

State Of W.B vs Hari Narayan Bhowal on 16 March, 1994

Equivalent citations: 1994 SCC (4) 78, JT 1994 (2) 610, 1994 (4) SCC 78, 1994 AIR SCW 2578, (1994) 3 SCT 707, 1994 SCC (L&S) 869, 1994 UJ(SC) 1 750, (1994) 27 ATC 524, 1994 BLJR 2 1069, (1994) 1 CURLR 985, (1995) 2 LAB LJ 328, (1994) 2 LAB LN 366, (1994) 2 SCJ 182, (1994) 2 SERVLR 54, (1994) 2 UPLBEC 1060, (1994) 3 SCR 24 (SC), (1995) 1 SERV LJ 19, (1994) 2 JT 610 (SC)

Author: N.P Singh

Bench: N.P Singh, P.B. Sawant

PETITIONER:

STATE OF W.B.

Vs.

RESPONDENT:

HARI NARAYAN BHOWAL

DATE OF JUDGMENT 16/03/1994

BENCH:

SINGH N.P. (J)

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SINGH N.P. (J)

SAWANT, P.B.

CITATION:

1994 SCC (4) 78 JT 1994 (2) 610

1994 SCALE (2) 263

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- Leave granted.

2. This appeal has been filed on behalf of the State of West Bengal, against an order passed by the High Court, directing the State Government, to give the same pay scale and other benefits, which are

payable to the Constables of the West Bengal Police Force, to the writ petitioner- respondents (hereinafter referred to as the 'respondents'), who are the members of the West Bengal National Volunteer Force.

3. The respondents were employed as 'Aragamies' otherwise called Volunteers attached to Biswakarama Battalion. According to respondents, as they have been appointed in accordance with the provisions of the West Bengal National Volunteer Force Act, 1949 (hereinafter referred to as the 'Act') and as they have been performing the duties of Constables while maintaining law and order, they should be treated on a par with the police Constables of West Bengal; they are entitled to the same scale of pay and other benefits which are payable to such Constables. It was pointed out on their behalf, that the revised scale of pay introduced by the Government, for the National Volunteers, was highly discriminatory in nature and different from the members of the West Bengal Police Force although the respondents not only perform the duties of Constables while maintaining law and order, but perform even the duties of brick-laying, carpentry, painting, plastering, flooring, pumping and electrical wiring. They have to construct roads and highways as well, apart from guarding the vital installations.

4. A learned Judge on the principle of "equal pay for equal work", directed the State Government to consider the case of the respondents, in the light of the judgment of the same court in the case of Madan Mohan Sen v. State of W.B. 1 in which the High Court had directed to pay the Aragamies, who were the members of the West Bengal Civil Emergency Force, the scale of pay and benefits, which were payable to the firemen in the West Bengal Fire Service. The Division Bench, affirmed the direction given by the Single Judge, saying that as the Aragamies have been performing and discharging the duties of the Constables, they were entitled to the same scale of pay and other allowances, which are payable to the Constables of the West Bengal Police Force; the denial of said scale and benefits amounted to discrimination within the meaning of Article 14 of the Constitution.

5. On behalf of the appellant-State, it was pointed out by a reference, to the comparative data which had been filed before the High Court regarding the Aragamies in the West Bengal National Volunteer Force and the 1 F.M.A.T. No. 1841 of 1986, decided on Nov. 21, 1990 (Cal HC) Constables in the West Bengal Police Force, that Aragamies are recruited from amongst the trained members of the National Volunteer Force, or from amongst the ex-servicemen, whereas the Constables in Police Force are recruited on selection, by process of direct recruitment. The qualification prescribed for Aragamies is Class VI passed, whereas for Constables the qualification is Class VIII passed. There is also difference in the minimum physical standard required for the two. The duty to be performed by the Aragamies are (1) to aid the police force to meet law and order situation, (2) to attend emergencies on call, in times of Dock Strike, Corporation Strike and similar other situation of unrest, (3) to attend emergency duties in times of natural calamities e.g. flood, storms, earthquake etc., and (4) to guard vital installations in Union/State Undertakings, e.g., DPL, DCL, RCFA, WBSEB and Water Treatment Plants, etc. whereas the duties of the Police Constables, are maintenance of law and order and prevention of crime. It further appears that Aragamies are Class IV employees in the State Government Service, while Constables are Class III employees.

6. In the Act "Force" has been defined to mean West Bengal National Volunteer Force. "Volunteer" has been defined under Section 2(g) to mean a person enrolled as a member of the West Bengal National Volunteer Force or any unit or corps of the Force established, constituted or formed, as the case may be under the proviso to Section 3 or Section 7. Section 3 says that the State Government may raise and maintain "a volunteer force to be called the West Bengal National Volunteer Force" and for that purpose enrol persons as volunteers from Calcutta and elsewhere in West Bengal. The functions of a volunteer have been prescribed in Section 4, saying that when called upon, he shall discharge such functions in relation to the protection of persons, the security of property and preservation of the public peace in any area within West Bengal and such other functions as may be assigned to him by or under the said Act. Section 7 vests power in the State Government to direct that one or more corps or units of the force be constituted or formed for any particular region within West Bengal or for any specified purpose. Section 8 says :

"8. (1) Any citizen of India or any person having a permanent domicile in West Bengal who may offer himself for enrolment in the Force and who satisfies the prescribed conditions may be eligible for enrolment therein by such authority, in such manner and for such period not exceeding five years as may be prescribed. (2) Every volunteer shall receive a certificate of appointment in the prescribed form and such certificate shall be issued by such authority as may be prescribed and thereupon he shall have the powers, privileges and protection conferred, and shall discharge the duties imposed, on a volunteer by or under this Act.

(3) Every volunteer enrolled under this Act shall undergo such preliminary and periodical training as may be prescribed.

(4) Every person enrolled as a volunteer under this Act shall be entitled to receive a certificate of discharge in the prescribed form on the expiration of the period for which he was enrolled and any such person may, prior to the expiration of that period, be discharged by such authority subject to such conditions as may be prescribed, and shall be so discharged on the recommendation of the Advisory Committee in this behalf. (5) The prescribed authority may, subject to such conditions as may be prescribed

(a) suspend, discharge, dismiss or remove any volunteer from his office and thereupon the certificate referred to in sub-section (2) shall cease to have effect, or

(b) disband any unit constituted under this Act and thereupon every volunteer of such unit shall vacate office."

Section 12 provides that a volunteer, when called upon for duty under subsection (a) or sub-section (1) of Section 10 to aid the police force, such volunteer shall work under the orders of or be under the control of such officers of the police force as may be prescribed.

7. On plain reading of the different provisions referred to above, it appears that West Bengal National Volunteer Force is a force of volunteers. When called upon for duty, the volunteer has to discharge such functions in relation to protection of persons, the security of property and preservation of the public peace in any area within West Bengal and such other functions as may be assigned to him. Any citizen of India or any person having a permanent domicile in West Bengal may offer himself for enrolment in the force and if he satisfies the prescribed conditions, he may be enrolled by the prescribed authority for such period not exceeding 5 years. Every person enrolled as volunteer under the said Act, on expiration of the period for which he had been enrolled or even prior to the expiration of the said period be discharged in accordance with the procedure prescribed under sub-section (4) of Section 8. It is true that such volunteer force has to perform when called upon, the duties of the police force while maintaining law and order. But according to us, the whole concept of the National Volunteer Force, is different from that of the police force. In respect of the volunteers, it can be said that it is a standby force, not only for law and order, but for different emergencies, to aid and help the regular police force or members of the other services.

8. It appears, the Pay Commission examined the scales of pay of the volunteers of National Volunteer Force and the Constables of the West Bengal Police Force. On the basis of the relevant material different scales of pay for them was recommended. The High Court having found that the nature of work of the respondents was more or less that of the constables of the police force, especially, when they are called upon to maintain law and order, held that there was no justification to deny the same scale of pay, to the respondents on the principle of "equal pay for equal work".

9. In public services, nature of work in two services or in the same service, the nature of the work of the two groups may be more or less same. But merely on that ground they are not entitled to the same scale of pay. It is well known that scales of pay are fixed by expert bodies like the Pay Commissions, which consist of persons having specialized knowledge of the subject. Such Commissions while fixing the scales of pay or revising the same, have to go in depth, not only into the nature of work by members of the same service and members of different services but also various other factors before the scales of pay are fixed. One of the primary concerns of such Pay Commissions is to remove any anomaly and to see that members of different services get scales of pay and other emoluments not only according to the nature of work but also according to educational qualifications, responsibilities of the posts and experience etc. As such, before any direction is issued by the court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary.

10. This Court in the case of Delhi Veterinary Assn. v. Union of India² said that in addition to the principle of "equal pay for equal work", the pay structure of the employees of the Government should reflect many other social values. It was said :

"The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial

recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors."

In the case of State of U.P. v. J.P. Chaurasia³ it was pointed out that whether two posts are equal or should carry the equal pay, depends on several factors. It does not depend just upon either the nature of work or the volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission, who would be the best judges, to evaluate the nature of duty, responsibility and all relevant factors. The same view was reiterated in the case of State of M.P. v. Pramod Bhartiya⁴ by a three-Judge Bench of this Court. Recently, in the case of 2 (1984) 3 SCC 1: 1984 SCC(L & S) 329: AIR 1984 SC 1221 3 (1989) 1 SCC 121: 1989 SCC (L & S) 71: (1988) 8 ATC 929:

AIR 1989 SC 19

4 (1993) 1 SCC 539: 1993 SCC (L & S) 221: (1993) 23 ATC 657 Shyam Babu Verma v. Union of India⁵ a claim for equal pay by a group of Pharmacists was rejected saying that the classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable.

11. It need not be impressed that the principle of "equal pay for equal work" can be enforced only after the persons claiming satisfy the court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equals as unequals. Unless a very clear case is made out and the court is satisfied that the scale provided to a group of persons on the basis of the material produced before it amounts to discrimination without there being any justification, the court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scales of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. It need not be emphasised that in the process undertaken by the court, an anomaly in different services may be introduced, of which the court may not be conscious, in the absence of all the relevant materials being before it. Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article 14, courts should be reluctant to issue any writ or direction to treat them equal, particularly when a body of experts has found them not to be equal.

12. So far as the present case is concerned, as already mentioned above, the High Court placed reliance on an earlier judgment of the same court directing that Agragamies of West Bengal Civil Emergency Force be paid the same scale of pay, which was payable to the Firemen of the Fire Service Department. That earlier judgment of the High Court has been reversed by this Court (State of W.B. v. Madan Mohan Sen⁶). This Court while dismissing the writ application of Agragamies of West Bengal Civil Emergency Force has pointed out that merely because the academic qualifications

and physical requirements of both are similar or that the Agragamies are also given certain fire-fighting training along with other training, it cannot be said that they perform similar duties, functions and responsibilities as the Firemen.

13. The same is the position here. On the material on record, it is difficult to hold that the respondents who had been enrolled as volunteers under the West Bengal National Volunteer Force Act, belong to the class of Constables, under the West Bengal Police Force and to treat them separately in matters of fixation of scale of pay, amounts to violating Article 14 of the Constitution. According to us, they form two different classes in public service. In this background, the High Court was in error in treating them on a par with the Constables of the West Bengal State Police Force.

5 ((1994) 2 SCC 52 1: JT (1994) 1 SC 574 6 1993 Supp (3) SCC 243: 1993 SCC (L & S) 1063: (1993) 25 ATC 586