
(2005) 04 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 80 of 1999

Sukhendu Choudhury

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 309, 309

Citation : (2007) 4 GLR 305

Hon'ble Judges : T.Vaiphei, J

Bench : Single Bench

Advocate : K.N.Bhattacharjee, R.Debnath, S.Chakraborty, Advocates appearing for Parties

Judgement

1. In this writ petition, the petitioners are claiming parity of the pay scale with Assistant SubInspector of Police ("ASP") of the Police Department, Government of Tripura.
2. Heard Mr. K.N. Bhattacharjee, the learned senior counsel, assisted by Mr. R. Debnath, the learned counsel for the petitioners. I have also heard Mr. S. Chakraborty, the learned counsel for the Staterespondents.
3. To appreciate the controversy involved in this writ petition, the brief facts of the case may be noticed at the very outset. The petitioners are Foresters under the Forest Department, Government of Tripura. The petitioner No. 1 at the time of filing of this writ petition was posted as Forest Beat Officer, Ranirbazar Beat Office while the petitioner No. 2 was posted as Forest Beat Officer, Jampuijala Beat Office. In terms of the provision of Tripura Government Services (Revised Pay) Rules, 1975, which came into force from 1.3.1974, the prerevised pay scale of Rs. 125200 in respect of the Foresters stood revised to Rs. 240440 with an enhancement pay scale of Rs. 260495 after completion of 10 years of service. During the corresponding period, the revised pay scale of Rs. 125200 of the ASI under the Police Department also stood revised to Rs. 240440. Then, another Pay Revision was effected in the year 1.1.1982 when the Tripura Government

Services (Revised Pay) Rules, 1982, which came into force. In this revision of pay, the pay scale of Rs. 240440 of the Foresters got revised to Rs. 430850 and their pay scale of Rs. 260495 (after completion of 10 years of service) stood revised to Rs. 4701025. Similarly the pay scale of ASI also got revised from Rs. 240440 to Rs. 430850. Subsequently the pay scale had undergone another revision when the Tripura State Civil Services (Revised Pay) Rules, 1988 came into force. In this revised pay scale, the pay scale of the Foresters stood modified to Rs. 5501245 for the purpose of revision and the revised pay scale of the Foresters was accordingly fixed to Rs. 1,0202,620. However, the pay scale of ASI was modified to Rs. 5601300 for the purpose of revision and the pay scale was accordingly revised to Rs. 1,2502,890. This down gradation of the pay scale of the Foresters like the petitioners apparently caused heartburn, which led them to make a representation before the respondent authorities.

4. It would appear that acting upon the said representation, the State respondents referred the matter to the Pay Anomaly Committee constituted for the purpose. Unfortunately, before the Pay Anomaly Committee could finish their exercise, the Tripura Fourth Pay Commission came into being whereupon the function of the Pay Anomaly Committee stood transferred to the Tripura Fourth Pay Commission. It would further appear that the Fourth Pay Commission having regard to the nature of works, scale of responsibility, risk of works and other related features, recommended the pay scale of Rs. 1,2502,890 in place of Rs. 1,0202,620 for the Foresters so as to , maintain parity with the pay scale of ASI and accordingly recommended suitable amendment to the Revised Pay Rules, 1988. The State respondents after receipt of the report of the Fourth Pay Commission constituted a High Power Administrative Committee to examine the recommendation of the Fourth Pay Commission. To shorten the narration, the State respondents apparently did not accept the recommendation of the Fourth Pay Commission in so far as the proposed pay scale of the Foresters is concerned, which resulted in the filing of this writ petition. The contention of the petitioner is that since the Foresters and ASI are performing the same duties and responsibilities, the fixation of higher pay scale of ASI is discriminatory and unconstitutional. It is also contended by the petitioners that the down gradation of their pay scale qua the pay scale of ASI is unwarranted and not sustainable in law and that in the absence of cogent reasons, the State respondents is bound to accept the recommendation of the expert body constituted by themselves. It is, therefore, prayed that appropriate directions be issued to the State respondents to grant them the same pay scale of ASI on the principle of equal pay for equal works.

15. The State respondents resisted the writ petition and filed their counter affidavit wherein it is, inter alia, contended that the Foresters and the ASI cannot be equated inasmuch as they do not have the same functions or responsibilities. They also contended that the pay scale proposed by the Fourth Pay Commission is only recommendatory in nature and not binding upon them. According to the State respondents, they have duly considered the recommendation of the

Commission on the basis of the nature of works, degree of responsibility, recruitment policy, educational, qualification, risk of works, etc., associated with the post of Foresters and ASI and have come to the conclusion that the Foresters are not entitled to the pay scale of the ASI. Thus, the Staterespondents submit that the writ petition is without substance and is liable to be dismissed.

6. From the pleadings of both the parties, the following points have emerged for consideration :

(i) Whether the Foresters and ASI perform the same functions and responsibilities ?

(ii) Whether down gradation of the pay scale of the Foresters visavis another category of employees belonging to a different Department, i.e., ASI with whom there was a parity earlier is legal or justified ?

(iii) Whether the recommendation of the Pay Commission is binding upon the Staterespondents ?

7. Since the plea of equal pay for equal work has to be examined with reference to article 14 of the Constitution of India, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. The question of violation of article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality clause contained in article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia. The doctrine of equal pay for equal work does not contemplate that only because the nature of work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations, the said doctrine would be automatically applied. For instance, the holders of a higher educational qualification can be treated as a separate class. The Apex Court in *State of Haryana v. Jasmer Singh*, (1996) 11 SCC 77 observed that the principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations or even in the same organization. Again, in another decision in *State Bank of India v. M.R. Ganesh Babu*, (2002) 4 SCC 556, the Apex Court has reiterated the settled position of law that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work ; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference.

8. Perhaps conscious of the principles of law laid down by the Apex Court, Mr. K.N. Bhattacharjee, the learned senior counsel for the petitioners seeks to discharge the burden by highlighting the similarities of the functions and responsibilities of the Foresters and the ASI as follows :

(1) Both the categories of employees have performed duties round the clock, i.e.,

even on holidays and Sundays, day in and day out and even during odd hours of night. Even then one month's additional pay and allowances paid to the ASI are not paid to them ;

(2) The ASI are trained to operate arms and ammunition, so are the Foresters ;

(3) Both the ASI and Foresters are in the uniform service, having the same power to arrest offenders, to lodge a complaint for prosecution, or seize incriminating materials ;

(4) Foresters are equally under the duty to protect the reserved forests, protected forests and wild animals' lives at a considerable risk to their lives ;

(5) Apart from law and order duty in and around the forests, the Foresters are charged with the duty of collecting forest revenues and deposit the same, thereby evidencing that their duties and responsibilities are in no way less than that of ASI. In fact, their duties and responsibilities are undoubtedly higher and more hazardous than the ASI;

(6) The ASI are drawing ration allowance at schedule rate, which are enhanced from time to time but the Foresters are denied of similar facilities;

(7) The Principal Chief Conservator of Forests has already submitted a memorandum to the respondent authorities urging them to provide rationing allowance, washing allowance, Armour allowance, hazardous risk allowance and special pay and allowances for one month a year but the same has not been done ;

(8) The committee constituted by the Ministry of Environment and Forest, Government of India in March, 1997, recommended uniformity of the pay scale of the Forest Officers including the Foresters throughout the country with that of the ASI; and

(9) The academic qualification required for the post of Foresters is Higher Secondary (+ 2 stage) while the academic qualification essential for the post of ASI is only Madhyamik. Both the ASI and Foresters undergo training course while the physique requirement of Foresters and ASI are on a par.

9. Thus, according to the learned senior counsel for the petitioners, the duties and responsibilities or functions of the Foresters are on par, if not higher/more, with the duties and responsibilities of the ASI thereby warranting the payment of the same pay scale to the Foresters. On the other hand, Mr. S. Chakraborty, the learned counsel for the State respondents while refuting the aforesaid contention of the learned counsel for the petitioners, has also pointed out the following factors justifying a different and higher pay scale for ASI :

(1) Foresters are entrusted with the works of protection forests and wild animals in their respective forest areas but the ASI are entrusted with the duties of maintaining law and order situation everywhere even in the forest areas as well;

(2) The ASI are posted as Second Officer of the Police Station with the onerous duties of containing the activities of the extremist, securing the security of the Ministers and other VIPs, of controlling the traffic system of the State, of functioning as Officer in charge of small police station and police outpost;

(3) Though educational qualification for direct recruitment for the post of ASI of police is Madhyamik with good physique and medical fitness, a constable in the Police Department has to render 20 to 25 years of service and has to pass the Departmental examination for promotion to the post of ASI of Police, while a Forester can be directly recruited if he has the educational qualification of Higher Secondary (+2 stage) with physical fitness.

In addition to the above, Mr. Chakraborty further contends that the State respondents while considering the recommendation of the Commission cannot overlook another equally important factor, i.e., the financial capacity of the State to pay the enhanced revised pay scale to the Foresters as the State Government is fully dependent on the Central Government for payment of salaries. According to the learned counsel for the State, the burden of additional financial outlay required for enhancing the pay scale of employees is a relevant consideration for the State respondent when any proposal for enhanced pay scale is examined. It is, therefore, submitted by the learned counsel for the State that since the petitioners have failed to discharge the burden of proving that the Foresters and the ASI performed the same functions and responsibilities, no case is made out by them for parity of pay scale with the ASI.

10. It is a settled proposition of law that it is not open to the court to consider whether the equation of posts made by the Government is right or wrong. The equation of posts has to be determined by taking into account the following factors :

- (1) nature and duties of post;
- (2) responsibilities and powers exercised by officers holding the post, extent of territorial and other charge held or responsibilities discharged;
- (3) minimum qualification, if any, prescribed for recruitment to the post;
- (4) salary of the post.

11. If the first three criteria are fulfilled, the fact that the salaries of two posts are different would not in any way make the post not equivalent. At this stage a comparative chart showing the pay scales of the Foresters and the ASI since 1975 as mentioned in paragraph 9 to the writ petition may be referred to since this will give us the synoptic picture of the pay scale which have been granted from time to time reflecting the pay scales of both the posts. The same is reproduced hereunder :

ROP, 1975 ROP, 1982 ROP, 1988 ROP, 1999

Forester (i) Rs. 240440 Rs. 430850 Rs. 1,0202,620 Rs. 3,3007,100

(ii) Rs. 26495 Rs. 4701025

Assistant Sub Rs. 240440 Rs. 430850 Rs. 1,2502,890 Rs. 40007,890

Inspector of

Police

12. After giving my anxious consideration to the submissions advanced on behalf of the rival parties, I am of the view that the petitioners have not established that they perform the same functions and responsibilities of the ASI. What clinches the issue is the responsibility discharged by the respective categories of employees. The functions or activities expected and/or discharged by the Foresters are admittedly confined to protection of forest areas of the State and matters in connection therewith, which are, so to say, specialized in character. In the case of ASI, the responsibilities or activities undertaken by them are of universal policing duties. Their duties extend to the activities of criminals or otherwise of maintaining law and order situation and of prevention or detection of crimes even in forest areas. In other words, the functions of the police are universal in nature and do not confine to particular areas of operation or particular activities. In that view of the matter, there are many distinguishing features not found in the duties and responsibilities of the Foresters. Moreover, it is a settled proposition of law that the evaluation of jobs for the purpose of pay scale must be left to expert body and unless there are any mala fide, its evaluation should be accepted by the court. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably based on an intelligible criterion which has a rational nexus with the object of differentiation, the differentiation will not amount to discrimination. In the instant case, the Staterespondents in their counter affidavit have clearly shown the reasons or objects for granting higher pay scale to the ASI, which cannot be said to be unreasonable or irrational. Judicial review is directed against the decision making process and not the merit of the decision itself. If there can be two possible views, the views of the administrator cannot be substituted by the views of this court. The view of the Staterespondents that on the facts and circumstances of the case, the ASI of Police Department performed higher responsibilities or discharged onerous duties than the Foresters are possible views, and it cannot be said to be irrational, which warrants the interference of this court within the parameter laid down by law for the exercise of its discretionary writ jurisdiction.

13. The next question which falls for consideration then is whether the down gradation of pay scale of the Foresters visavis ASI with whom till 1982 there was parity, is illegal. Under the proviso to article 309 of the Constitution of India, the Staterespondents have the power to make or unmake any law and the only exception being that no law can be passed which retrospectively affects the

vested right of an employee. The instant case is not one in which the acquired right of the petitioner has been retrospectively taken away. The Staterespondents cannot obviously restrict themselves to a particular policy decision for all times to come irrespective of new developments and has the freedom to note changes in their policy decisions on valid considerations if the situation warrants. In *State of U.P. and Others v. Ministerial Karamachari Singh*, (1998) 1SCC 422, the Apex Court approved the down gradation of pay scale visavis another category of employees with whom earlier there was parity. In the instant case, on a review of the responsibilities and functions of the ASI in the light of recent development coupled with the financial constraints faced by them, the Staterespondents decided to upgrade the pay scale of the ASI w.e.f. 1988 without corresponding upgradation of the pay scale of Foresters. There is no infirmity in the change of policy effected by them for upgrading the pay scale of the ASI visavis the Foresters with whom there was earlier a parity of pay scales.

14. The last point which falls for consideration whether the Staterespondents are bound by the recommendation of the Tripura Fourth Pay Commission. Drawing my attention to the decision of the Apex Court in *Union of India and Others v. Ram Gopal Agarwal and Others*, (1998) 2 SCC 589, Mr. K.N. Bhattacharjee the learned senior counsel for the petitioners contends that the Staterespondents cannot make a departure from the recommendation of the Commission which was constituted by them for the purpose of pay revision. It is true that in the aforesaid case, the Apex Court has held that in the absence of cogent reasons, the recommendation of the Commission could not be upset merely on the basis of Affidavits. However, as observed earlier, the Staterespondents have clearly indicated sufficient justification for not accepting the recommendation of the Commission in so far as the proposed pay scale of the Foresters is concerned. That apart, in the latest decision rendered by the Apex Court in *M.P. Rural Agriculture Extension Officers Association v. State of M.P. and Another*, (2004) 4 SCC 646, it is held that the Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof visavis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employee by framing appropriate rules. The Apex Court further says that the State in terms of the said provision is also entitled to give a retrospective effect thereto. True, it may be that when recommendations are made by a Pay Commission, evaluation of job must be held to have been made but the same by itself may not be a ground to enforce the recommendations by issuing a writ of or in the nature of mandamus. Although the State did not accept the same in toto and made rules to the contrary by evolving a policy decision, it cannot be said to be arbitrary or discriminatory. In my considered view, the aforesaid observations of the Apex Court completely answer the contentions of

the learned counsel for the petitioners.

15. In the light of the foregoing, this writ petition has no merit and is accordingly dismissed. However, on the facts and circumstances of the case, the parties are directed to bear their respective costs.