

Punjab State Electricity Board And Anr. vs Thana Singh And Ors. on 8 January, 2019

Equivalent citations: AIR 2019 SUPREME COURT 354, 2019 (4) SCC 113, AIR ONLINE 2019 SC 13, 2019 LAB IC 782, (2019) 2 ALLMR 474 (SC), (2019) 1 ESC 58, (2019) 1 JLJR 297, (2019) 1 SCALE 244, (2019) 1 SCT 517, (2019) 1 SERVLJ 55, (2019) 1 UC 3, 2019 (200) AIC (SOC) 5 (SC), (2019) 2 ALLMR 474, (2019) 2 JCR 192 (SC), (2019) 2 PAT LJR 2, (2019) 2 SERVLR 327, (2019) 3 MPLJ 519, 2019 (4) ADJ 26 NOC, (2019) 5 MAH LJ 1, AIR 2019 SC (CIV) 1381

Author: R. Banumathi

Bench: Indira Banerjee, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 193 OF 2019
(Arising out of SLP(C) No.10896 OF 2011)

PUNJAB STATE ELECTRICITY BOARD
AND ANOTHER

... Appella

VERSUS

THANA SINGH AND OTHERS

....Respondent

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the judgment dated 28.09.2010 passed by the High Court of Punjab and Haryana at Chandigarh dismissing the LPA No.713 of 2010 on the ground that the respondents-Sub Fire Officers are entitled to parity of scales of pay as the pay scale granted/revised to other classes of posts within same group viz., Group XII of the Punjab State Electricity Board.

3. Brief facts of the case are as follows:-

Respondents were inducted into the service of the Punjab State Electricity Board (PSEB) in the year 1978 and now they are MADHU BALA Date: 2019.01.08 16:49:30

IST Reason:

working as Sub Fire Officers in the appellant-Board. The pay scale of the post of Sub Fire Officers was Rs.225-500 which was revised with effect from 01.01.1978 to Rs.620-1200. Thereafter, by an order dated 21.03.1989, the pay scale for the post of Sub Fire Officers was revised to Rs.1640-2925 with effect from 01.01.1986 along with the pay scales of other category of employees of the Board viz. Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors were revised. Subsequently, by an order dated 03.10.1990, the pay scale of Head Clerks was revised from Rs.1640-2925 to Rs.2000-3500 on the recommendation of the Pay Anomaly Committee. Likewise, by the same order dated 03.10.1990, the pay scale of the Internal Auditors was revised to the scale of Rs.1800-3200; but the pay scale of the Sub Fire Officers was not revised on par with Head Clerks and Internal Auditors. A recommendation letter dated 25.03.1991 was written by the Superintendent Engineer, GNDTP, Bhatinda to the Chief Engineer, GNDTP, Bhatinda to consider the case of the Sub Fire Officers to grant scale of pay on par with Head Clerks and Internal Auditors stating that there will not be much financial burden, if the pay scales of Sub Fire Officers are revised equal to other categories as only five number of posts of Sub Fire Officers exist at GNDTP, Bhatinda and RTP, Ropar. Relying on the said letter dated 25.03.1991 of the Superintendent Engineer, GNDTP, Bhatinda, the respondents-Sub Fire Officers submitted various representations to the appellant-Board requesting for higher pay scale on the ground that the pay scale to the post of Sub Fire Officers in the Punjab State Government Department i.e. Fire Protection Department is Rs.1800-3200 and therefore, the respondents-Sub Fire Officers working in the appellant-Board are also to be given same scale of pay.

4. The respondents-Sub Fire Officers filed CWP No.9294 of 1993 stating that the action of the appellant-Board in granting pay scale less than the State Government employees is illegal, unjustified, discriminatory and violative of Article 14 of the Constitution of India. According to the respondents, there is no difference in qualification for recruitment to the post of Sub Fire Officers between the Board and the State Government and therefore, there should not be any difference in the pay scale between them.

5. The appellant-Board filed counter affidavit stating that the Board is not bound to pay the same pay scale to the respondents- Sub Fire Officers as are given by the Punjab Government to its employees holding the same post. It was averred that Punjab State Electricity Board is a statutory body constituted under the Electricity Supply Act governed by its own regulations. It was averred that the respondents-Sub Fire Officers cannot claim parity with other categories viz. Head Clerks, Head Clerk-cum-Divisional Accountants, Internal Auditors, etc. because all these posts belong to different cadre than the cadre of the respondents-Sub Fire Officers as the nature of work, duties, responsibilities and initial qualifications for recruitment to these posts are different.

6. The learned Single Judge allowed the writ petition holding that the Sub Fire Officers are within Group XII that included Head Clerks, Head Clerk-cum-Divisional Accountants, Internal Auditors,

etc. therefore, Sub Fire Officers cannot be denied same scales of pay when increased for other three classes of persons within Group XII. However, the learned Single Judge rejected the respondent's plea claiming parity with the employees of the State Government. Observing that the respondents are to be treated on par with other three classes within Group XII of the Board, the learned Single Judge allowed the writ petition.

7. The Division Bench of the High Court dismissed the appeal filed by the appellant-Board holding that there is no basis for differently treating the Sub Fire Officers included in Group XII. The Division Bench has referred to the letter dated 25.03.1991 of the Superintendent Engineer, GNDTP, Bhatinda stating that the cadre of Sub Fire Officers is a small one with limited chances of promotion to the higher posts i.e. Fire Officers and that by revising the scale of Sub Fire Officers on par with others, there will not be much financial burden on the Board. Being aggrieved, the appellant-Board is before us.

8. Mr. Nidhesh Gupta, learned Senior counsel for the appellant- Board has submitted that the respondents-Sub Fire Officers cannot claim parity with other categories viz. Head Clerks, Head Clerk- cum-Divisional Accountants, Internal Auditors, etc. because all these posts belong to different cadre and the mode of recruitment and the nature of duties and responsibilities are entirely different. It was submitted that though the post of Sub Fire Officers is included in Group XII, the nature of duties and responsibilities to each post in Group XII are different and the respondents-Sub Fire Officers cannot claim parity of pay scales with other posts in the same group. It was contended that the learned Single Judge erred in saying that merely because the post of Sub Fire Officers is categorised in Group XII, they are to be treated on par with other categories of posts in Group XII. It was urged that if the impugned judgment is to be sustained, it will have huge financial implications on the appellant-Board and the same is not sustainable.

9. Mr. Jaspal Singh M., learned counsel for the respondents supporting the judgment of the learned Single Judge as well as of the Division Bench of the High Court submitted that since the respondents are included in Group XII, there cannot be any discrimination in the scales of pay. It was submitted that when the scales of pay were increased for other three classes of posts within Group XII, similar revision of scale of pay ought to have been given to the respondents also and the learned Single Judge as well as the Division Bench rightly ordered the parity in scale of pay.

10. We have carefully considered the submissions and perused the impugned judgment and the materials on record. The following points arise for consideration in this appeal:-

(i) Whether Sub Fire Officers can claim parity of pay scale with pay scale of Head Clerks, Head Clerk-cum-Divisional Accountants, Internal Auditors, etc. merely on the ground that the post of Sub Fire Officers is categorised in Group XII?

(ii) Whether respondents are right in contending that grant of different scale of pay to Sub Fire Officers is discrimination and in violation of Article 14 of the Constitution of India?

11. It is fairly well settled that equation of pay scales must be left to the Government and on the decision of the experts and the Court should not interfere with it. Observing that equation of pay scales of posts must be left to the Government and the experts, in *Steel Authority of India Limited and Others v. Dibyendu Bhattacharya* (2011) 11 SCC 122, this Court held as under:-

“26. In *Union of India and Others v. S.L. Dutta and Another* (1991) 1 SCC 505, *Union of India and Others v. N.Y. Apte and Others* (1998) 6 SCC 741, *State of U.P. and Others v. J.P. Chaurasia and Others* (1989) 1 SCC 121 and *Kshetriya Kisan Gramin Bank v. D.B. Sharma and Others* (2001) 1 SCC 353, this Court held that the determination that two posts are equal or not, is a job of the Expert Committee and the court should not interfere with it unless the decision of the Committee is found to be unreasonable or arbitrary or made on extraneous considerations. More so, it is an executive function to fix the service conditions, etc. and lies within the exclusive domain of the rule-making authority. (See also *T. Venkateswarulu v. Executive Officer, Tirumala Tirupathi Devasthanams and Others* (2009) 1 SCC 546.)”

12. In *S.C. Chandra and Others v. State of Jharkhand and Others* (2007) 8 SCC 279, observing that the grant of pay scales is a purely executive function and the court should not interfere with the same, this Court held as under:-

“33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.* (2007) 1 SCC 408.

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).”

13. Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, this Court, in *SAIL*, held as under:-

“30. the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially

different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”

14. In the light of the above principles, the case of Sub Fire Officers in PSEB requires to be examined whether they are entitled to parity in pay scales as that of the Head Clerks, Head Clerk-cum-Divisional Accountants, Internal Auditors, etc. PSEB is an autonomous body constituted by Notification of the Punjab Government under Section 5 of the Electricity Supply Act, 1948 and the services under PSEB are governed by the Punjab State Electricity Board (Revised Pay) Regulations, 1988. The First Schedule relates to categorisation of various groups and revised scales of pay for categories specified thereunder. Group XII as it then stood in the year 1988 contains Sub Fire Officers which reads as under:-

Group-XII : Scale: 1500-30-1560-40-2000-50-2400-60-2700-75-2925

1. Internal Auditor 620-1200 1500-2925

2. Head Clerk -do- -do-

3. Head Clerk-cum-Divisional -do- -do-

Accountant

4. Sub Fire Officer -do- -do-

15. In the year 1988, though the post of Sub Fire Officers has been included in Group XII in one category as that of Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors, the nature of work, duties, responsibilities and initial qualifications for recruitment and manner of recruitment to each post are different since all these posts belong to different cadre. The respondents cannot claim as a matter of right that they should be given the similar pay scale as are given to the categories of posts such as Head Clerks, Head Clerk- cum-Divisional Accountants and Internal Auditors.

16. For considering the equation of posts, the following factors had been held to be determinative:-

1. The nature and duties of a post;

2. The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;

3. The minimum qualifications, if any, prescribed for recruitment to the post; and

4. The salary of the post (vide Union of India and Another v.

P.K. Roy and Others AIR 1968 SC 850).

17. After referring to P.K. Roy's case, this Court, in SAIL, held as under:-

“25. In State of Maharashtra and Another v. Chandrakant Anant Kulkarni and Others (1981) 4 SCC 130 and Vice-Chancellor, L.N. Mithila University v. Dayanand Jha (1986) 3 SCC 7, a similar view has been reiterated observing that equal status and nature and responsibilities of the duties attached to the two posts have to be taken into consideration for equivalence of the post. Similar view has been reiterated in E.P. Royappa v. State of T.N. and Another (1974) 4 SCC 3 and Sub-Inspector Rooplal and Another v. Lt.

Governor Through Chief Secretary, Delhi and Others (2000) 1 SCC 644, wherein this Court following the earlier judgment in P.K. Roy AIR 1968 SC 850 held that the salary of the post alone may not be a determining factor, the other three criterion should also be fulfilled.”

18. The duties and nature of work of Head Clerks and Internal Auditors are entirely different. Head Clerk works under XEN, Drawing and Disbursement Officer and there is only one Head Clerk in the Division Office. Head Clerk is the Head of the establishment in the Divisional Office and total work of the establishment is under the control of the Head Clerk. Head Clerk also maintains the leave and other miscellaneous works for the Sub-divisions and the Division Offices and also discharges administrative functions and thus, has more responsibilities. Duty of an Internal Auditor is to audit the billing of the Revenue Department of the Sub-division Office which includes billing of domestic supply to large supply. Whereas the duty of the Sub Fire Officer is entirely different viz., rush to the spot of emergency along with firefighting equipment crew, direct and supervise firefighting and rescue operations, arrange for extra fire fighting equipments, if need be discharge mechanical foam, dry chemical powder, etc. and inform the fire pump house for continuous running of pumps and also inform Fire Officer/Sr.Xen/Fire and Safety regarding incident. Thus, the work performed by the Sub Fire Officer is entirely different from the nature of duties performed by the Head Clerks and the Internal Auditors.

19. The appellant-Board being an autonomous body governed by its own regulations, it was for the Board to classify its employees/posts on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, the Board would be justified in prescribing different pay scales. Article 14 of the Constitution of India would be applicable only when a discrimination is made out between the persons who are similarly situated and not otherwise. It is the duty of an employee seeking parity of pay to prove and establish that they have been discriminated. In State of Haryana and Another v. Tilak Raj and Others (2003) 6 SCC 123, this Court held that “to claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination.”

20. The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales. After referring to number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in SAIL, held as under:-

“22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of “equal pay for equal work” as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on the person claiming such right. (Vide U.P. State Sugar Corpn. Ltd. and Another v. Sant Raj Singh and Others (2006) 9 SCC 82, Union of India and Another v. Mahajabeen Akhtar (2008) 1 SCC 368, Union of India v. Dineshan K.K (2008) 1 SCC 586, Union of India and Others v. Hiranmoy Sen and Others (2008) 1 SCC 630, Official Liquidator v. Dayanand and Others (2008) 10 SCC 1, U.P. SEB and Another v. Aziz Ahmad (2009) 2 SCC 606 and State of M.P. and Others v. Ramesh Chandra Bajpai (2009) 13 SCC 635)”.

21. Burden of establishing parity in pay scale and employment is on the person claiming such right. There were neither pleadings nor any material produced by the respondents to prove that the nature of work performed by the Sub Fire Officers is similar with that of the Head Clerks and the Internal Auditors to claim parity of pay scale. As pointed out earlier, the burden lies upon the party who claims parity of pay scale to prove similarity in duties and responsibilities. In the writ petition, respondents have only claimed parity of pay scale with those of the employees working under the Punjab Government which was not accepted by the learned Single Judge. Determination of parity or disparity in duties and responsibilities is a complex issue and the same should be left to the expert body. When the expert body considered revision of pay for various posts, it did not revise the pay scale of Sub Fire Officers. When the expert body has taken such a view, it is not for the courts to substitute its views and interfere with the same and take a different view.

22. As pointed out earlier, though the Head Clerks, Head Clerk- cum-Divisional Accountants and Internal Auditors were earlier placed in the same group viz. Group XII; but educational qualifications requisite for these posts and mode of recruitment are different. Likewise, there is no similarity in the work performed by the employees on those posts. Only in cases of complete similarity in the nature of work, duties, responsibilities and promotional channels, parity of pay scale can be claimed. Merely on the ground that Sub Fire Officers are categorised in Group XII along with Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors cannot be a

ground for seeking parity of pay scale. As submitted by the learned Senior counsel for the appellant-Board, the nature of work, duties, responsibilities and initial qualification for recruitment of each post are entirely different as all these posts belong to different cadre.

23. That apart, though in the year 1988 there were only four posts in Group XII, number of several posts have been subsequently included. Vide Finance Circular No.44/89 dated 15.06.1989, seven more posts were added in Group XII. Thereafter, vide Finance Circular No.45/89 dated 26.06.1989, there was a further increase of seven posts in Group XII. The fourteen posts which were added to Group XII are:- Punjabi Teacher, Drawing Teacher, Hindi Teacher, D.P.Ed. Teacher, Master/Mistress, Science Teacher, Security Inspector, Modeller Divisional Head Draftsman, Prosecuting Inspector (now Law Officer), Law Officer Grade II, Medical Assistant, Librarian and Fire Officer, etc. At the time of the issuance of order dated 03.10.1990 revising the scale of pay of Head Clerks, Head Clerk- cum-Divisional Accountants, Internal Auditors etc., there were various posts included in Group XII. For all these posts, source and mode of recruitment, qualifications and nature of work are entirely different. If the contention of the Sub Fire Officers for parity of pay scale with pay scale of Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors is accepted, such parity of scale of pay may have to be extended to all other posts in Group XII which would involve huge financial repercussion on the finance of the Board which is a service- oriented institution. The High Court, in our view, erred in not keeping in view the financial consequences of the direction to give parity of pay scale to the Sub Fire Officers. As held in *Union of India and Another v. Manik Lal Banerjee* (2006) 9 SCC 643, “it is now a well settled principle of law that financial implication is a relevant factor for accepting the revision of pay.”

24. Before the learned Single Judge, the respondents relied upon the letter written by the Superintendent Engineer, GNDTP, Bhatinda to the Chief Engineer, GNDTP, Bhatinda dated 25.03.1991 to consider the request of Sub Fire Officers for parity of pay scale with pay scale of Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors. As rightly contended by the appellant-Board, the letter was written only on the ground that there would not be much financial burden. But the said letter does not indicate any parity of nature of work, responsibilities, functional need, etc. The said letter of the Superintendent Engineer, GNDTP, Bhatinda also did not take note of other various categories of posts included in Group XII. Referring to the said letter dated 25.03.1991 of the Superintendent Engineer, GNDTP, Bhatinda, the learned Single Judge observed that the plea of the respondents for parity of pay scale was supported by the Superintendent Engineer. The learned Single Judge did not keep in view the well factors like source, mode of recruitment, nature of work, etc. for the post of Sub Fire Officers and the Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors.

25. In the writ petition, the respondents have taken the plea that they are entitled to the scale of pay on par with the employees of the Punjab Government in parity of the wages. Nature of work performed by those in the service of Punjab Government are different from those in service of the Board, the learned Single Judge rightly refused to accept the plea of the respondents claiming parity with the employees of the State Government.

26. The learned Single Judge, however, proceeded under the erroneous footing that merely because Sub Fire Officers were categorised in Group XII, they were entitled parity of scale of pay with pay scale of Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors. Inclusion of posts of Sub Fire Officers in Group XII may not be a determinative factor to hold that the Sub Fire Officers are equal with Head Clerks, Head Clerk-cum-Divisional Accountants, and Internal Auditors. Mere difference in pay scale does not always amount to discrimination; it depends upon the mode of selection/recruitment, nature, quality of work and duties and that the status of both the posts are identical. Observing that it is not always impermissible to provide two different pay scales in the same cadre, this Court, in SAIL, held as under:-

“29. It is a settled legal proposition that it is not always impermissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. (Vide State of U.P. and Others v. J.P. Chaurasia and Others (1989) 1 SCC 121 and Mewa Ram Kanojia v. All India Institute of Medical Sciences and Others (1989) 2 SCC

235.) “Non-uniformities would not in all events violate Article 14.” Thus, a mere difference does not always amount to discrimination.

(Vide Madhu Kishwar and Others v. State of Bihar and Others (1996) 5 SCC 125, Associate Banks Officers’ Assn. v. SBI and Others (1998) 1 SCC 428 and Official Liquidator v. Dayanand and Others (2008) 10 SCC 1)”.

27. Respondents have not produced any material to show that there is any similarity/identity between the posts of Sub Fire Officers and the Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors in terms of the nature of duties, responsibilities, qualifications and mode of recruitment etc. to apply the principle of parity of pay scale. The learned Single Judge did not keep in view that the nature of duties and responsibilities performed by the Sub Fire Officers are different and parity cannot be claimed merely on the ground that they are categorised in one group. The judgment of the learned Single Judge and the impugned judgment of the Division Bench cannot be sustained and are liable to be set aside.

28. In the result, the impugned judgment dated 28.09.2010 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No.713 of 2010 is set aside and this appeal is allowed. Pursuant to the interim order of the Supreme Court, if any amount over and above the salary payable has been paid, the same may not be recovered from the respondents and other Sub Fire Officers.

.....J. [R. BANUMATHI]J. [INDIRA BANERJEE] New Delhi;

January 08, 2019