

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 5780 of 1995****With****SPECIAL CIVIL APPLICATION NO. 5256 of 1995****With****SPECIAL CIVIL APPLICATION NO. 8274 of 1995****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE N.V.ANJARIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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J K VADALIA & 7....Petitioner(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR IS SUPEHIA, ADVOCATE for the Petitioner(s) No. 1 - 8

MR PP BANAJI, LD. AGP for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA**Date : 29/06/2012**

CAV JUDGEMNT

The above captioned three writ petitions raised common issue based on similar facts, which could be considered simultaneously. Therefore, all the petitions are being decided by this judgment.

2. The grievance of petitioners in all the three petitions was non-granting of pay-scale of Rs.1640-2900 in place of Rs.1400-2600 sanctioned for them. The petitioners have prayed for direction against the respondents to give to them pay-scale of Rs.1640-2900 with effect from 01st January, 1986 and to pay the arrears with interest.

3. The facts involved in each of the petitions are summarized hereunder.

3.1 Special Civil Application No.5780 of 1995 is filed by eight petitioners, amongst whom the petitioner No.1 is President of Gujarat State Cooperative Department Class III Employees' Union. Petitioner Nos.2 to 8 are the Head Clerks working under the Cooperative Department of the State Government getting pay-scale of Rs.1400-2600. The petitioners have challenged decision reflected in the communication dated 28th September, 1992 from Department of Cooperation and Agriculture, Government of Gujarat, respondent No.1 herein, rejecting the request of the petitioners to revise their pay-scale from Rs.1400-2600 to Rs.1640-2900. The case of the petitioners is that the State Government adopted the pay-scale recommended by the Central Pay Commission

meant for the employees of the Central Government by bringing into force Gujarat Civil Services (Revision of Pay) Rules, 1987 with effect from 01st January, 1986. Prior to 01st January, 1986 the pay-scale of the petitioners was Rs.420-800. The said pay-scale came to be revised to Rs.1400-2600 under the aforesaid Rules of 1987. It is the further case that the said Rules of 1987 came to be amended by Gujarat Civil Services (Revision of Pay) (Amendment) Rules, 1991, which also were applied from 01st January, 1986. It is contended that in the said Rules of 1991, the posts carrying the pre-revised scale of Rs.420-800 were given the pay-scale of Rs.1640-2900. It is the grievance of the petitioners that though they were getting pre-revised scale of Rs.420-800, the aforesaid revision was not effected in respect of their posts and their pay-scale remained at Rs.1400-2600. It is the case that after the aforesaid Notification of 1991, the petitioners made representations to the respondents, details of which are mentioned in paragraph 4 of the petition, which ultimately did not yield fruits. Even after their request was rejected as per communication dated 28th September, 1992, they continued to pursue the cause; however, since nothing was heard and the similar representations of employees working in other Departments were rejected, they approached this Court by filing the petition.

3.2 The petitioners of Special Civil Application No.5256 of 1995 have raised similar grievance. Petitioner No.1 presents himself as Secretary of Non-

Technical Employees' Association of Class III Electrical Inspectors, whereas petitioner Nos.2 to 4 are the Head Clerks working under the Energy and Petrochemical Department of the State Government. Their case is also that their posts original carried pay-scale of Rs.420-800, which pay-scale ultimately came to be revised with effect from 01st January, 1986 as per the afore-mentioned Amended Rules of 1991, to Rs.1640-2900. However, the said revision was not applied to them. They also agitated their grievance by means of representation to the Authority, but failed to convince them.

3.3 The petitioners of third writ petition being Special Civil Application No.8274 of 1995 are the Assistants working under the Director of Archives, Gujarat State Dafter Bhandar Department. Petitioner No.1 describes himself as President of Gujarat State Dafter Bhandar Class III Karmachari Mandal. Petitioner Nos.2 and 3 are the Research Assistants. Their grievance also proceeds on similar lines and is based on similar facts as of the employees of the other two petitions above mentioned. They have additionally contend that their posts are equivalent to the similar posts under the Central Government, therefore, they are entitled to get the same pay-scale given to their counterparts in the Central Government, when the State Government has adopted the pay-scales as applicable to the Central Posts as per the Central Pay Commission. Their further contention is also that the Assistants Archivists of the State Government is required to have higher educational

qualification than an Assistant Archivists of the Central Government.

3.4 The petitioners of all the petitions have in their respective Memorandum of Petitions based their contention and claim with reference to 12 different posts mentioned in paragraph 6 of each of the petition to show that all those posts carried unrevised pay-scale of Rs.420-800 and they were given the scale of Rs.1640-2900. The details of those posts and their pay-scales are as under:

3.5 The respondents in Special Civil Application No.5780 of 1995 as well as the respondents in Special Civil Application No.8274 of 1995 have filed their affidavits in reply. No affidavit-in-reply is found on record in so far as Special Civil Application No.5256 of 1995 is concerned.

4. Heard learned advocate Mr.I.S. Supehia for the petitioners appearing in all the petitions, and learned Assistant Government Pleader Mr.P.P. Banaji for the respective respondents in three petitions.

4.1 Learned advocate for the petitioners submitted that the denial of pay-scale of Rs.1640-2900 to the petitioners amounted to a hostile discrimination. It was submitted that when in respect of other posts carrying same pre-revised pay-scale of Rs.420-800, the scale of pay came to be revised to Rs.1640-2900, there was no reason not to revise the petitioners' pay-scale in the similar way. It was submitted further that in the Cooperative Department, there

were posts with different designations carrying pay-scale of Rs.1400-2600, which were transferable inter-se and they were subjected to common seniority, therefore, according to his submission pay-scale of Rs.1640-2900 ought to have been granted to all the posts. It was also submitted additionally that the Assistants working in the establishment of High Court of Gujarat are given the amended pay-scale of Rs.1640-2900 against Rs.1400-2600, whose erstwhile pay-scale was Rs.420-800. It was submitted that on all such counts, the petitioners' right under Article 14 and 16 of the Constitution were violated.

4.2 In respect of petitioners of Special Civil Application No.8274 of 1995, learned advocate for the petitioners submitted that pursuant to Notification dated 28th March, 2001 the designation of the Research Assistant under the Director of Archives came to be changed to Archives Assistants. In the Central Government, the posts of Assistant Archives in Grade I and Grade II carried different pay-scales, whereupon some Assistant Archives file an application before the Central Administrative Tribunal seeking merger of two pay-scales, further seeking pay-scale of Rs.1640-2900, which was allowed and the Tribunal gave the said pay-scale to the Assistant Archives in the Central Government. It was submitted that the Assistant Archives in the State Government and those under the Central Government perform similar duties. On the above facts as well as on the doctrine of equal pay for equal work. The petitioners are required to be given pay-scale of Rs.1640-2900.

4.3 Learned Assistant Government Pleader relied on the affidavit-in-reply and contended in all the petitions that merely because the pre-revised pay-scale was sent, it was no ground to claim parity in the revised pay-scale. It was submitted that since the equality of pre-revised pay-scale was the only comparison, the prayers were totally misconceived. It was submitted that there is no material to establish that the two posts are equal to be eligible for equivalent revised pay-scale. It was further submitted that there is no pleading, except in case of petitioners of the third petition, who are Research Assistants, that the petitioners performed same work and similar duties as being performed by the persons holding the 12 posts accordingly.

4.4 With reference to the 12 posts mentioned and relied on by the petitioners, it is submitted in the affidavit-in-reply that a High Level Committed recommended enhancement of pay-scale for them, and their upward revision is based on recommendations of High Level Committed which undertook detail inquiry in the equality of posts and nature of duty attached to such posts. A list of 72 different cadres is produced along with the affidavit-in-reply, in respect of which the pay-scales have not been revised.

4.5 A further contention was highlighted in respect of the petitioners of Special Civil Application No.8274 of 1995 that the pay-scale of

Rs.1640-2900 claimed by them is attached to the posts of Assistant Archivists whereas the petitioners hold the post of Research Assistants, and therefore, there is no anomaly and the petitioners were rightly paid in the pay-scale of Rs.1400-2600 which was also the basis for subsequent revision as per the 6th Pay Commission.

5. From the conspectus of facts and the contention canvassed, the main issue is whether mere equality in the pre-revised pay-scale can be a ground to claim parity in subsequent pay-revisions. A parity in pay-scales attached to the posts/cadre under the government service, depends upon several factors such as nature of duties involved, educational qualification, promotional avenues available, the method of recruitment and all such horizontal and vertical comparison of relativities, which may have been attached to two posts to make them equal. It is trite that equivalent pay-scale may not be, and indeed is not, the only ground for parity of two posts. While determining the question as to what pay-scale is to be given to a particular post, several trits and factors, some of which are mentioned above without being exhaustive, becomes relevant. A claim that a particular post be given the same pay-scale as is given to the another post, has to be guided by variety of considerations and multiple factors treated germane.

5.1 In **State of West Bengal Vs. West Bengal Minimum Wages Inspectors' Association** [(2010) 5 SCC 225] the

question before the Supreme Court was whether the respondents in that case, holding the post of Inspector, Agricultural Minimum Wages, were entitled to parity on pay scale from April 1981 with those holding the posts of Inspector (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers). The contention was similar as being raised in the present case, that said referred three other categories posts were in the same scale of Rs.300-600 as applicable to them when the Revision of Pay Rules, 1970 were in force, and that under 1981 Rules the pay scales for the other three posts were revised to Rs.925-1,050 but the respondents were entitled in pay scale as than the revised, eventhough minimum educational qualification was same for all four categories. The Apex Court observed to hold that equality in pay-scale cannot be claim for based on the ground merely that earlier the categories were in same pay scale.

"It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts.

Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale. As noticed above, one post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust. The respondents have neither pleaded nor proved that the holders of post of inspectors (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of inspector-AMW. Hence, the prayers in the original writ petition could not have been granted. In fact, that is why the learned single Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by expert bodies and the remedy of the respondent was to give a representation to the concerned authority and the court cannot grant any specific scale of pay to them."

(Para 17)

5.2 If the petitioners' attempt to rest their claim on the basis of principle of equal pay for equal work, then their contention is wholly misconceived. It is well-settled that the employee cannot claim equal pay for equal work as fundamental right. The consideration claim on the footing of doctrine of equal pay for equal work depends upon variety of factors.

6. In Special Civil Application No. 8274 of

1995, the petitioners carried the pay scale of Rs.1640-2900 raising a ground that their designation of Research Assistants was charged to Archives Assistants, and therefore they being comparable to the post of their counterparts Archives Assistants in the Central Government, they are entitled to be given same pay scale on the ground of equal pay, as according to them their duties and nature of work are similar. There is nothing on record to substantiate this. In fact it is pointed out by the respondents that petitioner have prayed fro pay scale of Rs.1640-2900, which is given to Assistant Archivist, but the post of the petitioner is of Research Assistant to which pay-scale given is Rs.1400-2600 and there is no anomaly.

6.1 The claim and the contention are misconceived because mere fact that the nomenclature of the two posts are identical the principle of equal pay for equal work has no application. The two cadres are different. In State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association [2002 (6) SCC 72] it was held that parity in designation does not justify parity in pay-scale. It was observed,

“Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the

priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government Courts have taken the view that ordinarily Courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity..... Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat."

(Para 10)

6.2 In Special Civil Application Nos.5780 of 1995 and 5256 of 1995, it is not even the case pleaded that the posts held by the petitioners carry work and duty of similar nature to the posts with reference to which parity in the pay-scale and consequentially the higher pay-scale is claimed. The only ground urged is that the original pre-revised scale of Rs.420-800 was same and in the subsequent revision, the higher revised pay-scale given in respect of other posts, was not given to the petitioners. When equality of posts depend on several criteria as stated above, a singular aspect that at some early point of time the pre-revised scale of the

two posts was same, the subsequent upward revision in the pay-scale has to be applied uniform manner invariably without having regard the other aspects determining the parity of posts.

7. The contention that the pay-scales were arbitrarily not revised cannot be countenanced. The pay-scale of Rs.1400-2600 came to be revised under Rules of 1987. The Amended Revised Rules of 1991 granted upward revision in respect of different posts to Rs.1640-2900. For the purpose of deciding as to which categories of posts/cadres may be granted further upward revision from Rs.1400-2600, the State Government had appointed a High Power Committee. The said Committee undertook factual inquiry going into the aspect of parity and on the basis comparative facts, recommended the pay-scale of Rs.1640-2900. As many as 72 posts/cadres were not treated eligible for grant of pay-scale of Rs.1640-2900 and the pay-scale for all those posts remained at Rs.1400-2600. The posts of the petitioners in all the three petitions were inclusive of said 72 cadres. Therefore, the cases of the petitioners for the purpose of parity for giving pay-scale in question, were gone into by High Power Expert Committee, but petitioners' posts were not found fit for granting the said pay-scale. Once the Expert Committee has gone into the issue and the decision is based on its recommendations, this Court will not in exercise of jurisdiction under Article 226 of the Constitution interfere. This Court is not sitting in appeal over the decision of the Expert Committee.

8. The related principles are noticed from the decision in Secretary, Finance Department and Ors. Vs. West Bengal Registration Service Association and Ors., 1993 Supp (1) SCC 153,

"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other

departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relatives have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex

matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

9. Thus, selection of pay-scale, parity of posts and such matters primarily and substantially fall within the exclusive domain of the executive unless there exists a manifest hostile discrimination or apparent arbitrariness. The executive can be said to be the best judge in these matters, as determination of such matters involve the host of considerations. The judicial review power, if at all to be extended to such areas, it has to be in the cases where there is manifest arbitrariness or a demonstrable perversity in the decision. There being no such case in the facts of the present cases, no interference is warranted.

10. For the foregoing reasons and discussions, all the three petitions are dismissed. Rule is discharged. There shall be no order as to costs.

(N.V.ANJARIA, J.)

Anup