

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 17/1987

DATE OF DECISION.....

1. Smt. Mariamma Samuel
 2. Shri Mahesh D.Rathod
 3. Shri Magaji Gadaji
-APPLICANTS

VS.

Council of Scientific and
Industrial Research.

.....RESPONDENT

Shri M.RadhakrishnanCOUNSEL FOR THE APPLICANTS
Shri K.S.NanavatyCOUNSEL FOR THE RESPONDENT

CORAM

Hon'ble Shri P.H.Trivedi, Vice-Chairman
Hon'ble Shri J.P.Sharma, Judicial Member

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

The applicant No.1 is serving as Steno-Typist, applicant No.2 is a Helper, applicant No.3 is a Driver in the service of the respondent and at present on contractual basis. The applicants are aggrieved by non-regularisation of their services and treating them as being engaged on contractual basis.

2. The applicants claimed the following relief :-

"The respondent's action in depriving the benefits of regularisation may be declared as illegal, arbitrary and discriminatory and direct the respondent to pay all the arrears to the applicants from the date of their appointment."



3. The case of the applicant No.1 is that she is serving as a Steno-Typist and was appointed by an Order dated 29.12.1977 (Paper No.13/Paper Book). She was appointed on purely temporary basis on daily wages at the rate of Rs.15 per day. The applicant made several representations and ultimately by a letter dated 21.2.1983 from Joint Secretary (Administration), C.S.&I.R., New Delhi to the applicant, she was informed that her request cannot be acceded to. However, the applicant continued to work and she was given to work on a consolidated sum of Rs.400 per month for 90 days at one stretch and the term used to be extended from time to time. The amount of Rs.400 was increased to Rs.450 on contract basis from 3rd August, 1983.

4. Applicant No.2 was engaged on contract basis from 3.10.1979 for housekeeping work as Labourer at P.T.C., Ahmedabad. This contract was to expire on 2nd January, 1990 and the applicant was paid Rs.300 per month. This contract was renewed from time to time, but for a period of 90 days.

5. Applicant No.3, Shri Magaji Gadaji was also engaged as Driver on a contractual basis from 22.11.1980 on a consolidated amount of Rs.400 per month and if he absents from his duty, then a sum of Rs.16 per day of each day of absence has to be deducted from this amount. This contract was renewed from time to time and still subsisting.

9

6. The contention of the applicants is that since they are working as regular employees with the respondents, so they are entitled to wages as are admissible to Central Government employees working on the same post in other wings of the Central Departments under Union of India. In short, the applicants have invoked the principle of equal pay for equal work. The applicants also prayed for the regularisation as they have been working since a long time. The applicant No.1 is working since 19.12.1977, applicant No.2 is working since 3.10.1979 and applicant No.3 is working since 22.11.1980.

7. The respondents contested the application and filed the reply stating therein that the present application is not maintainable as there is no relationship of employer and employee between the applicant and the respondents. It is further contended that the application has been filed by the three applicants jointly and so it is violative of Sub Rule 5 of Rule 4 of Administrative Tribunal Procedure Rules, 1987. The respondent has also raised the issue of jurisdiction stating that the office of the respondent is situated in Delhi, so Ahmedabad Bench has no jurisdiction. The services of the applicants are contractual in nature. It is further stated that the CSIR Recruitment Rules came into existence in 1982. It is further stated that there is one post of Junior Stenographer, which too is reserved for SC/ST candidate. The post was advertised and the candidates named by the Employment Exchange Bureau were also considered. The

L

10

applicant No.1 took the examination, but she did not qualify and was declared below standard. The examination was conducted by Vasavda Labour Institute. Similarly an advertisement was made for the post of Driver, but the applicant^{No.3} was not selected by the Selection Committee. As regards applicant No.2, since his name was not sponsored by Bureau of Employment Exchange, so he was not considered for appointment. The respondent, therefore, stated that the applicants have no case and the application be dismissed.

8. We have heard the learned Counsel for the parties at length and have gone through the record of the case. The learned counsel for the applicants has referred to a number of judgements. We have gone through them* and many others on the principle of the doctrine of equal pay for equal work.

-
- * (1) Methods Mackinnon Mackenzie and Company Limited Vs. Audrey D.Costa, AIR 97 SC, p-1281.
(2) Bhagwati Prasad Vs. Delhi State Municipal Development Corporation, AIR 1990 SC, p-371.
(3) Randhir Singh Vs. Union of India, AIR 1982 SC, p-879.
(4) Surender Singh Vs. Engineer-in-Chief, C.P.W.D., 1986 (1 SCC) p-639.
(5) Bhupender Chamoli Vs. State of U.P., 1986 (1 SCC) p-637.
(6) Daily rated casual labourer, P&T Department Vs. Union of India, AIR 1987 SC, p-2342.
(7) U.P. Rajya Sahkari Bhoomi Vikas Bank Ltd. Vs. its workmen judgement today, 1989 (4) SC, p-306.
(8) Supreme Court Employees Welfare Association Vs. Union of India and Others, AIR 1990 SC, p-334.

11

9. It is not in dispute that the abstract doctrine of equal pay for equal work as envisaged by Article 39(d) of the Constitution and which in itself is not enforceable in view of the provisions of the Article 37 of the Constitution, ceases to be an abstract doctrine when a discrimination on account of unequal pay is brought within the meaning of Article 14 of the Constitution. It also cannot be in dispute that mere nomenclature of the post cannot be the determining factor for claiming or granting equal pay. Similarly, it is not necessary that the work performed in the two cases should be identical or same; even if it is similar in essential parts, the principle of equal pay for equal work would be attracted.

10. The applicants' case is that applicant No.1 is working as a Stenographer, the applicant No.3 is working as a Driver and applicant No.2 is working as a Helper and the duty they perform is almost identical and similar by their counterparts performing in other centrally administered departments and in this view of the matter, the wages paid to them on contractual basis is nothing, but exploitation of their labour. In fact in Randhir Singh's case (supra), the duties of the Driver Constables of Delhi Police were almost akin to the Constable Drivers of RPF. In the case of Surender Singh, Bhupender Chamoli, Daily rated casual labourer of the P&T Department and Bhagwati Prasad (supra), the issue was of difference in pay of daily rated employees vis-a-vis regularly employed Class IV employees and the classification made by the respondents in those cases

6

(12)

on that account was held to be irrational and untenable and as there was no difference in the duties performed by the two types of employees, the principle of equal pay for equal work was applied. Similarly, in the case of U.P. Rajya Sahkari Bhoomi Vikas Bank Ltd.(supra), classification between junior and senior groups for purposes of pay was held to be untenable as the same work was done by both. In the case of Supreme Court Employees Welfare Association (supra), it was held that "If any classification is made relating to the pay scales and such classification is unreasonable and (or) if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be kept at naught ^{note} and equal pay may be directed to be given for equal work. In Methods Mackinnon Mackenzie (supra), it was held that there was no material difference between the work performed by lady confidential Stenographers and male Stenographers and as such the provisions of Equal Remuneration Act, 1976 (25 of 1976) were found to be applicable. In the case of daily rated casual labourer employed under P&T Department, the Supreme Court directed respondents to procure a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Post & Telegraph Department. Thus in view of the above, the only reply of the respondent is that the applicants have been engaged on contractual basis. However, if the contract is renewed from one day to another keeping intact the 90 days period and the persons continue to work, it only goes to show that the respondents are taking work from the applicants in a similar manner as they could

6

(13)

have taken from a regular employee. A circular was issued by CSIR on 14.2.1983 not to engage any casual labourer and it is because of this the respondents have adopted a new method of entering into contractual service with the applicants. In view of this the applicants are entitled to the pay which their counterparts are getting in the same department on the same post.

11. As regards regularisation, the applicant Nos.1 and 3 have failed in the examination. So unless they clear the examination, their services cannot be regularised. They have to be recruited according to the Recruitment Rules of 1982, a copy of which has also been filed by the learned counsel for the applicants himself. It is not disputed by the applicants that Mrs. Mariamma Samuel and Driver, Sh. Magaji Gadaji have failed in their tests. So unless they qualify in the test, they cannot claim regularisation and moreover, the post of Junior Stenographer is reserved for SC/ST candidate and for that the applicant No.1 cannot claim as a matter of right unless another post is available or she opts for any other department.

12. As regards applicant No.2, Sh. Mahesh D. Rathod, the only objection by the respondents is that he was not sponsored by the Employment Exchange. But in view of the authority of M.M. Unnikrishnan Vs. Superintendent of Post Offices and others reported in 1990 (13) ATC 250, it is not necessary that the names should be sponsored by the Employment Exchange.

✓

100

13. The respondents have taken certain technical objections that a joint application has been filed, but since the application has been admitted about three years ago, so it shall be not in the interest of justice to reject the application on technical grounds. However, one set of fee of Rs.50 has to be paid by each of the applicants and the applicants shall be re-numbered as 17 A, 17 B and 17 C of 1987.

14. The next point of jurisdiction has not been pressed by the learned Counsel of the respondents before us and otherwise also it has no merit.

15. In view of the above discussions, the applications are disposed of as follows :-

The respondents shall regularise the services of Shri Mahesh D.Rathod, applicant No.2 from the date of this application and he shall be paid such emoluments as are being paid to Class IV employees by the respondent at other places or at the same place in their employment.

16. Applicant No.1 and 3 shall be paid the salary as is being paid to other regular employees-Stenographers and Drivers till the time they are regularised by a test and if they successfully qualify and a post is available, then they shall be regularised. Applicants No.1 and 3 shall be entitled to the equal pay of their counterparts

↓

15

in the department, i.e. of Junior Stenographer as well as motor driver from the date of this application and they will be entitled to the arrears of pay and also will get the pay in future in the same scale of pay. The applicants shall be given a chance to clear a departmental examination according to rules irrespective of the age limit. So long as the new incumbents do not arrive to replace them according to rules, the applicants shall not be ceased from services. *Parties are left to bear their own costs.*

Jomane

(J.P.SHARMA)
MEMBER (J)

21.12.90
Delhi (P.B)

P.H. Trivedi

(P.H.TRIVEDI)
VICE-CHAIRMAN

(164) 2

Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman
Hon'ble Mr. P.M. Joshi : Judicial Member

9.9.1987

Mr.Chari learned advocate for the applicants sent an application for adjournment on account of his indisposition. Allowed. The case be posted on 28th September, 1987. Mr.K.S.Nanavaty learned advocate for the respondent appears.

P.H. Trivedi

(P.H.Trivedi)
Vice Chairman

P.M. Joshi

(P.M.Joshi)
Judicial Member