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Ct. no.42
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 24774 of 2024

**Tripurary Banerjee & ors.
-Vs-
The State of West Bengal & ors.**

Mr. Partha Sarathi Bhattacharyya, Sr.Adv.
Mr. Salahuddin
Md. Raziuddin
Mr. Raju Bhattacharyya
... for the petitioners

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
Mr. Soumik Dey
... for the State

Mr. Mayukh Mukherjee
Ms. Sagtnika Banerjee
Ms. Aishwarya Bajaj
Ms. Sarmistha Basak
Mr. Samrat Mondal
... for the respondent no.10

1. The matter is appearing in the list under the heading '*For Orders*'.
2. By the present writ petition, the petitioners seek for removal of discrepancies in the scale of pay and in grade pay of the employees of three-tier Panchayat Raj on the same footing considering the essential eligibility criteria for recruitment to the respective posts.
3. The petitioners contend that they were appointed to the post of '*Sahayak*' in different Gram Panchayats for the purpose of securing additional

assistance in the function of the Gram Panchayat in accounts and other records, in recording resolutions of meetings including those of Gram Sansads and Gram Sabha and follow-up actions thereon and any other works that may be assigned by the Gram Panchayat, in the pay scale of Rs.3150-80-3390-90-4380-100-5680 plus usual allowances as admissible. With the amendments of Rules in 2007 and 2008, the eligibility for recruitment to the post of '*Sahayak*', Accounts Clerk, Clerk-cum-Typist, Typist, Work Assistant, Assistant Cashier, Telephone-cum-Receptionist, Lower Division Assistant etc. are more or less the same. But surprisingly the scale of pay and grade pay are different. Hence this writ petition filed by the petitioners seeking equal pay for equal work.

4. Mr. Partha Sarathi Bhattacharyya, learned Senior Advocate appearing on behalf of the petitioners submits that the petitioners seek parity with Accounts Clerk. The eligibility criteria for recruitment to the post of '*Sahayak*' and Accounts Clerk are almost identical. However, there is a difference in the pay structure for both the posts. Such difference violates Article 14 of the Constitution of India. Referring to Rule 55D of the West Bengal Panchayat (Gram Panchayat

Administration) Rules, 2004 and Rule 85H of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 2008, he submits that the duties of a 'Sahayak' and the Accounts Clerk are almost the same. Due to discriminative policy of the Government, the petitioners being 'Sahayak' discharging similar functions as Accounts Clerks are getting less salary. Principles of '*equal pay for equal work*' is not an abstract doctrine but one of substance. Though such principles is not expressly declared by our Constitution to be a fundamental right but it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims '*equal pay for equal work for both men and women*' as a Directive Principles of State Policy. To vast majority of people the equality clauses under Article 14 and Article 16 of the Constitution would mean nothing, if they are unconcerned with the work they do and the pay they get. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Randhir Singh versus Union of India and others***, reported in ***AIR 1982 SC 879***. Such doctrine of '*equal pay for equal work*' has also been reiterated in the decision of Hon'ble Supreme Court in ***State of Haryana and others versus Charanjit Singh and others***, reported in ***(2006)***

9 SCC 321. He seeks for appropriate direction upon the State authorities to remove such discrepancies in the pay scale of different posts in the three-tier Panchayat Raj and extend the benefit of the same scale to the petitioners, who are discharging their functions as *Sahayaks*, in parity with the scale of the Accounts Clerks in different panchayats.

5. On the contrary, Mr. Arindam Chattopadhyay, learned Advocate representing the State-respondents submits that in order to claim equal pay for equal work the petitioners have to demonstrate that they are discharging equal functions. Upon analytical comparison of duties of a '*Sahayak*' under Rule 55D of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 and duties of an Accounts Clerk under Rule 85H of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 2008, it would be evident that they are distinct and different. Therefore, petitioners being '*Sahayaks*' cannot claim parity of scale with that of Accounts Clerks. Referring to the decision of the Hon'ble Supreme Court in *Charanjit Singh's* case (supra), he submits that doctrine of '*equal pay for equal work*' does not apply automatically and has no mechanical application in every case. Article 14

permits reasonable classification based on qualities or characteristics of persons recruited or grouped together, as against those who were left out. In a given case, the quality of work which is produced may be different and the nature of work assigned may be different. The application of the principles 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. The petitioners have failed to demonstrate of doing equal work. The notification no.1368/PN/O/III/2A-18/2002 dated 23rd March, 2002 of the Government provides the eligibility criteria for appointment to the post of *Sahayak* and other posts in the three-tier of the Gram Panchayat, which is also distinct and different. In light of his aforesaid submissions, he seeks for dismissal of the writ petition.

6. Mr. Mayukh Mukherjee, learned Advocate for the respondent no.10, Nakashipara Gram Panchayat submits in the similar fashion as of the writ petitioners. Referring to the decision of Hon'ble Supreme Court passed in ***P. Savita and Others versus Union of India, Ministry of Defence (Department of Defence Production), New Delhi*** reported in ***1985 SCC (L&S) 826***, he submits

that persons holding identical posts and discharging similar duties should not be treated differently.

7. At the outset upon going through the averments of the writ petition it is found that the petitioners have not claimed parity against any specific post and have made a general prayer for removal of discrepancies in the scale of different posts in the three-tier of the Panchayat Raj. Needless to mention that the petitioners have also not pleaded or demonstrated that they are discharging similar functions and works vis-a-vis the posts which have been depicted in paragraph no.3 of the writ petition.
8. At this stage, it would be apposite to reproduce the observations of the Hon'ble Supreme Court in *Charanjit Singh (supra)*:

“19. 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.

20. *As stated above in all these cases the High Court has followed a Full Bench decision of that Court. The Full Bench has also observed that the essential ingredient is similarity. This would (sic not) be correct. However, at one stage the Full Bench observes that even if some dispute is raised, that would be wrong law. In each case the court must satisfy itself that the burden of proving that the work and conditions are equal is discharged by the aggrieved employee."*

9. It manifest from aforesaid proposition laid down by the Hon'ble Supreme Court that upon the Court being convinced equal work of equal quality and all other relevant factors having been fulfilled, it may issue direction for payment of equal pay. Further in each case the Court must be satisfied that the burden of proving that the work and conditions are equal is discharged by the aggrieved employees. It is pertinent to note that such pleadings of discharging equal works are

lacking in the writ petition. That apart, there is no proof placed in support of claim of the petitioners. The petitioners have failed to demonstrate that they are discharging equal work of equal quality.

10. During the course of hearing, learned Senior Advocate appearing for the petitioners tries to impress upon that the duties of *Sahayak* under Rule 55D of Rules of 2004 and duties of Accounts Clerk under Rule 85H of Rules of 2008 are same and identical and, therefore, the principles of ‘*equal pay for equal works*’ applies in the case of the petitioners.
11. In order to appreciate the aforesaid argument, it would be profitable to reproduce both the Rules namely Rule 55D of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 and Rule 85H of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 2008 as hereunder.

“55D. Duties of the Sahayak of the Gram Panchayat.—Notwithstanding anything contained in any other rules, orders or notifications, the Sahayak shall, subject to the direction and control of the Gram Panchayat and the Pradhan, perform the following duties:

- (a) assist the Executive Assistant in matters of financial administration if and when required,
- (b) assist the Secretary to facilitate the proper maintenance of accounts and records, including vouchers of financial transactions made in and by the Gram Panchayat and encashment of the cheque,
- (c) assist the Secretary in recording the resolutions of the meeting held in the Gram Panchayat, Gram Sabha and Gram Sansad,
- (d) any other duty as may be assigned by the Pradhan or the Upa-Pradhan, or the State Government, from time to time.”

“H. Accounts Clerk.—(1) Subject to the general control of the Artha Sanstha Unnayan O Parikalpana Sthayee Samiti and the control and directions of the Executive Officer, the Accounts Clerk shall work under the functional control of the Joint Executive Officer and shall be responsible through them to the Panchayat Samiti for his work.

(2) Subject to the provisions under sub-rule (1), he shall—

- (a) prepare the pay bills for the employees of the Panchayat Samiti, remuneration bills for the Sabhapati and the Sahakari Sabhapati of the Panchayat Samiti, honorarium bills for the Karmadhyakshas of the Panchayat Samiti and fixed TA bills for the members of the Panchayat Samiti;
- (b) prepare bills relating to Grant-in-aid of Panchayat Samiti and place such bills to the Executive Officer or the Joint Executive Officer, as the case may be;
- (c) assist the Cashier-cum-Store Keeper in operation and use of IFMS software as and when required;
- (d) maintain such registers as may be directed by the Executive Officer or the Joint Executive Officer in terms of the West Bengal Panchayat (Zilla Parishad and Panchayat Samiti) Accounts and Financial Rules, 2003;
- (e) assist the Cashier-cum-Store Keeper as and when required;
- (f) perform any other function or duty as may be assigned to him by the Executive Officer or by the Sabhapati through the Executive Officer or by the Panchayat Samiti or by the State Government, by order.”

12. Upon bare reading of the aforesaid Rules, it manifest that the duties of ‘Sahayak’ is quite distinct and different from duties of Accounts Clerk. Accordingly, the argument pressed into service on behalf of the petitioner as above does not hold good.

13. In *P. Savita (supra)*, the challenge was against the order dismissing the petition challenging an order of Government of India accepting the recommendations Third Pay Commission dividing Senior Draughtsmen into two groups with different pay scales, which according to the appellants violated Articles 14 and 16 of the Constitution. The Appellant nos. 1 to 8 are Senior

Draughtsmen in the Ordnance Factories under the Ministry of Defence, Department of Defence Production and the Director General of Ordnance Factories. Appellant nos. 1 to 5 were promoted on different dates to the post of senior Draughtsman when they were working as Draughtsmen. Appellant nos. 6, 7 & 8 were directly recruited as Senior Draughtsmen in the Vehicle Factory, Jabalpur on different dates. Appellant no. 9 is a registered Association of the Employees working in the Design/Drawing Office of the Defence Establishments under the Ministry of Defence, etc. The facts are distinguishable from the case at hand.

14. Such being the position, the writ petition falls short of merit.
15. Accordingly, the writ petition being no. **WPA 24774 of 2024** stands dismissed.
16. Interim order, if any, stands vacated.
17. All connected applications, if any, stand dismissed.
18. There shall be no order as to costs.
19. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

20. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)