

(2009) 12 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : SWP No's. 1015 and 1016/02

Surinder Singh Jamwal and Another	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Jammu and Kashmir Forest (Protection) Force Act, 2001 — Section 3(2)

Citation : (2010) 2 JKJ 527

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Hali, J.—These two writ petitions involving similar nature of controversy shall stand disposed of vide this common judgment.

2. The State Government realizing the urgency of ensuring protection of forests in the State of J&K, particularly in the face of armed smuggling and

also taking into consideration that the territorial staff of the Forest Department was not adequate and equipped to deal with the problem of

smuggling and forest encroachment, took a decision to constitute the Forest Protection Force (here-in-after referred to as the Force), consisting of

1500 Guards, 150 Inspectors and 60 Assistant Directors, to be distributed in 30 units. By an act of legislature, the Jammu and Kashmir Forest

(Protection) Force Act, 2001, (here-in-after called the Act) was promulgated. Section 3 of the Act relates to the constitution of the Force which

consists of armed force of the State called the Force and the said Force in terms of Section 3(2) of the Act is a Department of the State on the

pattern of the Police Department in the State

3. Vide notification No. 3 of 1996 dt. 24th of Dec'96, applications were invited for the post of Forest Inspectors and other posts indicated in the

said notification. Basic qualification fixed for the aforementioned post was 10+2 with Science subjects. The physical standards i.e., the height and

fitness were also prescribed as an eligibility criteria for the post of Forest Inspectors. After completion of the selection process, 62 candidates in all

including the Petitioners came to be selected in both the Divisions of the State.

4. Being the members of the armed force for protection of the forests, the Petitioners along with other selectees were deputed for training at Police

Academy, Phillaur. After successful completion of the training, they were deployed in different forest units in the State. The services of the

Petitioners and other Forest Inspectors were placed in the pay scale of Rs. 1400-2300 (as per notification) i.e. Rs. 4500-7000/-(revised).

5. The grievance of the Petitioners is that their services should have been placed in the grade of Rs. 6500-10500/- as is being granted to the

Inspectors in the Police Department. Claiming parity with them, the Petitioners claim equal pay for equal work in the present petition. To

substantiate their claim, following grounds are being urged:

a/That the training imparted to the Petitioners at Police Academy, Phillaur, was of the same level and status as in the case of Inspectors of the

Police Department;

b/That training apart, practical test included the practical knowledge and training for investigation of cases, making arrest, conducting of raids and

training in respect of handling and use of weapons, which also included wireless communication as also possessing of knowledge in respect of the

laws required for discharge of official duties in the same manner as is required by the Police Inspectors in the Police Department.

6. It is on the basis of the above contention raised in the writ petition, it is stated that the Respondent authorities have wrongly placed the

Petitioners in the grade of Rs. 4500-7000/-. whereas, they are entitled to be placed in the grade of Rs. 6500-10500/-.

7. On the other hand, the stand of the Respondents is that;

a/the basic qualification for appointment as Inspector in the Force is 10+2, whereas, in the police department, the initial, appointment is not made

against the post of Inspector but as Sub Inspector for which the eligibility criteria

so far as academic qualification is concerned is Graduation;

b/the duties in the Force are restricted to the activities carried out in the forest area alone;

c/the mode of recruitment and nature of job performed by the Petitioners as Inspectors of the Force is entirely different from those working in the Police Department.

8. In nutshell, it is stated that the Petitioners are not similarly situated with the Inspectors working in the Police Department and, as such, cannot claim parity in respect of pay scales.

9. I have heard learned Counsel for the parties and perused the record.

10. The doctrine of equal pay is not an abstract doctrine and is capable of being enforced in the court of law but equal pay must be for equal work

of equal value. It can be invoked only if it is being selectively applied thus violating the doctrine of equality. It, however, permits a reasonable

classification depending upon the qualities or characteristics which have reasonable relationship with the object sought to be achieved. Article 14 of

the Constitution of India permits a reasonable classification based on qualities and characteristics of persons recruited and grouped together as

against those who are left out. Mere nomenclature designating a person is not enough to come to the conclusion that he is doing the same work.

The quality of the work may be different and even the nature of the work assigned may be different. The application of principle of equal pay for

equal work requires consideration of various dimensions of a given job. There may be a qualitative difference, as regards the liability and

responsibility. The functions may be the same, but the responsibility of a particular job may be different.

11. A party raising the issue of equal pay for equal work has to make necessary averments and, prove that all the things are equal and similar.

While applying the aforementioned principle to the present case, following things emerge:

i/That the Petitioners stand appointed as Forest Inspectors in the pay scale of Rs.4500-7000/-(Rs.1400-2300/-unrevised) which is equivalent to the

pay scale of Assistant Sub Inspector in the Police Department;

ii/The minimum qualification provided for appointment against the post the Petitioners are working is 10+2, whereas in the case of Inspectors

working in the Police Department, the qualification prescribed is Graduation and there is also no direct recruitment against the said post of.

Inspector in the Police Department;

iii/That the functions of the Petitioners as well as the Inspectors working in the Police Department are no doubt the same, but in case of Petitioners,

their activities are restricted to the forest alone, whereas in case of Inspectors of the Police Department, it is both forest as well as other offences

under the Penal Code.

12. In addition to the above, the police department is also required to look after the law and order, thereby, the responsibilities attached to their

job admittedly are more than the Petitioners.

13. Petitioners contention is confined to the issue that they are performing the same functions as are being done by the Inspectors in the Police

Department. It is not contested by them that their method of recruitment and the qualification are the same. In support of their contention, reliance

has been placed on a Division Bench judgment of this Court passed in LPA(SW) No. 76/07 titled Sham Kumar v. State of J&K and Ors.,

decided on 25th of May'09.

14. The issue involved in the aforementioned appeal was whether the Appellant who is a Task Force Guard is entitled to out of turn promotion.

While allowing the contention of the Appellant, the Division Bench observed that as at the time of recruitment of Appellant, the State adopted the

rules applicable to the Police Department for recruitment, which provided for out of turn promotion, the Appellant is also entitled to the said

benefit. The relevant observations in this regard may be noticed as under:

In such situation, it would be deemed that at the time of recruitment of Appellant, the State adopted the recruitment rules applicable to the Police

Department for recruitment of Appellant and people similarly situated to that of him. Such rules as aforesaid, no doubt authorize grant of out of turn

promotion to a person who has achieved the standard prescribed therefor. It is not the contention that a part of the recruitment rules applicable to

police department was adopted and the adopted part did not contain out of turn promotion.

Appellant having had achieved such prescribed standard thus became entitled to the benefit thereof, in as much as such rule had been adopted for

his recruitment and the rule so adopted became part of his conditions of service.

15. The import of the judgment aforementioned clearly envisages that for grant of out of turn promotion, the persons in the Task Force would be

entitled to the same in view of their appointment having been made under the rules which provided such a benefit. The issue in the present case is

not with regard to the application of the rules but grant of parity with the Inspectors working in the Police Department so far as it relates to the pay

scales, for which different principles are to be adopted.

16. Application of rule is one aspect whereas, applying the principle of equal pay for equal work is in a different domain. Therefore, the judgment

aforementioned relied upon by the Petitioners would not be applicable to the present case.

17. The other judgment relied upon by the learned Counsel for the Petitioners in support of the contention that they are entitled to similar pay scale

as is being paid to the Inspectors In the Police Department, is reported as Dhirendra Chamoli and Another Vs. State of U.P., .

18. The issue before the Apex Court in the above case was with respect to the persons who were engaged as casual workers on daily wage basis

by Nehru Yuvak Kendra, who were seeking same salary and allowances as paid to the Class IV employees. The Apex Court in the said case

observed as under:

This article declares that, there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must

be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Keriendras in the country and who are

admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees.

It makes o difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the

same salary and conditions of service as Class IV employees.

19. The aforementioned view has not found favour with the recent judgments of the Apex Court on the issue and it has now been held that daily

rated workers cannot claim parity with those who have been appointed on regular establishment even though they may be performing the same job

but they do not constitute the same class.

20. The principle of equal pay for equal work, that has been laid down by the Apex Court in the case reported as State of Haryana and Others

Vs. Charanjit Singh and Others, etc. etc., , is required to be followed. Following observations made in the above case are relevant and are being

reproduced below:

Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in & court of law. But equal

pay must be for equal work of equal value. The finding in State of Punjab and Others Vs. Devinder Singh and Others, , that for similar work the

principle of equal pay applies, cannot be accepted. Equal pay can only be given for equal work of equal value. The principle of "equal pay for

equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of

persons recruited and grouped together, as against those who were left out. Of course, the qualities or, characteristics must have a reasonable

relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay

in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is

also an acceptable reason for pay differentiation. The view that there cannot be discrimination in pay on the ground of differences in modes of

selection taken in Bhagwan Dass and Others Vs. State of Haryana and Others, , cannot be accepted. The very fact that the person has not gone

through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the

doctrine may have no application. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher

pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification, based on difference in

educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not

enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is

produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application

of the principle of, "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity

that the job may entail may differ from job to job. 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 make a difference. "Thus normally the applicability of this principle

must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.

21. The import of the aforementioned judgment, besides other factors, postulates that a difference in educational qualification as a basic, eligibility

for appointment and the mode of recruitment by itself makes a difference. In the present case, it would be seen that besides the fact, that

Petitioners may be performing the same functions, but their quality and responsibility may vary with those of the Inspectors working in the Police

Department. Admittedly, in the present case, the basic qualification provided for recruitment is also different. Even, the mode of recruitment is

different because as, indicated above, there is no direct recruitment against the post of Inspector in the Police Department and the initial recruitment

in the said Department is made against the post of Sub Inspector.

22. In view of the above, I find no force in these petitions, which are accordingly dismissed.

23. Petitioners have brought to the notice of the court that recommendations have been made by the authority concerned for bringing the

Petitioners category at par with the Inspectors working in the Police Department. It is also indicated that the recruitment rules are also under

process and in this behalf a communication dt. 1st of March'08, has been addressed by the Director General of Police to the Financial

Commissioner, Home Department, wherein' it has been, mentioned that certain discrepancies which have been found in the rules pertaining to the

Force, are required to be modified and rectified.

24. Be that as it may, in case, while framing the rules for the Force, if it is found that the Petitioners category is entitled to be brought at par with

the Police Inspectors, which decision is still awaited, it is made clear that in case any such decision is taken by the authority concerned, the order

passed by this Court will not come in the way of the authority concerned to

accord such a consideration to the said category.

25. Otherwise, as indicated above, these petitions are found to be without merit and are dismissed.