

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

+ W.P.(C) No.5594/2000
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9th March, 2015

SH. SANJEEV KUMAR & ORS. Petitioners

Through: Mr.Kuldeep Kumar, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr.B.K.Sood, Advocate for R- 2 to 4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioners who are the employees of Bureau of Indian Standards/respondent no.2, seek the pay scale equivalent to the pay scale of similarly situated persons/employees in the Government Presses. The petitioners are working with the respondent no.2 in the posts of Junior Operator and they claim that for a similar work of a Junior Operator in the Central Government, there exists a higher pay scale and the petitioners must be therefore granted that higher pay scale.

2. I have repeatedly asked the counsel for the petitioners to show me even a single judgment as per which it is held that the employees who work in the autonomous organizations of the Central Government are entitled to

the same pay scale as given to the employees of the Central Government, but counsel for the petitioners is not able to point out even a single judgment which lays down this ratio. Counsel for the petitioners however relies upon the following judgments:-

- I. Yogeshwar Prasad and Ors. Vs. National Inst.,Edu. Planning & Admn. & Ors. in Civil Appeal Nos.288-289/2005 decided on 21.10.2010;***
- II. Bureau of Indian Standards (BIS)and Ors. Vs. Bureau of Indian Standards Employee's Union and Ors. in LPA No.232/1999 decided on 01.8.2000;***
- III. Indian Road Constn. Corpn. Ltd. Vs. K.P.Grover & Ors. 78(1999) DLT 691;***
- IV. Union of India and Ors. Vs. Rajesh Kumar Gond in SLP (C) No.17419/2009 decided on 25.7.2013; and***
- V. State of Mizoram & Anr. Vs. Mizoram Engineering Service Association & Anr. AIR 2004 SC 3644.***

3. Unfortunately, counsel for the petitioners is not able to show to this Court any paragraph/s or line/s in any of these five judgments which holds and lays down the ratio that the pay scales and monetary emoluments of the employees in autonomous organizations of the Central Government have to be the same as the pay scales of similarly situated employees in the Central Government.

4. In my opinion, the argument urged on behalf of the petitioners is misconceived at the very outset because autonomous organizations'

employees automatically do not get the pay scales of the Central Government employees. It is the Central Government through the parent ministry under which the autonomous organization falls, along with the Ministry of Finance, which decides the pay scales of the employees of a particular autonomous organization. In fact, the pay scales can be different between different autonomous organizations of the same government depending upon the type of the organization and work etc being done by the employees in that particular organization. There is no inherent right or any legal right of any employee of an autonomous organization of the Central Government to claim the monetary emoluments equal to an employee of the Central Government. Article 14 of the Constitution of India applies for giving equality to equals and no equality/parity can be claimed between Central Government employees and employees of autonomous organizations. Unequals cannot be treated as equals.

5. I may note that in the counter-affidavit filed by respondent nos. 2 to 4, it is stated that even the scope of work of the petitioners is not the same as the scope of work of the employees of the Government Presses, however, be that as it may in my opinion, the doctrine of equal pay for equal work applies to the employees within the same organization and not to employees

of different organizations, much less to those employees who are employees of the Central Government.

6. In fact, the Supreme Court recently in the judgment in the case of ***Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd. 2007 (1) SCC 408*** has held that the courts should not take upon itself the functions of the executive and the legislature in the matter of fixation of pay scales. The relevant observations of the Supreme Court in this judgment are contained in paras 16, 37 & 40, and which read as under:-

“16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

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37. Creation and abolition of posts and regularisation are purely executive functions vide P.U. Joshi v. Accountant General. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.

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40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment or these posts, regularisation, **fixing pay scales**, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in Rama Muthuramalingam v. Dy. Supdt. Of Police and we fully agree with the views expressed therein.” (emphasis added)

7. There is hence no merit in the writ petition, and the same is therefore dismissed.

MARCH 09, 2015
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VALMIKI J. MEHTA, J