

Arindam Chattopadhyay v. State of West Bengal

[Civil Appeal No. 2521 of 013 arising out of SLP (C) No. 7420 of 2012]

13.03. 2013

Judgment

G. S. Singhvi, J.

1. Leave granted.

2. The question which arises for consideration in this appeal is whether the appellants, who have been working as Child Development Project Officer (CDPO) in the Integrated Child Development Services (ICDS) since July, 1999, are entitled to be paid salary in the pay scale prescribed for that post.

3. On being selected by the West Bengal Public Service Commission, the appellants were appointed as Assistant Child Development Project Officer (ACDPO) in 1986-87. After about 12 years, the competent authority issued order dated 7.7.1999 with the concurrence of the Finance Department of the Government whereby the petitioners were temporarily transferred to ICDS projects to act as CDPOs in their existing pay scales.

4. The appellants made representation dated 15.2.2011 with the prayer that they may either be promoted to the post of CDPO or be given pay scale of that post by asserting that they had been discharging the duties of the post of CDPO.

5. After about 2 years, the appellants filed O.A. No.330/2003 before the State Administrative Tribunal, West Bengal (for short, 'the Tribunal') and prayed for issue of a direction to the respondents to pay them salary and allowances in the scale of Rs.5500-11200 attached to the post of CDPO from the date they were working as acting CDPO, i.e., 7.7.1999. In paragraph 4 of the application, the appellants averred as under: "Your Applicants state that although your Petitioners have been posted as Acting Child Development Project Officer, (CDPO) by virtue of said Office Order (Annexure ('P/I') and have been shouldering the higher responsibilities of the post of C.D.P.O., the impugned order stipulates that your Applicants and others covered by the said order, should get pay and allowances in their existing pay scale of A.C.D.P.O. Such denial of higher scale of pay and allowances of the post of Child Development Project Officer (CDPO) to your Applicants is unjust, improper and illegal under the law of the land, since no employee should get the pay and allowances of the post he holds, even in Acting capacity.

Your Applicants, therefore, pray to the Hon'ble Bench for appropriate direction or directions in the Respondents 1 to 3 to pay the pay and allowance of the post of Child Development Project Officer (CDPO), the scale of pay being Rs.470-1160/- (ROPA 1981)/1640-3625 (ROPA 1990)/5500-11200 (ROPA 1988), from the date of Applicants have been working as Acting CSPO by dint of Office Order dated 07.07.99 (Annexure 'P/I').

6. "In the counter filed by the respondents, it was not disputed that the appellants had been discharging the duties of CDPO but it was averred that there is no recruitment rule exclusively for the post of CDPO which is governed by West Bengal Junior Welfare Services Rules (for short, "the Rules"). This is evinced from paragraphs 3 and 4 of the reply, which are extracted below: "(3) With regard to the statements made in paragraph 4.11 of the instant application the respondents state that there is no recruitment rule exclusively for the post of CDPOS. The post of CDPOS are manned from the WBJSW service cadres along

with 8 other posts.

Hence the question of changing recruitment rules for the post of CDPOS holds no ground. In respect of the projects having no regular CDPO the ACDPOS are ordered to hold the charge of the projects in order to run the projects. It is a common practice of the Administration to order the office second in command to hold the charge of the office whenever the office first in command goes on leave, or tour, or otherwise the post falls vacant. Such duties have also been mentioned in the job chart of the ACDPOS published by the Government of India.

To remain in charge does not qualify him to enjoy the pay scale of the head of office. The respondent deny and dispute all allegations, imputations and contentions made in this paragraph which are not borne out by records and those which are contrary to inconsistent with what have been stated above. All allegations, not specifically admitted herein shall be deemed to have been set out herein and denied seriatim. (4) With regard to the statements made in the rest of the paragraphs of the instant application the respondents state all the employees under the state of West Bengal are governed by WBSR.

Under WBSR, holding of temporary charge of a higher post does not qualify an officer to enjoy the higher pay scale which is enjoyed by an officer of higher cadre service normally holding the post. The ACDPOS have been appointed under Rules framed for appointment to the post clearly mentioning the pay scales, terms and conditions and job responsibilities. To remain in charge of the CDPOs in their absence is within the job chart of the ACDPOs. Hence question of violation of natural justice by not allowing them pay scale attached to the WBSWS does not arise.

The respondents reiterate that there is no pay scale specifically attached to the post of CDPO, hence no question of allowing that pay scale to the ACDPOs in charge of the projects at all arise. Proper steps have been taken to fill up the posts of CDPOs with the WBSWS cadre but the process have been delayed due to objection of ACDPOs themselves and such steps go against their own interest as well. Save those stated above and those which are matters of record all other allegations made in these paragraphs are denied.

7. "The Tribunal dismissed the Original Application vide order dated 16.9.2005 by recording the following observations: "Now, the question to be decided is whether the applicants are entitled to get the pay scale of CDPO when they were posted there as Acting. In the instant case, from their order issued by a letter dated 07.07.99 it is clear that the ACDPOs, i.e., the applicants were transferred temporarily to the ICDS projects to act as CDPO officers in the existing scale of pay with immediate effect and until further orders. So, from the order itself it is clear that they were posted to act as CDPO in their existing scale of pay.

It is also categorically stated by the respondent that there is no specific pay scale for CDPOs. So, the question of issue of separate pay scale to the applications does not arise. Ld. Lawyer for the petitioners relied upon the judgement reported in 1990 S.C. cases (L & S 1127). We have gone through the said judgment. It is the settled principle of law that each case shall be decided on its own merits. After going through the said judgment we find that the order issued by the Deptt. is specific and clear. This runs as follows:- "the Directors of Education, A & N Islands is pleased to order the transfer of Shri Selveraj, primary School Teacher attached to Middle School, Kanyapur to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77".

So, from the order itself it appears that it is already mentioned clearly the pay which will be drawn. In the present case the order is also itself is very clear that the applications will act as CDPO in their existing scale of pay. The applicants are also quite under the WBSR rules. The said rule does not provide that holding the temporary charge of a higher post qualify an officer to enjoy the higher pay scale which is enjoyed by an office of a higher cadre service normally holding the post. Considering all these aspects we do not find any merit to consider the prayer of the applicants. Hence, the application is dismissed on

contest.

8. "The appellants challenged the order of the Tribunal in WPSTNo.775/2005 but could not convince the High Court to entertain their prayer. Their writ petition was dismissed vide order dated 5.12.2011, the relevant portion of which is extracted below: "In the instant case we find from the order of the Tribunal that post of C.D.P.O. did not have any particular pay scale. Be that as it may, once the petitioners were asked to man the post temporarily, it would mean officiation in a superior post that would attract appropriate officiating allowance. Pay scale in the superior post can only be achieved once they are promoted or absorbed in such post on promotional basis.

We, however deprecate the practice of the State by asking them to temporarily man such post without filling up the post on regular basis. It is high time the State should look into the problem and solve it on perpetual basis. Till then, the petitioner would be entitled appropriate officiating allowance as per the rules. Such officiating allowance would be available to the petitioners from the date of filing of the petition before the Tribunal.

9. "Shri S. Bhattacharjee, learned counsel for the appellants relied upon the judgments of this Court in *Selvaraj v. Lt. Governor of Island, Port Blair and others* (1998) 4 SCC 291 and *State of West Bengal and others v. Pantha Chatterjee and others* (2003) 6 SCC 469 and argued that in view of the doctrine of equality enshrined in Articles 14 and 16 read with Article 39(d), the appellants are entitled to be paid salary and allowances in the scale meant for the post of CDPO because they are discharging the duties of that post. Learned counsel further argued that the stipulation contained in order dated 7.7.1999 that the appellants are temporarily transferred to ICDS project to act as CDPOs in their existing pay scale cannot be made the basis for depriving them of their constitutional right guaranteed under Articles 14 and 16.

10. Learned counsel for the respondents referred to the provisions contained in the Rules framed by the Governor under proviso to Article 309 of the Constitution to show that the post of CDPO is required to be filled by promotion and argued that the appellants do not have the right to be paid salary in the higher pay scale because they have so far not been promoted as CDPOs.

11. We have considered the respective submissions. The applicability of the doctrine of equality, enshrined in Articles 14 and 16 of the Constitution, in the matter of pay and allowances was explained in *Randhir Singh v. Union of India* (1982) 1 SCC 618 in the following words: "It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive principle of State Policy.

"Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get.

To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of

people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them.

The Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word "socialist" must mean something. Even if it does not mean 'to each according to his need', it must at least mean "equal pay for equal work". "The principle of "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements.

In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide International Labour Law by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". 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." (emphasis supplied)

12. Though the judgment in *Selvaraj v. Lt. Governor of Island, Port Blair and others* (supra) can be distinguished on the ground that in the order passed by the competent authority requiring the appellant, who was holding the post of primary teacher, to look after the duties of Secretary (Scouts), it was mentioned that pay will be drawn against the post of Secretary (Scouts) under general fundamental rules, the principles laid down in *State of West Bengal and others v. Pantha Chatterjee and others* (supra) has direct bearing on the question arising in this appeal. The respondents in that case were appointed as part-time Border Wing Home Guards.

They filed writ petition before the Calcutta High Court with the complaint that they were being discriminated vis-À-vis other regular Border Wing Home Guards of West Bengal and the Border Security Force Personnel despite the fact that they were performing similar duties and discharging same responsibilities. The learned Single Judge referred to the judgments in *Bhagwan Dass v. State of Haryana* (1987) 4 SCC 634, *Daily Rated Casual Labour through Bhartiya Dak Tar Mazdoor Manch v. Union of India* (1988) 1 SCC 122 and *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* 1991 Supp (1) SCC 600, and held that the respondents are entitled to the same benefits as are admissible to the permanent Border Wing Home Guards.

The Division Bench of the High Court agreed with the learned Single Judge and dismissed the appeal filed by the State of West Bengal with some modification. While dismissing the appeal, this Court observed: "There is no dispute about the fact that there has been disparity in emoluments and other working conditions, between the part-time BWHG and the BWHG on the permanent staff although both have been deployed for performing the same nature of duties and have been working for the same duration in the same conditions but one of them with and the other without the necessities of the job, facilities and benefits of the service. It is true and rightly held that BWHG could not compare themselves with BSF personnel but the difference between the permanent staff and the part-time staff which had been made in the Scheme was obliterated and rendered ineffective.

There is no real distinction between the two, namely, the permanent BWHG and the part-

time BWHG in absence of non-release of the latter after three months of the appointment, as per the Scheme. It has not been indicated by the appellants or the Union of India that the petitioners were ever disengaged of their assignment temporarily or the State Government had availed of their services after due and prior permission of the Central Government, or they were ever freed to resume their old vocational pursuits. It is in the affidavit of the authorities that BWHG are under operational command of BSF authorities, when deployed for patrolling along the Indo-Bangladesh border. In the background of what has been indicated above, in our view the findings arrived at by the High Court cannot be faulted with. With a view to recapitulate the legal position, we may briefly refer to some decisions of this Court apart from those relied upon by the High Court.

In a decision reported in *Jaipal v. State of Haryana* (1988) 3 SCC 354 it has been held to be a constitutional obligation to ensure equal pay for equal work where the two sets of employees discharge similar responsibilities under similar working conditions. The plea of temporary or casual nature of employment or full-time and part-time employees had been negated. Similarly, in the case reported in *Dhirendra Chamoli v. State of U.P.* (1986) 1 SCC 637 it was held that casual workers could not be denied same emoluments and benefits as admissible to the temporary employees on the ground that they had accepted the employment with full knowledge of their disadvantage.

In *Grih Kalyan Kendra Workers' Union v. Union of India* (1991) 1 SCC 619 though on facts no discrimination was found but the principle of "equal pay for equal work" was upheld and recognized where all were placed similarly and discharging same duties and responsibilities irrespective of the casual nature of work. This right had been held to have assumed the status of a fundamental right in service jurisprudence having regard to the constitutional mandate of "equality" in Articles 14 and 16. In *Daily Rated Casual Labour through Bhartiya Dak Tar Mazdoor Manch v. Union of India* (1988) 1 SCC 122 right of daily-rated casual workers in the P & T Department was recognized and they were directed to be paid in minimum of the scale as was admissible to the regular workers as both discharged similar work and responsibilities." (emphasis supplied)

13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS projects. If this would have been a stop gap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post, i.e., CDPO. However, the fact of the matter is that as on the date of filing of the Original Application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years.

By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor any material has been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs. Since July, 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalised for the Government's failure to undertake the exercise of making regular promotions.

14. In the result, the appeal is allowed. The impugned order as also the one passed by the Tribunal are set aside and the respondents are directed to pay salary and allowances to the appellants in the pay scale of the post of CDPO with effect from the date they took charge of those posts. This exercise must be completed within 8 weeks from today. The arrears shall be paid to the appellants within a period of 9 months.

15. Since regular promotions to the post of CDPO have not been made for more than one

decade, we direct the respondents to do the needful within a period of six months from today.