

Government Of West Bengal vs Tarun K. Roy And Ors on 18 November, 2003

Author: S.B. Sinha

Bench: S.B. Sinha, Ar. Lakshmanan

CASE NO.:

Appeal (civil) 3527 of 1998

PETITIONER:

GOVERNMENT OF WEST BENGAL

RESPONDENT:

TARUN K. ROY AND ORS.

DATE OF JUDGMENT: 18/11/2003

BENCH:

V.N. KHARE CJ & S.B. SINHA & DR. AR. LAKSHMANAN

JUDGMENT:

JUDGMENT 2003 Supp(5) SCR 656 The Judgment of the Court was delivered by S.B. SINHA, J. Applicability of the doctrine of 'equal pay for equal work' is the question involved in this appeal which arises out of a judgment and order dated 3rd December, 1997 passed by a Division Bench of the Calcutta High Court in FMAT No. 1505/1996.

FACTUAL BACKGROUND;

In the Irrigation Department of the state of west Bengal inter alia there existed two posts-operator-cum-Mechanic and Sub-Assistant Engineer. The First pay commission of the State of west Bengal in its report dated 31.12.1969 recommended the following pay-scales relating thereto.

Posts	Pay scale recommended
Operator-cum-Mechanic	Rs. 200-250
Sub-Assistant Engineer	Rs. 305-600

It is not in dispute that by reason of statutory rules the minimum qualification required for recruitment for the said two posts were laid down as under:

"operator-cum-Mechanic

(a) Pass in School Final Examination or its equivalent;

(b) Pass in Certificate course in the trade of internal compustion engine from ITI or Technical School recognized by the Government. Sub-

Assistant Engineer

(a) Pass in School Final Examination or its equivalent;

(b) Pass in Diploma Course in Engineering from any Government Polytechnic"

The Government of West Bengal framed The west Bengal Service (Revision of Pay & Allowances) Rules, 1970 (hereinafter referred to as the 'ROPA Rules') whereby whereunder the pay scale for the post of operator-cum-Mechanic was initially prescribed as Rs. 180-350 which was subsequently revised to Rs. 230-425 with effect from 1st April, 1970. The pay-scale for the post of Sub-Assistant Engineer, however, was prescribed at Rs. 300-600 with higher initial start at Rs. 330 with effect from the same date. By a notification No. 10303 F dated 19th November, 1974 in modification of ROPA Rules, 1970 it was laid down:

"IV (i) Sub-Assistant Engineers having Engineering Degree shall have an initial start n the existing scale of Rs. 300/- Rs. 600/- at the stage of Rs. 360 p.m. They will also get the benefit of age relaxation for direct recruitment either through the Public Service Commission or for ad-hoc appointments.

(ii) All Test Relief overseers and other Diploma holder Engineers will henceforth be termed as Sub-Asstt. Engineers."

The Sub-Assistant Engineers, it is not disputed, are directly recruited through Public Service commission whereas no such procedure is laid down for appointment in the post of operator-Cum-Mechanic. It is not in dispute that some persons in the category of employees of operator-cum-Mechanic who were possessing Diploma in Engineering claimed entitlement to the nomenclature of the Sub-Assistant Engineer and the scale of pay prescribed therefor by filing two writ petitions in Calcutta High Court. The matters eventually came up to this court. A plea was taken in the said writ petitions by the appellants herein that the diploma holder engineers working as Operators-Cum-Mechanic in the Irrigation Department were not entitled to the said designation. The said plea was negatived by this court in its judgment titled State of West Bengal and Ors. v. Debdas Kumar and Ors., [Reported in [1991] Suppl. 1 SCC 138 holding:

"15. It has been contended for the appellants that by construing the notification as including operators-cum-Mechanics in the lower time scale as Sub-Assistant-Engineer and giving them a higher scale, there would be a division amongst the Operators-cum-Mechanics in the matter of their pay scale and such an anomaly would not have been contemplated by the rule makers. There is no force in

this contention. It is well settled that difference in pay of employees belonging to the same cadre post or educational qualification is constitutionally valid and permissible and is not violative of Articles 14 and 16 of the Constitution. The post of Sub-Assistant Engineer is a direct recruitment post. It appears that the Division Bench assumed that the post of Sub-Assistant Engineers were ultimately a promotional post for the operators-cum-Mechanics through intermediary promotions in intermediary grades. This is incorrect. Under the Rules, the post of Sub-Assistant Engineer is not at all a promotional post for any categories of employees in the State, on the contrary, it is a direct recruitment post. It is not contested that 17 other employees similarly placed as the respondents herein were given the benefits of the said amended notifications and were conferred both status of Sub-Assistant Engineers and also the pay scale thereof for the reason that they were also diploma holder Engineers though they were not in the pay scale of Rs. 300-600. This is a concurrent finding that these respondents have been discriminated and the State Government had acted arbitrarily without any rational basis by conferring benefits of the notification to 17 other employees in other departments while denying the said benefits to the said respondents in the Agriculture Department.

[Emphasis Supplied] Another group of Operators-cum-Mechanic who did not possess diploma in engineering and were mere graduates or holding School Final Examination filed a writ petition which was marked as matter No. 2564 of 1988 (Nemai Chand Ghosh and Ors. v. State of West Bengal and Ors.,) claiming the higher pay-scale of Rs. 300 Rs. 600 with higher initial start at Rs. 330 relying on the doctrine of equal pay for equal work. The said writ petition was dismissed and appeal preferred thereagainst by the writ petitioners therein admittedly is still pending for hearing before the Division Bench of the High Court.

A similar writ petition being C.R. No. 9167 (W)/1990 (Nazimuddin Ahmed and Ors. v. State of West Bengal and Ors.) was, however, allowed by a judgment and order dated 25th August, 1989 despite the fact that the writ petitioners therein were not holders of diploma in engineering. The said judgment is said to have been passed ex-parte and without noticing the earlier judgment in Nemai Chand Ghosh (supra).

As allegedly the said judgment was not implemented, an application for contempt of court was filed by the writ petitioners when the court's attention was drawn to the judgment of the earlier writ petition and its pendency before the Division Bench, the learned single judge modified his order dated 25.8.1989 by an order dated 1st October, 1991 directing the State to pay all benefits in terms of the earlier order dated 25.8.1989 with a rider that in the event the writ petitioners in the appeal preferred against the judgment delivered in Nemai Chand Ghosh (supra) fails, the State would be entitled to recover the amount by such easy instalments as would be decided by the authorities concerned. With the aforementioned directions, rule issued in the contempt proceeding was disposed of.

The respondents therein thereafter filed a writ petition which was marked as C.R. No. 8728 (W) of 1991 (Tarun Kumar Roy and Ors. v. State of West Bengal and Ors.). Following the judgment dated 25.8.1989 passed in the case of Nazimuddin Ahmed (supra) the said writ petition was allowed. The State preferred an appeal thereagainst and by reason of the impugned judgment the said appeal was dismissed holding that as no appeal had been preferred against the order dated 25.8.1989 the same attained finality and, thus, the respondents herein became entitled to grant of similar relief holding:

"When the Dip oma Holder Operator-cum-Mechanics got the above benefits, those who were regularly appointed as Operator-cum-Mechanics found that in their category of service those who were having Diploma in Engineering, were placed in higher scale of pay. They moved this Court for equal pay for equal work which, as the courts have held, is one of the facets of the right of equality before law and equal protection of law as enshrined under Article 14 of the Constitution of India. Since such Operator-cum-Mechanics who were not having Diploma or Degree in Engineering and who were otherwise qualified to be appointed as operator-cum-Mechanics, got the relief as aforementioned, the persons who were in the same category and were left-out moved the court and the Learned Single Judge has granted them the same relief as others pursuant to the order of the court in C.R. No. 9167 (W) of 1980.

There is some attempt made before us that the order passed by the Ld. Single Judge in the contempt petition is enough for the appellants herein to revert the petitioners C.R. No. 9167(W)/1980. This, however, in our opinion, will not be possible unless the judgment in the said case is reversed. In the absence of any appeal, the said judgment has become final. A view contrary to the view in CR 9167(W)/ 1980, in the instant proceeding, shall place the petitioners in the instant proceeding at disadvantage as a class apart from others similarly/similarly situated who were/are petitioners in C.R. 9167(W)/ 1980."

SUBMISSIONS:

Mr. Bhaskar Gupta, learned senior counsel appearing on behalf of the appellant, inter alia would contend that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that the order passed in the case of Nazimuddin Ahmed (supra) could not be treated as a precedent as the said judgment was subject to the order passed in the first writ petition filed by Nemai Chand Ghose.

The learned counsel would submit that, in any event, non-filing of an appeal could not be a ground to pass the same order without considering the merit of the matter.

Mr. Krishnamani, the learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that as indisputably the earlier judgment passed by a learned Single Judge of the Calcutta High Court was acted upon by the appellant they cannot be permitted now to turn round and contend that similar scale of pay would not be granted. It was submitted that whereas in CR 9167 (W)/1980 there were 56 writ petitioners, only 10 employees are involved in the present case and as such they being graduates in science should be given the same relief as the minimum qualification laid down for holding the post of Operator-cum-Mechanic is merely matriculate. Having been better qualified, Mr. Krishnamani would urge, there is absolutely no reason as to why the respondent should not be treated as a separate class keeping in view of the fact that they have been performing the same duties as are being performed by the Sub-Assistant Engineers. The cases of the respondents, Mr. Krishnamani would contend, being peculiar in nature this court in exercise of its equity jurisdiction may grant appropriate relief confining the same to the respondents on the ground that they are graduates and declining the same to the matriculates holding the posts of Operator-cum-Mechanic.

The learned counsel would submit that in any event, having regard to the fact that the respondents herein had approached the High Court in 1992, even on the ground of delay, similar relief can be denied to those who are only matriculates.

EQUAL PAY FOR EQUAL WORK:

Article 14 read with Article 39 (d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently.

In *State of Jammu & Kashmir v. Triloki Nath Khosa and Ors.*, AIR (1974) SC 1, this Court held:

"Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification."

The Post of Operator-cum-Mechanic and Sub-Assistant Engineers are technical posts. As noticed hereinbefore, whereas for the posts of Operator-cum-Mechanic the qualification of school final examination and a certificate obtained from the Industrial Training Institute would be sufficient; for the posts of Sub-Assistant Engineer the person must have a diploma from a polytechnic apart from being a matriculate.

It is also not in dispute that such qualification was prescribed as far back as in the year 1971 and the respondents herein were appointed thereafter.

The Court, in exercise of its power of judicial review cannot hold that matriculates with a certificate from ITIs or simply graduates in science would be entitled to hold the posts of Sub-Assistant Engineers. It is for the executive to lay down the qualification required for holding a post and not for the courts. In *Debdas Kumar (supra)* the issue which fell for determination by this Court was as to whether those Operators-cum-Mechanic who were diploma holders, having regard to the aforementioned notification dated 19th November, 1974 were entitled to be designated as Sub-Assistant Engineers. This Court noticed that the post of Sub-Assistant Engineer is direct recruitment post and not a promotional post and, thus, they are entitled to be designated as Sub-Assistant Engineers, particularly, when such a status had been conferred upon 17 persons similarly situated. This Court granted relief to *Debdas Kumar (supra)* only on the ground that they had been discriminated against.

Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentialia. Doctrine of equal pay for equal work, therefore, is not attracted in the instant case.

There is nothing on record to show that the duties and functions of two categories of employment are at par, and, thus, parity in pay-scales is not permissible.

The very fact that from the very beginning two different pay scales were being maintained is itself suggestive of the fact that the duties and functions are also different. In fact it is not disputed that the two post of Sub-Assistant Engineer is a higher post.

In *Chairman-cum-Managing Director, National Textiles Corporation Ltd. and Ors. v. N.T.C. (WBAB & O) Ltd. Employees Union and Ors.*, (2003) 8 SCALE 613 this Court held:

"In view of the fact that the nature of duties of the staff in the two categories has been found to be not at par, parity in pay scales may not be possible.

In *Orissa University of Agriculture & Technology and Anr. v. Manoj K. Mohanty*, JT (2003) 4 SC 104 this Court noticed:

"It is clear from the averments made in the writ petition 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'."

This Court further noticed:

".....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.

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'. The 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 the organization.

13. Yet, in mother decision in *State Bank of India and Anr. v. M.R. Ganesh 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:-

"...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..."

In a case of this nature, the courts are required to determine the issue having regard to larger public interest. It is one thing to say that in a given case the High Court or this Court may not exercise an equitable jurisdiction under Article 226 or Article 136 of the Constitution of India, but it is another thing to say that the courts shall grant a relief to a party only on the ground that a contention which is otherwise valid would not be raised on the ground that the same was not done in an earlier proceedings.

In the instant case, the appellant has explained under what circumstances the order of the learned Single Judge of the Calcutta High Court had to be obeyed. If rule of law is to be followed, judicial discipline demands that the court follows its earlier binding precedent. The Calcutta High Court itself has rejected such a plea. The matter is pending in appeal. An order passed to the contrary by

another learned Single Judge in ignorance of the earlier binding precedent by itself would not constitute a binding precedent and may be held to have been rendered per incuriam.

Furthermore, in the order dated 1st October, 1991, the learned Judge categorically directed that the same would be subject to any order that may be passed in the appeal which is pending before the Division Bench from the judgment and order dated 20th January, 1989 passed in Nema Chand Ghose (supra). The said order, therefore, did not attain finality.

In the aforementioned situation, the Division Bench of the Calcutta High Court manifestly erred in refusing to consider the contentions of the appellant on their own merit, particularly, when the question as regard difference in the grant of scale of pay on the ground of different educational qualification stands concluded by a judgment of this Court in Debdas Kumar (supra). If the judgment of Debdas Kumar (supra) is to be followed a finding of fact was required to be arrived at that they are similarly situated to the case of Debdas Kumar (supra) which in turn would mean that they are also holders of diploma in engineering. They admittedly being not, the contention of the appellant could not be rejected. Non-filing of an appeal, in any event, would not be a ground for refusing to consider a matter on its own merits. (See State of Maharashtra v. Digambar, [1995] 4 SCC 683).

In State of Bihar and Ors. v. Ramdeo Yadav and Ors., [1996] 3 SCC 493, wherein this court noticed Debdas Kumar (supra) holding:

"Shri B.B. Singh, the learned counsel for the appellant contended that though an appeal against the earlier order of the High Court has not been filed, since larger public interest is involved in the interpretation given by the High Court following its earlier judgment, the matter requires consideration by this court. We find force in this contention. In the similar circumstances, this court in State of Maharashtra v. Digambar, [1995] 4 SCC 683 : (1995) AIR SCW 3116 and in State of West Bengal v. Debdas Kumar, [1991] Suppl. SCC 138: [1991] AIR SCW 704, had held that though an appeal was not filed against an earlier order, when public interest is involved in interpretation of law the court is entitled to go into the question.

EQUITABLE CONSIDERATION;

The respondents are merely graduates in science. They do not have the requisite technical qualification. Only because they are graduates, they cannot, in our opinion, claim equality with the holders of diploma in engineering. If any relief is granted by this court to the respondents on the aforementioned ground the same will be in contravention of the statutory rules. It is trite that this court even in exercise of its jurisdiction under Article 142 of the Constitution of India would not ordinarily grant such a relief which would be in violation of a statutory provision.

In Common Cause. A Registered Society v. Union of India and Ors., [1998] 6 SCC 667, this Court held:

"Even under Article 142 of the Constitution, such a direction cannot be issued. While passing an order under Article 142 of the Constitution, this court cannot ignore the substantive provision of law much less the constitutional rights available to a person. (See: Supreme Court Bar Assn. v Union of India, [1998] 4 SCC 409, AIR (1998) SC 1895).

In M.C. Mehta v. Kamal Nath and Ors., [2000] 6 SCC 213 this Court observed:

".....The Court further observed that though the powers conferred on the court by Article 142 are curative in nature, they cannot be construed as powers which authorize the court to ignore the substantive rights of a litigant. The court further observed that this power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of this court.

Further in State of Punjab and Anr. v. Rajesh Syal, [2002] 8 SCC 158 this Court opined:

This court has ample jurisdiction to pass orders under Article 142(1) of the constitution which may be necessary for doing complete justice in any case or matter. But even in exercising this power, it is more than doubtful that an order can be passed contrary to law.

The respondents furthermore even are not entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided. But one way or the other, even the matter had been considered by this Court in Debdas Kumar (supra). The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. This appeal is allowed. No costs.