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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 6751/2003**

% *Date of Judgment: 30th November, 2016*

BHAGWATI PRASAD & ANOTHER Petitioners
Through **Mr. Kartickay Mathur, Adv.**

versus

UNION OF INDIA & OTHERS Respondents
Through: **Mr. R.V. Sinha, Adv.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. This writ petition has been preferred by the petitioners feeling aggrieved by the order dated 29.07.2003 passed by the Central Administrative Tribunal (hereinafter referred to for short as the 'Tribunal'), whereby OA No. 1040/2001 filed by the petitioner No. 1 and 2 and their colleague namely Mr. Jagdish Kumar Mallah, was dismissed.
2. The petitioners (1) Sh. Bhagwati Prasad and (2) Sh. Kanhaya Lal were working as Senior Proof Readers in the Department of Posts in the pay scale of Rs.1320-30-1560-40-2040 and at that time Junior Proof Readers were in the pay scale of Rs.1200-30-1440-30-1800. However, 5th Central Pay Commission made the following recommendation vide Para No. 43.5 to merge number of pay scales as existing pay scales

were too close to each other: -

“The latter two scales are identical but for a difference in span. Rs.1200-1800 was a scale for skilled II category of artisans, while Rs.1320-2040 was the scale for skilled I category artisans. We decided to merge these categories, so that the artisans could progress directly from Rs.950-1500 to Rs.1320-2040 on the analogy of LDCs being promoted as UDCs. This merger has thus taken away one of the chief grievances of artisans who always felt discriminated vis-à-vis their ministerial counterparts.”

3. After acceptance of the recommendations of the 5th Central Pay Commission Report by the Government, in the Department of Posts the pay scale of the Junior Proof Reader and Senior Proof Readers were amalgamated in the post known as ‘Proof Reader’ and pay scale of Rs.4000-100-6000 was made applicable w.e.f. 01.01.1996.
4. Grieved by the recommendations of 5th Central Pay Commission, the petitioners along with Sh. Jagdish Kumar Mallah, a Junior Proof Reader in the Department of Posts filed OA No. 1040/2001, which was disposed off by the Tribunal on 26.02.2002 with a direction to the respondent to pass a detailed, speaking and reasoned order in accordance with the rules and instructions of applicants’ claim within a period of three months from the date of receipt of the copy of the order and the liberty was granted to the petitioners to revive the O.A. through M.A., if any grievance still survived.
5. The Assistant Director General (Administration), Government of India, Ministry of Communication and Information Technology, Department of Posts, vide detailed order dated 19.06.2002 conveyed to the petitioners separately that their request for grant of pay scale of Rs.6500-200-10500 has not been acceded to by the Competent

Authority.

6. Not satisfied with the order passed by the respondents, the petitioners were allowed to revive the said OA vide order dated 03.09.2002. The petitioners' claimed that they were enjoying pre-revised pay scale of Rs.1320-2040 and the 5th Central Pay Commission vide Para No. 43.5 of its report recommended clubbing of number of post and merged the some of the pay scales. The Government of India accepted the recommendation of the 5th Central Pay Commission and post of Senior Proof Reader was clubbed with that of the Junior Proof Reader and a common nomenclature of Proof Reader was assigned and they were placed in the corresponding pay scale of Rs.4000-100-6000.
7. The petitioners alleged that they have been meted out with step-motherly treatment and sought quashing of the impugned order and a direction to grant them proper pay scales. They have claimed that the post of Proof Readers in the Ministry of Personnel, Public Grievances and Pensions (MoP, PGP), who were in the pre-revised pay scale of Rs.1200-2040 have been granted revised pay scale of Rs.5500-9000, whereas the Proof Readers in the office of Registrar General of India, Ministry of Home Affairs have been granted revised pay scales of Rs.4500-7000 from pre-revised pay scales of Rs.1200-1800. The petitioners pleaded that they have been performing the same duties as is being performed by the Proof Readers in the other departments and claimed applicability of principle of 'Equal Pay for Equal Work'.
8. The respondents disputed the claim of the petitioners before the Tribunal on the grounds that: -

- (i) the duties, responsibilities, qualifications and experience required for the recruitment to the post of Proof Reader in the Department of Posts vis-à-vis MoP, PGP and the office of Registrar General of India, Ministry of Home Affairs were different.
- (ii) the basic qualification required for Junior Proof Readers in the Department of Posts is matriculation with Diploma in Proof Reading or Proof Correcting and knowledge of Hindi and for Senior Proof Reader, it is 100% by promotion from amongst the Junior Proof Readers of this office. However, in MoP, PGP, qualification of graduation of recognized University with experience of Hindi/English proof reading is required, and in the office of Registrar General of India, Ministry of Home Affairs, a degree of recognized university with two years experience of proof reading and technical marking is required and desirable qualification is proficiency publishing technology. With regard to the method of recruitment, while the post in the office of Registrar General of India are filled up through deputation of the officers of Central and State Governments holding analogous posts or atleast three years of regular service in the post carrying the pay scales of Rs.3050-4590. The Department of Posts prescribed filling up of Senior Proof

Readers by promotion from the post of Junior Proof Readers of this office.

- (iii) the post of Proof Reader in MoP, PGP stands abolished and there was no question of petitioners seeking parity with a non-existing category.

9. The Tribunal was not convinced with the contentions of the petitioners and held that it has emerged out of the recommendations of the 5th Central Pay Commission for the reasons given by the Pay Commission itself and the Government accepted the same and it is not only the Proof Readers in the Department of Posts but the same has been made applicable across the board to all the posts where skilled persons were employed in different scales. With regard to the comparison with their counterparts in MoP, PGP and RGI, the Tribunal found that the same is not supported by the facts. In case of MoP, PGP, there was no post of Proof Reader at the time when the application was filed as the same had been abolished. So far as the similar posts in the other offices are concerned, the Tribunal after perusal of the recruitment rules found that they were distinguishable.

10. It is this order dated 29.07.2003 (impugned order), which led the petitioners to prefer the present Writ Petition seeking a writ in the nature of Certiorari for setting aside the impugned order dated 29.07.2003 passed by the Tribunal and to quash the order dated 19.06.2002 passed by respondent no. 1 and for issuance of a writ in the nature of Mandamus directing the respondents to grant them parity in pay with the persons employed in the same category in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home

Affairs.

11. It is contended by the learned counsel for the petitioners that the petitioners, who have been working as Proof Readers in the Department of Posts, have been discharging the same duties as that of their counterparts in the Ministry of Personnel, Public Grievances and Pensions and Registrar General of India, Ministry of Home Affairs and the principle of 'Equal Pay for Equal Work' is deducible from Article 14 and 16 of the Constitution of India and should be applied to the cases of unequal pay scale based on irrational classification. To buttress his arguments, learned counsel for petitioners has relied upon the various judgments of the Hon'ble Supreme Court reported as (i) ***A.R. Neelayadakshni and others Vs. University of Delhi and others***, 2000 (3) SLR 691. (ii) ***Randhir Singh Vs. Union of India and others***, (1982) 1 SCC 618. (iii) ***Bhagwan Dass and others Vs. State of Haryana***, (1987) 4 SCC 634. (iv) ***Alvaro Noronha Ferriera and another Vs. Union of India and others***, (1999) 4 Supreme Court Cases 408. (v) ***Bhagwati Prasad Vs. Delhi State Mineral Development Corporation***, AIR 1990 SC 371. (vi) ***National Museum Non-Gazetted Employees Association & Anr. Vs. Union of India & Ors.*** JT 1988 (1) SC 495. (vii) ***P.K. Ramachandra Iyer and Others Vs. Union of India and others***, (1984) 2 SCC 141.
12. Per contra, it is argued by the learned counsel for the respondent that the person claiming parity must plead necessary averments and prove that the work is equal between the posts concerned. He further argued that the qualification required for the post of Proof Readers in the Department of Posts, where the petitioners have been working, is matriculation, whereas in the Department of Personnel, Government of

India, degree of a recognized University or equivalent, experience of Hindi/English proof reading is required and in the office of Registrar General of India, Ministry of Home Affairs for the post of Proof Reader degree of a recognized University or equivalent, two years experience of proof reading and technical marking is required and proficiency in desk publishing technology is desirable qualification. He further points out that in the Department of Posts for the post of Proof Readers, the required qualification is matriculation. He contended that the post of Proof Reader had been abolished in MoP, PGP before petitioners moving the Tribunal. He further submitted that the Tribunal has rightly dismissed the O.A. and the petitioners cannot claim parity with Proof Readers working in the office of Registrar General of India, Ministry of Home Affairs as the qualification and method of recruitment are different.

13. We have heard the learned counsels for the parties and perused the record.
14. It is well settled that equation of posts or pay is best determined by expert bodies like the Pay Commission. Such issue came up for consideration before the Apex Court in ***State of U.P. Vs. J.P. Chaurasia, (1989) 1 SCC 121***, (at Page 130, Para 18) wherein it has been held that: -

“.....The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was

made with extraneous consideration.”

15. Hon’ble Supreme Court has further held in *Union of India and anothers Vs. P.V. Hariharan and another*, (1997) 3 Supreme Court Cases 568, as under: -

“5. Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of “equal pay for equal work” is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales.....”

16. In the present case, the qualification required for the post of Proof Reader in the Ministry of Personnel, Public Grievances and Pensions, a minimum qualification of graduation with experience of Hindi/English proof reading is required in MoP, PGP and two years experience of proof reading and technical marking, proficiency in desk job publishing and technology has been prescribed in the office of Registrar General of India. With regard to the method of recruitment, while the post in the

office of Registrar General of India are filled up through deputation of the officers of Central and State Governments holding analogous posts or atleast three years of regular service in the post of carrying the pay scales of Rs.3050-4590.

17. Moreover, in *Steel Authority of India Limited and Others Vs. Dibyendu Bhattacharya*, (2011) 11 Supreme Court Cases 122, (Para 22), it has been held by the Hon'ble Supreme Court that an employee seeking parity of pay under Article 39 (d) of the Constitution of India is required to prove and establish that he had been discriminated against and the constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibility, reliability, experience, confidentiality, functional need etc. Equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The Apex Court after referring several case law concluded as under: -

“30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Article 14 and 39 (d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibility and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of post. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts

concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”

18. It may also be noticed that so far as the Ministry of Personnel, Public Grievances and Pensions (DoPT), the post of Proof Reader has already been abolished w.e.f. 07.02.2002 vide order No. A.11011/4/97-Ad.1, much before the petitioners moved the Tribunal.
19. In view of the fact that the qualification for the post of Proof Readers in the Ministry of Home Affairs, Ministry of Personnel, Public Grievances and Pensions, is higher than the qualification required for Proof Reader in the Department of Posts and the post having been abolished in the Ministry of Personnel, Public Grievances and Pensions w.e.f. 01.02.2002 much before the filing of the application before the Tribunal by the petitioners and position in law that it is the job of the expert/Executive Committee of Government/Central Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, we are not persuaded to interfere with the order of the Tribunal.
20. Resultantly, the Writ Petition is hereby dismissed. No costs.

VINOD GOEL, J.

G. S. SISTANI, J.

NOVEMBER 30, 2016

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