

(2005) 01 CAL CK 0051
In the Calcutta High Court
Case No : F.M.A. No. 31 of 1999

W.B. Minimum Wages Inspectors Association and Others	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2006) 1 CHN 404 : (2005) 3 ESC 1905

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Kalyan Bandhopadhyay, S. Biswas and Indrani Mitra, for the Appellant; Aninda Mitra, Joydip Kar, Anirban Kar and Kohinoor Roy, for the Respondent

Final Decision : Allowed

Judgement

Dilip Kumar Seth, J.

1. The appeal is founded on the principle of Article 39(d) of the Constitution of India, namely, equal pay for equal work. The grievances of the petitioners are that though had been on the same scale of Rs. 300-600 (prior to the R.O.P.A. Rules, 1981) were recommended in scale of Rs. 380-910 under the R.O.P.A. Rules, 1986 along with the Inspector, Co-operative Societies; Extension Officer, Panchayat; Inspector Statistics (N.E.S. Directorate); Research Assistant, Dairy Service; Sanitary Inspector, Grade-I, in implementing R.O.P.A. Rules 1981, the Inspector, Minimum Wages (Agriculture) was retained in scale of Rs. 380-910 (Scale 9), whereas the rest were given scale of Rs. 425-1050 (Scale 10). Though discharging similar responsibility or in some cases more responsibilities, yet their claim for upgradation to Scale 10 from Scale 9 at par with the other similarly situated inspectors were turned down. The Third Pay Commission simply recommended the corresponding scale of R.O.P.A. 1986. The Review Committee recommended Scale 10 for the same service with effect from 1st of January, 1986. But the State Government did not accept the same. The Fourth Pay

Commission again directed grant of same scale to all these officers of the West Bengal Subordinate Labour Service and recommended Scale 16.

1.1. This subsequent recommendation of the Fourth Pay Commission was sought to be brought on record by way of an application for leave to incorporate subsequent event through which the relevant materials have since been brought on record and which were heard along with the appeal. Thus, at the same time, some of the other officers of the same cadre, who were granted Scale 9 obtained Scale 10 through writ petitions filed before this Court pursuant to orders passed therein directing grant of Scale 10. In some cases the Government itself had given Scale 10 to some of the other officers. In this background the petitioners claimed that they are entitled to a parity and identical scale with those of their counterparts, who were in scale of Rs. 300-600. Reliance was placed on various materials and decisions to support the respective contentions, which we would be dealing with at appropriate stage.

1.2. The writ petition filed by the writ petitioners claiming the above relief was dismissed on 1982 on the ground that the same involved certain question of fact which the Writ Court could not take upon itself to determine and that the matters were likely to be considered by the newly appointed Pay Commission in the near future before which the question might be agitated.

1.3. Against this judgment the present appeal has since been preferred. Admittedly, the grievances of the petitioners were based on the R.O.P.A. 1981, namely, the Second Pay Commission, whereafter the Third Pay Commission (R.O.P.A. 1986) had intervened at the time when the rule was discharged, since appealed against, and during the pendency of the appeal, the Fourth Pay Commission (R.O.P.A. 1991) had intervened. In these circumstances, it is the question as to whether any fruitful result can be had on the strength of the present appeal.

Appellant's contention :

2. Mr. Saktinath Mukherjee, learned Senior Counsel for the appellants, however, contended that the subsequent events can very well be taken note of in order to do complete justice when the facts are not in dispute and the materials upon which reliance is placed are matters of record. In support of his contention, he relied on the decisions in *Ram Ratan Sahu and Ors. v. Mohant Sahu and Ors.* (1907) 6 CLJ 74; *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others*, and *Lekh Raj v. Muni Lal and Ors.* (2001) 2 SCC 762. Relying on the decision in *Purshottam Lal and Others Vs. Union of India (UOI) and Another*, , he contended that if the recommendation of the Pay Commission is accepted, it is to be accepted for all. Placing reliance upon *Employees of Tannery and Footwear Corporation of India Ltd. and another Vs. Union of India and others*, , he contended that unless there is any tangible differentia in the nature of the job, all are to be equally placed. Referring to the decision in *State of West Bengal and Ors. v. Hari Narayan Bhowal and Ors.* 1994 (2) SLR 54, he contended that if the

discrimination made is without justification, then the Court can interfere. On the basis of the ratio laid down in Bhagwan Sahai Carpenter and others Vs. Union of India and another, , he submitted that there cannot be any discrimination in the same group.

2.1. According to him the petitioners were and are on the group comprising the West Bengal Subordinate Labour Service within which the Inspector of Cooperative Societies etc., referred to above, are included. In order to substantiate this proposition, he drew our attention to the recruitment rules, the qualification, the condition and nature of the service, responsibilities and the duties performed.

Respondent's contention :

3. Mr. Aninda Mitra, learned Senior Counsel, ably assisted by Mr. Joydip Kar, learned Counsel for the respondents, on the other hand, contended that these questions cannot be gone into in exercise of the writ jurisdiction which are matters to be decided by expert bodies and not by the Court. For the purpose of determining the question of equal pay for equal work, various factors are to be taken into consideration. These factors are dependent on comparative studies of the duties and the responsibilities discharged, which are factual in nature and could be undertaken only by the experts in the field and the Court is not supposed to undertake such job. In support, he relied on the decisions in L. Chandra Kumar Vs. Union of India and others, ; and State of West Bengal and others Vs. Deb Kumar Mukherjee and others, . He then contended that the recommendation of the Pay Commission is not binding on the State Government. Inasmuch as the report of the Pay Commission is in discharge of executive function. In case the Government does not accept the recommendation, the same would not be justiciable. The Court cannot undertake the task of job-evaluation and equation of posts. In support, he relied on Secretary, Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, .

3.1. He also contended that the qualification for recruitment in the post of Inspector, Minimum Wages (Agriculture) is under graduate and not graduate as claimed. He referred to pages 64 and 65 of the Paper Book. Referring to page 42 of the said Paper Book, he contended that no averment for claiming parity with the four posts mentioned were available within the pleadings. The onus to establish parity is on the petitioners. In order to substantiate this proposition, he relied on the decision in State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, . According to him, in the absence of any materials to establish parity, no relief on equality can be granted and that the recommendation of a department is not acceptable and the recommendation does not confer any right on the petitioners. The Court has to leave such matter to the experts. It cannot examine the same except in case of hostile discrimination. To support this contention, he relied on Union of India and Others Vs. Pradip Kumar Dey, .

3.2. Relying on the decision in *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, , which in turn relied upon the decision in *Pramod Bhartiya (supra)*. He contended that the capacity of the Government to pay is also a factor to be taken into consideration. Equal pay for equal work is not fundamental right, though a constitutional goal. He further contended that the implication and the impact of such grant of scale have also to be judged. In this context, he referred to the decision in *Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty*, . He then contended that the grant of scale is a policy decision of the Government outside the domain of the jurisdiction exercised by Court, relying upon the decision in *Union of India and others Vs. Makhan Chandra Roy*, . Pointing out to the ratio decided in *Joint Joint Action Council of Service Doctors' Organisations and Others Vs. Union of India (UOI) and Another*, , he drew our attention to the extent as to how far the recommendation is binding and the extent of the right of the petitioners to get such relief.

3.3. Pointing out to the order refusing the petitioners' claim, he submitted that the Government did not accept the recommendation on the grounds recorded in the order, which is non-justiciable. Referring to pages 20 and 21 of the Supplementary Affidavit, he pointed out that the posts are different, the responsibilities are different and that the recommendation was rejected after giving reasons and pursuant to the orders of the Supreme Court. So far as the ground with regard to the recommendation of the Fourth Pay Commission that has been urged by Mr. Mukherjee gives rise to a different cause of action, which cannot be incorporated in the writ petition, particularly, when the appeal is against an order long after which the recommendation of the Fourth Pay Commission came into existence.

The reply :

4. Mr. Mukherjee, on the other hand, in reply, submitted that those who were block level extension officer were also given Scale 10 and that subsequent events can be taken into consideration, which he reiterated relying on *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others*, and *Lekh Raj v. Munni Lal and Ors.* (2001) 2 SCC 762 (para 11).

4.1. At the end Mr. Kar appearing for the respondents further pointed out that the parity with welfare officers cannot be claimed in the absence of any pleading. He also pointed out that the pleading has since not been amended.

Admitted facts :

5. From the above facts, it appears that the post of Inspector, Minimum Wages (Agriculture) is one of the posts borne under the West Bengal Subordinate Labour Service. Admittedly, all those posts were borne at scale of Rs. 300-600 before the Second Pay Commission/R.O.P.A. 1981. For all those posts the R.O.P.A. 1981 recommended corresponding revised scale of Rs. 390-910. Admittedly, the scale of Rs. 425-1050 was accepted for four posts. Whereas the

Inspector, Minimum Wages (Agriculture) were given scale of Rs. 380-910/-. It is also an admitted proposition that R.O.P.A. 1986, the Third Pay Commission, had simply given the corresponding scale to the respective posts namely for the other four posts Scale 10 was given as against scale of Rs. 425-1050 and Scale 9 was given to the petitioners, namely, Rs. 380-910. The Third Pay Commission did not go into the question of responsibilities or otherwise and did not justify the revision with any reason. The Review Committee, however, recommended Scale 10 for the petitioners on the ground that they are also holding the corresponding posts, particularly, having regard to the rules of recruitment etc. It was also found that persons, who were promoted to the post held by the petitioners, enjoyed Scale 9. Therefore, the feeder post and the promotional post could not bear identical scale. But this recommendation was not accepted by the State Government and was rejected. It further appears that in some cases the State Government had given the scale in respect of posts in the same cadre of West Bengal Subordinate Labour Service from Scale 9 to Scale 10, but had never directed giving of the same benefit to the petitioners, who were continued at Scale 9. Whereas the Fourth Pay Commission recommended giving of same scale, namely, Scale 16 in general to all West Bengal Subordinate Labour Service posts, which included those held by the petitioners. Admittedly, all these materials have since been brought on record by means of an application for leave which was also heard along with the appeal.

Subsequent events--Whether can be taken note of:

6. Having regard to the facts and circumstances of the case, it appears that those materials would be necessary for doing complete justice to the parties and determining the issues. The Court cannot refuse justice when the parties do come before it simply on technicalities when it does not involve separate cause of action or investigation of facts or otherwise. Inasmuch as, in the present case, the grant of scale in successive R.O.P.A. Rules are dependent on the question of granting the scale in the R.O.P.A. 1981 by the Second Pay Commission, the grievance in respect of which is still pending and a decision on this question would be relevant for the purpose of consideration for granting of scale in the subsequent R.O.P.A. Rules or by the subsequent Pay Commissions and as such the grant of scale in successive R.O.P.A. Rules/Pay Commissions are related to series of transactions, which cannot be disintegrated and separated and divided in separate compartments and are in effect different stages of the same process, which is revised from time to time and as such forms part of the same cause of action, though, takes place subsequently. In such situation, the Court cannot close its eyes and over-look the subsequent events, particularly, when the matters are being dealt with by expert bodies. Therefore, in our view, the Court is supposed to take note of the subsequent events and cannot overlook the same, as was held in *Lekh Raj (supra)*; *Nair Service Society Ltd. (supra)* and *Ram Ratan Sahu (supra)*.

6.1. We, therefore, allow the application for leave to incorporate subsequent

events and to bring on record the materials disclosed with the said application on which reliance was placed by Mr. Mukherjee. These documents are all issued by the State and are records of the Government and as such unless disputed, there can be no bar for the Court to rely upon the same. In his usual fairness, however, Mr. Kar did not dispute the genuinity or existence of the materials so disclosed. We, therefore, think it fit to rely upon the same as would be necessary for the purpose of deciding the present question.

Parity of pay : The Principles :

7. As rightly contended by Mr. Mitra and Mr. Kar for the respondents that it is a settled proposition of law that the question of comparison of the responsibilities and duties of the different posts are to be left with the expert bodies. The recommendations are dependent on the job-evaluation and equation of posts. Equal pay for equal work is dependent on various factors such as qualification, nature of the job, the duties performed, the responsibilities discharged etc., which are all factors to be taken into consideration, a complex job dependent on various facts which the Court cannot undertake as was held in *L. Chandra Kumar* (supra) and *Deb Kumar Mukherjee* (supra). It is also an admitted proposition that the onus to establish parity is on the petitioner as was held in *Pramod Bhartiya* (supra). As was held in *Pradip Kumar Dey* (supra) that in the absence of established parity, no relief of equality could be granted to the petitioners. At the same time, the recommendation of the department would not confer any right on the petitioners nor the State is bound to accept the same and the Court has to leave the matter to the experts except in case of hostile discrimination. As was rightly contended by Mr. Kar that the recommendation of the Pay Commission is an executive function, as was held in *Secretary, Finance Department* (supra) wherein it was laid down that such executive function is not binding on the Government and the rejection by the Government is non-justiciable since it is based on job evaluation and equation of post which is supposed to be undertaken by the expert body. It was also correct to say that the grant of scale is a policy decision outside the domain of the jurisdiction exercised by the Court as was held in *Makhan Chandra Roy* (supra).

Discrimination : Whether Hostile : Scope of interference by Court:

8. There is no doubt or dispute about the proposition advanced by Mr. Mitra and Mr. Kar appearing for the respondents. But, at the same time, it cannot be conceived that the Court has no jurisdiction to entertain a writ petition if the petitioners come and contend that the Government had made hostile discrimination in accepting the recommendation of the Pay Commission in respect of some of the posts included within the same cadre of West Bengal Subordinate Labour Service except that held by the petitioners, namely, the post of Inspector, Minimum Wages (Agriculture), particularly, when no justification is available for such a discrimination. It appears to us to be a hostile discrimination. Inasmuch as the scale of Rs. 380-910 (Scale 9) was enjoyed by U.D.A. and other feeder posts being sources from which promotion is granted to the post of

Inspector, Minimum Wages (Agriculture). The feeder post and the promotional post cannot bear the identical pay scale. While accepting the recommendation of Scale 10 for the other groups of the same service and denial of the same scale to the petitioners and grant of a lower scale equal to that of the feeder post definitely is a hostile discrimination. As rightly contended by Mr. Mukherjee the recommendation, if accepted, it is to be accepted for all as was held in *Purshottam Lal (supra)*, unless there is any tangible differentia in the nature of job. Inasmuch as in the absence of any such differentia, all are to be placed equally, since held in *Employees of Tannery and Footwear Corporation of India Ltd. (supra)*. If such discrimination is made without any justification, then it is open to the Court to interfere as was held in *Hari Narayan Bhowal (supra)*. There cannot be any discrimination in the same group as was laid down in *Bhagwan Sahai Carpenter (supra)*.

8.1. True it is that in order to determine the question, it is necessary to look into various factors namely the recruitment rules, the conditions of the service, the nature of the job, the duties performed and the responsibilities discharged. It is a question of job evaluation and equation of post, which is normally to be left with the experts, but if on the materials placed before the Court, it appears that there is no rationale to the differentiation or the discrimination made by the State, the Court can very well look into the materials and examine the same. In the process it can also rely upon the recommendation of the experts, if there be any.

The Present case: The Principle applied :

9. In the present case, it appears that the Review Committee had recommended Scale 10 for the post of Inspector Minimum Wages (Agriculture) after considering the relevant factors. This was turned down by the State Government on certain reasons, through which Mr. Mukherjee had led us. On perusal thereof, we are of the opinion that the reason for rejection of the recommendation of the Review Committee seems to be preposterous. This is further supported by the recommendation made by the Fourth Pay Commission.

9.1. We have examined the qualification as disclosed in this case from pages 102 and 103 of the paper book and page 57 paragraph 15 (1) of the supplementary paper book. We have also examined duties and responsibilities as available from pages 57 to 61 paragraphs 15 (m) and (n) of the supplementary paper book the pages 11 and 12 paragraph 15 (Annexure p-6), pages 27-52 of the leave application (supplementary) dated 31st March, 2003 and the comparative chart at page 120 of the supplementary paper book. At the same time, we have also noted that certain other posts in respect of which the State Government denied Scale 10 and granted Scale 9 were given Scale 10 either by the Government of its own or by reason of an order passed by this Court on writ petitions moved by those groups since accepted by the State Government. It may also be noted that the Third Pay Commission had simply given the corresponding scales without any justification, but the Fourth Pay Commission and the Review Committee had placed the petitioners at par with the other counterparts of the same service.

9.2. Even if the Court is not an expert in the field, but it is free to rely upon the opinion of the experts and find out as to whether there is any justification in the denial despite recommendation. Scale 10 was granted to the post of Inspector, Scheduled Castes and Scheduled Tribes, Block Saving Organiser, Inspector, Social Welfare, Block Youth Officer and Fishery Extension Officer following the orders of the Courts, whereas Scale 10 was given to Inspector, Co-operative Societies, Extension Officer, Panchayat, Extension Officers of Industries and Fishery Extension Officer. Both those groups of posts were given the corresponding Scale 11 in the Third Pay Commission.

9.3. It may also be noted that the West Bengal Subordinate Labour Service included in the cadre of Inspector of Minimum Wages, Inspector of Shops and Establishments, Labour Inspector, Inspector of Trade Union, Investigator and Statistical Assistant. In the same category as it appears from the Notification No. 2207-GE dated 23rd June, 1995 that the Agriculture Minimum Wages Inspectors were also placed in the same group. The amendment to the rules regulating the recruitment to the post of Inspector Minimum Wages, Inspector Trade Unions, Labour Inspector, Statistical Assistant Inspector, Investigator, Scrutiny Assistant, Computer and Computing Investigator in the Statistical Section of Labour Directorate and the Supervisor of the Labour Welfare Centers of the Labour Directorate was incorporated by a notification dated 5th June, 1995 inserting the Agriculture Minimum Wages Inspector with effect from 1st of July, 1976 and that the qualification is graduate and preferably honours or with distinctions. These are all materials which go to show that the petitioners could not be discriminated upon with the other counterparts in the same service, particularly, when they were borne in the same scale before R.O.P.A. 1981 and were recommended the same scale in R.O.P.A. 1981, but discriminated by the State not only against the petitioners but also against some other who were given scale 10 (Rs. 425-1050) either by the State on its own or by orders of the Court leaving the petitioners at Scale 9 (Rs. 380-910). But no justifiable reasons having been disclosed and our attention having not been drawn to any such material, we are of the opinion that the State could not make the discrimination hostile in nature.

Pleading : Whether absent:

10. Mr. Kar had contended that there was no pleading with regard to the parity with the four posts mentioned in page 42. True, the onus is on the petitioner as was held in *Pramod Bhartiya (supra)*. The very claim was made on the strength of the averments and the materials disclosed in the writ petition itself, particularly, paragraphs 15 (1), (m) and (n) respectively, which read with the other materials seem to be sufficient in discharge of such onus and pleadings available on record. Therefore, the contention of Mr. Kar cannot be sustained.

State's capacity to pay : Whether factor for denying relief:

11. The next contention that the capacity to pay is also a factor to be taken into consideration and that the equal pay for equal work is not a fundamental right

though a constitutional goal as was held in Haryana Civil Secretariat Personal Staff Association (supra). True, it is a constitutional goal, not a fundamental right, in the governance by the Government, which are to be ensured. The principles of equality of pay for equal work also one of the limbs of Article 14, and particularly of Article 16 of the Constitution of India and cannot be overlooked as only being a constitutional goal. It is linked with the fundamental right to equality enshrined in Article 16 in relation to employment or otherwise, which cannot be segregated. The capacity to pay may be relevant for the purpose of granting of a particular scale to a particular group, but it cannot be a factor to deny the same when the scale is granted to all other groups in the same cadre of service and denied to one only. As discussed above that some of the groups in the same service or cadre have since been given Scale 10 in R.O.P.A. 1981 and Scale 11 in R.O.P.A. 1986, therefore, having regard to the peculiar facts and circumstances of the case, the principle emanating from Haryana Civil Secretariat Personal Staff Association (supra) would not be applicable in view of the distinguishing feature as noted above. It is also a correct proposition that the implication or impact has also to be judged as was held in Manoj K. Mohanty (supra). But the said proposition can also be distinguished in the same manner as we have distinguished the ratio laid down in Haryana Civil Secretariat Personal Staff Association (supra). Inasmuch as the same cannot, be taken into consideration when identical scale is given to all the others in the same cadre and denied to the petitioners.

Grant of Scale : Policy decision : Impact on the present case :

12. Grant of scale is definitely a policy decision outside the domain of the Court as was held in Makhan Chandra Roy (supra). But, in this case, we are not supposed to grant scale. In this case what the Court is supposed to do is to examine as to whether the denial of the Scale 10 in R.O.P.A. 1981 and Scale 11 in R.O.P.A. 1986 to the petitioners when the same scale was given to all their counterparts in the same cadre or the service could be justified or not. The decision to grant scale being a policy decision is not justiciable as was held in Secretary, Finance Department (supra), but when it is discriminated in between posts in the same cadre, it does not remain a policy decision. A discriminatory action without tangible differentia cannot be a policy decision to exclude the domain of the jurisdiction of the Court. It is open to the Government to accept the recommendation or not to accept the same. But it cannot accept the same for one and deny to the other. The recommendation may not be binding as was held in Joint Action Council of Service Doctors' Organisations (supra), the recommendation may not confer any right as was held in Pradip Kumar Dey (supra), but in cases where recommendation is accepted for some and denied to other would not be a question of examining the extent of binding nature of the recommendation and would not be a policy decision within the meaning of the ratio decided in Makhan Chandra Roy (supra) to make the action non-justiciable. An action, which discriminates without tangible differentia is definitely justiciable, and the Court on the grounds put forth by the State cannot spare the non-

acceptance contrary to the recommendation of the Review Committee.

Differentia : If exists : Justifiability :

13. Though it was attempted to be pointed out by Mr. Kar that the posts are different, the responsibilities are different, but it does not seem so, particularly, in view of the recommendation of the Fourth Pay Commission and that of the Review Committee for rejection whereof is not backed by sufficient justification.

13.1. In this case, we may accept that the Court cannot be an expert. But then the experts have recommended. Some of such recommendations have been accepted and some were not. In such a situation, the question before the Court as to whether the action of the State in non-accepting the recommendation is justified. The Court may not weigh and determine but can examine whether the non-acceptance has been properly explained.

Conclusion :

14. As discussed above, in the absence of any proper explanation explaining the action of the State in the denial of the scale to the petitioners, we are unable to accede to the contention of Mr. Mitra and Mr. Kar.

ORDER

15. In these circumstances, the appeal succeeds. The writ petition is allowed. The order of the learned Single Judge under appeal is hereby set aside. The petitioners be given the same scale from the respective date as were given to their counterparts, namely, the four posts mentioned at page 42 of the paper book under R.O.P.A. 1981 as well as the corresponding scale under R.O.P.A. 1986 and the same scale that would be given to those four posts mentioned in page 42 of the paper book under the Fourth Pay Commission; and accordingly their pay be fixed and the difference/arrears be paid to the petitioners within six months from the date of service of a certified copy of this order, and be paid accordingly so far as their current salary is concerned in the same scale together with all consequential benefits as are available in law to the respective petitioners.

15.1. The appeal, thus, stands allowed. There will, however, be no order as to costs.

15.2. Urgent xerox certified copy, if applied for, be made available to the parties within seven days from the date of such application.

Rajendra Nath Sinha, J.

16. I agree.