



Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 441 OF 2022**

Versus

1 State of Goa,
Through the Chief Secretary
Porvorim Goa.

2 Department of Civil Supplies and
Consumer Affairs
Junta House, 1st lift, 2nd floor,
Panaji Goa through its Director ...Respondents

Mr A. R. Kantak, Advocate for the petitioner.

Ms Maria Correia, Additional Government Advocate for the respondents.

CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ

DATED : 25th NOVEMBER 2024

JUDGMENT (Per Nivedita P. Mehta, J)

1. By the present petition under Articles 226 and 227 of the Constitution of India, the petitioner is seeking issuance of a direction against respondents no. 1 and 2 to grant pay, remuneration and other benefits applicable to the petitioner as a

Member of the State Consumer Forum; in terms of the Consumer Protection Act, 2019 (in short “the Act of 2019) with effect from 15.07.2020. The petitioner has restricted his relief to prayer clauses (A) and (B) in the petition. The petitioner is not pressing prayer clause (B-1).

2. Rule. The rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties.

3. The petitioner is an electronics and telecommunication engineer, having worked in the field of Electronics in many multinational companies like Philips Electronics, Nihon Kohden Corporation, Fluke Europe, Medtronic Functional Diagnostics A/S and was employed in Qatar. In view of the technical qualifications possessed by the petitioner, the petitioner was selected by respondent No.1 vide order dated 07.06.2004 under the provisions of Section 10 (1) (a) and (b) of the Consumer Protection Act, 1986 as a sitting member of the Consumer Dispute Redressal Forum, South Goa District at Margao for a period of five years at a consolidated remuneration of Rs.275/- per day for the sitting. The petitioner was then transferred from the Consumer District Redressal Forum, South Goa to the Consumer District Redressel Forum, North Goa on 31.01.2006. The petitioner was reappointed vide order dated 14.12.2009 for a further term of five years as a Member of the Consumer Disputes Redressal Forum,

North Goa which expired on 13.12.2014. Thereafter, the petitioner was appointed as a Member of the Goa State Consumer Dispute Redressal Commission vide order dated 04.05.2018. The other two Members sitting with the petitioner at the Goa State Consumer Disputes Redressal Commission were Justice U.V Bakre as the President of the Commission who retired on 26.02.2020 and the other member Smt. Vidya Gurav retired on 15.02.2021. The petitioner thereafter was the only member who presided over the Goa State Consumer Disputes Redressal Commission.

4. On 03.09.2021 an advertisement for appointment to the post of the President and Members of the Goa State Consumer Redressal Commission was published in the Herald newspaper. The petitioner addressed a letter to respondent No.2 informing that the petitioner is presently a sitting member of the Goa State Consumer Redressel Forum and would retire on 14.05 2023. In response, the petitioner was asked to complete his term as per Section 45 of the Consumer Protection Act, 2019.

5. The petitioner vide letter dated 08.06.2022 made a representation to respondent No.2 stating therein that the Consumer Protection Act, 2019 came into force on 20.07.2020 and the petitioner is entitled for the pay and allowances as applicable to the other members of Goa State Consumers Disputes Redressal Commission. It is pertinent to note here that the

respondent No.2 vide Notification dated 03.10.2022 appointed the petitioner to officiate as President of the Goa State Consumers Disputes Redressal Commission till the post of the President is not filled.

6. The respondents have filed their reply. The response is that vide order dated 04.05.2018 the petitioner on the recommendation of the selection committee was appointed as a Member of the Consumer District Redressal Commission, Panaji Goa on a part-time basis under the erstwhile Act of 1986 in terms of Rule 6 of the Goa Consumer Protection Rules, 1987 knowing fully well that the same is on ad-hoc basis. The respondents have further stated that during the petitioner's tenure as an ad-hoc member of the State Commission, the Consumer Protection Act, 2019 came into force and the provisions of the said Act came into force on 20.07.2020. The respondents submit that though the petitioner continued to serve as a Member till the completion of his term; does not entitle the petitioner to the salary/pay at par with the members appointed under the Consumer Protection Act, 2019.

7. The learned counsel for the petitioner submitted that as per Section 45 of the Consumer Protection Act, 2019 the president/members who were already in service at the district/State level were allowed to continue till the completion of their term and

in view of Rule 4 (2)(4) of the Consumer Protection (Salary, Allowances and Conditions of Service of President and Members of the State Commission and District Commission) Model Rules 2020 (in short “Model Rules 2020”) framed by the Central Government under the proviso to sub-section (1) of Section 102 of the Consumer Protection Act, 2019, which came to force on 20.07.2020.

8. Learned counsel for the petitioner submitted that the petitioner has been handling all the hearings as prescribed under the Regulations 2020 and is discharging his duties and work similarly to those members of the State Commission appointed under the Consumer Protection Act, 2019. Learned counsel for the petitioner submitted that the petitioner is entitled to the salary and allowance in terms of Rule 4 of the Model Rules 2020 and differentiating the petitioner from other co-members who were appointed as regular full time members under the new Act of 2019 amounts to breach of Article 14 and Article 39(d) of the Constitution of India and contends that the petitioner is entitled for salary and allowance at par with the other members for same work and same work hours. In view thereof, the petitioner claims to be entitled to receive pay equivalent to the pay at the minimum of the scale of an Additional Secretary of the State Government

with an annual upward revision of the pay of a member at the rate of 3%.

9. The learned Additional Government Advocate submits that the petitioner was appointed on a part-time basis and was receiving a consolidated honorarium of Rs.5000/- per day for the sitting and Rule 6 of the Goa Consumer Protection Rules, 1987 will apply to the petitioner till the completion of his term. Therefore, the benefit of Rule 4 of the Model Rules 2020 is not made applicable to the petitioner. The Additional Government Advocate submits that the communication dated 03.10.2022 does not appoint the petitioner as President of the State Commission; he was merely asked to officiate and discharge the duties of the President of the State Commission and this itself does not entitle the petitioner to the grant of the salary of the President. She further argued that reliance placed by the petitioner on Section 45 - transitional provisions of the Consumer Protection Act, 2019 is totally misconceived as it only contemplates that those who were appointed under the old Act of 1986 would continue to perform duties till the new appointment is made under the new Act of 2019 and the petitioner cannot interpret it for the claim to pay/salary at par with the members of the State Commission appointed under the Consumer Protection Act, 2019. The Additional Government Advocate further submits that Section 107 (3) of the Act of 2019 specifically

mentions that “*particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal*”. A bare perusal of Section 6(c) of General Clauses Act, 1897 would clearly spell out that the repeal act shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Learned Additional Government Advocate submitted that the principle of equal pay for equal work is not applicable in the present case.

10. Heard learned counsel for the parties and perused the materials available on record.

11. Section 45 of the new Act viz. Act of 2019 provides a Transitional provision as under:

*“45. **Transitional provision**.- Any person appointed as President or, as the case may be, a member of the State Commission immediately before the commencement of this Act shall hold office as such, as President or member, as the case may be, till the completion of his term”.*

12. Section 45 of the Act of 2019 protects the service of the petitioner who was appointed prior to coming into force of the new Act till the completion of his term. It is not in dispute that the nature of the duties, responsibilities, functions and authority of the petitioner are the same and identical to those members who have

been appointed under the new Act, with only a difference of appointment on part-time and full-time. We are of the considered view that non-granting of similar or equal pay to the members who have been allowed to continue by virtue of transition provision under Section 45 of the new Act amounts to treating equals unequally which would be discriminatory, as the nature of duties, responsibilities, functions and authority of the petitioner is same and identical. We are not inclined to accept the submission of the learned Additional Government Advocate that merely because of some difference in the qualification criteria prescribed for appointment as member under the new Act, the petitioner is not entitled to the same salary as a member who is appointed under the new Act. The transitional provision enables the existing member to continue till the completion of his term prescribed under the old Act. Such provision cannot be read in a manner having the effect of depriving member of the salary and allowances as the member appointed under the new Act. To deprive the petitioner, the benefit, in our view, no legitimate foundation is made out by the respondents. In our view, considering the nature of the functions a member of the commission discharges, different eligibility criteria prescribed by the new Act cannot be relevant criteria to deprive the petitioner the benefits claimed. There is nothing on record to even remotely indicate merely because there is some variance in the

eligibility prescribed for appointment, the duties and responsibilities of the post are not qualitatively similar or comparable. It is the very same post on which the petitioner is continued. We cannot comprehend a situation where the post of member which discharges similar duties and functions a person appointed later albeit under the new Act is paid much more salary and allowances than the petitioner merely because his appointment was under the old Act, factually claimed in view of the transitional provision.

13. Rule 4(2)(4) of the Model Rules 2020 provides for the salaries and allowances of the President and Members of the State Commission which is reproduced as under:

“4. Salaries and allowances payable to President and members of the State Commission.-

(1).....

(2) A Member of the State Commission shall receive a pay equivalent to the pay at minimum of the scale of pay of an Additional Secretary of the State Government and other allowances as are admissible to such officer.

(3)

(4) There shall be an annual upward revision of the pay of a member at the rate of 3%.”

14. Section 102 of the Consumer Protection Act, 2019 is reproduced as below:-

“102. Power of State Government to make rules.-

(1) The State Governments may, by notification, make rules for carrying out the provisions of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they shall conform to such model rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) the salaries and allowances payable to, and other terms and conditions of service of, the

President and members of the District Commission under section 30.....”

15. It is an admitted fact that the State Government did not make rules to provide salaries and allowances to the members in terms of Section 44 of the Act of 2019. In terms of Section 102 of the Act of 2019, the Model Rules, 2020 framed by the Central Government are applicable to the members of the Commission. In terms of such Model Rules, the member shall receive pay equal to the pay at the minimum of the scale of the Additional Secretary of the State Government and other allowances as admissible to such officer.

16. The cases relied on by the learned counsel for the petitioner are stated hereinafter.

i) *Vijay Kumar L. Vs, State of Assam and others*¹, the Gauhati High Court was dealing with a similar issue as is involved in the present case. The observation in paragraph 32 being relevant is reproduced as below:

“32. In the present case, there is no dispute that the duties and responsibilities discharged by the petitioners, though appointed on part time basis, are the same as are being discharged by full time members

¹ WP(C) 5223/2022 decided on 05.06.2024

of the District Forum. It is not the case of the respondents that the petitioners did not possess the qualifications prescribed for appointment on full time basis. It is the case of the respondents that petitioners would not be entitled to pay parity as they were appointed and re-appointed under the old Act and Rules and as such they are regulated by the terms of the appointment order. It is the further case of the respondents that for placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a part time basis, cannot claim to be placed in the regular pay-scale. But it is not the case of the respondents that the petitioners were appointed without regular selection process. Therefore, I am of the considered view that the principle of 'equal pay for equal work' would be applicable to the petitioners so as to vest in them the right to claim equal pay and allowances at par with the minimum of the pay- scale of full-time members holding the same post as the petitioner could able to establish that they are rendering same duties, functions, responsibilities and authority with that of the full-time members of the District Forum.”

ii) *Mr. Auroliano de Oliveira @Auro Vs. State of Goa.*² The Court in this matter was also dealing with the same issue as is involved in the present petition wherein one of us (M. S. Karnik, J) was a party.

² WP No.322 of 2023 decided on 23.10.2024

17. The learned counsel for the respondents relied on the judgment of the Hon'ble Supreme Court in *State of Bihar and others Vs Bihar Secondary Teachers Struggle Committee, Munger and others*³. Paras 87 and 96 of the said judgment read thus:-

“87. In order to consider the applicability of the doctrine of ‘equal pay for equal work’, one of the fundamental aspects to be considered is nature of duties. As was rightly submitted by Mr. Kabil Sibal and Dr. A.M. Singhvi, learned Senior Advocates, the nature of duties performed by Niyojit Teachers are certainly same or similar to those performed by the Government Teachers. As a matter of fact, both the sets of teachers are teaching in the same school and teaching same syllabus. The pointers placed by Dr. Singhvi in his submission as well as the example given by him evidently show that there is no distinction or difference as regards nature of duties performed and responsibilities discharged by the Niyojit Teachers. Some of the Niyojit Teachers have also been acting as Headmasters. However, the Rules in question viz. the 2006 Rules clearly indicate that the method of recruitment of Niyojit Teachers was completely different from the one under which Government Teachers were recruited. The Selection Committee contemplated under the provisions of the 2006 Rules comprised of officials at the Panchayat or Block levels. The selection was also at local levels and not through Bihar Public Service Commission or Schools Selection Board. The distinction brought out in that behalf by the State in Para 13 of its supplementary counter-affidavit filed in the High Court clearly shows the difference

³ (2019) 18 SCC 301

in mode of recruitment. It is thus clear that the mode of recruitment and the standards of selection were different but the nature of duties performed by the Niyojit Teachers have been absolutely identical. Could there be a distinction between these two streams of teachers. We may, therefore, at this stage see the development of the doctrine of 'equal pay for equal work' and whether it admits of any qualifications or exceptions.

96. *Analysis of the decisions referred to above shows that this Court has accepted the following limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work':-*

96.1. *The doctrine of 'equal pay for equal work' is not an abstract doctrine.*

96.2. *The principle of 'equal pay for equal work' has no mechanical application in every case.*

96.3. *The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.*

96.4. *The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job.*

96.5. *Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.*

96.6. *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.*

96.7 Equation of posts and salary is a complex matter which should be left to an expert body.

96.8. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

96.9. Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

96.10. In a given case, mode of selection may be considered as one of the factors which may make a difference.”

18. In the aforesaid case, the Hon'ble Apex Court accepted the contention of the State that the post of Assistant Teacher in the regular cadre is a dying cadre, therefore, the legal position that emerges from the judgment of the Apex Court is that the cadre of the Assistant Teacher and the Teachers appointed against the post of Panchayat Shikshak/Block Shikshak forms two different cadres. The Hon'ble Court took a view that the strength of the cadre which is dying cannot be enhanced and therefore, the judgment cannot be termed as relevant in the facts of the case at hand.

19. Their Lordships in *State of Punjab and others Vs. Jagjit Singh and others*⁴ have laid down the following principles to determine parity in principle of "equal pay for equal work". Their

⁴ (2017) 1 SCC 148

Lordships have held that the temporary employees are also entitled to minimum regular pay scale 7 on the principle of "equal pay for equal work". It is held thus:

"42.2. The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of "equal pay for equal work'. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see - the Randhir Singh case, and the D.S. Nakara case).

42.3. The principle of "equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see - the Randhir Singh case). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see - the Federation of All India Customs and Central Excise Stenographers (Recognized) case, the Mewa Ram Kanojia case, the Grih Kalyan Kendra Workers' Union case and the S.C. Chandra case).

42.4. Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of "equal pay for equal work' (see - the Randhir Singh case, State of Haryana v. Haryana

Civil Secretariat Personal Staff Association, and the Hukum Chand Gupta case). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

42.5. In determining equality of functions and responsibilities, under the principle of "equal pay for equal work", it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see - the Federation of All India Customs and Central Excise Stenographers (Recognized) case and the State Bank of India case). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of "equal pay for equal work" (see - State of U.P. v. J.P. Chaurasia, and the Grih Kalyan Kendra Workers' Union case).

42.6. For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular payscale (see - the Orissa University of Agriculture & Technology case).

42.7. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as - merit, or seniority, or some other relevant criteria (see - *State of U.P. v. J.P. Chaurasia*).

42.8. If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see - the *Mewa Ram Kanojia* case, and *Government of W.B. v. Tarun K. Roy*). In such a cause, the principle of "equal pay for equal work", cannot be invoked.

42.9. The reference post, with which parity is claimed, under the principle of "equal pay for equal work", has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see - *Union of India v. Pradip Kumar Dey*, and the *Hukum Chand Gupta* case).

42.10. A comparison between the subject post and the reference post, under the principle of "equal pay for equal work", cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same

master (see - the Harbans Lal case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - Official Liquidator v. Dayanand).

42.11. *Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of "equal pay for equal work" would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see - the State Bank of India case).*

42.12. *The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of "equal pay for equal work" would not be applicable (see - State of Haryana v. Haryana Civil Secretariat Personal Staff Association).*

42.13. *The parity in pay, under the principle of "equal pay for equal work", cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay-scale. The principle of "equal pay for equal work" is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - State of West Bengal v. West Bengal Minimum Wages Inspectors Association).*

42.14. For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur).

42.15. There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see - the Hukum Chand Gupta case), when the duties are qualitatively dissimilar.

42.16. The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see - the Hukum Chand Gupta case).

42.17. Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the

principle of "equal pay for equal work", even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of "equal pay for equal work" would not apply (see - the S.C. Chandra case, and the National Aluminum Company Limited case)."

20. No doubt, the petitioner was appointed under the old Act at a consolidated remuneration of Rs.275/- per day for the sitting. However, we find that the advertisement which was issued after the introduction of the Consumer Protection Act, 2019, nowhere mentions that there would be any ad-hoc or part-time basis appointment. The advertisement was issued for filling up of four posts as members and after the petitioner pointed out that as per Sections 31 and 45 of the Consumer Protection Act, 2019 he should be continued to work as a member of the State Commission, respondent in response replied to the petitioner that a Note has been put up to the State Government that there are only three vacancies and the petitioner's request for fixing of pay and allowance is under process of the State Government. The Consumer Protection Act, 2019 did not provide for appointment of any ad-hoc member or part time member nor did it provide for remuneration payable to any ad-hoc member or part time member working full day. The petitioner was performing duties similar to

the other members of the State Commission and therefore, was entitled to the pay and allowance at par with the other members of the State Commission appointed under the Act of 2019. The old Act of 1986, did not prescribe hearing scheduled for afternoon session. The Consumer Protection (Consumer Commission Procedure) Regulations 2020 prescribes that the hearing hours as being 10.30 a.m. to 1.00 p.m. and from 2.00 p.m. to 4.30 p.m. The petitioner was discharging duties as per the hearing hours and similar to that of the members of the State Commission appointed under the Consumer Protection Act, 2019. We therefore have no hesitation in rejecting the submissions canvased by Ms Correia that as the petitioner was working on a part-time basis he is not entitled to the relief similar to the member appointed under the Act of 2019.

21. In view of the discussion above and in light of the settled position of law, the petitioner is entitled to the minimum pay scale and allowances in terms of the Model Rules 2020 as the duty, function and responsibilities were the same with those members who were appointed as per the Consumer Protection Act, 2019 and the Model Rules 2020. The principle of '*equal pay for equal work*' would be applicable to the petitioner. The respondents are directed to grant all the consequential benefits accrued in favour of the petitioner as the Member of the State Consumer Forum at

par with the members appointed under the Consumer Protection Act 2019.

22. The writ petition is partly allowed and the same is accordingly disposed of. The rule is made partly absolute in the above terms. No costs.

NIVEDITA P. MEHTA, J

M. S. KARNIK, J