

GAHC010005252011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2097/2011

SMTI PRANATI DEVI and 3 ORS
WIFE OF SHRI PRASANNA GOSWAMI, RESIDENT OF PANBAZAR,
GUWAHATI-781001, ASSAM

2: SMTI PURNIMA HAZARIKA
W/O SHRI RAJIB BORBORA
R/O JYOTI NAGAR
GUWAHATI-781021
ASSAM

3: SMTI. NINA DEV CHOUDHURY

W/O SHRI AKHIL NARAYAN BARUAH
RESIDENT OF PANJABARI
GUWAHATI
ASSAM.

4: SMTI. BIJOYA DAS

W/O SHRI DILIP DAS
R/O VILL- MAJGAON MANIK NAGAR
NIKAMUL
TEZPUR
ASSAM

VERSUS

THE ASSAM SMALL INDUSTREIS and ANR
DEVELOPMENT CORPORATION LIMITD REPRESENTED BY ITS BOARD OF
DIRECTORS, BAMUNIMAIDAM, GUWAHATI-781021, ASSAM.

2:THE MANAGING DIRECTOR

ASSAM SMALL INDUSTRIES DEVELOPMENT CORPORATION LIMITED

BAMUNIMAIDAM
INDUSTRIAL ESTATE
GUWAHATI-781021

Advocate for the Petitioner : MR. M. P. SARMA

Advocate for the Respondent : MR. D. GOGOI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 30-05-2023

Heard Mr. M. P. Sharma, the learned counsel appearing on behalf of the petitioners and Mr. D. Gogoi, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 2.

2. The case of the petitioners herein is that the petitioners were absorbed in the respondent No.1 Corporation in the post of Technical Assistant in the Construction and Technical Services and Marketing Division. This aspect of the matter can be seen from the affidavit-in-opposition filed by the Manager In-charge, Administration of the respondent No.1 Corporation. It further appears on records that the petitioner from time to time submitted representations for the purpose of granting them higher scale of pay of Rs.620/- - Rs.1375/- and Rs.1375/- - Rs.3375/- from the scale of pay of Rs.560/- - Rs.1035/- which the petitioners were enjoying. Pursuant to the various representations as nothing worked out, the petitioners have also approached the Assam State Commission for Women. It further appears that the Managing Director of the respondent No.1 Corporation had also issued a communication on 31.07.2009 and informed

the Member Secretary of the Assam State Commission for Women that the claim of the petitioners for higher scale of pay in commensuration with their academic qualifications has been taken up for re-examination under the administrative norms of the Corporation. It was also mentioned that the claims of the said officials were discussed in the last two meetings of the Board of Directors of the Corporation and as per the direction of the Board, the matter has been referred to the Legal Counsel of the Corporation for opinion. It was also mentioned that the action on the matter would be taken up after receipt of the opinion of the Standing Counsel and after keeping in consideration of all aspects of the matter in the overall interest of the Corporation.

3. Be that as it may, it is the stand of the petitioners that the respondent No.1 Corporation thereupon did not follow it up with the Assam State Commission for Women and the petitioners were not granted the benefits of higher scale of pay. It is also the case of the petitioners that on 22.01.2009, the Director of Technical Education had informed the General Manager of the respondent No.1 Corporation about the intention to produce Diploma holders in Architectural Assistantship who are required in PWD, Irrigation and other Government Technical Department and also public and private sector consulting and contracting organization. It was also mentioned that the admission qualification for Architectural Assistantship is same with other Diploma Courses under the Directorate and the duration is also the same with other Diploma courses. Further to that, it was also mentioned that all these courses are approved by the AICTE. It is therefore the case of the petitioners that taking into account that the petitioners have Diploma of 3 (three) years in Architectural Assistantship, the petitioners therefore entitled to "Equal Pay for Equal Work" with the corresponding employees of the other corporations as per their

qualifications of Diploma with 3 (three) years.

4. The petitioners have also tried to bring out a case of discrimination by making a reference to a person namely Shri Debojit Saikia who initially joined in the post of Draftsman wherein the minimum qualification required was Diploma with 2 (two) years. Subsequent thereto, the said person has been regularized as the Sub Engineer and granted the pay scale of Rs.3580/- - Rs.8750/-. It is therefore the case of the petitioners herein that a person who has lesser educational qualification than that of the petitioners have been granted a higher scale of pay than the petitioners and there is also no promotional aspects from the post of the Technical Assistant wherein petitioners were absorbed. In the backdrop of the above, the instant writ petition was filed more than a decade back claiming the grant of higher scale of pay to the petitioners which is receivable for posts carrying the minimum educational qualification of diploma in any Technical Trade; for a direction to the respondent authorities to fix the pay of the petitioners in the scale of pay of Rs.620/- - Rs.1315/- and thereafter to fix the pay of the petitioners at the appropriate stages of the revised scale of pay of Rs.1375/- - Rs.3375/- and Rs.3580/- - Rs.8750/- and release of the petitioners' arrear pay and allowances.

5. It appears on record that the ASIDC i.e. the respondent No.1 had filed a detailed affidavit denying the case of the petitioners. In paragraph No.5, it has been mentioned that the question of granting the Technical Allowances as admissible to the members of the technical service in an Engineering Department cannot be granted in view of the fact that there is no provision of granting any such Technical Allowance to any member of its employees in technical service. As regards the discrimination so alleged in the writ petition

insofar as the employee Shri Debojit Saikia was concerned, it was mentioned in paragraph No.7 that Shri Debojit Saikia worked as a Draftsman in the Corporation from 02.06.1990 to 31.01.2006 in the pay scale of Rs.560/- - Rs.1035/-. Thereupon, the management of the respondent No.1 in pursuance to its decision of the Board of Directors of the Corporation dated 28.01.2000 and 07.02.2011 regularized him as Sub-Engineer in the pay scale of Rs.3580/- - Rs.8750/- w.e.f. 01.12.2007 vide order dated 28.02.2011.

6. It is therefore the specific stand of the respondent Corporation that the said employee was not given higher scale of pay in the original post of Draftsman and therefore the contention of the petitioners that they have been granted a much lower pay scale in clear violation of the mandate of "Equal Pay for Equal Work" in relation to that employee had no foundation. It was further mentioned that the petitioners were holding the post of Technical Assistants and were posted at marketing divisions where works of Architectural Assistantship are not available and they are simply performing other official duties and as such, the question of seeking pay parity with other diploma holders has no legs to stand.

7. It further appears that an affidavit-in-reply was filed by the petitioners stating inter alia that the claim as made by the petitioners for being entitled to diploma scale of pay was not only on the ground of diploma qualification but also on the ground that they were discharging duties similar in nature, status and responsibilities as were being discharged by other persons possessing diploma qualification and working in the Corporation. It was further mentioned that the technical allowances claimed by the petitioners is legally receivable by them on account of the nature of duties required to be discharged by them. In

that regard, by bringing on record various orders/communications dated 25.08.2008, 23.12.2008, 16.02.2009, 05.12.2009 and 23.09.2010, the petitioners tried to demonstrate that they are also engaged for discharging works of similar nature, status, responsibilities which are evident from such orders/communications. It was further stated in the affidavit-in-reply that in the communication dated 31.08.2009, enclosed as Annexure 13 to the writ petition, the respondent Corporation had undertaken before the State Commission for Women that the grievances of the petitioners would be redressed on receipt of an opinion from the Standing Counsel but no such steps were being taken and now they cannot be allowed to retract from their stand which have been taken in the communication dated 31.08.2009.

8. I have heard the learned counsels for the parties and perused the materials on record. The question as to whether the petitioners were working as a Technical Assistant with the qualifications would be entitled to pay parity on the basis of "Equal Pay for Equal Work" with the employees working in other Corporations or even the respondent Corporation would require certain verification of facts as regards their nature of responsibilities, duties, status which the petitioners discharged as Technical Assistant with that of their counter parts in other Corporations as well as persons working in the same Corporation.

9. In the case of ***State of Bihar and others Vs. Bihar Secondary Teachers Struggle Committee, Munger and Others*** reported in ***(2019) 18 SCC 301***, the Supreme Court after making a copious detail as regards the law laid down with regard to the principle of "Equal Pay for Equal Work" culled down the following propositions in paragraph No.96 of the said judgment which are reproduced hereinunder:

“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, make 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.”*

10. From the above quoted paragraph of the said judgment, it would be apparent that there are various parameters in which the question of “Equal Pay for Equal Work” is to be adjudged. The same has to be looked into on the basis

of the various dimensions in respect to the jobs done with the counter parts. Therefore, it was the opinion of the Supreme Court that such applicability of the principle of equal pay for equal work must be left to be evaluated and determined by an expert body. The Supreme Court further observed that granting of pay scale being a purely executive function and hence the Court should not interfere inasmuch it may have a cascading effect creating all kinds of problems for the Government and the authorities. Another very relevant aspect which was duly noted in the above quoted paragraph that while entertaining and accepting the claim on the basis of "Equal Pay for Equal Work", the Court must consider the factors like the source and mode of recruitment/appointment.

11. In the backdrop of the above, taking into account that the facts involved wherein the question as to whether the petitioners were discharging duties similar in nature, status and responsibilities as discharged by persons possessing diploma qualifications and working in the other Corporations or even in the respondent Corporation are aspects which needs to be considered by the respondent Corporation and the same can only be done on the basis of certain verifications. Though, the petitioners herein have produced certain communications to show that the nature of duties, responsibilities and status of the petitioners are similar to that of the Sub-Engineer in question who is earning a higher scale of pay but this Court is of the opinion that the same would not be sufficient for this Court to interfere or pass a Writ in the nature of Mandamus directing the respondent authorities to grant the higher scale of the pay to the petitioners. Be that as it may, this Court is also of the opinion that the petitioners' grievances for consideration of higher scale of pay on the basis of facts alleged in the writ petition constitutes a legitimate expectation for

consideration of their case.

12. Considering the above, this Court therefore disposes of the instant writ petition with a direction upon the respondent No.1 to consider the case of the petitioners as to whether the petitioners would be entitled to the pay parity on doctrine of "Equal Pay for Equal Work" with that of the counter parts in other Corporations of the Government of Assam as well as in the respondent Corporation itself. The said exercise be completed within a period of 3 (three) months from the date of service of a certified copy of the instant judgment to the respondent No.2. The petitioners are given the liberty to produce such additional materials to prove that they are entitled to on the basis of the doctrine of "Equal Pay for Equal Work" with the counter parts of the other Corporations of the Government of Assam as well also the respondent Corporation.

13. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant