

Supreme Court of India

Shri Suryanarayan Sahu Etc vs The Council Of Scientific & ... on 25 November, 1997

Author: D Wadhwa.

Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:

SHRI SURYANARAYAN SAHU ETC.

Vs.

RESPONDENT:

THE COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH

DATE OF JUDGMENT: 25/11/1997

BENCH:

SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

THE 25TH DAY OF NOVEMBER, 1997 Present:

Hon'ble Mrs. Justice Sujata V. Manohar Hon'ble Mrs. Justice D.P. Wadhwa In-person for the appellant A.K. Sikri, Sr. Adv, Ms. Madhu Sikri and V.K. Rao, Adv. with him for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered:

WITH CIVIL APPEAL NO. 508 OF 1993 D.P. Wadhwa. J.

These two cross appeals arise out of the judgment dated June 19, 1989 of the Central Administrative Tribunal, Cuttack Bench (for Short, "the Tribunal" ) on a writ application filed by Suryanarayan Sahu (appellant in Civil Appeal No. 50/- of 1993) . At the relevant time, Sahu was working as a senior Draughtsman in the Regional Research Laboratory Bhubaneswar, a unit of the Council of Scientific and Industrial Research (CSIR). While Sahu is aggrieved by the impugned judgment in not granting him pay scale of Rs.425-700/- from 1.1.1973 as Junior Draughtsman and as senior Draughtsman in the pay scale of Rs. 550-900/- from 29.4.1974, Union of India is aggrieved as the Tribunal in the impugned judgment directed that Sahu be given pay scale of Rs. 425-700/- w.e.f. 29.4.1974.

Gensis of the dispute lies in the Third pay Commission's Report which the Central Government decided to implement from 1.1.1973 and rules applicable to the employees working in the CSIR.

CSIR is a society registered under the Society Registration Act. Rules & Regulations and Byelaws govern the functioning of the CSIR. Under Rule directed and controlled, subject to Rules & Regulations and Bye-laws and orders of the society, by the Governing Body. We do not have to refer to the Rules & Regulations and Bye-laws of the CSIR in details as these are not in controversy. Under Bye-law 12, conditions of service of the officers and staff of CSIR are governed by the Central Civil (Classification, control and Appeals) Rules and the Central Civil Services (Conduct) Rules for the time being in force. Under Bye-law 14, the scales of pay applicable to all the employees of the society shall not be in excess of those prescribed by the Government of India for similar personnel, save in the case of specialists. Under Bye-law 15, in regard to all matters concerning service conditions of employees of the Society, the Fundamental and supplementary Rules framed by the Government of India and such other rules and orders issued by the Government of India from time to time shall apply to the extent applicable to the employees of the Society. By- laws 14 and 15 of the CSIR framed by the Governing Body are as under:

"14. The scales of pay applicable to all the employees of the Society shall not be in the excess of those prescribed by the Government of India for similar personnel, save in the case of specialists.

15. In regard to all matters concerning service conditions of employees of the Society, the Fundamental and Supplementary Rules framed by the Government of India and Such other rules and orders issued by the Government of India from time to time shall apply to the extent applicable to the employees of the Society. Notwithstanding anything contained in this Bye-law, the Governing Body may establish and maintain schemes providing for benefits to employees of the Society on Superannuation/Retirement.

Rule 75 of CSIR Rules and Regulations as referred to in the grounds of appeal in the appeal of the CSIR is as under:

"75(a) The scales of pay applicable to the officers and establishments in the service of the Society shall not be in excess of those prescribed by the Government of India for similar personnel, save in the case of specialists.

(b) In regard to all matters concerning service of the conditions of employees of the Society, the Fundamental and Supplementary Rules framed by the Government of India and such other rules and orders issued by the Government of India from time to time shall apply to the extent applicable to the employees of the Society.

Notwithstanding anything contained in this Bye-law, the Governing Bod shall have the power to relax the requirement of any rule to such extent and subject to such conditions as it may consider necessary.

(c) Deleted."

It was not clarified as to why By-laws 14 and 15 and Rule 75 exist though effect would appear to be the same.

The petitioner who was a matriculate and possessed diploma in Draughtsman was appointed as a Tracer in the regional Research Laboratory, Bhubaneswar w.e.f. 4.3.1965 in the pay-scale of Rs. 110-200/-. ON 18.11.1967, he was promoted to the post of Junior Draughtsman in the scale of pay of Rs. 115-240. On 29-4.1974, he was further promoted to the post of senior Draughtsman in the scale of pay of Rs. 380-640.

Recommendations of the Third Pay Commission were accepted by the Central Government w.e.f. 1.1.1973. One of the recommendations of the pay Commission related to the scales of pay of Draughtsman and senior Draughtsman. Draughtsmen were to be in the pay scale of Rs. 330-560/- while the senior Draughtsmen were divided into two groups with two scales of pay of Rs. 330-560/- and Rs. 425-700/-. 50% of the senior Draughtsmen who were high up in seniority were given he scale of Rs. 425-700/- and the remaining 50% were placed in the lower scale of pay. This division of senior Draughtsmen was challenged in the Supreme court in P. Savita & Ors. vs. Union of India, Ministry of Defence (Department of Defence Production). New Delhi & Ors. [1985 (Supp.) SCC 94]. It was submitted before this Court that Draughtsman both junior and senior discharged identical duties and performed similar work and that that being so, there was little or no justification in putting 50% of them in a higher scale of pay and 50% others in a lower scale of pay and further that this grouping was without any intelligible differentia. The Court accepted the contentions raised by the junior Draughtsmen and found no justification in dividing senior Draughtsman into two groups with different pay scales. The judgment was delivered on May 1,1985. A direction was issued to Union of India to fix the scale of pay of Junior Draughtsman also at Rs. 425-700/-. After the decision of this Court in P. Savita's Case, the Government of India by notification dated 11.9.1985 decided that the Draughtsmen who were in the pay scale of Rs. 250- 280/- prior to 1.1.1973 and were placed in the scale of Rs. 330-560/- based on the recommendations of the third pay Commission might be given the scale of Rs. 425-700/- notionally from 1.1.1973 but actually from 1.9.1987.

CSIR is an autonomous body. The recommendations of the Pay Commission cannot be made applicable to CSIR suo motu. It would be up to the governing body of the CSIR to adopt the recommendations of such pay Commission. CSIR by Resolutions has been adopting the recommendations of the pay Commissions for formulating the pay scales of different categories of its employees but the recommendations, it was stated, were not adopted in to and that CSIR adopted a broad pattern of Government of India scale as recommended by the Third Pay Commission. In the CSIR, there are two cadres of Draughtsman, i.e., junior and senior. It is stated that on the basis of the recommendations of the Second pay commission as approved by the CSIR, junior Draughtsmen were placed in the pay scale of Rs. 150-240/- and senior Draughtsmen in the scale of Rs. 205-280/-. A Tracer was placed in the pay scale of Rs. 110-200 which was given to Sahu at the time of his appointment as Tracer. On his promotion to the post of junior Draughtsman, he was placed in the scale of Rs. 150-240.

As noted above, Third Pay Commission report was implemented by the Government for its employees w.e.f. 1.1.1973. CSIR adopted the broad pattern of the Government of India scale of pay as recommended by the Third Pay Commission as per Rule 75(a) of the CSIR Rules and Regulations. It is stated that the revised scales of pay for the CSIR employees including the junior and senior draughtsmen were fixed keeping in view the following guidelines based on the recommendations of the Third Pay Commission as approved by the governing Body:

"(a) to reduce the number of scales applicable to CSIR employees to 15;

(b) to frame these scales in consonance with the pay scales recommended by the Third Pay Commission as accepted by the Government of India.

(c) existing employees were to be accommodated in these 15 scales.

In its 61st Meeting of the Governing Body of the CSIR held on February 26, 1974 revised pay scales of the employees were approved and it was also resolved that revised pay scales should be given effect from January 1, 1973 as in Government Departments.

It is stated by the CSIR that while framing 15 scales, some deviations were required to be made to accommodate the employees so that it might not be possible to follow all the pay scales prescribed by the Third pay Commission in their entirety. Thus, keeping in view the existing scales of junior and senior Draughtsmen, these were placed into two scales respectively of Rs. 380-560/- and Rs. 380-640/-. The CSIR subsequently revised these scales to Rs. 330-560/- for junior Draughtsmen and Rs. 425/-700/- for senior Draughtsmen w.e.f. 1.5.1978. Further in accordance with the recommendations of the Third Pay Commission, 50% of the posts in the scale of Rs. 380-640/- were revised to 425-700. Senior Draughtsman belonging to this category were thus, placed in the pay scale of Rs. 425-700 w.e.f. 1.6.1978 or from the date of option or from any subsequent date. Remaining 50% of senior Draughtsmen who were lower in seniority were allowed to remain in the scale of Rs. 380-640 as personal to them till they got seniority to fall within the first 50% of senior Draughtsmen who were lower in seniority were allowed to remain in the scale of Rs. 380-640 as personal to them till they got seniority to fall within the first 50% of the posts to come in the scale of Rs. 425- 700/-. Accordingly Sahu was placed in the scale of Rs. 425- 700/- w.e.f. 1.8.1979 when he gained the seniority. CSIR has been adopting a promotion scheme and under the new assessment promotion scheme, the next higher grade of the senior Draughtsman was in the scale of Rs. 550-900/- and Sahu was to be assessed for promotion to this higher grade after 5 years of his having been placed in the scale of Rs. 425-700/-. He was called for interview on 12.10.1984 for assessment promotion to the next higher grade to Rs. 550- 900/- but he refused to attend the same. It is admitted that Sahu got this higher grade on 1.8.1985. Sahu is certainly in a better position compared to the decision of the Central Government implementing the directions of this Court in P. Savita's case as he got the scale of pay of Rs. 425-700/- from 1.8.1979.

Sahu in his submissions relied on the award dated 20.6.1980 of the Board of Arbitration (JCM) of the Ministry of Labour to claim the pay scale of Rs. 550-900/-. His grievance has also been that when he was appointed as Tracer, he was given a lower scale of pay.. Whatever the merit of his case,

it is too late in the day for him to contend so as his grievance of 1965 cannot be allowed to be agitated at this stage. The award of the Board of Arbitration was with reference to the demand for upward revision in the pay-scales of Draughtsmen of Grade III to I employe din the CPWD. The relevant portion of the award is as under:

"1. The Three categories of Draftsmen viz. Grade III, Grade II and Grade I shall be inducted in the pay scales shown hereunder against each of the aforesaid categories.

Draftsmen Grade III - RS.330-560/-

Draftsmen Grade II - Rs.425-700/-

Draftsmen Grade I - Rs.550-900/-

2. The above mentioned categories of Draftsmen shall be fixed notionally in their respective scales of pay as aforesaid from 1.1.1973 in accordance with the recommendations of the Third Pay Commission in respect of weightage and fitment. But for computation of arrears, the date of reckoning shall be the date of recording of disagreement in the Departmental Council viz. 29.7.1977".

Though by the impugned judgment, the Tribunal directed that Sahu be given scale of pay of Rs. 425-700 w.e.f. 29.4.1974 when he was promoted as senior Draughtsman, as regards his contention for the scale of pay of Rs. 550-900, the Tribunal said that there was no such scale in the recommendations of the Third Pay Commission and that this scale had been adopted by the CSIR in view of its own requirements. The Tribunal noticed that there was a prescribed method of assessing the suitability of the officers for promotion to this grade and that the petitioner had to comply with the requirement of the prescribed procedure and that he had not appeared before the Expert Committee in 1984. He must, therefore, pay the penalty for this omission. The Tribunal observed that Sahu shall have to wait for his turn and it expressed hope that he would appear before the Committee and get himself selected after which he shall be entitle to scale of pay of Rs. 550-900/-.

As noted above, the petitioner was granted this scale of pay w.e.f. 1.8.1985, after he had appeared before the Expert Committee. It would, thus, be seen that the CSIR itself took the decision on 1.6.1978 to give higher scale of pay to its senior Draughtsmen and in pursuant of that Sahu got this scale on 1.8.1979. As regards the CSIR get one assessment promotion under the new recruitment and assessment scheme after a specified period irrespective of the availability of posts and that such scheme of promotion was not available in any other services in the Government of India. Moreover while a Draughtsman in the Government would retire at the age of 58 years, in the CSIR, he would retire at the age of 60 years. It was also submitted that the nature of work in the CPWD for Draughtsmen was different then those working in the CSIR. We have to examine how far and to what extent the principle of 'equal pay for equal work' is applicable.

In *Randhir Singh vs. Union of India & Ors.* [(1982) 1 SCC 618], the Court was to consider the principle of "equal pay for equal work" under the reference to the Preamble and Articles 39(d), 14 and 16 of the Constitution. The Court negatived the plea of the respondent that the circumstance

that persons belong to different departments of the Government is itself a sufficient circumstance to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. The Court said that if this view is to be stretched to its logical conclusion, the scales of pay of officers of the same rank in the Government of India may vary from department to department notwithstanding that their powers duties and responsibilities are identical. The Court then observed thus:

"We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the pay Commission and not for courts but we must hasten to say that where all things are equal that is where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officer may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same." The Court further said thus: "Construing Articles 14 and 16 in the light of the preamble and Article 39(d), we are of the view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

This Court further said thus:

"It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain two grades with different scales of pay. The principle of 'equal pay for equal work' would be an abstract doctrine not attracting Article 14 if sought to be applied to them."

In State of U.P. & Ors. vs. J.P. Chaurasia & Ors.

[(1989) 1 SCC 121], again considering the question of parity in employment for the purpose of pay fixation, this court said that in service matters the merit and experience could be the proper basis for classification to promote efficiency in administration and that he or she learns also by experience as much as by other means and further that it could not be denied that the quality of work performed by persons of longer experience was superior than the work of newcomers. The Court was of the view that this principle was even recognised in Randhir Singh's case. The Court, therefore, held that classification based on experience was a reasonable qualification and that it had a rational nexus to the object thereof and to hold otherwise, it would be detrimental to the interest of the service itself. In Tarsem Lal Gautam & Anr. vs. State Bank of Patiala & Ors. [(1989) 1 SCC 182], the main grievance of the petitioner was that the new Regulations merely brought about a revision of pay

scales and that the differentiation amongst the existing Grade-A Officers who were doing the same nature of work and who would continue even after the placement in the new cadre to do the same work into two grades with different scales of pay based purely on the fortuitous circumstance of the date of their promotion to the existing Grade was arbitrary. The Court, after examining various decisions including that in P. Savita's case, said as under:

"This, we think, is not an instance to which the principle of 'equal pay for equal work' could straightway be applied. Indeed, the qualitative differences in regard to degrees of reliability and responsibility cannot be put aside as irrelevant. There cannot be any thumb rule to decide the invalidity of the provisions which recognise and provide for differentiation on the basis of higher experience, reliability and responsibility."

The Court was, thus, of the view that the principle of classification amongst existing officers Grade-A for the purpose of fitment in the new dispensation brought about by statutory regulations could not be said to be unreasonable and arbitrary requiring to be struck down as violative of Article 14. In *State of Madhya Pradesh & Anr. vs. Promod Bharatiya & Ors.* [AIR 1993 sc 286 = (1993) 1 SCC 539], this Court was again concerned to examine the principle 'equal pay for equal work'. The Court said thus:

"The material above mentioned goes to show that (a) the qualifications prescribed for the lecturers in the Higher Secondary Schools and the non-technical lecturers in Technical School are the same; (b) service conditions of both the categories of lecturers are same;

and (c) that the status of the schools is also the same. There is, however, a conspicuous absence of any clear allegation and/or material suggesting that functions and responsibilities of both the categories of lecturers is similar.

Much less is there any allegation or proof that qualitatively speaking, they perform similar functions. It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. It is also not sufficient to say that the service conditions are similar.

What is more important and crucial is whether they discharge similar duties, functions and responsibilities. On this score there is a noticeable absence of material."

In *Purshottam Lal & Ors. vs. Union of India & Ors* [AIR 1973 SC 1088= (1973) 1 SCC 651], which was referred to by Sahu, the issue before this Court was if the petitioners were discriminated against by the Government in violation of their fundamental rights in Article 14 and 16 of the Constitution. The Court was concerned with the acceptance of recommendations of pay Commission. It said that the Government had made a reference in respect of all the employees and that if it accepted the recommendations, it was bound to implement the recommendations in respect of all the Government employees and if it did not implement the report regarding some employees only it

commits a breach of Articles 14 and 16 of the Constitution and this was what the Government had done as far as the petitioners before the Court were concerned. This Court, therefore, issued directions to the Government to grant revised pay of scales to the petitioners. This decision, in our view, is not relevant to the issue canvassed before us.

The situation that now emerges is that CSIR is not bound to adopt all the recommendations of the Third Pay Commission and it is not material if the Central Government accepted the recommendations of the Third Pay Commission. CSIR is an independent body. Principle of law which has been settled by this Court in string of judgments is that different scales of pay can be granted based on experience and merit to the employees working in the same grade. Classification based on experiences is valid. An employee having more length of service is certainly better equipped to perform his duties of an office than a relatively new employee. We have already noticed above that Sahu is certainly better placed than Draughtsmen in Government service to whom principle laid in P. Savita's case has been applied by the Central Government. Once we have reached this conclusion the answer to the question raised in these appeals become self-evident. Tribunal was not right in holding that CSIR violated the principle of "equal pay for equal work" when it resolved that 50% of the members of the cadre of Senior Draughtsmen would be placed in higher scale of pay leaving the other 50% for the lower scale of pay. It would be seen that revised pay-scales for Draughtsmen in the CSIR are more beneficial to them than what was given in the Third Pay Commission and which recommendation had been accepted by the Central Government for its employees. Reliance of Sahu on the proceeding of the Board of Arbitration of the Ministry of Labour to claim the same pay scale as awarded by the Board of Arbitration to Draughtsmen working in CPWD is erroneous. For firstly CSIR is not bound to adopt the same pay scale given to Draughtsmen working in CPWD, a Department of the Central Government, and secondly it has been pointed out that work of Draughtsmen in CPWD and those in CSIR is not similar.

Direction of the Tribunal to give scale of pay of Rs. 425-700 to Sahu with effect from 29.4.74 when he was promoted to the grade of senior Draughtsman cannot be sustained. Grant of pay Scale of Rs.425-700 by the CSIR to Sahu with effect from 1.6.78 is as per the rules of the CSIR and is valid.

Accordingly, the appeal filed by Sahu (Civil Appeal No. 507/93) is dismissed and that appeal filed by CSIR. (Civil Appeal 508/93) is allowed. The impugned judgment of the Central Administrative Tribunal (Cuttack Bench) is dismissed. In the circumstances there will be no order as to costs.