

Before Rajiv Narain Raina, J.

RAM RATTAN AND OTHERS—Petitioner

versus

STATE OF HARYANA—Respondents

CWP No.23408 of 2011

December 13, 2016

Constitution of India, 1950—Arts. 14, 16 and 39(d)—Haryana Fisheries Department (State Service Group C) Rules, 1979—Appendix A—Re-designation of Post of Sectional Officer (Civil) as JE (Civil) and pay revision equivalent to Junior Engineers working in other departments—Held, equation of posts is an executive function beyond the domain of the Court unless there is complete identity of the two posts in every way with no distinguishing features and principles of Articles 14, 16 and (39d) of the Constitution of India can only then be applied—Disparity must be without reasonable classification—Two groups must form a homogenous class—Post of SO(Civil) in Fisheries Department and Junior Engineers in other wings of Engineering Department of State of Haryana and elsewhere not identical—Job profile and nature of duties is qualitatively and quantitatively different and inferior as compared to their counter parts in three wings of PWD—Thus, not a case of anomaly—Petitioners cannot compare themselves with employees working in different departments with different service conditions—Therefore, it cannot be said that action of respondents in refusing to re-designate the post is illegal, unfair or unconstitutional in any manner—Re-designation cannot be claimed as a matter of right.

Held that it is settled law that equation of posts is an executive function beyond the domain of the Court unless there is complete identity of the two posts in every way with no distinguishing features and principles in Articles 14 & 16 and Article 39 (d) of the Constitution of India only then can be applied which means the disparity must be without reasonable classification and the two groups form a homogenous class. There is no such identicalness of the post of Sectional Officer (Civil) in the Fisheries Department and the Junior Engineers in the other wings of the Engineering Departments of the State of Haryana and elsewhere, or for that matter Assistant Engineer (Civil) in the Fisheries Department (petitioner No.9) and Junior

Engineers (Civil) in other departments. The job profile and the nature of duties is qualitatively and quantitatively different and inferior as compared to their counterparts in the three wings of the Public Works Department. If Sectional Officers of the Agriculture Department succeeded in CWP No.4216 of 2001 titled S. K. Yadav and another v. State of Haryana and others decided on July 09, 2002 granting benefit to the petitioners therein granting them same pay scale as Junior Engineers w.e.f. May 01, 1989 is of no help to the petitioners as each case has to be decided on its own facts.

(Para 4)

B.S. Rana, Sr. Advocate with
Sanchit Punia, Advocate,
for the petitioners.

Shruti Jain Goyal, A.A.G., Haryana.

RAJIV NARAIN RAINA, J.

(1) The petitioners are Sectional Officers (Civil) and Assistant Engineers (Civil) in the Fisheries Department, Haryana. They belong to the Engineering background. They claim that their post is identical to the post of Junior Engineers in the three wings of the Public Works Department. In 1979 the post of Sectional Officer was re-designated as Junior Engineer in PWD (B&R) Department. Similarly, in other departments of the Haryana Government, namely, Panchayati Raj, Town and Country Planning, HUDA and the Agriculture Department the post was re-designated as Junior Engineer. As regards, the post of AE (Civil) the same has not been provided the pay scale as admissible to Assistant Engineers of other Government Departments of Haryana. The petitioners claim that an anomaly in the pay scale of Sectional Officer (Civil) has persisted since April 01, 1979. They claim that they were initially recruited in a joint advertisement for recruitment to the post of Sectional Officer (Civil) conducted for various departments including the three wings of the PWD by the Haryana Subordinate Services Selection Board (presently known as the Haryana Staff Selection Commission) without seeking their options. Petitioner No.9 was deputed to the Fisheries Department in the year 1975. As far as the other petitioners are concerned, the mode and year of appointment in the Fisheries Department is later on different dates. They were initially appointed in FFDA from 1983 to 1994 and were absorbed in the Fisheries Department in 2004 and 2006 respectively. Therefore, the State contends in rebuttal to the petition that petitioners No.1 to 8 have

no locus to challenge the pay revision w.e.f. April 01, 1979 or to make a claim to the effect that that the post of Sectional Officer (Civil) be re-designated as JE (Civil) to bring them on par with other Government departments of Haryana.

(2) As far as petitioner No.9-Ramesh Chand is concerned he joined as SO (Civil) on November 12, 1975 and was promoted as Assistant Engineer (Group-B) on August 02, 1987. He filed a writ petition bearing CWP No.10087 of 1997 for grant of pay scale as per Government letter dated June 02, 1989 which was dismissed by the Division Bench on July 20, 1998 on the ground that the benefit of the notification enhancing the pay scale to Rs. 3000-4500 was given only to Engineers carrying the pay scale of Rs. 2000-3500 while the petitioners were placed in the pay scale of Rs. 2000- 3200. The claim of the petitioners in the present case is to re-designate them as Junior Engineers and accordingly pay them salary in the pay scale admissible to Junior Engineers working in the other departments. Therefore, the first direction they seek is to convert their post as Junior Engineers and then to place them in the higher pay scale of JEs.

(3) The State in its reply says that this case is not one of pay anomaly but of change of nomenclature of posts in the Fisheries Department. The State is on record to submit that Assistant Engineers (Civil) and Sectional Officers (Civil) in the Fisheries Department made a representation to the authorities which was placed before the Anomaly Committee in its meeting held on January 07, 2011 and the request was rejected with the following observations:-

“The committee observed that AD has not recommended the demand. The job profile and nature of duties and responsibilities is qualitatively and quantitatively different/inferior as compared to their counterpart in PWD (three wings). There is no historical and established parity in the scales of the two cadres. Mere on the basis of qualification parity cannot be claimed as per every instruction dated 20.04.2001. Hence the committee rejected the demand of Assistant Engineer (Civil) and Sectional Officer (Civil) for grant of pay parity with their counterparts in PWD (three wings), being devoid of merit.”

(4) The proposal of re-designation of the post of Sectional Officer (Civil) of the Fisheries Department was once recommended by the Director and papers sent to the Additional Chief Secretary to

Government of Haryana, Fisheries Department vide memo dated October 06, 2015 and the same was considered by the Principal Secretary in accompanying CWP No.6357 of 1997, **Prem Chand and others versus State of Haryana and others** [presently de-tagged from this case by orders] and it was intimated to the Director Fisheries vide memo dated September 21, 2016 that the proposal/request of the SO (Civil) in the Fisheries Department cannot be considered. It is common ground that there is no post of Junior Engineer (Civil) designated in the Haryana Fisheries Department. (State Service Group C) Rules, 1979 ("1979 Rules"). Appendix-A confirms this fact. The State in its reply contends that the pay structure of the post is fixed by the Government by taking into consideration a number of factors like nature of duties and responsibilities of the post, horizontal and vertical relativities to similar jobs, avenues of promotion, extent of power vested in the Officer. The placement of a post in the hierarchy by mere factum of identical qualification between SOs (Civil) in the Fisheries Department and Junior Engineers in the other departments cannot be made the sole basis for a claim for same designation and pay scale. The pay scale of Section Officer (Civil) is prescribed in Appendix-A. It is settled law that equation of posts is an executive function beyond the domain of the Court unless there is complete identity of the two posts in every way with no distinguishing features and principles in Articles 14 & 16 and Article 39 (d) of the Constitution of India only then can be applied which means the disparity must be without reasonable classification and the two groups form a homogenous class. There is no such identicalness of the post of Sectional Officer (Civil) in the Fisheries Department and the Junior Engineers in the other wings of the Engineering Departments of the State of Haryana and elsewhere, or for that matter Assistant Engineer (Civil) in the Fisheries Department (petitioner No.9) and Junior Engineers (Civil) in other departments. The job profile and the nature of duties is qualitatively and quantitatively different and inferior as compared to their counterparts in the three wings of the Public Works Department. If Sectional Officers of the Agriculture Department succeeded in CWP No.4216 of 2001 titled **S.K. Yadav and another versus State of Haryana and others** decided on July 09, 2002 granting benefit to the petitioners therein granting them same pay scale as Junior Engineers w.e.f. May 01, 1989 is of no help to the petitioners as each case has to be decided on its own facts.

(5) Seeking equivalence in pay scales on the basis of same designation in different departments is a complex matter which is

generally left to the expert bodies i.e. Finance Department and the Pay Commission. The interference by the courts is only warranted when there is clear and emphatic material on record to come to a firm conclusion that grave error had crept in while fixing the pay scale for a given post and the Courts interference is absolutely necessary to undo the injustice. Job evaluation is not only difficult but a time consuming task and would require a constant study of the external comparisons and the internal relativities on account of the changing nature of job requirements from department to department.

(6) The Supreme Court in ***Union of India*** versus ***Tarit Ranjan Dass***¹ following the ratio of judgments in ***Union of India*** versus ***Pradip Kumar Dey***², ***State Bank of India*** versus ***M.R. Ganesh Babu***³ ***State of W.B.*** versus ***Hari Narayan Bhowal***⁴, ***State of U.P*** versus ***J.P. Chaurasia***⁵, ***State of M.P.*** versus ***Pramod Bhartiya***⁶, ***Shyam Babu Verma*** versus ***Union of India***⁷, ***Secretary, Finance Department and Others*** versus ***West Bengal Registration Services Association and Others***⁸, ***State of Haryana and Other*** versus ***Haryana State Personal Assistant Association and others*** laid down the guiding principle that equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliability, experience, confidentiality involved, functional need and requirements commensurate with the position of the post in the hierarchy, the qualifications required which factors are equally relevant to the consideration. The quantity of work may be the same but the quality may be different, that cannot be determined by merely relying upon averments in affidavits of interested parties. It must be determined by expert bodies like the Pay Commission and the Government in its financial apparatus, who would be the best judges to evaluate the nature of duty, responsibility and all relevant factors.

(7) Moreover, the academic qualifications and experience prescribed for direct recruitment to the post of Sectional Officer (Civil)

¹ (2003) II SCC 658

² (2000) 8 SCC 580

³ (2002) 4 SCC 556

⁴ (1994) 4 SCC 78

⁵ (1989) 1 SCC 121

⁶ (1993) 1 SCC 539

⁷ (1994) 3 SCC 1

⁸ 1992 (2) SLR 82

in Appendix-B to the 1979 Rules lay down the minimum educational qualification as possession of Diploma in Civil Engineering from a recognized Institute. Similarly, the mode of recruitment to the post of Assistant Engineers has been notified by the Haryana Government vide notification dated February 27, 1992 which requires possessing of AMIE qualification or B.E. degree in Civil Engineering with five years experience in civil construction work in case of direct recruitment. For promotion a candidate must possess Diploma in Civil Engineering with ten years experience as Sectional Officer (Civil)/Draftsman or possessing AMIE qualification or B.E. degree in Civil Engineering with five years experience. The State has explained that the word "anomaly" has been defined in the Government instructions dated 20-04-2001. As per the said definition it can be reasonably stated that an anomaly would be said to have occurred:-

- (a) When the pay scales are revised by the Government through a general pay revision notification for all its employees and the revised scales are not prescribed in respect of some posts/departments on account of inadvertent omission;
- (b) When the functional pay scale prescribed for a promotion post is lower than the functional pay scale of the feeder post.
- (c) Where there is a loss of pay in the case of an employee on account of revision of pay scales.
- (d) Where, on promotion, an employee draws lower emoluments than what he was drawing prior to his promotion.
- (e) Where the pay of a senior employee gets fixed at a lower stage as a consequence of pay revision qua a similarly situated junior employee.

(8) The case of the petitioners is not covered by the above mentioned definition; therefore, it is not a case of anomaly. I would agree.

(9) The petitioners cannot compare themselves with the employees working in different departments with different service conditions. I would also agree.

(10) To give due credit to Mr. B.S. Rana, learned Senior counsel it is recorded that he has placed reliance on five cases including CWP

No.4216 of 2001 in *S.K. Yadav v. State of Haryana*. In *S.K. Yadav* the State Government had decided to equate the pay scales of all the Engineers including the petitioners in the Agriculture Department. When Government took a conscious decision to place on a par the Engineers of the Agriculture Department with their counterparts in the PWD department vide an order in writing then Government was bound to implement the decision and grant parity of treatment to those found alike. The case as I read it is distinguishable on facts. I have read with profit the judgments cited by Mr. Rana on equation of posts and pay scales but I find no support from any of them justifying interference in this case.

(11) In these circumstances, it cannot be said that the action of the respondents in refusing to re-designate the post as prayed for in this petition, is illegal, unjustified, unfair, unconstitutional and arbitrary on any of the grounds raised by the petitioners and pressed and to the contrary the decision is in conformity with the rules of service designating posts and assigning pay scales to Sectional Officers (Civil) if the Fisheries Department, Haryana. Re-designation cannot be claimed as a matter of right

(12) Accordingly, no interference is called for in this petition and the same is dismissed.

Ritambhra Rishi