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Court : Rajasthan

Decided On : Jan-23-1998

Reported in : 1998(2)WLC301; 1998(1)WLN100

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Writ Petition No. 3393 of 1989

Appellant : Chandra

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Arun Madan, J.

1. The question which has arisen for consideration and decision by this court in the instant writ petition is as to whether the petitioner who is working in the capacity of Pump-Driver in the Horticulturist wing of Public Works Department (for short 'P.W.D.') Rajasthan, Jaipur, should not be entitled to the pay scale equivalent and admissible for the same post in other departments of the State viz. station, Mines, Geology and Public Health Engineering Department (for short 'P.H.E.D.') at par with said employees on the principle of equal pay for equal work, as enshrined under Article 39(d) of the Constitution of India.

2. The facts which are relevant for deciding this writ petition briefly stated are that the petitioner had joined service of State Government in the office of P.W.D., Jaipur on being appointed as Pump Driver in the office of the Superintendent of Gardens, Jodhpur, on 01.07.1962, in the pay scale of Rs. 40-60 p.m. Subsequently the petitioner was fixed in the regular pay scale of Rs. 70-110 p.m. at the rate of Rs. 88/- per day w.e.f. 01/09/1968 in the revised pay scale of 1969. He was prompted as Pump Mistry w.e.f. 26.05.1979, in the pay scale of Rs. 250-360, but was being given the benefit of pay scale of the Pump Driver, which was subsequently revised to Rs. 370/- w.e.f. 01.07.1981. The maximum pay scale which was admissible for the said post during the relevant time was Rs. 530/- p.m. as on 02.07.1983. In the Rajasthan Civil Services (New Pay Scales) Rules, 1969, the posts of Mistry, Pump Driver, Carpenter and black-smith have all been treated as equated posts in the pay scale of Rs. 70-110 and have also been extended to the Horticulture (Garden) Department on P.W.D.

3. In order to establish equivalence as regards the nature of corresponding duties of Pump Driver and Pump Mistry, it has been contended in the petition that they continued to remain identical in all other departments of the State Government with distinction that while the Pump Driver is to attend to the rectification of faults with regard to the functioning of the pumps, in case of Pump Mistry, the duties are technical in nature though correspondingly same. The petitioner was promoted to the post of Pump Mistry from the post of Pump Driver in terms of order dated 26.05.1979, whose duties, inter-alia includes attending to the working of pumps installed at different places like Mandore Garden, Nehru Park, Circuit House etc. and also to repair the same as and when necessity arises. The petitioner's pay scale were subsequently revised in accordance with Rajasthan Civil services (Revised Pay Scales) Rules. 1987, and he was placed in the pay scale of Rs. 720-1000 and at Rs. 940/- p.m., w.e.f. 02.07.1987, and it was revised to Rs. 955/- p.m. by 01.07.1988, and after getting the usual increments, he is now being paid the pay scale of a substantive post of Rs. 970/-p.m. w.e.f. 01.07.1989.

4. It is pertinent to mention in this connection that the case of the petitioner can be equated to the case of one Kana Ram v. State of Rajasthan, who had also filed an identical writ petition in this court vide S.B. Civil Writ No. 2256/84, which was

heard and finally decided by learned Single Bench of this Court vide order dated 01.11.1985, similar controversy had arisen between the parties before learned single bench of this court in the aforesaid writ petition, in which the petitioner had also sought similar relief from the Agricultural Department of the Government of Rajasthan and had sought a direction to fix his salary in regular pay scale subsequent to his absorption in the service of the said department in the pay scale No. 6 as admissible to employees of the aforesaid Department and further to revise his salary in accordance with the Rajasthan Civil Services (Revised Pay Scales) Rules, 1969, 1976 and 1983. This court after a detailed hearing and in view of the ratio of the decision of Apex Court in the matter of Randhir Singh v. Union of India : (1982)ILLJ344SC . had finally arrived at the conclusion that the persons who are discharging the same duties under one employer though in different departments should not be given different pay scales since there is no justification that a person who is working on the post of Pump Driver in the Garden Department of the Government of Rajasthan should get the pay scale of Rs. 370-830. whereas the pump drivers working in other departments are getting higher pay scales notwithstanding that both are discharging the same corresponding duties. Hence on the principle of equivalence as regard the nature of duties, obviously there cannot by any dissimilarity or discrimination as regards the applicability of the pay scales on the principle of equal pay for equal work. Applying the ratio of the aforesaid decision to the instant case as well as that of Randhir Singh's case (supra). I am of the considered view that it will be grossly unjust and discriminatory not to fix the petitioner in the pay scale as admissible to the Pump Drivers, who were similarly placed in other departments of the State Government as referred to above.

5. For the sake of convenience and ready reference I deem it appropriate to refer to the pay scales as per the revised pay scale rules, which are applicable for the post of Pump Driver in various departments of the State Government as set-out herein below:

Department Pay Scales under

1969 1976 1983 1987

Rules Rules Rules Rules

Garde 70-110 250-360 370-530 720-1000

PWD Deptt.

Agr. Deptt. 100-180 295-500 420-750 820-1520

PHED Gr. II 100-180 295-500 420-740 820-1520

Gr. I 120-240 370-590 500-860 895-1720

Circuit 100-180 295-500 370-530 720-1000

House

Mines & 100-180 295-500 370-530 720-1000

Geology

Ground Water 100-180 295-500 420-740 820-1520

Deptt.

6. It is thus obviously apparent from the above chart that different pay scales are made admissible to a Pump Driver in different departments of the State Government notwithstanding the nature of duties of the said post being one and the same.

7. In reply to show cause notice the respondents while controverting the aforesaid contentions have not controverted the legal position with reference to the relevant rules as applicable to the petitioner and as referred to above. However, they have stated that the case of the petitioner is distinguishable quo other similarly situated employees on the ground that the present case does not fall within four corners of Rule 3 (iii) of R.S.R. They have further contended that since the petitioner was initially appointed in the pay scale No. 3 i.e. Rs. 40-60, even in the year 1968, when the pay scales were revised to Rs. 70-110, the petitioner should have obviously no grievance to advance before this court since the benefit of

increments in regard to rules has already been extended to the petitioner and hence it will not open for him to contend that he has not been given the benefit of revised pay scales. It has further been contended that the State Government has already included the post of Mistry, Pump Driver, Carpenter and black-smith by treating them as similar equated posts in the pay scale of Rs. 70-110 p.m. in P.W.D. (Gardens) and therefore, only the said pay scale can been given to a person even if such a person is promoted on the post of Pump Mistry.

8. I have examined the rival contention as advance by the learned Counsel for the parties and am of the considered view that the respondents have deliberately tried to mislead & twist the main issue i.e. admissibility of the pay scale to similarly equated post as that of Pump Driver in P.W.D. (Garden)/Horticulture Department of the State as admissible to equated post in other wings of P.W.D. i.e. irrigation, mines, and Gardens etc. and in my view the distinction which has been drawn by the respondents is wholly untenable and devoid of merit.

9. During the course of hearing the learned Counsel for the respondents contended at the bar that even in the rules of 1983, different pay scales have been provided for pump drivers who are having I.T.I. certificate and who are not having such diploma certificates as per notification dated 07.06.1983, by which some amendment was made in the rules for the pump drivers who are having I.T.I.qualifications.

10. I have heard the learned Counsel for the parties at length, as well as the ratio of the decisions of the Apex Court as referred to above. Prima-facie, I am of the considered view that provision for granting lower pay scale for the pump drivers in the Gardens Department of the State Government of Rajasthan as compared to the pay scale which are being given to their counter parts in other departments of the state is grossly illegal and unjust since it is not open to the State Government to discriminate its employees who are discharging similar duties and functions on a particular post since it is not based on any 'intelligible differentia' nor there is any nexus between the classification and the object sought to be achieved by the same. Hence in my view this approach of the respondents is grossly violative of principle of 'equal pay for equal work' besides violative of Articles 14 and 16 of the

Constitution of India, read with Article 3(d) thereof. It is the primary function of the State Government to remove the existing anomalies which are prevalent in different wings of State Government with regard to those employees who are discharging similar duties & functions on the equal/equated posts and they should also be avoided to be dragged to uncalled for litigation. From the perusal of the chart referred to above in para 12 of the writ petition, which has also been reproduced above, the anomalies prevalent with regard to the pay scales for the period 1969-1987 has already been high-lighted above. I am further of the view that merely because additional allowances are admissible by virtue of revised D.A. as admissible to State Government Employees would by itself not defeat the case of the petitioner since the fixation of pay scale is altogether different then admissibility of revised pay scale and other allowances which are admissible at par to all the employees irrespective of their pay scales whose importance is that there should be no dis-similarity as regards to fixation of pay scale as regards to those employees who are discharging similar and identical duties though serving in different wings of the P.W.D. such as the pay scale of pump drivers/pump mistry and the petitioner deserves to succeed. I am further fortified in my observations from the judgment of the Apex Court in the matter of M.R. Gupta v. Union of India and Ors. reported in : AIR 1996 SC669 & in the matter of Randhir Singh's case (supra).

11. In M.R. Gupta's case (supra), the employee's grievance was that his fixation of initial pay was not in accordance with rules and question which had arisen before the Apex Court was regarding the impugned Judgment of the Tribunal dismissing as time barred, the appellant's application for proper pay fixation which came to be challenged in appeal in S.L.P before the court. Allowing the appeal, the Apex Court observed as under:

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis o proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a

Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.

12. In Randhir Singh's case (supra), the petitioner was a driver constable in the Delhi Police Force under the Delhi Administration and had demanded the similar pay scale as admissible to other drivers in service of Delhi Administration. The Hon'ble Apex Court after duly examining the matter observed as under:

There can not be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If any thing, by reason of their investitute with the powers, functions and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties then drivers in other departments, it was admitted by the respondents in their counter than the duties of the driver-constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of. the respondents is that the drivers of Delhi Police Force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principles which the Courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We. therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the drivers-constables of the Delhi Police Force atleast on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from 1st January, 1973, the date from which the recommendations of the Pay Commission were given effect.

13. As a result of the above discussion, the writ petition is allowed with a direction to the respondents to fix the petitioner in the same pay scale as admissible to the Pump-Driver/Mistry in other departments of the State Government in accordance with the revised pay scale Rules 1987 and as further revised from time to time.

The petitioner shall further be entitled to all consequential benefits as may be admissible to him in accordance with the rules from the date of this order. However, it is made clear that he shall not be entitled to claim past arrears of revision of pay scales, nor he shall be entitled to claim any interest on the same. The respondents are directed to comply with the said order within a period of 90 days from the date of submission of certified copy of this order.

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