

A SHRI ALVARO NORONHA FERRIERA & ANR.

v.

UNION OF INDIA AND ORS.

APRIL 23, 1999

B [S. SAGHIR AHMED AND K.T. THOMAS, JJ.]

Service Law :

C *"Equal pay for equal work"—Judicial Officers—Working in two different Union territories—Nature of duties and responsibilities indential—Disparity in pay scales—Validity of—Held, work pattern and pendency of cases at two different places cannot make the nature of work different—Burden to justify differential treatment lies on the Government—Appellants entitled to parity in pay scales—Constitution of India, 1950—Articles 14, 16 and 39(d).*

D Appellants were judicial officers posted in the Union Territory of Goa. They were fixed in the pay scales on par with their counterparts in Union Territory of Delhi. However, in the year 1982, the pay scales of judicial officers in Union Territory of Delhi was increased while the appellants were not given the benefit of increased pay scales. Even the pay commission recommendation did not remove the disparity. Aggrieved, the appellants filed
E a writ petition before the High Court which was dismissed on the ground that the appellants failed to establish that their nature of duties and responsibilities were identical with that of judicial officers in Delhi. Hence the present appeal.

F Allowing the appeal, this Court

HELD : 1.1. The judicial officers of Union Territory of Goa are entitled to parity in pay scale on par with their counterparts in Union Territory of Delhi on the principle of 'equal pay for equal work'. [829-G]

G 1.2. The parameters for invoking the principles of 'Equal pay for equal work' would include, *inter alia*, nature of the work and common employer. There can be no two views that the nature of work of District and Sessions Judges is the same though in some areas pendency of cases would be higher than others. Difference in the backlog are not uncommon even in two different stations of the same territory, nay, in two different courts of the same station.

H Such lopsidedness is hardly the ground to conclude that the nature of work

done by one judicial officer at one place is different from the other. The duty hours would be substantially the same, the powers to be discharged are in no way different, whether they are District Judges in Goa or in Delhi. It would be a futile exercise to make an endeavour for drawing a distinction between the work pattern at the two different places, for, such differences are discernible everywhere. But that would not make the nature of work different. [828-E]

Randhir Singh v. Union of India, [1982] (1) SCC 612, referred to.

1.3. Burden of proof cannot be cast on the appellants to establish "the pendency of litigation or the norms fixed for disposal of cases by the Delhi court to enable comparison between the nature of duties and the responsibilities carried by the officers of the Delhi Territory and the Goa Territory." Till hike in the pay-scale was brought about in 1982 for Delhi Judges the parity was maintained between the judicial officers of Union Territory of Goa and Delhi. Nobody doubted till then that the nature and dimension of work discharged by the officers of the same cadre of judicial officers at two different territories were different from any perceptible standard. It is for the Government to show that there was change in the nature of work which necessitated to keep two different levels of pay to the same officers working at two different places. [829-A]

2. Respondent Union of India is directed to disburse the arrears of pay to the appellants calculating their scales of pay on par with their counterparts in the Union Territory of Delhi for the period 1.3.1982 to 31.3.1987 within six months. [829-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1460 of 1994.

From the Judgment and Order dated 14.3.91 of the Bombay High Court in W.P. No. 228 of 1988.

Ashok H. Desai and Kailash Vasdev for the Appellants.

A.S. Nambiar, S.K. Mehta, Dhruv Mehta, Fazlin Anam, Ms. Shobba, Y.P. Mahajan and P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. Some Judges whose function was dispensation of justice

A had to approach the High Court for justice based on the celebrated doctrine "equal pay for equal work" but they were non-suited by a Division Bench of that High Court. They were Judges of higher judiciary in the subordinate level. They have now come to the Supreme Court with this appeal by special leave. It is interesting that, in the meanwhile, two of them have become Judges of the same High Court of Bombay as efflux of a decade in between
B has changed the hierarchiel status of the parties who initiated this legal action. When they filed the writ petition in the High Court they were District and Sessions Judges. One of them has since retired from service but the cause which they espoused survives.

C The nub of their grievance is this: When the scale of pay of their counterparts in the Union Territory of Delhi was increased, appellants, while working in the same cadre in the Union Territory of Goa, were not given that pay scale. It infringes, according to them, the principle enshrined in the Constitution.

D Facts are simple. On 20-12-1961 the Territories of Goa, Daman and Diu were liberated from the suzerainty of Portugal. In 1962, Goa became part of the Union Territory of India. Appellants were District Judges posted in the Union Territory of Goa. On 3-9-1981 the pay-scale of judicial officers (in the category of Additional District & Sessions Judges) in the Union Territories
E was the same Rs.1200-2000. In 1982 the Union Territory of Delhi increased the scale of pay of such Judges to Rs.2000-3200 while their counterparts in the Union Territory of Goa were not given any increase to keep the scale on par with the former. When the Fourth Pay Commission was formed representations were made by the judicial officers of Goa to rectify the anomaly which, according to them, came into existence for the first time in 1982, but no relief
F was provided to them. On the contrary, the recommendations of the Pay Commission were for raising the scale of pay of Delhi Judges to Rs.4500-5700 while that of Goa Judges was raised only to Rs.3000-5000.

G On 30-5-1987, Goa became a State separate from Union Territory. It is conceded that appellants cannot claim parity with the Delhi judicial officers after that date. Hence the grievance of the appellants was confined to the period between 1-3-1982 and 31-3-1987. Appellants therefore filed writ petitions before the High Court for necessary reliefs to be granted to them.

H The Division Bench of the High Court while declining to grant the reliefs advanced the following reasons:

"It is now well-settled by a catena of decisions of the Supreme Court and this Court that the doctrine of "equal work, equal pay" is a well-accepted norm in administration of services under the control of the Governments. To enable the employees to claim an advantage, it is essential to establish that the posts of judicial officers in Delhi and Goa are equal or are comparable before demanding that the pay scales available to Delhi officers should be made available to Goa officers. The only averment in the petition is that the posts in Delhi and Goa Judicial Service carry the same duties, responsibilities and nature of work being identical, the Goa officers are entitled to identical pay scales as those available to Delhi officers. The averment made in the petition is not supported by any material whatsoever and it would be impossible to draw on imagination to hold that the nature of the duties of officers in Delhi and Goa are identical."

Learned Judges repelled the contention that since Delhi and Goa were Union Territories it must be assumed that the nature of the duties and responsibilities of the District and Sessions Judges were identical and consequently both must get same benefit. They took the view that "merely because the officers in the two Territories are in judicial service it cannot be even suggested that the nature of the duties and the responsibilities are identical."

To buttress the aforesaid reasoning the Division Bench cited an illustration as the following :

"Take for illustration, the nurses employed in a large hospital in a city like Bombay. Is it possible by any stretch of imagination to suggest that the nurses working in a small hospital in a remote village are performing the same duties and carrying the same responsibilities as the nurses working in a large hospital in a city like Bombay?"

Ultimately the writ petitions were dismissed as learned Judges were unable to appreciate on what basis they could claim to be entitled to the same pay-scales as those available to judicial officers in Delhi. In the concluding passage the Division Bench said that "in our judgment the claim made by the petitioners is wholly misconceived and the petitioners are not entitled to any relief. We are unable to grant any relief to the petitioner and the petition must fail."

Shri Ashok Desai, learned senior counsel contended that Division Bench

- A of the High Court missed the crucial point that the claim is confined to the period when the District Judges and their counterparts in Delhi were working under the same Union Government though the administration in the two territories was carried on through separate agencies. According to the senior counsel, pendency of work at two places is not a criteria, as the workload and the nature of work at both places were substantially the same. The illustration of nurses cited in the judgment was sought to be demonstrated as another point in support of the claim instead of repelling it.
- B

- C The principle of "equal pay for equal work" has gained judicial recognition. The principle incorporated in Article 14 when understood from the angle provided in Article 39(d) of the Constitution is held to be the recognition of the aforesaid doctrine. It has been held in *Randhir Singh v. Union of India* [1982 1 SCC 612] that the principle "equal pay for equal work" is not an abstract doctrine but one of substance. Their Lordships pointed out: "To the vast majority of the people in India 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."
- D

- E The parameters for invoking the said principles would include, inter alia, nature of the work and common employer. There can be no two views that the nature of work of District and Sessions Judges is the same though in some areas pendency of cases would be higher than others. Differences in the backlog are not uncommon even in two different stations of the same territory, nay, in two different courts of the same station. Such lopsidedness is hardly the ground to conclude that the nature of work done by one judicial officer at one place is different from other. The duty hours would be substantially the same, the powers to be discharged are in no way different, whether they are District Judges in Goa or in Delhi. It would be a futile exercise to make an endeavour for drawing a distinction between the work pattern at the two different places, for, such differences are discernible everywhere. But that would not make the nature of work different. It was not necessary to cast the burden of proof on the appellants to establish "the pendency of litigation or the norms fixed for disposal of cases by the Delhi court to enable comparison between the nature of duties and the responsibilities carried by the officers of the Delhi Territory and the Goa Territory."
- F
- G

- H One admitted fact which looms large is that till hike in the pay-scale was

brought about in 1982 for Delhi Judges the parity maintained as between Union Territory of Goa and Delhi applied to the same cadre of judicial officers. Nobody doubted till then that the nature and dimension of work discharged by the officers of the same cadre of judicial officers at two different territories were different from any perceptible standard. It is for the contesting respondents to show that there was change in the nature of work which necessitated the Government to keep two different levels of pay to the same officers working at two different places.

Pay-scale of District and Sessions Judges in the Union Territory of Goa was made on a par with that of Delhi by means of the rules and regulations formulated by the Central Government in exercise of the powers conferred on it by the provisions of "The Goa, Daman and Diu (Absorbed Employees) Act, 1965." The change was effected in 1982 on the premise that the judicial officers in Delhi were upgraded as class I officers and since Union Territory of Delhi was declared a Metropolitan city, the pay-scales were equated with the pay-scales of judicial officers in other Metropolitan cities. We are not against revision of the pay-scales of the judicial officers in the Union Territory of Delhi on the basis of any justifiable grounds. But in doing so the pay-scales of their counterparts working in other Union Territories cannot suffer.

Shri A.S. Nambiar, learned Senior Advocate made a bid to raise a new contention that the Central Government was helpless in keeping up the pay-scales of the officers in Goa on a par with the judicial officers of Delhi as Goa was then administered through a separate elected legislature, and under Article 240 of the Constitution powers of the President to make regulations had been bridled. We are not disposed to countenance the said contention advanced for the first time during arguments, for, that was not the premise on which the parity was denied to the appellants.

For the aforesaid reasons we allow this appeal and direct the respondent Union of India to disburse the arrears of pay to the appellants calculating their scale of pay on a par with their counterparts in the Union Territory of Delhi during the period between 1.3.1982 and 31.3.1987. Such recalculation shall be made and the arrears shall be quantified to be disbursed within six months from today.