

ORISSA UNIVERSITY OF AGRICULTURAL & TECHNOLOGY AND ANR. A

v.

MANOJ K. MOHANTY

APRIL 17, 2003

[SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.] B

Service Matter:

Temporary appointment of the incumbent as Typist against the vacancy of Junior Assistant—Regularisation of service of juniors ignoring his claim—Challenge to—High Court directed to grant him regular scale of pay as admissible to regularly appointed Junior Assistants on the principle of equal pay for equal work—Correctness of—Held: Burden is on incumbent to establish his right of equal pay on par with Junior Assistants working on regular basis—In the absence of requisite averments in the petition, and material justifying applicability, the incumbent is not entitled to get regular scale of pay—Constitution of India—Article 14. C D

Words and Phrases:

'equal pay for equal work'—Meaning and scope of in the context of service jurisprudence. E

Respondent was appointed as a 'Typist' against the vacancy of 'Junior Assistant' on a consolidated salary temporarily by the appellant-University. He had been working as Junior Assistant for more than five years but his services were not regularised though some of his juniors were absorbed by the appellant-University. He filed a writ petition seeking regularisation of his services. High Court directed the appellant-University to pay the respondent regular scale of pay as admissible to Junior Assistants from back date. Aggrieved, appellant-University filed a Review Petition which was dismissed by the High Court. Hence the present appeals. F G

It was contended for the appellant-University that since services of the respondent were not regularised from back date, he was not entitled for regular scale of pay; and that High Court erred in granting regular scale of pay to the respondent without examining the facts and provision of law as stated by the H

A apex Court as regards equal pay for equal work.

On behalf of the respondent, it was submitted that since he was discharging the duties of 'Junior Assistant', he was entitled to regular scale of pay as admissible to 'Junior Assistants'.

B Partly allowing the appeals, the Court

HELD: 1.1. The High Court before directing to give regular pay-scale to the respondent w.e.f. September, 1997 on the principle of 'equal pay for equal work' did not examine the pleadings and facts of the case in order to appreciate whether the respondent satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by the regularly appointed 'Junior Assistants', the qualifications, responsibilities etc.

[758-E, F]

D 1.2. The respondent was appointed on temporary basis on consolidated pay and he had not even undergone the process of regular recruitment. Besides, nothing was stated in the Writ Petition as regards the nature of work, responsibilities attached to the respondent without comparing to the regularly recruited Junior Assistants. There was neither necessary averments in the writ petition nor any material was placed before the High Court so as to consider the application of principle of 'equal pay for equal work'. In the absence of necessary averments and material placed on record, there was no scope to give direction as is done by the High Court in the impugned order. The burden was on the respondent to establish that he has a right to equal pay on the principle of 'equal pay for equal work' relying on Article 14 of the Constitution. That having not been done, the respondent was not entitled for the direction to get regular pay-scale w.e.f. September, 1997. [758-F-H; 760-G, H]

Union of India and Ors. v. Pradip Kumar Dey, [2000] 8 SCC 580; *State of Haryana and Ors. v. Jasmer Singh and Ors.*, [1996] 11 SCC 77 and *State Bank of India and Anr. v. M.R. Ganesh Babu and Ors.*, [2002] 4 SCC 556, relied on.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No., 4210-4211 of 2000.

H From the Judgment and Order dated 3.2.99/11.9.97 of the Orissa High Court in C.R. No. 104 of 1998/O.J.C. No. 3267 of 1996.

Janaranjan Das, Gourang Biswal and Swetaketu Mishra for the Appellants. A

Shibashish Misra for Dabasis Misra for the Respondents.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL J. The respondent was appointed as a Typist against the vacancy of Junior Assistant on his application by the order dated 20.7.1990 on a consolidated salary of Rs. 530 per month temporarily until further orders. His father was serving as a Lecturer in Statistics in the appellant-University. He died in harness on 27.6.1971. It is the further case of the respondent that although in the appointment order it was mentioned as Typist, he was working as Junior Assistant in the Examination Section of the College of Engineering and Technology; two certificates dated 4.12.1993 and 25.3.1996 were given to him by Dean which bear the testimony of his working as Junior Assistant; though he had been serving for more than five years, his services were not regularized, instead appellants absorbed some of his juniors; by the order dated 26.3.1996, he was appointed for a period of 59 days w.e.f. 27.3.1996 to 24. 5.1996 with a break of one day. Under the circumstances, he filed writ petition in the High Court seeking regularization of his services as a Junior Assistant w.e.f. 21.7.1990. B C D

The appellants filed counter-affidavit in the High Court resisting his claim contending that he was not appointed on regular basis; he has to go through the process of recruitment test/interview and after he becomes successful, then only he can be appointed on regular basis. E

The High Court observing that the respondent has been working as Junior Assistant since 21.7.1990 on a consolidated pay; the Dean of the College has certified that he is sincere and hard-working; he has served for more than five years and that posts of Junior Assistant are lying vacant, directed the appellants to take appropriate decision to consider the question of appointing him on regular basis. The High Court disposed of the writ petition on.11.9.1997 in the following terms:- F G

“6. In the result, by modifying the impugned order dated 26.3.1996 at Annexure-6, we direct that the petitioner may not be disengaged from service till appropriate decision is taken by the opp. Parties. We pass this order in view of the admitted position that the post against which H

A the petitioner has been continuing as Junior Assistant is available and the said post is also required for the purpose which necessitated petitioner's appointment. The opp. parties are further directed to pay the petitioner regular scale of pay admissible to Junior Assistant from the month of September, 1997.

B 7. The writ application is accordingly disposed."

C Aggrieved by the direction to pay the respondent regular scale of pay admissible to Junior Assistant from the month of September, 1997, the appellants filed a review application on 20.4.1998 seeking review of the order dated 11.9.1997 passed in the writ petition. The High Court dismissed the review application on 3.2.1999 observing that there was delay in filing the same and that no explanation was given for the delay in filing the review application, but the High Court proceeded to consider the merits of the contentions raised in greater details than the consideration made in the original order disposing of the writ petition. We are of the opinion that certain observations made D while disposing of review petition were unnecessary and at any rate they cannot alter the legal position having impact and bearing on the facts of the case. Hence, aggrieved by the orders of the High Court made in the writ petition and review application, these appeals are filed challenging their correctness and validity.

E This Court on 15.7.1999 issued notice confining it to the question as to whether the respondent was entitled to the grant of regular pay-scale w.e.f. September, 1997. In the meanwhile, the operation of the impugned order to the extent it directed the appellants to pay regular pay-scale w.e.f. September, 1997 was stayed.

F The learned Counsel for the appellants urged that the respondent was appointed on a consolidated salary of Rs. 530 per month temporarily until further orders; unless he goes through the process of regular recruitment and his services are regularized, he is not entitled for regular pay-scale w.e.f. September, 1997. According to him, the High Court committed serious error G in giving direction to give respondent regular pay-scale w.e.f. September, 1997; there was no legal basis for giving such direction; when the respondent was appointed on temporary basis on a consolidated salary, it was not open to him to claim regular pay-scale. The learned counsel further contended that the High Court was not right in directing the appellants to pay regular scale H of pay admissible to Junior Assistant from the month of September, 1997

without examining the facts and position of law stated by this Court as regards 'equal pay for equal work'.

The learned counsel for the respondent made submissions supporting the impugned order. He submitted that the respondent has been working since five years prior to filing of the writ petition; vacancies in the post of Junior Assistant are available; the respondent is discharging the duties of Junior Assistant and is doing the same/similar work as is being done by regularly appointed Junior Assistants; he is entitled for regular pay-scale and the High Court was right in giving direction to give him regular pay-scale w.e.f. September, 1997.

It is not in dispute that the respondent was appointed as Typist on consolidated salary of Rs. 530 per month temporarily until further orders against the post of Junior Assistant. This fact is evident from the very appointment order dated 20.7.1990. The services of the respondent had not been regularized. His appointment was not made through the process meant for regular recruitment. The only question that is to be considered in these appeals is whether the directions given by the High Court to give regular pay-scale to the respondent w.e.f. September, 1997 is justified and sustainable. The relevant averments in this regard are contained in para 7 and 8 of the writ petition, which read thus:-

"7. That similarly while extracting from him the work of a Junior Assistant the inaction in allowing him the scale of pay of Junior Assistant also violates the principle of equal pay for equal work.

8. That in such background, it is most humbly submitted that instead of regularizing his services, the authorities have been passing orders engaging the petitioner in the spells of 89 days, 59 days and 44 days with one day break. This clearly amounts to unfair labour practice. Even on the break-days, the petitioner has been made to work. The last such 59 days' appointment has been made on 26.3.1996. Copy of the last appointment order is filed herewith as *Annexure-5*. The petitioner has again submitted a representation during January, 1996 for regularization of his services and for allowing him equal pay for equal work. Despite commendatory certificates by opp. Party No. 3, till date no progress has been made and the petitioner apprehends that at any moment his services may be dispensed with. Copy of the representation is filed herewith as *Annexure-6*."

A In the counter filed on behalf of the appellants in para 5 meeting the averments made in paras 7-9 of writ petition, it is stated thus:-

B “5. That in reply to the averments made in paragraphs 7 to 9, it is submitted that the prescribed rate of wage attached to the posts on consolidated basis as per Govt. in Labour Employment Department circular the amount of Rs. 910/- per month in respect of both the posts of Typist/Junior Assistant are allowed to the persons continuing on such contracted basis.

C In the instant case, the Petitioner has not been deprived of getting the wage of Rs. 910 per month at par with rates approved by the Government in Labour and Employment Department.

D The Petitioner has been engaged on consolidated pay on casual basis, casual workers are dis-engaged when there is no work to provide them. Accordingly, at times the petitioner is allowed engagement to meet the urgent need of work with necessary break. The engagement of the persons for a period of 89 days, 59 days and 44 days on *ad hoc* basis, consolidated pay and casual basis respectively are made by the University from time to time as per Circular No. 21133 dt. 15.7.1995, a copy of which is annexed herewith as Annexure-A.”

E The High Court before directing to give regular pay-scale to the respondent w.e.f. September, 1997 on the principle of ‘equal pay for equal work’ did not examine the pleadings and facts of the case in order to appreciate whether the respondent satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by the regularly appointed Junior Assistants, the qualifications, responsibilities etc. When the services of the respondent had not been regularized, his appointment was on temporary basis on consolidated pay and he had not undergone the process for regular recruitment, direction to give regular pay-scale could not be given that too without examining the relevant factors to apply the principle of ‘equal pay for equal work’. It is clear from the averments made in the writ petition

G extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing to the regularly recruited Junior Assistants. It cannot be disputed that there was neither necessary averments in the writ petition nor any material was placed before the High Court so as to consider the application of principle of ‘equal pay for equal work’.

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This Court in *Union of India and Ors. v. Pradip Kumar Dey*, [2000] 8 SCC 580, after referring to various decisions dealing with the similar question in para 8 has held thus:-

“In our considered view, the Division Bench of the High Court was not right and justified in straightaway giving direction to grant pay scale to the respondent when there was no material placed before the Court for comparison in order to apply the principle of “equal pay for equal work” between the Radio Operators of CRPF and the Radio Operators working in civil side in the Central Water Commission and the Directorate of Police Wireless. *In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned Single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the respondent.* No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving higher pay scales on the basis of which claim is made by the respondent for grant of pay scale. The factual statements contained in the recommendation of a particular department alone cannot be considered *per se* proof of such things or they cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise a mere recommendation did not confer any right on the respondent to make such a claim for writ of mandamus.”

Before giving such direction, the High Court also did not keep in mind as to what would be its implications and impact on the other employees working in the appellant-University. From the averments made in the writ petition extracted above, it is clear that no details were given and no material was placed before the High Court for comparison in order to apply the principle of ‘equal pay for equal work’. This Court in *State of Haryana and Ors. v. Jasmer Singh and Ors.*, [1996] 11 SCC 77 observed that the principle of ‘equal pay for equal work’ is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations or even in the same organization.

Yet, in another decision in *State Bank of India and Anr. v. M.R. Ganesh*

A *Babu and Ors.*, [2002] 4 SCC 556, a Bench of three learned Judges of this Court, while dealing with the same principle, in para 16 has expressed that:-

B “The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. 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 made a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made *bona fide*, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pays scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at *bona fide*, reasonably and rationally, was not open to interference by the court.”

In the absence of necessary averments and materials placed on record, there was no scope to give direction as is done by the High Court in the impugned order. The burden was on the respondent to establish that he has a right to equal pay on the principle of ‘equal pay for equal work’ relying on Article 14 of the Constitution. That having not been done, the respondent was not entitled for the direction to get regular pay-scale w.e.f. September, 1997. This being the position, it is unnecessary to examine the other contentions urged and decisions cited by the learned counsel for the respondent.

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In view of what is stated above, we find it difficult to sustain the direction given by the High Court in the impugned order to grant regular pay-scale to the respondent admissible to Junior Assistant from the month of September, 1997. Hence, we set aside the said direction and allow the appeals to that extent with no order as to costs. A

S.K.S.

Appeals allowed. B