

**D.R. Srivastava and ors. Vs. Delhi Development Authority**

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**Court :** Delhi

**Decided On :** Dec-17-2004

**Reported in :** 116(2005)DLT689; 2005(79)DRJ590

**Judge :** Manmohan Sarin, J.

**Acts :** Delhi Development Authority (Conduct, Discipline and Appeal) Regulations, 1999; Delhi Development Authority Act - Sections 57

**Appeal No. :** WPC 6637/2002

**Appellant :** D.R. Srivastava and ors.

**Respondent :** Delhi Development Authority

**Advocate for Def. :** Arun Birbal, Adv.

**Advocate for Pet/Ap. :** Sumit Bansal, Adv

**Judgement :**

**Manmohan Sarin, J.**

1. The above two writ petitions have been filed by Legal Assistants and Junior Law Officers, working with respondent-DDA. The first writ petition being WP(C) 6637/2002 has been filed by four Legal Assistants, seeking implementation of the recommendations of Vth Pay Commission report and grant of pay scale of Rs.

6500-10500 to them with effect from 1st January, 1996. The second writ petition being WP(C) 5728/2003 has been filed by four Junior Law Officers, seeking implementation of the Vth Pay Commission Report and grant of pay scale of Rs. 7500-12000 to them w.e.f 1st January, 1996.

2. Petitioners in first writ petition being WP(C) 6637/2002 state that the post of Legal Assistant, in the respondent authority was created in 1979. The pay scale was Rs. 425-700. This was revised to Rs. 550-900. The post of Legal Assistant was brought at par with the post of Superintendent in the office of respondent and made Group-B (Gazetted) post w.e.f 12th August, 1981 in terms of office order No.FE2(21)/70/Pt dated 21st February, 1984. The progression/revision in the pay scales of Assistant (non-selection), Superintendents (Non-Selection) and Legal Assistant (Selection) is reproduced for facility of reference in a tabulated form:-

Post	Gr.	Qualification/Mode of Selection	Pre-IVth Pay Commission	IVth Pay Commission (1/1/1986)	Vth Pay Commission (1/1/1996)
Assistant (non-selection)	C	Matric/By Promotion from U.D.C.	425-700/-	1400-2300/-	and revised to 1640-2900/-
Superintendent (Non-Selection)	B	Matric/By promotion from Asstt.	550-900/-	1640-2900/-	and revised to 2000-3200/-
Legal Assistant (Selection)	B	Gztt. Law Graduate/Direct recruitment through written test	550-900/-	1640-2900/-	5500-9000/-

3. The grievance of the petitioners is that while implementing the Vth Pay Commission report, Legal Assistant being a selection post through direct recruitment and written test, has been placed in the pay scale of Rs. 5500-9000, while Superintendent (non-selection) having earlier the same scale have now been placed in the pay scale of Rs. 6500-10500. Petitioners claim that above action to be totally arbitrary and discriminatory inasmuch as after recommendations of the Vth Pay Commission, the pay scales of Assistant (Legal) in the Ministry of Law, Justice and Company Affairs who was in the pay scales of Rs. 2000-3500 was enhanced to Rs. 6500-10500.

4. It is urged that petitioners, Legal Assistants are performing similar duties as Assistant (Legal) in the Ministry of Law, Justice and Company Affairs. DDA as per Resolution No. 135/1996 adopted the pay structure and scales of the Central

Government employees. The said scales are to apply mutates mutants to DDA employees. Applying principle of equal pay for equal work, petitioners are also entitled to have parity by having the same pay scales. Learned counsel submits that grant of pay scales of Rs. 6500-10500 to the petitioners as a Group `B' post would also be in consonance with the DDA (Conduct , Discipline and Appeal) Regulations, 1999 since as per the said regulation, ultimate Group-B post should not be less than Rs. 9000/- and not more than Rs. 13500/-.

5. Petitioners in WP(C) 5728/2003, are Junior Law Officers who on similar grounds are seeking parity with the pay scales granted to Superintendent (Legal) in the Ministry of Law, Justice and Company Affairs which is next promotional post to Assistant (Legal) in the said Ministry and is equivalent to the post of Junior Law Officer in DDA i.e. Rs. 7500-12000. Learned counsel for the petitioners submits that DDA has adopted rules and regulations and pay scales for their employees including Engineers, Architects, Superintendents, Stenographers, Assistants etc as applicable to the Central Government employees. By the same parity, petitioners in WP(C) 5728/2003 are also entitled to the revision of pay scales from 1.1.1996 on the same scale as Superintendent (Legal).

6. It is stated that petitioners had been making representations from 1997 to which no heed was paid. Petitioners as a last resort, filed these writ petitions when all avenues of administrative redress failed. Petitioners urged that they are entitled to the revised pay scales from the day benefit was given to others, holding same pay scales following the Vth Pay Commission's recommendations.

7. Respondent in the counter-affidavit filed in WP(C) 6637/2002 took the position that there was no discrimination in fixing the pay scales of Legal Assistants as the next promotion from Legal Assistant to Junior Law Officer carries the scale of Rs. 6500-10500 which is the scale being demanded. It was urged that two of the Legal Assistants have already been promoted to the post of Junior Law Officer. Respondent also denied that there was any parity of Legal Assistant with the post of Superintendent. The relevance of the scales as applicable in Ministry to the scales of DDA was disputed. The respondent also relied on the following report of Dandapani Committee which had been set up to resolve anomalies arising out of

the Vth Pay Commission recommendations for implementation of scales in DDA:

'The Legal Assistants have asked for the pay scale of Rs. 2000-3200 as being given to the Legal Assistants in Law Ministry. The comparison of work in Law Ministry in Government of India with legal work in D.D.A is not correct. The Committee do not, therefore, feel it is necessary to revise the grade of Legal Assistants as requested.'

8. The petitioners have also impugned the aforesaid finding and submit that same has brought about arbitrariness. The essential qualifications and nature of duties of Legal Assistants in DDA and Assistant (Legal) in Central Government are almost similar. Petitioners have placed on record Recruitment Regulations for post of Assistant, Legal Assistant and Superintendent. Besides a comparative chart of duties of Legal Assistants in DDA and Assistant (Legal) in Central Government has been filed in the form of affidavit. Petitioners have given a rather detailed description of step by step functioning, some of which are administrative in nature. It is seen that apart from the administrative and ministerial steps, the Legal Assistants in DDA and those in Central Government perform similar legal functions. In case of litigation, written statement, reply and counter-affidavit etc are to be prepared after vetting of comments received from user departments. While doing so, legal position, policy and practice is to be taken note of. There is also opinion work to be done. Analysis and evaluation of court orders and judgments with regard to recommendations for appeal or revision etc are given. There are elements of administrative duties which are integral to legal functioning like follow up of proceedings, interaction with panel lawyers, court attendance and at times appearance in the absence of panel lawyers. This is the position as far as Legal Assistants and Junior Law Officers of respondent-DDA are concerned. This apart, duties involve research, opinion work which entail the requirement of knowledge of law and understanding of legal issues.

9. There is merit in the submission of petitioners that functions performed by them apart from having commonality and similarity of functions performed by their counter-parts in the Ministry of Law, Justice and Company Affairs, petitioners are discharging additional functions which are legal in nature and somewhat of higher

responsibility.

10. From the foregoing discussion, it would be reasonable to infer and conclude that the functions and duties performed by Legal Assistants and Junior Law Officers in DDA and Assistant (Legal) and Superintendent (Legal) in the Ministry of Law, Justice and Company Affairs are almost the same. The Dandapani Committee's report on which reliance is placed cannot be said to be on any sound footing. The Committee without assigning any cogent reasons, had concluded that functions were different and it was therefore not necessary to revise the pay scales. The rejection of petitioners demand for parity on the basis of Dandapani Committee's report in the absence of any cogent reasons, discussions or deliberations cannot be sustained.

11. Learned counsel for respondent Mr. Arun Birbal while opposing the writ petitions submitted that granting of relief as prayed by the petitioners would tantamount to a mandamus to frame the regulations in terms of Section 57 of the DDA Act. This, resubmits was not permissible at law. Learned counsel next submitted that it was the prerogative of the respondent in any matter to fix the pay scales of different categories of persons working with them having regard to the nature of duties. This function, it is stated falls within the ambit of the organisation and no case was made out for interference in writ jurisdiction. It is noticed that respondent-DDA has been giving and revising the pay scales on the basis of resolutions passed without reporting to framing regulations under Section 57. Even the prevailing pay scales have been revised by passing of office orders. These are given effect to by the respondent-authority by passing resolutions. The resolutions are approved by the Administrator who happens to be Lt. Governor on behalf of the Central Government. The resolutions so passed are treated at par with regulations under Section 57. Accordingly, it is of no avail for the DDA to urge that there cannot a pay scale revision without framing of regulations. The resolutions passed have been treated at par with regulation under Section 57.

12. During the course of submissions, a specific query to the learned counsel for respondent was put as to whether Legal Assistants of DDA and Assistant (Legal) of Ministry of Law, Justice and Company Affairs, perform similar functions and if

not, how was their nature of duties different. Counsel was unable to point out any differentia or to repel the argument so as to deny parity of scales with the Central Government employees.

13. Reference is also invited to Bureau of Indian Standards Laboratory Employees Association v. UOI 2003 I AD 370 wherein it was held that when there was no difference in the nature of duties, the members of petitioner association could not be held dis-entitled to the benefit of revised pay scales and a direction was issued to grant pay scales.

14. In view of the foregoing discussion, it is held that nature of work, duties and functions performed by Legal Assistant and Junior Law Officer of respondent and that of Assistant (Legal) and Superintendent (Legal) in the Ministry of Law, Justice and Company Affairs are similar and comparable. Petitioners are entitled to have parity in the pay scales with that of Assistant (Legal) and Superintendent (Legal) in the Ministry of Law, Justice and Company Affairs.

15. Reference is invited to the decision of the Supreme Court in Shri Alvare Noronha Ferriera and Anr. v. Union of India and Ors. : [1999]2SCR824 , wherein the court directed Union of India to disburse the arrears of pay to the appellants calculating their scale of pay at par with their counterparts in the Union Territory of Delhi during the period between 1.3.1982 and 31.3.1987. Again in G.K.K. Pillai and Ors. v. Union of India and Anr. : 97(2002)DLT395 , the arrears of the difference on account of entitlement to the same pay scale were directed to be paid within three months. In LPA No. 232/1999 and CM 1683/1999 Bureau of Indian Standards (BIS) and Ors. v. Bureau of Indian Standards Employee's Union and others, the Division Bench dismissed the appeal against the order of the Single Judge wherein parity in scales was directed to be maintained and payment of arrears was directed.

16. In view of the foregoing discussion, writ of mandamus to issue to respondent-DDA to implement Vth Pay Commission Report and grant pay scale of Rs. 6500-10500 to the petitioners in WP(C) 6637/2002 and pay scale of Rs. 7500-12000 to the petitioners in WP(C) 5728/2003 as applicable to Assistant(Legal) and Superintendent (Legal) respectively in the Ministry of Law, Justice and Company

Affairs w.e.f 1.1.1996 and to pay the arrears on account of difference within three months from today.

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