

THE HIGH COURT OF TRIPURA _A_G_A_R_T_A_L_A_

Writ Appeal No.24 of 2012

1. Tripura Co-operative Agriculture and Rural Development Bank Ltd., represented by its General Manager, having its registered Head office at Hariganga Basak Road, Paradise Chwmohani, Agartala, Police Station - West Agartala, District - West Tripura, Now Office Lane, Agartala, West Tripura.
2. The President, Tripura Co-operative Agriculture and Rural Development Bank Ltd., Paradise Chowmohani, Agartala, Police Station - West Agartala, District - West Tripura, Now Office Lane, Agartala, West Tripura.
3. The General Manager, Tripura Co-operative Agriculture and Rural Development Bank Ltd., Paradise Chowmohani, Agartala, Police Station - West Agartala, District - West Tripura, Now Office Lane, Agartala, West Tripura.

..... *Appellants.*

- Vs -

1. Sri Subhas Chandra Biswas,
Son of Late Rajani Kanta Biswas,
Grade - II Officer, Tripura Co-operative Agriculture and Rural Development Bank Ltd., Head Office - Paradise Chowmohani, Agartala, District - West Tripura, Resident of Ramnagar Road No.4, Post Office - Ramnagar, Police Station - West Agartala, District - West Tripura.
2. The Registrar of Co-operative Societies, Government of Tripura, Palace Compound, Police Station - East Agartala, District - West Tripura.
3. The State of Tripura, Represented by the Secretary to the Department of Co-operation, Government of Tripura (Secretariat Building, Agartala), Police Station - West Agartala, District - West Tripura (Now Capital Complex).
4. Tripura State Co-operative Bank Ltd., represented by its General Manger, having its registered Head Office at Amulya market, P.S.West Agartala, District - West Tripura.
5. The Secretary, Department of Finance, Government of Tripura(Secretariat Building), Police Station - West Agartala. District - West Tripura

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S TALAPATRA

For the appellant : Mr. S Chakraborty, Advocate,
For
respondent No.1 : Mr. A K Bhowmik, Sr. Advocate,
Ms. A Banik, Advocate.
respondent No.4 : Mr. P K Pal, Advocate.
Date of hearing : 24.8.2015
Delivery of judgment : 13.10.2015
Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

(*Deepak Gupta, CJ*)

This writ appeal by the Tripura Co-operative Agricultural and Rural Development Bank(TCARD) is directed against the judgment dated 24.11.2011 passed by a learned single Judge of the Agartala Bench of the Gauhati High Court which then exercised jurisdiction over the State of Tripura whereby the writ petition filed by the writ petitioner(*respondent No.1 herein*) was allowed and it was directed to process the claim of the writ petitioner for grant of revised pay scale by considering his post equivalent to the post in the Tripura State Cooperative Bank Ltd.(TSCB).

2. The admitted facts are that the petitioner is an employee of the Tripura Co-operative Agricultural and Rural Development Bank Ltd. He was appointed as Field Officer (Gr.II) on 14th January, 1980. Both the Banks fall within the purview of the Tripura Co-operative Societies Act, 1974. The case of the petitioner is that the scales of

pay in both Tripura Co-operative Agricultural & Rural Development Bank and Tripura State Co-operative Bank for Gr.II Officers were identical at all times and the first anomaly took place in 1996. It is also submitted that the duty and nature of work of both the posts are identical and, therefore, the petitioner is entitled to the same scale of pay as is granted to Gr.II Officers in the Tripura State Co-operative Bank Ltd.

The relevant scales of pay of Gr.II Officers from 1.7.1978 till 1.11.1996 onwards in both the Banks are reflected hereinafter :

<i>Grade - II Officers under</i>	<i>1-7-78 to 31-12-81</i>	<i>1-1-82 to 31-12-87</i>	<i>1-1-88 to 31-12-94</i>	<i>1-4-94 to 31-10-96</i>	<i>1-11-96 and onwards</i>
<i>TCARDB Ltd.</i>	<i>Rs.425 - 900/-</i>	<i>Rs.650 - 1595/-</i>	<i>Rs.2,000 - 4,410/-</i>	<i>Nil</i>	<i>Rs.2,100 - 5,000/-</i>
<i>TSCB Ltd.</i>	<i>Rs.425 - 900/-</i>	<i>Rs.650 - 900/-</i>	<i>Rs.2,100 - 4,530/-</i>	<i>Rs.3000 - 5,000/-</i>	<i>Rs.3,000 - 5,000/-</i>

3. The writ petition in question out of which the appeal arises was filed in the year 2001. From a perusal of the table referred to hereinabove the similarity in the pay scales was only from 1978 to 1981. Thereafter the employees/Gr.II Officers in Tripura Co-operative Agricultural and Rural Development Bank were getting a higher pay scale than the employees/officers of the Tripura State Co-operative Bank from 01.01.1982 to 31.12.1987. From 01.01.1988 the Gr.II Officers in the Tripura State Co-operative Bank were always in the higher pay scale. The writ petition has been filed in the year 2001 whereas this difference in pay scales was existing from the year

1988 and there is no explanation worth the name why this writ petition was filed so many years later.

4. The petitioner had received the pay scales from time to time. In 1997 the petitioner submitted a representation wherein he prayed for equality with the employees of the Tripura State Co-operative Bank. It would be pertinent to mention that these pay scales in the year 1996 are based on the recommendations of Pay Commissions made by the 3rd Tripura Pay Commission and 4th Tripura Pay Commission. In fact a mistake occurred on 28.5.1999 and the pay scale of petitioner was revised to Rs.10,000 - 15,100/- from Rs.2,100 - 3,000 - 5,000/-. Later this was rectified and the petitioner was placed in the pay scale of Rs.7,800 - 15,100/-.

5. The main ground raised by the petitioner and the only ground on which the benefit has been granted to the petitioner is that the Gr.II Officers working in Tripura State Co-operative Bank are doing qualitatively and quantitatively the same type of work as Gr.II Officers in Tripura Co-operative Agricultural and Rural Development Bank.

6. The learned single Judge has allowed this petition mainly on the ground that at one time the pay scales of the two Banks were similar. This judgment is under challenge before us. It is contended on behalf of the appellant that the learned single Judge

was wrong in applying the principle of equal pay to equal work for the following reasons :

- (i) That both the Banks are two different entities;
- (ii) Both the Banks have different nature of work;
- (iii) Both the Banks have separate sets of rules and by laws and
- (iv) The qualifications and eligibility criteria for Gr.II Officers in both the Banks are different.

7. On the other hand, Mr. A K Bhowmik learned Sr. Advocate appearing for the writ petitioner, has supported the judgment of the learned single Judge and submits that the revised pay scale has been given on the report of the Committee but on perusal of the report we find that the revision was done at par with Tripura State Co-operative Bank from scale to scale and not from post to post on the recommendations of the pay Commissions. Therefore, what has happened is that the scales have been revised but it has no connection with the specific post.

8. The parties have cited a number of judgments before us. On behalf of the writ petitioner reliance is placed on the judgment of the Apex Court in **1988 Supreme Court 1970, Y K Mehta and others Vs. Union of India and others** wherein the Apex Court held that Staff Artists of Doordarshan would be entitled to same pay scale as their counterparts in the Film Division are entitled to. The Apex Court held that there is no distinction between Staff Artists of All India Radio and those in Doordarshan keeping in view the service

conditions and nature of duties. Therefore, the Apex Court granted equal pay for equal work to them. It would be pertinent to mention that in that case the actual benefit was limited from the first day of the month of the year in which the each writ petition was filed whereas in the present case the learned single Judge has given benefit to the petitioner right from 1988 onwards which is much beyond the period of limitation.

9. Reliance has also been placed by the writ petitioner on **(2008)1 SCC 586, Union of India Vs. Dineshan K. K.** In that case, the Apex Court held that it is the task of the expert body to determine the pay structure. The Apex Court held as follows:

“12. The principle of ‘equal pay for equal work’ has been considered, explained and applied in a catena of decisions of this Court. The doctrine of equal pay for equal work was originally propounded as part of the Directive Principles of the State Policy in Article 39(d) of the Constitution. In Randhir Singh Vs. Union of India & Ors. , a bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Article 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in D.S. Nakara & Ors. Vs. Union of India. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Article 14 and 16, in service jurisprudence, the doctrine of ‘equal pay for equal work’ has assumed status of a fundamental right.

13. *Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide: Secretary, Finance Department & Ors. Vs. West Bengal Registration Service Association & Ors. and State of Haryana & Anr. Vs. Haryana Civil Secretariat Personal Staff Association). Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene.”*

In that case the Apex Court held that the Radio Mechanics working under different organizations of the Home Ministry were entitled to equal pay for equal work.

10. The last decision relied upon by the writ petitioner is ***(2008)12 SCC 219, State of Kerala Vs. B Renjit Kumar and others*** wherein a similar view has been expounded and the Presiding Officers of the Industrial Tribunal have been given the same scale of pay as District Judges.

11. In all the cases relied upon by the writ petitioner, the Apex Court has come to a clear-cut finding that the nature of duties, qualifications and work in both the organizations are identical.

12. On behalf of the appellant, reference has been made to the judgment of the Apex Court in ***AIR 2006 Supreme Court 161, State of Haryana and others Vs. Charanjit Singh and others*** wherein the Apex Court held as follows :

“17. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid

stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. 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. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regards. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are

necessary averments and there is a proof. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.”

What has been laid down by this judgment is that only if the Court is convinced that the holder of both the post are doing equal work of equal quality and all other relevant factors are fulfilled, the Court may direct payment of equal pay for equal work.

13. As far as the present case is concerned, the two Banks are different organizations. The Tripura State Cooperative Bank is like any other commercial Bank and has all types of commercial transactions. It grants loans for purchase of cars, house etc. It is a commercial Bank where people can have accounts etc. On the other hand, the Tripura Co-operative Agricultural and Rural Development Bank is a totally different entity. It does not work like a commercial Bank. It's working is limited to the agriculture in rural sector. It does not work in the commercial field and, therefore, the nature of duties of the field officers is bound to be different. The rules and regulations governing the two Banks are totally different. In fact in the reply of the Tripura State Cooperative Bank it has been stated that even the eligibility criteria for being appointed as field officers is totally different in the two Banks and this allegation has not been

countered by filing a rejoinder. The duty and nature of work in the two Banks are totally different.

14. If a petitioner claims equal pay for equal work with a post in a different organizations then it is the duty of the petitioner to place on record the Rules governing the conditions of appointment; it is for the petitioner to produce before the Court the duties prescribed for both the posts in the two organizations and it is for the petitioner to satisfy the Court that the nature of the work being performed by the officers holding the post for which equivalence is claimed is identical. In the present case, this has not been done and equivalence has been claimed only on the basis of the fact that at one time the Officers in both the Banks were in the same grade of pay.

15. We are clearly of the view that merely because of one time two posts are placed in the same grade of pay is not sufficient to hold that the principle of equal pay for equal work is attracted. Sometimes even under the same employer when two posts are in the same scale of pay after the recommendation of the Pay Commission they are placed in different scales of pay or at different stages in the same scale of pay. This decision is taken by the Pay Commission which is the expert body and this Court, normally, does not interfere with the findings of the expert body unless it is shown that *ex facie* the findings of the expert body are incorrect or against law. In the

present case that has not been done. In fact the learned single Judge has not even given the qualifications for the two posts or the nature of duties for the two posts but only because the posts have similar nomenclature and are in two Co-operative Banks the principle of equal pay for equal work has been granted. We are also of the considered view that the writ petition was hit by the principle of delay and laches. As pointed out earlier, the differentiation in the pay scales started in the year 1983 and the petitioner could not have challenged this 18 years later in the year 2001.

16. In view of the above discussion, we are of the considered view that the learned single Judge erred in applying the principle of equal pay for equal work in the facts and circumstances of the present case. We, therefore, allow the writ appeal, set aside the judgment of the learned single Judge and the writ petition filed by the petitioner-respondent is dismissed. No costs.

JUDGE

CHIEF JUSTICE