

(2008) 10 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 186, 218, 763 and 873 of 2003

The Chief Security Commissioner, Railway Protection Force,
South Central Railway, Rail Nilayam, The Assistant Security
Commissioner-cum-Principal, Railway Protection Force
Training Centre and The Director General, Railway Protection
Force

APPELLANT

Vs

South Central Railway Protection Force Association

The Chief Security Commissioner, Railway Protection Force,
South Central Railway, Rail Nilayam and The Director
General, Railway Protection Force, Railway Board Vs South
Central Railway Protection Force Association
 Director
General, Railway Protection Force, The Chief Security
Commissioner, Railway Protection Force, South Central
Railway, Rail Nilayam and Principal, Railway Protection Force
Training Centre Vs V. Shankaraiah, Constable and Others

 The Commandant, Railway Protection Special Force,
The Inspector General, Railway Protection Special Force,
Railway Board and The Director General, Railway Protection
Special Force, Railway Board Vs Jaipal Singh and Others

RESPONDENT

Date of Decision : 29-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 37, 39
Railway Protection Force Act, 1957 — Section 2, 21
Railway Protection Force Rules, 1987 — Rule 75, 78, 78.1

Citation : (2009) 1 ALD 689 : (2009) 1 ALT 517

Hon'ble Judges : Vilas A. Afzulpurkar, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : R.S. Murthy, in W.A. Nos. 186, 218 and 763 of 2003 and Gouri
Shankar Sanghi, in Writ Appeal No. 873 of 2003, for the Appellant; J.M. Naidu,
for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—A short question that arises for consideration in all these writ

appeals is whether the ancillary staff of Railway Protection Force (herein after called as "the Force") are entitled to draw the same scales as admissible to other enrolled members of the force (combative staff).

W.P. Nos. 15161/1991 and 20028/2000 were filed by the ancillary staff, and W.P. Nos. 15493/2000 and 18413/2000 were filled by the Railway Protection Force Association for issuing a Mandamus by directing the respondents to implement the pay scales as mentioned in Rule 78 of the Railway Protection Force Rules, 1987 (for short "the Rules") by declaring that the ancillary staff do come under the category of Constables, Naiks, Head Constables as per Rules 75 and 78 of the Rules and to fix the pay scales accordingly by paying arrears.

2. By the impugned order dt.29-07-2002 a learned single Judge of this Court allowed W.P. Nos. 15161/1991, 15493/2000 and 20028/2000 declaring that the petitioners/ancillary staff shall be entitled to be paid the pay scales stipulated under Rule 78 of the Rules for the corresponding main force and as revised from time to time including the arrears of difference of pay scales. Aggrieved by the same, the appellants-respondents filed W.A. Nos. 763/2003, 186/2003, and 873/2003 respectively.

3. Following the judgment dt.29-07-2002 rendered by him, the same learned Judge allowed W.P. No. 18413/2000 by order dt.23-09-2002. Aggrieved by the same, the appellants-respondents filed W.A. No. 218/2003.

4. Sri R.S. Murthy, learned Counsel for the appellants in W.A. Nos. 186, 218, and 763 of 2003 strenuously contended that the petitioners who are categorized as ancillary staff under the Rules were always been treated as distinct and different from the other categories of employees in the matters of qualification and method of recruitment, pay scales etc., Once the Fourth Pay Commission and the Fifth Pay Commission appointed by the Central Government fixed the different pay scales for ancillary staff and main force, ancillary staff cannot be treated equal to that of main force and they cannot be paid the same pay scales as that of main force. The Railway Protection Force constituted under the Railway Protection Force Act, 1957 (for short "the Act") comprises of two categories of personnel. The 1st category is referred to as "main force" and the 2nd category is referred to as "ancillary force". The main force again comprises of three branches, namely, Head Constable, Naik and Constable, whereas the ancillary staff is categorized into different categories as per Category 5 of Schedule I of the Rules, namely, tailor, barber, Mali, Dhobi, Safaiwala, Cobbler, Cook, Motor Cleaner etc. He further contended that there is a change in the pay scales of both main force and ancillary staff based on the recommendations of the Fourth Pay Commission; therefore the ancillary staff cannot be equated with that of the main force. In support of the above submission reliance is placed on the judgments of the Apex Court in *State of U.P. and Others Vs. J.P. Chaurasia and Others*, ; *Union of India (UOI) and Another Vs. P.V. Hariharan and Another*, , *State of Haryana v. Haryana Civil Secretariat Personal Staff Association* 2002 (4) S 605 and *Ramesh Singh v. Union of India* (2008) 2 SCC (L&S) 89 . He further

contended that the Madras High Court in *R. Gandhi and Ors. v. The Chief Security Commissioner, Railway Protection Force and Ors.* Unreported Judgment dt.1-12-1998 passed in CWP No. 13322/1990; Calcutta High Court in *Joharul SK. and Ors. v. Union of India and Ors.* Unreported judgment dt.2-8-2007 passed in FMA No. 504/2007 and Delhi High Court in *Chairman, Railway Board and Ors. v. Ram Chand and Ors.* Unreported judgment dt.30-1-2006 passed in LPA No. 502/2002 are not justified in declaring that ancillary staff are entitled to same pay scales as that of enrolled members of the force. Though the judgment of the Delhi High Court in LPA No. 502/2002 dt.30-01-2006 was carried in appeal before the Supreme Court, SLP has been dismissed as not pressed on the representation made by the Additional Solicitor General representing the Railway Board that Railways is going to rationalize the pay structure of the Class IV employees, and no such instructions were given by the responsible official of the Railway Protection Force, therefore the same cannot be taken into consideration for deciding the issue. He further contended that Association is not a person aggrieved to maintain the writ petition and the said writ petition filed by the Association is liable to be dismissed by placing reliance on *General Secretary, Eastern Zone Insurance Employees' Association Vs. Zonal Manager, Eastern Zone, Life Insurance Corporation and Others*, , *Director General Ordnance Factories Employees' Association Vs. Union of India (UOI) and Director General Ordnance Factories*, and *Govt. Press E. Assocn. v. Govt. of Mysore* AIR 1962 Mys 25.

5. Sri Gouri Shanker Sanghi, learned Counsel appearing for the appellants in W.A. No. 873/2003 while adopting the arguments of Sri R.S. Murthy fairly conceded that Railways implemented the judgments of the Madras, Calcutta and Delhi High Courts and as a result ancillary staff of all the respective regions are being paid the same pay scales which were paid to main force. He however by placing reliance on the judgment of the Apex Court in *State of Orissa and Others Vs. Balaram Sahu and Others*, etc. etc., contended that ancillary staff are not entitled to equal scales of pay on par with other enrolled members of the force.

6. Sri J.M. Naidu, learned Counsel for the respondents while supporting the order under appeal further contended that the orders passed by Calcutta High Court has been implemented by the Eastern Railways in its proceedings dt.24-09-2008 with effect from 01-01-1986 instead of date of issuance order. Similarly some of the Divisions of the Railways implemented the orders passed by the several High Courts, therefore, writ petitioners and members of the association in this region cannot be discriminated and association can always maintain the writ petition for implementation of pay scales on par with the pay scales payable to the other members of the same force. In support of his submission reliance is placed on the judgments of the Supreme Court in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, , *Scholars & Teachers Action Committee v. Andhra University* 1996 (2) ALD 1220, *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, and *Shri A.B. Krishna and Others Vs. The*

State of Karnataka and Others, .

7. It is not in dispute the learned single Judge of the Delhi High Court by order dt.03-01-2002 in CWP No. 6201/2000 while rejecting the similar contention that the Fourth Pay Commission recommending replacement scales as regards the ancillary staff of the force and did not recommend the same pay scales for the ancillary staff that of the other enrolled members of the force held that CI.78.1 under Chapter VI of the Rules, which has been framed by the Central Government u/s 21 of the Act, does not reflect the contents of notification issued in September, 1986 based on the recommendation of the Fourth Pay Commission. Once Rules govern the field and not the notification which was issued prior in time than the rules and following the judgment of the Madras High Court in R. Gandhi and Ors. (5 supra) allowed the writ petition granting the reliefs claimed. On appeal, the Division Bench of the Delhi High Court Chairman, Railway Board and Ors. v. Ram Chand and Ors. (7 supra) dismissed the L.P.A. No. 502/2002 dt.30-01-2006 holding, after extracting Rule 78.1 of the Rules, as under:

Thus it is very clear that the ancillary staff, which is specified in Schedule I will draw the same scale of pay as the enrolled members. No doubt, the pay of enrolled members can keep changing according to the directions of the Central Government, but then there will be an automatic change in the pay of ancillary staff holding the same rank.

A perusal of the Schedule I to the Rules shows that in the 2nd column the rank is mentioned, while in the 3rd column the designation is mentioned. Thus, as mentioned in item 45 to the First Schedule, a person designated as "Head Cook" (as mentioned in the 3rd column) holds the rank of Head Constable as mentioned in the 2nd column. Similarly, a person designated as "Cook" holds the rank of a Naik, as is evident from Item 52 of Schedule I and so on.

Thus, there is no ambiguity in the rules....

Against the judgment of the Delhi High Court rendered in L.P.A. No. 502/2002, the Chairman, Railway Board filed Special Leave to Appeal (Civil) No. 10024/2006 with an application for condoning the delay in filing SLP. The Supreme Court dismissed the SLP by order dt.04-01-2008 holding as follows:

The Additional Solicitor General representing Railway Board submits that the Railway is going to rationalize the pay structure of the Class-IV employees. Subject to that, the SLP is not pressed and is dismissed as such.

In view of dismissal of SLP by the Supreme Court, the judgment of the Division Bench of the Delhi High Court dt.30-01-2006 passed in LPA No. 502/2002 has become final.

A Division Bench of Calcutta High Court in Joharul SK. and Ors. (6 supra) after referring to Rule 78.1 of the Rules allowed the appeal holding that the learned single Judge erroneously refused to grant the benefits of same scale to the writ

petitioners as are admissible to the enrolled members of the said force holding the same rank in terms of Rule 78.1 of the Rules. The judgment of the Calcutta High Court was implemented by the Eastern Railway through its proceedings in R.O. No. 261/2008 dt.24-09-2008 by granting scale of pay with effect from 01-01-1986 instead of the date of issuance order.

8. Learned single Judge of this Court by the impugned judgment under appeal after referring to Rules 75 and 78.1 of the Rules rightly held that the difference as to the qualification and method of selection was sought to be balanced by framing Rule 75. The expression "enrolled members" as defined u/s 2(ba) of the Act indicates that enrolled member of the force, irrespective of the nature of the duties and rank held by him shall include any subordinate officer under officer or any other member of the force. A combined reading of Rule 75 together with definition of enrolled members suggests that irrespective of the nature of duties discharged, all the personnel including those, who hitherto treated, as followers become the enrolled members and the distinction as to their classification in that regard ceased to exist.

9. It is not disputed pay structure existing of two categories of employees, namely, category-I which relates to main force and Category-II refers to ancillary staff. Under 1959 Rules the ancillary staff was upto the rank of Rakshak only. The pay scales permissible to them was on par with Rakshak of the main force. In respect of some categories of ancillary staff, it was on par with that of senior Rakshaks of the main force. Learned single Judge also referred to the pay scale of Rakshak in main force. Pay scale of Rakshak was 70-85 and of Senior Rakshak was 75-99. Pay scale of Rakshak (Safaiwala, Mali, Kahar) was 70-85 and of Rakshak (Barber, Dhobi) was 75-95 and Rakshak (Cook, Cobbler) was 75-110. In no case it was less than that of the personnel holding the same rank in the main force.

10. The Supreme Court in P.V. Hariharan's case (2 supra) held as under:

...Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales....

Further, the Supreme Court in Supreme Court Employees' Welfare Association v. Union of India 1989 (4) SCC 187 after considering the effect of fixation of pay scales to various categories of judicial employees and after referring the

observation made by it in *Randhir Singh v. Union of India* (1982) 1 SCC 618 held that although the doctrine of "equal pay for equal work" does not come within Article 14 of the Constitution as an abstract doctrine, but if any classification is made relating to the pay scales and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of "equal pay for equal work", as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of "equal pay for equal work" will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of "equal pay for equal work", as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. *Dhirendra Chamoli and Another Vs. State of U.P.*, is a case of "equal pay for equal work", as envisaged by Article 14, and not of the abstract doctrine of "equal pay for equal work". (See para 38 of 16 supra)

11. The Supreme Court further held that it is really the business of the Government or the Management to fix the pay scales after considering various other matters and the court can only consider whether such fixation of pay scales has resulted in an invidious discrimination or is arbitrary or patently erroneous in law or in fact. (See para 42 of 16 supra)

12. Once the appellant-Department has not denied the fact that ancillary staff were drawing equal salary as that of the main force and in no case it was less than that of the personnel holding the same rank in the main force and when Rule 78 which stipulates pay scales for several posts did not show any distinction between Head Constable, Naik and Constable in the main force and corresponding to the staff of the ancillary staff as mentioned in Category-5 of Schedule I and Railway Regions of Madras, Delhi, and Calcutta have implemented the pay scales to their ancillary staff by implementing the orders passed by the various High Courts, the petitioners and the members of the petitioner association cannot be discriminated in violation of Article 14 of the Constitution.

13. Rule 78.1 of the Rules, which was framed after fixation of 4th Pay Commission, mandates ancillary staff as specified in Schedule I shall draw the same scale of pay as is admissible to other enrolled members holding that rank. In view of the same, the submission made by the learned Counsel for Railways that different pay scales were prescribed by the 4th Pay Commission and the ancillary staff are not entitled to same pay scale do not merit consideration.

14. In view of the same, we see no ground to interfere with the orders passed by the learned single Judge in allowing the writ petitions.

Further, we do not see any force in the contention of the learned Counsel appearing for the appellants that Railway Protection Force Association cannot maintain the writ petition, as the Association is not the aggrieved person. Since the association is not claiming any relief but it is ventilating the grievance of its members with regard to anomaly of pay scale being paid to the ancillary staff and in implementing various orders passed by the High Courts of Delhi, Calcutta and Madras they can always maintain the writ petition and ventilate the grievance of its members.

15. In the result, all the writ appeals fail and they are accordingly dismissed. No costs.