

1. SMT. SHAYANI U. NAIK,
of major age, Indian
National, resident of
Flat No. F-1, 'D' Building,
Kurtarkar Harmony, Borda,
Margao-Goa.

2. KUM. GAURI DAMODAR NAIK,
of major age, Indian
National, resident of
House No. 84-E-1, "Sheetal Niwas",
Opposite Pednekar Chawal,
Lymati, Davorlim, Salcete-Goa.

... Petitioners.

STATE OF GOA, through its
Secretary (GA), General Administration
Department, with Office at Secretariat,
Porvorim, Bardez-Goa.

... Respondent.

**Mr S.D. Lotlikar, Senior Advocate with Mr T. Sequeira,
Advocate for the Petitioner.**

Mr Devidas Pangam, Advocate General with Mr Deep Shirodkar, Additional Government Advocate *for the Respondent-State.*

**CORAM : M. S. SONAK &
R. N. LADDHA, JJ.**

RESERVED ON : 29th June, 2022

PRONOUNCED ON: 12th July, 2022

JUDGEMENT: (*Per R.N. Laddha, J*)

By this Writ Petition under Article 226 of the Constitution of India, the petitioners seek directions to the respondent to place them in the Pay Band of ₹9300-34800+4200 (GP) in PB-2, at par with the other Legal Assistants working in the Law Department, Secretariat w.e.f. the date of joining their duties in the said Department. Further, a direction is also sought to order the respondent to grant all the consequential benefits relating to the said Pay Band, including arrears of pay and other benefits incidental thereto.

2. The facts germane to this writ petition may briefly be stated as follows:

Petitioners were appointed as Legal Assistants by the Electricity Department of the State of Goa on 18.04.2007. They were admittedly selected by a duly constituted Selection Committee against the posts created vide order dated 22.01.2007 in the pay scale of ₹4500-125-7000. Again, it is undisputed that they were duly confirmed in their respective posts in the year 2010.

3. The Government of Goa desired to strengthen the Law Department at the Secretariat, where the volume of legal work was

considerable. In that view of the matter, to fill up three posts of Legal Assistants in the General Administration Department, an advertisement for three posts of Legal Assistants, then in the pay scale of ₹4500-125-7000 (pre-revised)(provisional), was published. Upon the publication of the said advertisement, the Government, as a part of the austerity measures, decided to transfer four posts of Legal Assistants, i.e. of the petitioners herein and two from the Directorate of Transport to the General Administration Department, Secretariat to be deployed under the Law Department, Secretariat. Accordingly, orders were issued. In June 2010, the petitioners reported for duty to the General Administration Department, Secretariat. On 15.06.2010, by an order issued by the General Administration Department, the petitioners were transferred and posted to the Law Department with immediate effect in the pay scale of PB-1 ₹5200-20200+GP ₹2800.

4. The Government of Goa, while accepting the recommendations of the Fifth Pay Commission, had ordered that all revisions in the pay scale w.e.f. 01.01.1986 and up to December, 1995, shall be ignored to grant pay scales under the Fifth Pay Commission. Accordingly, the pay scales of the Secretariat cadre, including the Legal Assistants working in the General Administration Department/Law

Department of the Secretariat, were fixed, taking into account the pre-revised scales. In other words, they were given the pay scale of ₹4500-125-7000 upon implementing the Fifth Pay Commission Recommendations.

5. The Legal Assistants in the Law Department, appointed by direct recruitment in the revised pay scale of ₹1640-60-2900, were given the corresponding pay scale of ₹5500-9000 under the Fifth Pay Commission Recommendations as a consequence of which, a weird situation arose in the General Administration Department/Law Department. Whereas some Legal Assistants were getting their pay in the pay scale of ₹4500-125-7000, the others were receiving their pay in the pay scale of ₹5500-9000, with the result that two sets of employees belonging to the same cadre and doing the same work in the said posts were receiving the pay in different pay scales.

6. The Legal Assistants, who were given a lower pay scale of ₹4500-125-7000, after the implementation of the Fifth Pay Commission, filed several writ petitions before the High Court of Bombay at Goa complaining about this discrimination and sought a writ of mandamus to direct the Government to place them in the pay scale of ₹5500-9000 under the Fifth Pay Commission with effect from

01.01.1996. The said petitions came to be allowed, and it was directed that all the Legal Assistants working in the General Administration Department/Law Department, Secretariat of the Government of Goa shall be given the pay scale of ₹5500-9000. However, while implementing the Sixth Central Pay Commission's recommendation, the Government had decided to maintain Legal Assistants in the Secretariat in the General Administration Department/Law Department in the pay scale of ₹5500-9000 (pre-revised).

7. Accordingly, in terms of the Sixth Pay Commission, the pay scale of the Legal Assistants in the Secretariat was fixed at ₹9300-34800+4200 (GP) in PB-2, equivalent to ₹5500-9000 (pre-revised). It was directed that the actual monetary benefits would be granted to the incumbents w.e.f. 01.10.2009.

8. It is the case of the petitioners that at the time of initial revision of pay scale of the Legal Assistants to ₹1640-60-2900 after the implementation of the Fourth Pay Commission recommendations, there were no posts of Legal Assistants existing either in the Electricity Department or the Transport Department. As such, the revision of the pay scale had significance only so far as the Legal Assistants working in the General Administration Department/Law Department were

concerned. The Finance Department of the Government of Goa, when it issued the order dated 11.11.2009, merely took note of this fact and decided that the pay scale of ₹5500-9000, which was otherwise extended to all the Legal Assistants working in the Department, by the decision of the High Court, shall be maintained. Accordingly, the revised pay scale of ₹9300-34800+4200 (GP) in PB-2 was made applicable only to the Legal Assistants working in the General Administration Department/Law Department and not to the Legal Assistants working in other departments. However, there were no legal or other justifications for doing so.

9. Further, it is the case of the petitioners that upon their transfer along with their posts to the General Administration Department/Law Department, they became members of the same cadre as the other Legal Assistants working in the General Administration Department/Law Department with effect from the date they reported to the Law Department as they have been performing the same duties and discharging the same obligations as other Legal Assistants working in the same Department. However, even though they were members of the same cadre and identically placed/circumstanced, so far as the duties and obligations of Law Assistants were concerned, they and

other two Legal Assistants transferred to the Law Department along with their posts from the Department of Transport were drawing their salary in the pay scale of ₹5200-20200+GP 2800 corresponding to the pre-revised pay scale of ₹4500-125-7000. In contrast, the other Legal Assistants working in the Law Department were and are being paid their salaries in the pay scale of ₹9300-34800+4200 (GP) in PB-2. According to the petitioners, this amounts to practicing hostile discrimination against them.

10. Aggrieved, the petitioners made a representation to the Government. The petitioners requested to put them in the Pay Band of ₹9300-34800+4200 (GP) in PB-2, at par with the other Legal Assistants working in the Law Department. It is further the case of the petitioners that their request was attended to by the Law Department and the General Administration Department, which found substance and merit in the request made by the petitioners. However, the Finance Department conveyed its inability to accede to the petitioners' request on the ground that there was a lapse on the part of the General Administration Department and the Administrative Reforms Department in transferring the petitioners to the Law Department without obtaining its prior approval. It is further the petitioners' case

that they perform identical duties as the other Legal Assistants are performing. The petitioners, therefore, claim the same pay scale applicable to the other Legal Assistants borne on the establishment of the Law Department.

11. Mr S.D. Lotlikar, learned Senior Counsel appearing on behalf of the petitioners, submits that in our Constitutional Scheme, the doctrine of equal pay for equal work has a definite place in view of Article 39(d) and Article 14 of the Constitution of India. The petitioners are performing identical work as discharged by the employees who are placed in higher pay scale. There is a complete and wholesale identity between these two groups in the works/duties being performed by them.

12. Mr Lotlikar made a passing reference to the noting's of the Under Secretary (General Administration) on its file and has submitted that the Law Secretary has also been of the opinion that the petitioners are doing the same work as is being done by the other Legal Assistants working in the Law Department.

13. According to Mr Lotlikar, learned Senior Counsel, the respondent's contention that the petitioners are allotted "light work as

per their capability" compared with the Legal Assistants working in the General Administration Department is merely a bald statement without anything more, is misconceived and contrary to the records and notings as aforesaid.

14. Mr Lotlikar would contend that the petitioners are entitled to claim the benefit of the Government Order dated 11.11.2009, wherein the Government had decided to maintain a pay scale of ₹5500-175-9000 (equivalent to ₹9300-34800+GP ₹4200) for Legal Assistants working in the Secretariat. He submits that giving lesser pay to the petitioners compared to their co-employees in the same Department, amounts to hostile discrimination. He further submits that initially, the pay scale of all Legal Assistants in the Secretariat and the Electricity Department was the same, namely, ₹4500-125-7000. Over time, two of the Legal Assistants working in the Law Department were appointed by direct recruitment in the revised pay scale of ₹5500-175-9000 (equivalent to ₹9300-34800+GP ₹4200), while others continued to work in the pay scale of ₹5200-20200+GP of ₹2800. Some of them, however, approached this Court challenging the difference in pay scale on the principle of equal pay for equal work. This Court allowed the said Writ Petition and directed that all are entitled to the same pay

scale as their counterparts. Accordingly, the Government vide Order dated 04.12.2003 complied with the said order of this Court.

15. It has been submitted that vide Memorandum dated 20.10.2011, even a Common Seniority List has been prepared in respect of all Legal Assistants working in the Law Department, including the petitioners herein.

16. Mr Lotlikar, learned Senior Counsel, has invited our attention to the recruitment Rules for the Legal Assistants in the Electricity Department and the Recruitment Rules for the Legal Assistants in the Law Department and submitted that in the Electricity Department the selection was to be done by Group “C” DSC/DPC and in the Law Department also by Group “C” DPC. According to him, since the posts of the Legal Assistants were transferred from the Electricity Department, there remains no post of the Legal Assistant in the said Department, and in view of that, it must be treated as a “deemed absorption”.

17. It has been submitted that the petitioners, at the earliest possible opportunity, had made representation to the Government, pointing out anomaly in their pay scale and demanded rectification

thereof. The matter was being considered by the various departments of the Government, which were favourably disposed towards the petitioners' claim for justice. However, it was only by a communication in April, 2015 that the petitioners were informed about the rejection of their claim for being placed in the pay scale of ₹9300-34800 +4200 (GP) in PB-2.

18. According to Mr Lotlikar, once the petitioners and the other Legal Assistants working in the Law Department were in the same cadre, equal treatment should be given to them. Reliance is placed on the decision of the Hon'ble Supreme Court in the following cases to substantiate the grounds as raised above. (i) *P. Savita and others v/s. Union of India (UOI) and others*¹ ; and (ii) *Kamalakar and others v/s. Union of India*²

19. Mr D.J. Pangam, learned Advocate General appearing for the respondent at the out set submitted that the benefit of pay scale of ₹9300-34800-4200(GP) in PB-2 can be extended to the petitioners from today i.e. with prospective effect. However, he submitted that under no circumstances such benefit can be extended to the petitioners either from the date they were accommodated in the Law Department

¹ AIR 1985 SC 1124

² (1999) 4 SCC 756.

or from the date of petition. Relying upon the affidavit-in-reply filed on behalf of the respondent, he submits that the Government had merely accommodated the petitioners to be transferred and posted in the Law Department on humanitarian ground, so as not to render them jobless. In his view, as the posts of the Legal Assistant were transferred along with petitioners to the General Administration Department for deployment in the Law Department, they carried their own Recruitment Rules. The petitioners are not entitled to the higher pay scale, which is drawn by the other Legal Assistants of the Law Department. The petitioners have not been absorbed in the Law Department as there were no posts of Legal Assistants in the pay scale of ₹5200-20200-2800 (GP).

20. Mr Pangam further submits that merely because the nomenclature/designation “Legal Assistant” is the same and so also the essential qualifications, the petitioners cannot be equated with the Legal Assistants in the Law Department. According to the learned Advocate General, the Legal Assistants in the Law Department were selected by a Selection Committee consisting of the Secretary (Law), Under Secretary (GAD) and Under Secretary (Drafting), which was an expert committee. In comparison, the selection of the Legal Assistants

in the Electricity Department was by the Selection Committee for Group “C” DSC. He further submits that the Legal Assistants recruited in the Law Department are more meritorious than those from the Electricity Department as they possess post graduate degree in Law. The petitioners are allotted lighter work as per their ability compared to the work assigned to the Legal Assistants appointed in the Law Department.

21. It has been submitted that the petitioners never belonged to the post created for the Secretariat cadre. The deployment of the petitioners in the Law Department was a mere arrangement to protect their employment. Further, he submits that the doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced. The mere similarity of nomenclature was not determinative of equality in the matter of pay scales. All the relevant factors such as mode of recruitment, qualifications for the post, and the nature and quality of the work so also equal value; therefore, responsibilities involved and various other factors are relevant for grant of relief in terms of the said doctrine.

22. According to Mr Pangam, the principle of equal pay for equal work can only apply if there is a complete and wholesale identity

between the two groups. In his view, Article 39(d) and Article 14 of the Constitution of India should be applied to the similarly situated people. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of *Union of India and others v/s. Manoj Kumar and others*³.

23. The rival contentions now fall for our determination.

24. It is settled principle of law that the doctrine of “equal pay for equal work” must satisfy the test that the incumbents are performing equal and identical work as discharged by the employees against whom the equal pay is claimed. It is not in dispute that the petitioners have been Law Assistants in the Law Department of Government of Goa since June 2010. It is seen from the affidavit-in-reply of the respondent that the posts on the establishment of the Electricity Department were transferred together with the incumbents/petitioners working on those posts to the General Administration Department to be further deployed in the Law Department with all incidents of their service to the establishment of Law Department. Additionally, the Law Department has prepared and published a Common Seniority List of all the Legal Assistants, including

³ 2021 SCC OnLine S.C. 646

the petitioners, demonstrating that the petitioners are treated as identically circumstanced with the other Law Assistants.

25. It is not in dispute that the essential educational qualifications of the petitioners are identical to what other Legal Assistants working in the Law Department hold. This was not a case where the petitioners had not gone through the recruitment process, nor was it that while making appointments, the Recruitment Rules had not been followed. In the instant case, the petitioners have been selected and appointed based on the Recruitment Rules, which prescribe more experience than the Recruitment Rules under which other Legal Assistants were appointed in the General Administration Department/Law Department.

26. In the notings of the General Administration Department and the Law Department, it is clearly mentioned that the petitioners are discharging the same duties and doing the same work assigned to the posts of the other Legal Assistants. There cannot be two different pay scales for identical posts in the same Department. The Law Secretary, under whom the petitioners are working, also in its file notings has strongly recommended that the pay scale of the petitioners should be

fixed in Pay Band-2 of ₹9300-34800+GP 4200 at par with the other Legal Assistants of the same department.

27. The petitioners have made out a case of equivalence to claim rights at par with the other Legal Assistants working in the Law Department. No material has been placed on record to show as to what is the real difference between the duties being performed by the petitioners and other Legal Assistants. The record bears out that their functions/duties/work and responsibilities are identical with the functions/duties/work and responsibilities of the other Legal Assistants on the establishment of the Law Department.

28. It is seen from the order dated 01.06.2010 of the Government of Goa, Department of Administrative Reforms, that the Government had decided to strengthen the Law Department of the State of Goa for quick disposal of cases received by them, suggesting that the respondent had examined and considered the petitioners' cases as to their competency and merits and therefore issued the order of their transfer to the General Administration Department/Law Department. It was the decision of the Government to transfer the petitioners from the Electricity Department to the Law Department.

Therefore, the contention of the respondent that the concurrence of the Finance Department was not obtained is untenable.

29. Mr Pangam's contention based on austerity measures, cannot justify denial of equal salary to the petitioners who are admittedly doing the same work and assuming the same responsibility. If the State were to have directly recruited Legal Assistants as proposed the State would be obliged to pay them the scales which other Legal Assistants in the Law Department were drawing. Therefore, in the name of austerity measures the principle of equality under Article 14 cannot be sacrificed.

30. In the circumstances, we must hold that the petitioners are not only similarly circumstanced, but they are, merged in the Cadre of the Law Assistants already working on the establishment of the Law Department, Government of Goa.

31. In the present case, we are concerned with only two employees. Both these employees from the date of their postings/absorption in the Law Department have discharged the same duties as were assigned to their counterparts. Therefore, there is no reason to deny them the benefits of the scale due to them, at least from

the date of institution of the petition. The learned Advocate General could give no cogent reason why the benefit of this scale should be extended to the petitioners only prospectively and not from the date of petition.

32. For the foregoing reasons, we hold that the decision of the Finance Department, not to accede to the request of the petitioners to place them in the pay scale of ₹9300-34800-4200(GP) in PB-2 is illegal. Now the only question that remains is from which date the petitioners should be placed in the pay scale of ₹9300-34800-4200 (GP) in PB-2, at par with the other Legal Assistants working in the Law Department, Secretariat.

33. In this context, useful reference may be made the decision in the case of ***State of Punjab and another v/s. Surjeet Singh and others⁴***, wherein it was held by the Hon'ble Supreme Court that if the High Court is, on the basis of the 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.

⁴ *Civil Appeal No.1976 of 2003*

34. We have already indicated that the petitioners fulfil/meet all the criteria required to apply the doctrine of equal pay for equal work. We, therefore, proceed to direct the respondent to place the petitioners in the pay scale of ₹9300-34800+4200 (GP) in PB-2, at par with the other Legal Assistants working in the Law Department, Secretariat w.e.f. the date of filing of this Writ Petition, and they shall be entitled to all the consequential benefits relating to the said Pay Band, including arrears of pay and other benefits incidental thereto.

35. Rule is made absolute in the above terms.

36. There shall be no order for costs.

R.N. LADDHA, J.

M.S. SONAK, J.

MEENA
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