

(2006) 02 GAU CK 0047
In the Gauhati High Court

Th.Jeetendra Singh

APPELLANT

Vs

Imphal Municipal Council thr.the Chairman (IMC), Imphal,
Manipur and Anr.

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Citation : (2006) 02 GAU CK 0047

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : Kh.Tarun kumar Singh, Joychandra Singh, Advocates appearing for Parties

Judgement

1. The petitioner, who is now working as Food Inspector in the Imphal Municipal Council, is asking for revision of his scale of pay to Rs.8000 13500/ p.m. on the main fulcrum that one Shri R.K. Nokulsana Singh, who was said to be the Food Inspector in the erstwhile Imphal Municipal Board (at present Imphal Municipal Council) was enjoying the pay scale of Rs.175 450/ p.m. in the year 1963, and also that Food Inspector of the neighbouring states also enjoying the pay scale higher to the present pay scale of the petitioner.

2. Heard Mr. Kh. Tarunkumar Singh, learned counsel appearing on behalf of the petitioner as well as Mr. M. Joychandra Singh, learned standing counsel for the respondents Imphal Municipal Council.

3. The facts leading to the filing of the present writ petition, stated in short, are that the petitioner was appointed to the post of Food Inspector cum Sanitary Inspector of the Imphal Municipal Council temporarily to the post vacated by one Shri W. Bheigya Singh in the pay scale of Rs.14002300 p.m. with usual allowances with effect from the date of his joining with the condition that the petitioner shall have to undergo the training of Food Inspector's Course in any recognized Institute with a short days from the date of appointment and in this connection the Health Officer, Imphal Municipality should submit a report to the Assistant Executive Officer, Imphal Municipal Board if necessary vide order of the

President, Imphal Municipal Board dated 23.9.1991. On 17.4.1999, the Governor of Manipur in exercise of the powers conferred by subsection (1) of Section 9 of the Prevention of Food Adulteration Act, 1954 was pleased to appoint the petitioner, Food Inspector of Imphal Municipal Council as Food Inspector for the purpose of the said Act and rules framed there under within the Imphal Municipal Area with effect from the date of publication of the notification in the Manipur Gazette vide notification No.5/26/93M, Imphal, the 17th April, 1999.

4. As requested by the Executive Officer, Imphal Municipal Council under his letter dated 21.12.98, the Asstt. Food Controller for Director of Health Services, Arunachal Pradesh under his letter dated 21.1.99 furnished a copy of the notification being No.MPFA87/5 dated, Itanagar the 19th December, 1991, i.e. ? Food Inspector (Group "B") Recruitment Rules, 1991?. According to the said Recruitment Rules for the post of Food Inspector in the Medical Department under the Government of Arunachal Pradesh, the Food Inspector is enjoying the pay scale of Rs.2000 3500/ p.m. It is the further case of the petitioner that one Shri R.K. Nokulsana Singh, who was serving as Food Inspector, was enjoying the scale of pay of Rs.175 450/ p.m. with retrospective effect from 1.9.1962 and the said scale of pay was equivalent to the scale of pay attached to the post of Subedar Major of the Home Department of the Government of Manipur. The said scale of pay of Rs.175 450/ p.m. had been revised to Rs.6500 10500/ p.m. vide ROP 1999 w.e.f. 1.1.1996. Basing on this fact, the petitioner claims that his scale of pay as Food Inspector of the Imphal Municipal Council should be revised to Rs.6500 10500/ p.m. vide ROP 1999 w.e.f. 1.1.1996 and to Rs.8000 13500/ per month as provided in the Fifth Pay Commission as All India pattern. The respondents also filed their affidavit in opposition. In the affidavit in opposition, it is stated that the petitioner was absorbed to the post of Food Inspector only on 14.7.2000 against the post of Food Inspector created on 2.8.1996. The said Shri R.K. Nokulsana Singh was appointed as Municipal Inspector and he was serving as Municipal Inspector as well as Food Inspector. In such circumstances, Shri R.K. Nokulsana Singh, Municipal Inspector was temporarily allowed to enjoy the pay scale of Rs.175 450/ p.m. until further orders. It is also said that Shri R.K. Nokulsana Singh had additional duty of Staff Supervisor of Health and Sanitary Section under the designation of Sanitary Inspector (1) and such being the situation, the pay scale of Rs.175 450/ enjoyed by the said Shri R.K. Nokulsana Singh temporarily is not the pay scale of Food Inspector. Over and above, Shri R.K. Nokulsana Singh was appointed as Municipal Inspector and not as Food Inspector but he was also allowed to work as Food Inspector vide order of the Chairman of the then Imphal Municipal Board dated 5.7.1963 which reads as follows:

?Office of the Imphal Municipal Board

O R D E R

No.IM/23/63 Dt. 5th July, 1963.

In pursuance of the resolution No.2 (2) (D) dated 10.06.63 of the IMB, the scale of pay of Food Inspector is fixed in the scale of Rs.175 1525IB 1543020450/ per month on temporary basis with retrospective effect from the 1st Sept., 1962 and Shri R.K. Nokulsana Singh, Municipal Inspector who is also a Food Inspector shall enjoy the scale of pay stated above until further orders.

The normal duty of Shri R.K. Nokulsana Singh shall be that of Food Inspector and in addition to his normal duty of Food Inspector he shall also have the duty of Staff Supervision of Health and Sanitary section under the designation of Sanitary Inspector No.(1) until further orders. But no additional allowance or pay will be given to him for this.

Sd/

(R.K.Birchandra Singh)

Chairman

Imphal Municipal Board?

5. In the affidavit in opposition of the respondents, it is also specifically mentioned that the scale of pay of the Food Inspector of the Imphal Municipal Council was thoroughly examined by the Expert Committee, viz. Finance and Assessment Committee, of the Imphal Municipal Council in its meeting held on 19.7.2000 and recommended that the scale of pay of the Food Inspector be fixed at Rs.5000 8000/ p.m. in the revised scale (ROP 1999). The Imphal Municipal Council in its 59th Meeting held on 25.7.2000 had resolved to accept the recommendation of the pay scale of the Food Inspector by the said Expert Committee, i.e. Finance and Assessment Committee, vide resolution No.1(3) which reads as follows:

RECORD OF THE PROCEEDINGS OF THE 59TH MEETING OF THE IMPHAL MUNICIPAL COUNCIL HELD ON 25.7.2000, 27.7.2000, 31.7.2000, 5.8.2000, 7.8.2000 & 8.8.2000 AT 11 A.M. IN THE MEETING HALL OF THE COUNCIL. Dated the 7.8.2000 Resolution No.1 (3).

So, after due consideration as recommended that the Finance & Assessment Committee held on 19.7.2000 it is resolved that the Scale of Pay of Food Inspector be fixed at Rs.5000 8000/p.m. in the revised scale (R.O.P. 1999).

The scale of pay for the post of Food Inspector of the State Government of Manipur is also Rs.5000 8000/ p.m. (according to ROP 1999). The respondents in their affidavit in opposition stated that according to section 46(3) of the Manipur Municipalities Act 1994 condition of services and qualifications in respect of employees of the Imphal Municipal Council shall be the same as applicable to the employees of the State Government from time to time. Accordingly, the pay scale of the Food Inspector of Imphal Municipal Council is also fixed at the scale of Rs.5000 8000/ p.m. which is the very same scale of pay enjoyed by the Food Inspector of the State Government of Manipur.

6. It is now fairly well settled legal position that decision of the expert bodies like the Pay Commission is not ordinarily subject to judicial review because pay fixation is an exercise requiring going into various aspects into the posts held in various service natures and duties of the employees. The judicial review of the fixation of pay scale of the employees by the expert committee in exercise of the writ jurisdiction by the High Court is circumscribed and very limited. The Apex Court in *State of U.P. & Ors. vrs J.P. Chourasia & Ors.*: AIR 1989 SC 19 wherein the Apex Court held that the equation of pay must be left to the executive authority. It must be determined by the expert body. They would be the best judge to evaluate the nature of duties and responsibilities of posts and if there is any such determination by a commission or a committee the court should ordinarily accept it. The court should not try to tinker with such equivalent unless it is shown that it was made with extraneous considerations. The Apex Court reiterated the same view in *Supreme Court Employees' Welfare Association vrs Union of India & Ors.*,: AIR 1990 SC 34 that:

?It is not the business of the Supreme Court to fix the payscales of the employees of any institution in exercise of its jurisdiction under Art.32. If there be violation of any fundamental right by virtue of any order or judgment, the Supreme Court can strike down the same but, surely, it is not within the province of the Court to fix the scale of pay of any employee in exercise of its jurisdiction under Art.32.?

7. The case of the petitioner for claiming the pay scale of Food Inspector of the neighbouring states is not sustainable inasmuch as comparison of the pay scale basing on the mere designation of posts of different states is misconceived. Regarding this point, reference may be made to the decision of the Apex Court in *State of Haryana & Anr. Haryana Civil Secretariat Personal Staff Assn*: (2002) 6 SCC 72: held that the parity sought by the petitioner in the case was with employees having only the same designation under the Central Government and such comparison based merely on designation of the post was misconceived. Relevant para8 of the judgment in *State of Haryana & Anr. Haryana Civil Secretariat Personal Staff Assn*. is quoted hereunder:

?8. From the discussions in the impugned judgment, it is clear to us that the High Court has ignored certain settled principles of law for determination of the claim on parity of pay scale by a section of government employees. While making copious reference to the principle of equal pay for equal work and equality in the matter of pay, the High Court overlooked the position that the parity sought by the petitioner in the case was with employees having only the same designation under the Central Government. Such comparison by a section of employees of the State Government with employees of the Central Government based merely on designation of the posts was misconceived. The High Court also fell into error in assuming that the averment regarding similarity of duties and responsibilities made in the writ petition was un rebutted. The appellants in their counter affidavit have taken the specific stand that no comparison between the two sections of

employees is possible since the qualifications prescribed for the PAs in the Central Secretariat are different from the PAs in the State Civil Secretariat. Even assuming that there was no specific rebuttal of the averment in the writ petition, that could not form the basis for grant of parity of sale of pay as claimed by the respondent. The High Court has not made any comparison of the nature of duties and responsibilities, the qualifications for recruitment to the posts of PAs in the State Civil Secretariat with those of PAs of the Central Secretariat.?

8. This court in the case of Manipur Cooperative Department Officers Assn. & Ors. vrs State of Manipur & Ors.,: 1999 (1) GLT 534, after taking into consideration of the Expert Committee prescribing the different pay scales of the posts of SubRegistrar of the Cooperative Deptt., SubDeputy Collector of Revenue Deptt. and SubRegistrar of the Registration Deptt., Govt. of Manipur had rejected the writ petition filed by the Manipur Cooperative Deptt. Officers" Assn. (Supra) for claiming revision of pay sale of SubRegistrar of Cooperative Society to that of the SubRegistrar of the Registration Department, Govt. of Manipur, SubDeputy Collector of Revenue Department, Govt. of Manipur on the ground that SubRegistrar, Cooperative Society were enjoying the same scale of pay of the SubRegistrar of Registration Department, SubDeputy Collector of Revenue Department earlier.

9. As discussed above, the equation of the posts, their responsibilities, etc. are the functions of the Expert Committee and this court is not well equipped for those purposes. In the instant case, the petitioner could not make out any material to show that the fixation of pay scale of the Food Inspector of Imphal Municipal Council at Rs.5000 8000/ p.m. by the Expert Committee, i.e. ?Finance and Assessment Committee?, of the Imphal Municipal Council was based on extraneous consideration. The pay scale of Rs.175 450/ pm. Enjoyed by Shri R.K. Nokulsana Singh who was a Municipal Inspector was not the pay scale for the Food Inspector of the then Imphal Municipal Board and he was allowed to enjoy the said pay scale as a persona designata in the circumstances discussed above. In the present writ petition, no sufficient cogent reasons are made for equating the petitioner with Shri R.K. Nokulsana Singh.

10. For the reasons discussed above, this court is of the considered view that this writ petition is devoid of merit. Accordingly dismissed. No order as to costs.