

Uoi and anr.Vs. Sanjay Kumar and ors.

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Court : Delhi

Decided On : Sep-07-2010

Judge : Pradeep Nandrajog,;Mool Chand Garg,Jj.

Acts : Prasar Bharti Act 1990 - Section 11

Appeal No. : W.P.(C) NO.2071,2094,2095/2007

Appellant : Uoi and anr.

Respondent : Sanjay Kumar and ors.

Advocate for Def. : Mr.A.K.Behera and Ms.Meenu Mainee, Advs.

Advocate for Pet/Ap. : Mr.Gaurang Kanth and Mr.Biji Rakesh, Advs.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

ORDER

1. Relevant dates may be noted. 15.9.1997 is the date when the Prasar Bharti (Broadcasting Corporation of India) Act 1990 was notified with 23.11.1997 being notified as the appointed date being the date where from the erstwhile Civil

Servants under the Union of India in the Ministry of Information & Broadcasting were to be treated as on deputation with Prasar Bharti. It be noted that activity of broadcasting through the visual and audio media i.e. radio and television which hitherto was with the Union Government was transferred to a statutory corporation. Vide Section 11 of the Act these employees could opt for service under Prasar Bharti failing which they were to be treated as Central Government Employees and on deemed deputation with Prasar Bharti.

2. Issues arose, as they usually do in India, and in particular when the Government tries to corporatize itself. The reason is obvious, as Civil Servants Constitutional Protections are available and as employees of statutory corporations only statutory protections as per the relevant statute are applicable. Besides, the lazy are wary of corporatization for corporatization brings along the corporate culture of work ethics.

3. Thus, the Central Government Employees in the Ministry of Information & Broadcasting did not opt for service under Prasar Bharti and negotiations were held between the Management and the Union to break the impasse. With effect from 25.2.1999 Prasar Bharti decided that employees of the Ministry of Information & Broadcasting working under it, on permanent absorption under Prasar Bhati would be given wages in the scale Rs.6500-10500 as against the scale Rs.5000-8000 which was their entitlement as employees of the Ministry of Information & Broadcasting.

4. As time went by, appointments and recruitments as also crystallization of various rights, the origin whereof is the point of time when television and radio was under the Central Government, gave birth to rights.

5. The respondents in the four captioned petitions can be classified into three distinct groups and their cases considered accordingly. Category-I: Casual workers working for long as employees of the Ministry of Information & Broadcasting whose right for regularization/confirmation as per policy framed by the Central Government matured on various dates after 23.11.1997 i.e. the appointed date after Prasar Bharti Act was promulgated on 15.9.1997. They claimed entitlement to be placed in the same scale of pay in which erstwhile

employees of the Central Government working in the Ministry of Information & Broadcasting were placed as employees of Prasar Bharti. Category-II: Employees who were selected as per select list notified prior to 15.9.1997 but were given employment after 23.11.1997 by Prasar Bharti. They claimed entitlement to be placed in the same scale of pay in which persons in the same select list but given appointment prior to 15.9.1997 were placed. Category-III: Employees whose process of employment commenced in January 1999 when Prasar Bharti was constituted and were given appointment thereafter. They claimed pay parity with their counterparts claiming that they should be placed in the same scale of pay as persons holding same posts.

6. Facts which had given birth to the respective claims are that employees of the Central Government working in the Ministry of Information & Broadcasting were not opting for service under Prasar Bharti and probably by way of incentive were given a higher pay scale. Since in all the writ petitions we are concerned with employees appointed to the post of Assistant Engineers, Production Assistants, etc. it may be noted that erstwhile Central Government employees working in the Ministry of Information & Broadcasting and appointed as Assistant Engineers, Production Assistant etc. were placed in the scale Rs.6500-10500 but to others holding similar posts pay scale offered was Rs.5000-8000. The claim of all the respondents has succeeded before the Tribunal. The Tribunal has held that persons holding same posts cannot be discriminated vis-a-vis the scale of pay in which they have to be placed.

7. Let us highlight the factual and legal basis of the claim for parity urged by the three categories of employees.

8. Employees in Category-I i.e. those who were working as casual employees for long under the Ministry of Information & Broadcasting claimed that there was a policy framed by the Central Government to regularize their services in a phased manner and this right enured in their favour when Prasar Bharti was constituted on 15.9.1997. Merely because they acquired status as regular employees under Prasar Bharti was no ground to justify they being placed in the scale Rs.5000-8000 and their counterparts who were regular employees under the Ministry of

Information & Broadcasting being placed in the pay scale of Rs.6500-10500. To which the answer of the petitioners was that higher scale of pay was given to the erstwhile regular employees of Ministry of Information & Broadcasting as they were on deemed deputation and on being taken as regular employees under Prasar Bharti were paid higher wages. In other words the petitioners urged that erstwhile employees of Ministry of Information & Broadcasting formed a separate category vis-a- vis those who were appointed by Prasar Bharti.

9. Qua employees in Category-II the argument of said employees was that the appointment process commenced when the Ministry of Information & Broadcasting invited applications from eligible candidates and the select list was prepared by the Ministry of Information & Broadcasting. Their names found mention in the select list drawn much prior to 15.9.1997. But for the fortuitous fact that character verification of some was completed prior to 15.9.1997 while for them was completed post 15.9.1997 thereby resulting in some being given letters of appointment by the Ministry of Information & Broadcasting and they by Prasar Bharti would not entitle the petitioners to place the former in the pay scale Rs.6500-10500 and the latter in the pay scale Rs.5000-8000. The response of the petitioners was the same as that to the employees of Category-I i.e. the employees who came to Prasar Bharti from under the Ministry of Information & Broadcasting formed a separate category.

10. Qua employees in Category-III in respect of whom selection process commenced in the year 1999 i.e. much after 23.11.1997 and was completed obviously thereafter, they urged that employees doing similar work and holding similar posts could not be discriminated qua the pay scale in which they had to be placed. The response of the petitioners was the same as that to the employees of Category-I i.e. the employees who came to Prasar Bharti from under the Ministry of Information & Broadcasting formed a separate category.

11. The issue of equal pay for equal work and employees holding same posts under the same employer requiring same pay scales to be applied is no longer res integra. We eschew reference to various authorities where parity is claimed by employees in different departments under the Union, for the reason different

issues arise for consideration therein, but note only two decisions where employees in the same department were sought to be placed in different scales of pay, notwithstanding the employees holding identical posts and doing same jobs. In the decision reported as 1987 (1) SCC 582 Telecommunication Research Centre Scientific Officers (Class-I) Association & Ors. vs. UOI & Ors. the employees were sought to be placed in two categories. Category-I was employees directly recruited as officers in the Telecommunication Research Centre, a Department of the Post & Telegraph Wing directly under the control of the Post & Telegraph Board of the Ministry of Communication and the second category being employees who came on transfer in the said department but employed under the Indian Telecommunication Service Group-A and Group-B Posts. Two issues were urged before the Supreme Court by the directly recruited employees vis-a-vis the transferred employees. First pertained to denial of promotional opportunities and the second with respect to a special pay being paid to the transferred employees. Qua the plea of denial of promotional opportunities, the Supreme Court, in the absence of adequate pleadings, declined to answer the question, but on the issue of parity of pay held that for employees holding same post and doing same work and there being no ground to classify the same in two categories, the placement in different scales of pay was arbitrary. It was noted that the technical and educational qualifications required for both group of employees was the same. Thus, it was directed that both groups be paid the same wages.

12. In a somewhat different factual setting, in the decision reported as 1987(1) SCC 592 M.P.Singh vs. UOI & Ors. it was held that where employees enter the cadre from two different sources, if they do the same work and are similarly placed, there can be no discrimination in payment of wages.

13. Of course, employees in the same cadre can certainly be placed in different pay scales but that would be if it is shown that one set of employees has higher technical or education qualifications or performs more onerous duties vis- a-vis the other or the like. But, where there is complete parity it would be highly discriminatory to treat employees differently merely on account of the two coming from two different sources.

14. Holding so in favour of the respondents, let us see the plea put up as a justifiable excuse by the petitioners to place the respondents in a lower scale of pay.

15. To the Category-I employees i.e. those working on casual basis under the Central Government but confirmed against regular posts under Prasar Bharti, suffice would it be to state that the claim for regularization pertained to a policy of the Central Government and merely because some got confirmed under the Central Government and some got confirmed under Prasar Bharti would not result in two groups being formed. Thus, apart from the principle that employees holding same posts and doing same duties cannot be discriminated in matters pertaining to wages with reference to the source of appointment, we find no justifiable cause to treat Category-I employees as forming a different and a distinct category.

16. To the Category-II employees, suffice would it be to state that their empanelment was under the Central Government and admittedly some employees under the same panel were inducted by the Central Government and Prasar Bharti placed them in the scale of pay Rs.6500-10500. On the fortuitous circumstance of some empanelled candidates not being able to have character verification completed prior to 27.11.1997 and thereby they being inducted as employees to the same posts directly under Prasar Bharti would not make them a distinct category vis-a-vis their counterparts who were in the same select panel but were appointed by the Central Government.

17. With respect to Category-III employees the principle of law noted by us in paras 11 and 12 above would apply.

18. The writ petitions are found to be without any merit and hence are dismissed. However, since the issue raised was arguable, we refrain from imposing any cost.

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