

Bhagwan Sahai Carpenter and Others

Vs

Union of India and Another

Civil Writ Petitions Nos. 12259-66 of 1984

(B. C. Ray, S. R. Pandian JJ)

15.03.1989

JUDGMENT

RAY, J. –

1. The petitioners who are employed in various categories of trades such as carpenter, mason, painter, upholsterer, plumber, pipefitter, sawyer and sign writer under skilled grade in Military Engineering Services under the Ministry of Defence commonly known as MES have assailed in this writ petition the upgradation of some of the trades out of the 15 trades in the skilled grade on the basis of the recommendations made by the Expert Committee constituted by respondent 1 on the grounds inter alia that the fixation of higher scales of pay of some of these trades out of the 15 trades in the skilled grade ignoring the other trades is arbitrary, discriminatory and in contravention of the fundamental rights of the petitioners enshrined in Articles 14 and 16 as well as in Article 39(d) of the Constitution of India inasmuch as it purports to violate the right of equal pay for equal work.
2. The petitioner along with other employees in different trades within the skilled grade used to get same scales of pay in the skilled grade continuously for years together since the recommendations of the First Pay Commission in 1949. All the employees of the trades in skilled grade in Military Engineering Services, in short as MES, also received common scales of pay on the recommendations of the Second and Third Pay Commissions till 1981. In 1981 out of the 15 trades in the skilled grade some of the trades had been upgraded ignoring the petitioners' trades and as a result the petitioners though included in the skilled grade had been getting lesser pay than those belonging to some trades due to the upgradation of their scales of pay. This upgradation in the scales of pay had been made on the basis of report of an Expert Committee appointed in 1981 which gave scores of points to the various trades and on its basis recommended higher scale of pay for six trades in the skilled grade i.e. Rs. 260-400 whereas the other trades of the said grade were termed as a semi-skilled and the scale of pay was recommended as Rs. 210-290. This anomaly in the scale of pay of employees of different trades within the same grade led to great dissatisfaction amongst the employees of different trades within the skilled grade. The petitioners, therefore, challenged in this writ petition the fixation of the higher scale of pay for six trades i.e. moulder, mason, upholsterer, sawyer, pipefitter and plumber. There is no dispute that all the employees in the 15 trades mentioned in para 4 of the writ petition previous to the fixation of scale of pay on the basis of the report of the Expert Committee used to draw the same scale of pay as per the recommendations of the Third pay Commission in 1973 i.e. Rs. 210-290.
3. A notice was issued on the writ petition by this Court on May 4, 1984. An affidavit-in-counter sworn by one R. P. Bawa, working as SOI in the office of Engineer-in-Chief's branch at New Delhi

has been filed. In para 3 of the said counter-affidavit it has been averred that in accordance with the recommendations of the Third Pay Commission which was accepted by the government, an Expert Classification Committee was set up in 1974 by a Resolution of the Government of India, Ministry of Defence dated October 3, 1974 to study and evaluate the job content of all industrial and a few specifically selected non-industrial jobs in defence establishments and to co-relate the evaluation to suitable pay scales within the framework of the recommendations of the Third Pay Commission. This Committee was advisory in nature. The Committee submitted its recommendations to the government in 1979. It recommended nine pay scales for the industrial workers, after applying the technique of job evaluation following the Point Rating Method. It has also been stated that on the basis of points scores given by the Expert Committee to the petitioners' job fitment of defence workers in revised scales was done strictly on the basis of their respective point scores and the co-relation point range evolved by the government for various scales. It has been further stated that government issued orders to implement the decision on October 16, 1981. It has also been stated that the petitioners do not belong to skilled grade but they are in semi-skilled grade.

4. The petitioners made an application for amendment of the writ petition to the effect that the recommendations made by the so-called Expert Committee was made effective and implemented with effect from October 16, 1981 but in case of petitioners' trades the recommendations of the Expert Committee/Anomalies Committee was made effective and implemented with effect from October 15, 1984. This act on the part of the government/respondents is discriminatory and the respondents ought to have given the benefit of the recommendations of the Anomalies Committee with effect from October 16, 1981 as had been done in case of other categories of trades.

5. It appears from a copy of letter dated October 1984 issued by the Engineer-in-Chief that :

Pay scale of the categories of industrial workers mentioned in the enclosed government letter has been upgraded from the date of issue of government letter to skilled grade pay scale (Rs. 260-400). All the existing workers, will be eligible for revised pay scale w.e.f. October 15, 1984. Necessary instructions for implementation be issued immediately.

6. On October 15, 1984, a letter was sent to the Chief of the Army Staff, New Delhi under the signature of Deputy Secretary to the Government of India wherein it has been mentioned that the President has accorded sanction to the upgradation of the following jobs from semi-skilled grade (Rs. 210-290) to the skilled grade (Rs.260-400) :

Sl. No. Job Title 1 Book Binder 2 Saddler 3 Boot Maker 4 Carpenter
5 Pipefitter 6 Plumber 7 Mason 8 Moulder 9 Painter/Polisher 10
..... Sign Writer 11 Sawyer 12 Upholsterer##

7. In para 2 of the said letter it has been stated that these orders will take effect from the date of issue.

8. From the aforesaid letters it is clear that respondent 1 has extended the benefit of scale of pay fixed for skilled grade to the petitioners' trades by upgrading their semi-skilled grade to skilled grade with effect from October 15, 1984. The petitioners are, therefore, getting equal pay being in the skilled grade as other members of the skilled grade. The petitioners, however, are praying that the benefit of the higher scale of pay in the skilled grade should be extended to them from October 16, 1981 instead of October 15, 1984 as has been given to the members of the other trades in the

skilled grade upgraded earlier on the basis of the report of Anomalies Committee. The relevant excerpt of the report is quoted below :

All the jobs studied by the Anomalies Committee, which are present in semi-skilled grade of Rs. 210-290, may be upgraded to the skilled grade of Rs. 260-400. This may be given effect from October 16, 1981.

9. Mr. Garg, learned counsel appearing on behalf of the petitioners had submitted that in view of the recommendations of the Anomalies Committee, the petitioners should be given the benefit of the scale of pay of the skilled grade i.e. Rs. 260-400 with effect from October 16, 1981 and not from October 15, 1984. He further submitted that the scale of pay has been fixed on consideration of the job evaluation inasmuch as the previous job evaluation by the Expert Committee led to serious grievances between the employees of the different trades in the skilled grade.

10. Mr. Mahajan, learned counsel appearing on behalf of the Union of India has submitted that though the Anomalies Committee has recommended that the benefit of the skilled grade may be given effect from October 16, 1981 yet it has got no binding force on the government. It is for the government to decide from which date the government will apply the said skilled grade to the petitioners even though the government has accepted the recommendations of the Anomalies Committee.

11. Considering all the facts and circumstances of the case we are unable to accept the contentions advanced on behalf of the Union of India on the ground that the employees of the different trades in the skilled grade cannot be treated different i.e. by allowing higher scale of pay to employees of some of the trades from an earlier date and giving the same benefit to members of other trades in the skilled grade from a later date. This will per se be discriminatory and it will be contrary to the equality clause envisaged in Articles 14 and 16 of the Constitution as well as the fundamental right of equal pay for equal work. The petitioners are entitled to get the benefit of the skilled grade of Rs. 260-400 from October 16, 1981 instead of October 15, 1984 as has been given to the employees of other trades in the skilled grade.

12. In the aforesaid premises, the writ petitions are allowed. Let a writ of mandamus be issued directing respondent 1 to extend the benefit of the pay scale of skilled grade to the petitioners with effect from October 16, 1981. The respondents are also directed to pay to the petitioners the higher scale of pay of the skilled grade from October 16, 1981 to October 14, 1984. All arrears of pay be made to the petitioners as early as possible but not later than three months from the date of this judgment.

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