think the decision of the Supreme Court in Grih Kalyan Case (supra) as quoted above comes to the aid of the writ Petitioner. The principle of "equal pay for equal work" definitely apply in the instant case since the Petitioner is still discharging the duties of a Constable Driver.

7. In this circumstances, I think this is a case where this Court in exercise of its power under Article 226 of the Constitution may direct the Respondent State to extend the benefits of driving allowance and that of the time-scale including graded pay scale as per rules to the writ Petitioner. Consequently, I allow this writ petition and direct the State Respondents to extend the benefits of the time-scale, driving allowance and other benefits as may be permissible under the rules with effect from 8.2.85, i.e., the day when he was appointed by the Superintendent of Police as Constable Driver. No order as to costs.