
(1996) 09 GAU CK 0034

In the Gauhati High Court

Case No : Civil Rule No. 153 of 1989 and Re-numbered Civil Rule No. 334/96

Tripura Govt. Press Employees and Another

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 17-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39
Industrial Disputes Act, 1947 — Section 2(5)

Citation : (1999) 1 GLT 287

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : B. Das and S. Chakraborty, for the Appellant; U.B. Sana, GA and M.L. Roy, for the Respondent

Judgement

N.G. Das, J.—This is an application under Article 226 of the Constitution of India filed by the Petitioners viz. Tripura Government Press Employees Union and its Secretary, namely, Sri Kanti Bhusan Chakraborty for the issuance of a writ of mandamus directing the Respondents to pay graded pay scale No. 28 of the Tripura State Civil Service (Revised Pay) Rules, 1988 (for short, rules of 1988) in parity with the "Bookbinders" performing the similar work in the Civil Secretariat of the Government of Tripura.

2. I have heard Mr. B. Das, learned senior counsel appearing on behalf of the Petitioners and Mr. U.B. Saha, learned Government Advocate and Mr. M.L. Roy, learned Counsel appearing on behalf of the Respondents.

3. The question for consideration in this writ petition is whether "Book-binders" working in Tripura Government Press are entitled to the same pay scale as are being drawn by the book-binders in the Civil Secretariat.

4. The case of the Petitioners is that in the year 1959 after introduction of pay scale they demanded the pay scale of Rs. 125-3-140-4-156-EB-4-200/-. But the same having not been given, the matter was referred to the Industrial Tribunal

which, however, made the award in favour of the Petitioners and accordingly the Petitioners got the pay scale of Rs. 125-3-140-4-156-4-EB-4-200/- with effect from 21.1.72. This scale of pay was revised in 1975 to Rs. 240-8-320-10-440/- (EB 8th and 15th stage).

5. It is stated that under Respondent No. 1 viz. the State of Tripura similar posts of Bookbinders are also available under the Civil Secretariat whose pay scale was also Rs 240-8-320-10-440/-(EB 8th and 15th stage) R.R. (Annexure-2). The Recruitment Rules for the post of Book-binders which were framed vide notification dated 28.7.87 (Annexure-3) will show that the qualification and eligibility for the posts of Book-binders under Tripura Government Press are higher than that of the post of "Book-binders" under Civil Secretariat. This Recruitment Rules (Annexure-2) were however revised vide notification dated 28.7.87(Annexure-3) whereby the pay-scale of the book-binders were further revised to Rs.430-15-580-20-600-25-850/- under the Tripura Government Service (Revised pay) Rules, 1982. Upto that period the parity of pay scale was maintained with that of the pay scale of the Book-binders of Civil Secretariat.

6. But under revised rules, 1988 the pay scales of the Government employees of Tripura were divided into three parts viz. Part-A, Part-B and Part-C. Part-A relates to cadre service: Part-B relates to other than cadre services and Part-C relates to graded pay scales. The binders are recognised to be entitled to the pay scale under Part-C of the said Rules. The Binders and Book-Binders are at serial No. 15 of Chapter 28 of the Part-B (Schedule 3) of the said Rules of 1988. The posts of binders and book-binders were however re-designated Book-binders and they were given the graded scale of serial No. 4 of Part-C (Schedule 3) of the said Rules of 1988.

7. The grievance of the Petitioners is that while they were given the graded scale of Serial No. 4 in Part-C of the Rules of 1988 their counterparts in the Secretariat got the scale of Part-B and as a result thereof they get maximum scale of pay of Rs. 1250-2890/-whereas the Petitioners' maximum scale is Rs. 970-2400/-. A corrigendum dated 15.10.88 was issued whereby the pay scale of Bookbinders under Tripura Public Service Commission in the scale of Rs. 430-850/- was revised to Rs. 970-2400/-.

8. The further case of the Petitioners is that the post of Book-binder is a technical post and they are workmen within the meaning of Section 2(5) of the Industrial Dispute Act, 1947. But even though the posts of Bookbinders are technical posts, the Respondent No. 1 most unjustifiably denied the graded scale No. 28 of the Rules of 1988 and as such violated the provisions of Articles 14 and 16 of the Constitution of India. The Petitioners, therefore, approached the Respondents on filing representations. But they did not get any favourable response. The Petitioners have, therefore, claimed the reliefs as stated above.

9. The Respondents have resisted the writ petition by filing a counter affidavit wherein it has been contended that it is not a correct statement that Book-

binders in the Civil Secretariat are getting the scale of Rs. 1250-2890/-. It is stated that Book-binders in the Civil Secretariat will be entitled to get the scale of Rs. 1250-2890/- after completion of 18 years of service without any promotion as would appear from the notes in Part-"B" (Schedule 3 of the Revised Pay Scales, 1988. It is stated that no Book-binder in the Civil Secretariat is provided with the pay scale of Rs. 1250-2890/-; only two book-binders in the Civil Secretariat are in the pay scale of Rs. 970-2400.

10. The further contention of the Respondents is that the Pay Commission after examination of the various scales, duties of employees etc. recommended that where employees appointed in a post with similar initial recruitment qualification, nature of duties and also in many cases similar designation drawing different scales in different departments should be grouped in grades and employees should be given the chance to get the next higher grade after 10 years of service and to the highest grade after 18 years of service. It was also laid down that when the requisite period of service of an employee was completed on 1.1.86 (i.e. the date of effect of the revised scale) or the date of option the pay of the employee will be directly fixed in appropriate graded scales corresponding to the years of service. The Commission, therefore, prescribed two grades in two cases where there were to existing scales for such employees in different departments.

11. It was further averred that where no graded scale was provided, the employee would be allowed to higher scale after completion of 10 years service and thereafter next higher scale after 18 years of service. The Pay Commission recommended such measure for two reasons viz to remove anomalies and to open the scope of promotion or to get at least higher grade or higher scale so as to make equity and to give similar benefits to all employees. It has been further contended that the Pay Commission did not treat the posts of Book-binders as technical posts. The Pay Commission recommended and decided to use the term mechanical or the technical in a narrow and traditional sense in respect of those posts only whose duties are involved in dealing with the mechaneries, powers etc. and where required recruitment qualification like certificate from ITC or long technical experience in the required trades/job etc. Accordingly, the Government of Tripura accepted the views of the Commission and did not allow the graded scale to be meant for technical/mechanical posts which the Commission also did not recommended for the Book-binders. It is stated that the Bookbinders are not technical men and hence they are not entitled to get the scale of No. 28 which is meant for technical/mechanical posts. It has been specifically averred that the 3rd Pay Commission did not categorise the posts of Book-binders as technical posts and as such there is no scope for consideration of the case of the Petitioners. It has been further " contended that the representation of the Petitioners is still pending and hence this writ petition is not maintainable.

12. It has been admitted in the re-joinder affidavit filed by the Petitioners that the binders in the Civil Secretariat are allowed the scale of pay of Rs. 1250-2890/- after completion of 18 years of service and they are also provided

with the scale of pay of Rs. 1020-2620/- after completion of 10 years of service. On the other hand, the binders in the Tripura Government Press would be allowed the maximum scale of pay of Rs. 970-2400/-. It has also been contended by the learned Counsel appearing on behalf of the Petitioners that duties and responsibilities of the binders of the Civil Secretariat and that of Tripura Government Press re similar and hence on the basis of the principle "equal pay for equal work", the Petitioners are entitled to the same pay scale as has been given to the binders of the Civil Secretariat. But Mr. U.B. Saha, learned Government Advocate has argued that even though it would appear that duties and responsibilities of the respective posts are similar, a comparative study of the Recruitment Rules of the Binders of the Civil Secretariat and that of the Tripura Government Press will show that while the binders of the Civil Secretariat have no promotional scope, the binders in Tripura Government Press have promotional scope and due to that scope some of them also got promotion to the higher scale. It is, therefore, argued by Mr. Saha that the Pay Commission taking this factor in view recommended for consideration of the case of the employees who have no promotional scope. The Report of the Third Tripura Pay Commission shows that the Third Tripura Pay Commission also made such recommendation in respect of the Dead-end post. The recommendation is available at page-27 of the Third Tripura Pay Commission Report and it reads:

7.2 Dead-end post.

There are certain posts for which no promotional avenue exists. An employee holding such a dead-end post has to retire without getting any promotion.

The Commission does not consider it proper for any employee to spend long years in service without any promotion, though it recognises that there may be difficulties in creating a channel of promotion for every single post.

The need, however, remains for providing a promotional channel to such dead end posts. The Commission, therefore, recommends that in such cases, the post may be re-designated and upgraded after an employee has held the post for 10 years and the employee may be appointed on promotion to the re-designated post in a higher scale. The post may revert to its original level after the holder has vacated the same.

13. Referring to the recommendation of the Third Tripura Pay Commission Mr. Saha has quite fervently urged that so far as the posts of binders in Civil Secretariat are concerned the Recruitment Rules will show that the binders in the Civil Secretariat have no promotional scope and that is why in view of the recommendation of the Third Tripura Pay Commission the Government of Tripura granted the scale of pay of Rs. 1020-2620/-after completion of 10 years and the scale of pay of Rs. 1250-2890/- after completion of 18 years of service. It is argued by Mr. Saha that the Recruitment Rules of the binders of Tripura Government Press will show that they are entitled to get promotion to the higher post after completion of 3 years. The Recruitment Rules for the post of Book

Binders under the Civil Secretariat, Tripura are as follows:

RECRUITMENT RULES FOR THE POST OF BOOK BINDER UNDER THE CIVIL SECRETARIAT: TRIPURA

1. Name of post Book Binder
2. No. of posts 1 (one)
3. Classification Class-III (non-gazetted)
4. Scale of pay Rs. 240-8-320-10-440/- (EB after 8th & 15th stages)
5. Whether selection Non-selection post, post or non- selection post
6. Age limit for direct Upper age limit 35 recruits years. Relaxable by 5 years in case of Scheduled Tribes/ Scheduled Castes and Government servants.
7. Educational and Not applicable other qualifications required for direct recruits.
8. Whether age and Not applicable educational qualifications prescribed for direct recruits will apply in case of promotees.
9. Period of probation, 2 (two) years. if any.
10. Method of recruitment. Whether by By promotion direct recruit or by promotion or by deputation/transfer and percentage of vacancies to be filled by various methods.
11. In case of recruit by From the post of promotion/deputa- Gestetner- Operator tion/transfer, grades having knowledge and from which promotion/experience in Book- tion/deputation/ Binding works, transfer to be made.
12. If a DPC exists, ClassIII D.P.C. what is composition
13. Circumstances Not applicable in which TPSC is to be consulted in making recruitment
14. Saving Nothing in these rules, shall effect reservation and other concessions required to be provided for other special categories of persons in accordance with the order issued by the Central/State Government from time to time in this regard.
14. The above Recruitment Rules show that the binders have no promotional avenues and this fact has also not been denied by the Petitioners in their rejoinder affidavit. On the other hand the Recruitment Rules for appointment to the post of Assistant Foreman (Binding) shows that the post of Assistant Foreman (Binding) can be filled up by binders with 3 years experience. The Recruitment Rules for appointment to the post of Assistant Foreman (Binding) are as follows:

RECRUITMENT RULES FOR THE POST OF ASSISTANT FOREMAN (BINDING)

1. Name of post : Assistant Foreman (Binding)
2. Number of posts : 3 (three) plus additional posts as and when sanctioned.
3. Classification : Class III
4. Scale of pay : Rs. 330-10-400-15-580/- (EB after 8th & 15th stages)
5. Whether selection : Non-Selection post or non- Selection post
6. Age limit for direct : 35 years, relaxable in recruitment case of ST/SC and others as per Govt. orders.
7. Educational and : H.S. Examination pass other qualification or its equivalent. Must required have good knowledge of Book Binding works including experience in the handling of various binding machines and must have supervisory experience at least of 2 years in a reputed Press. Must have Diploma in Printing & Graphic art with Book Binding as a Special subject.
8. Whether age and : No educational qualifications prescribed for the direct recruits will apply in the case of promotees
9. Period of : No probation, if any
10. Method of recruit- : 66 2/3% by promotion and 33 1/3% by direct recruitment. or by promotion or transfer and percentage of the vacancies to be filled by various methods.
11. In case of recruit- : From Binder in the scale mentioned by promotion of Rs. 240-440/- with 3 years experience in the from which promoted it senior to Folding Machine Operator in the made. scale of Rs. 330-580/- or by transfer from Folding Machine Operator in the scale of Rs. 330-580/-. Relaxation of the period of service may be done in deserving cases with the approval of the Cabinet. Failing above by direct recruitment.
12. If a D.P.C. exists, : Class III D.P.C. what is its composition.
13. Circumstances in : Does not arise T.P.S.C. is to be consulted in making recruitment
14. Savings : Nothing in these rules shall affect reservation and other concessions required to be provided for Sch. Castes/Sch. Tribes and such other Special categories of persons in accordance with the orders issued by the Central/State Govt. from time to time in this regard.
15. In this context Mr. Saha has also drawn my attention to the order No. FI (55)-PTG/95/6666-71 dated 9th of November, 1995. This document was subsequently produced before the court and it reads:

On the recommendation of the D.P.C. held on 22.9.95, Shri Sanakmani Deb Barma, Binder, Tripura Government Press, Printing and Stationary Department,

Agartala is promoted to the post of Operator (Folding Machine/H.P.C. Machine on regular basis in the scale of pay of Rs. 970-40-1290-45-1650-50-2400/- in the Tripura Govt. Press under the Printing and Stationary Department Govt. of Tripura, Agartala, read with Graded Scale No. 28, under R.O.P. Rules, 1988.

His promotion will be on probation basis for 2 (two) years from the date of his joining in the respective post.

The promotion is subject to the final decision of the Hon'ble High Court Civil Rule 510/94 as communicated by the Appointment & Services Department's No. F. 23(6)-GA/93 dated 14.8.95.

His pay will be fixed under the provision of F.R. 22(a)(i).

The expenditure involved on this behalf will be met against the Sub-head of accounts in which provision is made in the Budget grant.

16. This order shows that Shri Sanakmani Deb Barma, a Binder of Tripura Government Press was promoted to the post of Operator. The Recruitment Rules for the post of Folding Machine Operator/Heavy Paper Cutting Machine Operator which has been notified under No. F.1(19)-PTG/85/13,321 dated, Agartala, the 1st December, 1986 also shows that this post can also be filled up by promotion from binder with 3 years service in the grade.

17. Mr. B. Das, the learned senior counsel appearing on behalf of the Petitioners has, on the other hand, contended that until Third Tripura Pay Commission Report was published the binders of the Tripura Government Press and the binders of the Civil Secretariat were getting the same scale of pay and as such there was no reason for such discrimination by the Third Tripura Pay Commission as the nature of duties and responsibilities are same. It has also been argued by Mr. Das that the Recruitment Rules for appointment of binders in the Tripura Government Press will show that academic qualifications needed to be eligible for the posts of binders in the Government Press are more than that of the Civil Secretariat. In support of his contention Mr. Das has referred to a decision of the Supreme Court in the case of Employees of Employees of Tannery and Footwear Corporation of India Ltd. and another Vs. Union of India and others, In that case it was not disputed that at one stage, namely, in 1970, the scales of the employees falling in the aforesaid four categories employed with the Respondent-corporation as well as the Cotton Corporation of India were identical. The nature of duties were also same and there was parity in the pay scales of the employees in both these Corporations. After 1970 the pay scales of the employees in Cotton Corporation of India were revised thrice whereas the pay scales of the employees in the Respondent-Corporation were revised twice.

18. However, in pursuance of the directions given by the Supreme Court the Government of India appointed a High Power Committee under the Chairmanship of Shri Justice R.B. Misra, to go into the various aspects relating to pay scales and other incidental matters such as additional D.A., interim relief etc. This

Committee, after considering the pay-scales in the various Public Enterprises having Central Government pattern of D.A. has recommended uniform pay scales for the employees including subordinate staff falling in the categories of Attendant, Messenger, Peon etc. The Committee was of the view that rationalisation of the present heterogeneous structure of pay scales was required in the interests of uniform remuneration for similar work in the different categories. Therefore, the Supreme Court was of the view that the pay scales of the employees in the unionised cadre falling in the four categories referred to above in the Respondent-Corporation should be revised in a way that the same are at par with the pay scales of such employees employed with the Cotton Corporation of India.

19. In this context Supreme Court referred the decision of State of U.P. and Ors. Appellant v. J.P. Chaurasia and Ors. Respondents reported in AIR 1989 SC 19 where Supreme Court held that the matter of equation of post for the purpose of equation of pay must be left to the executive and must be determined by expert bodies like Pay Commission and that if there is such a determination by a Commission or Committee the Court should normally accept it.

20. In the instant case it will appear from the Recruitment Rules of both categories of binders that while binders of the Civil Secretariat have no promotional scope, binders in Tripura Government Press have promotional scope and that one is qualified to get the higher post after completion of 3 years of service. Third Tripura Pay Commission Report shows that in view of the fact that there are certain dead-end post it recommended that in such cases the post may be re-designated and up-graded after an employee held the post for 10 years. On the basis of the recommendation of the Third Tripura Pay Commission the Government of Tripura also allowed the binders to get higher scale of pay of Rs. 1020-2620/- after completion of 10 years and scale of pay of Rs. 1250-2890/- after completion of 18 years.

21. In the case of State of U.P. and Ors. Appellants v. J.P. Chaurasia and Ors. Respondents (supra) the supreme Court held:

The answer to the questions whether two posts are equal or should carry equal pay depends upon several factors. It does not just depend upon either the nature of work of or volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with

extraneous consideration.

22. In *V. Markendeya and Others Vs. State of Andhra Pradesh and Others*, The Supreme Court made the following observation:

Where two class of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. If the State denies them equally in pay, its action would be violative of Articles 14 and 16 of the Constitution and the Court will strike down the discrimination and grant relief to the aggrieved employees. But before such relief is granted the court must consider and analyse the rationale behind the State action in prescribing two different scales of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for relevant posts, the court finds that the classification made by the State in giving different treatment to the two class of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be up-held. Principle of equal pay for equal work is applicable among equals, it cannot be applied to unequals. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the Court that invidious discrimination is prescribed by the State in prescribing two different scales for the two class of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by court in abstract. The question what scale should be provided to a particular class of service must be left to the Executive and only when discrimination is practiced amongst the equals, the court should intervene to undo the wrong, and to ensure equality among the similarly placed employees. The court however cannot prescribe equal scales of pay for different class of employees.

23. In *Shyamal Saikia and Ors. Petitioners v. State of Assam and Ors.* reported in (1984) 1 GLR 144 a Division Bench of this Court laid down the law as follows:

"Equal pay for equal work" is not a catch phrase or an empty slogan. The expression, at the first blush, appear to be exciting and comforting but they are powerful responses for the conscience. The collocation of the words are our constitutional remedies by the enforcement of the constitutional rights guaranteed by and under the Constitution. It is proclaimed in Article 39(d) of the Constitution as a Directive Principle, the Constitutional target of "Equal pay for equal work for both men and women." Articles 14 and 16 guarantee respectively the fundamental rights to equality before law and equality of opportunity in the matter of public employment. The Directive principle has to be read into the fundamental rights and should be treated as tools for the interpretation of fundamental rights. The equality clauses should be useful and must mean something to the citizens.

It follows, therefore, that the unequal scales of pay based on (I) no classification or (2) irrational classification is violation of Articles 14 and 16 provided those drawing the different scales of pay do similar work under the same employer. Indeed, the employer is the best person to judge or assess whether the employees are performing "identical work" and therefore entitled to equal scales of pay. The term "identical" in the context means, kindred, skin, equivalent, comparable, analogous or cognate work.

24. It would be apparent from the decision of the Supreme Court referred to above that application of the doctrine of "equal pay for equal work" depends upon several factors and equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission.

25. In the present case a comparative study of the Recruitment Rules of binders of Civil Secretariat, Tripura and that of Tripura Government Press shows that while the binders of Civil Secretariat have no promotional scope, the binders in Tripura Government Press have scope for promotion and that a binder can get promotion after completion of 3 (three) years of service. The Petitioners have not also assigned any reason as to why they did not approach the Government for referring the matter to the Individual Tribunal.

26. For all these reasons, I am of the view that this writ petition merits no consideration and accordingly, the same is dismissed. However, I leave the parties to bear their own costs.