

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.16/2002

1. Shri Ramchandra K. Patil,
H.No.165, Donda, Karanzalim,
Goa.

2. Shri Dayanand F. Gawas,
At Post Usap Tal, Dodamarg,
Dist. Sindudurga.

3. Shri Vasant V. Saval,
Patradevi Post, Pedne, Goa.

4. Shri Ravindra J. Deulkar,
Post Sangali, Tal Sawantwadi,

5. Shri Subash K. Shetye,
Pethwada Korgao, Pednem, Goa.

6. Shri Ramchandra M. Gotur
At post Naganur, Tal Gokak,
Dist. Belgaum.

7. Shri Shankar N. More,
Revan Post Thane,
Valpoi, Sattari, Goa.

..... Petitioners.

V/s.

1. State Bank of India,
Zonal Office, S.B.I. Building,
St.Inez, Panaji, Goa 403 001.

2. The Assistant Manager,
Security, State Bank of India,
Zonal Office, S.B.I. Building,
St.Inez, Panaji, Goa 403 001.

..... Respondents.

Shri Girish Sardessai, with Shri L.V. Palekar, Advocates
for the petitioners.

Shri M.S. Sonak, with Ms. Pooja Bharne, Advocates for the
respondents.

CORAM : A.S. AGUIAR &
P.V. HARDAS, J.J.

DATE : JANUARY 14, 2002.

ORAL JUDGMENT : (Per HARDAS, J.)

Rule. By consent of parties, rule made
returnable forthwith.

The present petition has been filed by the

petitioners who claim to be the employees of the respondent-State Bank of India. The petitioners claim that they have been working as Security Guards on regular basis. According to the claim in the petition, the petitioners were earlier engaged through a contractor by the respondent Bank and, as such, had worked as Security Guards in the Zonal Office of the respondent Bank at Panaji, Goa. According to the petitioners, they have been in such employment for the last 7 to 17 years without break doing work of perennial nature. According to the petitioners, they apprehend that their services would be terminated on 15/1/2002.

2. Mr. Sardessai, the learned Counsel appearing for the petitioners, has submitted before us that the petitioners who were discharging the work of Security Guards, akin to the duties which were being discharged by the regular employees of the respondent Bank, were entitled to the same benefits as are given to the regular employees of the respondent Bank. According to the petitioners, there is disparity in the wages. It is claimed that the disparity in wages is in existence since the date of appointment of the petitioners. The pleadings in this regard are absolutely silent as regards specific date of appointment of each of the petitioners. Also there are no pleadings regarding the wage structure

of the regular employees of the respondent Bank who are said to have been discharging the functions similar to that of the petitioners. The petitioners have not disclosed the wages which they were paid by the contractor.

3. According to Mr. Sonak, the learned Counsel appearing for the respondents Bank, the petitioners were earlier employees of a contractor namely "Ex-services Security Co-operative Society" a body registered under the Karnataka Co-operative Societies Act, 1959. According to the learned Counsel for the respondent Bank, the contract was terminated from May 2001 and since June, 2001, the petitioners have been employed on daily wages by the respondent Bank. It is urged by the learned Counsel for the respondent Bank that the petitioners while in service with the contractor, were drawing wages of Rs.1200/- to Rs.1800/- per month; whereas the respondent Bank is paying wages of Rs.4,000/- per month to the petitioners. Thus, according to the learned Counsel for the respondent Bank, there cannot be said to be any disparity in the wages. Further it is urged before us that the principal 'equal pay for equal work' would not be made applicable in the present case as the regular employees of the respondent Bank are recruited through the Employment Exchange/Sainik Board. Certain qualifications are prescribed which, according to the

learned Counsel for the respondents, are not possessed by the petitioners. According to us, this is not a forum where the disputed questions of facts can be gone into. Careful consideration and evaluation of the evidence would be necessary to arrive at a finding whether the respondent Bank has indulged in unfair practice in paying lesser salary to the petitioners. The nature of the duties of the regular employees of the respondent Bank will have to be evaluated with the nature of the duties of the petitioners. Evidence of the wages which were paid to the petitioners since their employment by the contractor would be necessary before a finding can be recorded that there has been a breach of "equal pay for equal work". Also the liability of payment of arrears, limitation, etc., will have to be decided. Thus, the petitioners have an alternate forum which can decide the various issues involved in the dispute.

4. Apart from this, the question of disparity in wages cannot be gone into, as according to both the learned Counsel appearing for the parties, the appropriate authority is the Labour Commissioner. The petitioners since their employment with the contractor, which is said to be more than 10 years ago, have, without demur, accepted the wage structure which was paid to them. Therefore, according to us, this disputed question

of fact cannot be gone into in this Writ Petition at this stage.

5. Learned Counsel appearing for the petitioners has placed reliance on the Judgment of Municipal Council, Bhandara and another v. Jaiwantabai w/o. Wanvas Meshram and others, reported in 1998(1) C.L.R. 1233. The learned Counsel has also relied upon the Judgment of Food Corporation of India v. Shyamal K. Chatterjee and others, 2000 AIR SCW 3472. In both the said Judgments, the findings of the facts have been arrived at by the Tribunals. In the present case, the petitioners have directly come to this Court without availing the alternate remedy available to them.

6. Mr. Sonak, the learned Counsel for the respondent Bank has placed reliance on the Judgment of Steel Authority of India Ltd., and others etc., etc. v. National Union Water Front Workers and others, etc. etc., 2001 AIR SCW 3574. Reliance is placed on para 123 of the aforesaid Judgment, which reads as under :

" We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise

of jurisdiction under Art. 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be Industrial Tribunal/Court whose determination will be amenable to judicial review."

7. It is unfortunate that the petitioners, who were employees of the contractor and had worked as Security Guards/watchmen at the respondent Bank since last 7 to 17 years, now face termination of their services. The respondent Bank claims that after termination of the contract, it has employed the petitioners on humanitarian considerations, on daily wages.

8. The petitioners have prayed for a writ of mandamus directing the respondent Bank to refrain from terminating their services. The petitioners at prayer (b) have prayed that the respondent Bank be directed to grant regular status to the petitioners from the date of their initial appointment as security guards. Prayer (c) which is an alternative prayer by which the petitioners have prayed that the action of the respondent Bank employing guards on a temporary basis and paying them lesser wages than the similarly placed guards on regular basis is violative of Articles 14 and 16 of Constitution.

9. We are afraid that in a writ petition, the prayers of the petitioners cannot be granted. As far as wage discrimination is concerned, we have already observed that there is no sufficient data produced in the writ petition. Apart from that, it is a question of fact which has to be decided by the Industrial Court/Tribunal which can be said to be conferred with the jurisdiction.

10. We, therefore, express no opinion on the merits of the case. If the petitioners choose to approach the Industrial Court or any other Authority vested with the jurisdiction, it shall decide the same according to law without being influenced by the observations made by us.

11. In the result, the petition is dismissed with no order as to costs. Rule discharged.

A.S. AGUIAR, J.

P.V. HARDAS, J.

ssm.