Orissa High Court
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Balaram Sahu And Ors. vs State Of Orissa And Ors. on 10 March, 1992
Equivalent citations: (1993) ILLJ 864 Ori
Author: Hansaria
Bench: B Hansaria, B Dash
JUDGMENT

Hansaria, C.J.

1. This court has been called upon again to decide as to at what rate wages are to be paid to the N.M.R. workers. Precisely put, the question is whether they should get wages equal to those being made available to the regularly employed persons discharging the same duties and functions.

2. This is not the first occasion that this question has come up before this Court. We would have indeed thought that in view of the long line of decisions of this court based on the judgments of the Supreme Court on "equal pay for equal work", there would be no occasion to re-examine this question. But that is not so. The State has opposed in the present case to the grant of pay to the petitioners who are working either as Males or Discharge Observers. They are, however, being paid at daily rate varying from Rs. 12.75 to Rs. 16/- whereas the basic salary of the persons doing the same type of work on regular basis is Rs. 150/- per month. They are, therefore, claiming wages paid to the regularly employed persons.

3. This question has been before this Court from 1985 and was examined in O.J.C. No. 1876 of 1985 (Jayakrushna Misra v. Managing Director, Orissa Construction Corporation Limited) disposed of on July 4, 1987, which was cited with approval in O.J.C. No. 766 of 1988 disposed of on December 12, 1991, to be followed again in O.J.C. No. 1110 of 1991 (Harakrushna Patnaik v. State of Orissa) disposed of on January 6, 1992. In all these cases, this Court had upheld the right of the N.M.R. employees to claim the rate of wages being paid to others similarly placed and appointed on regular basis. As already stated, this view had been taken relying on a catena of decisions of the Supreme Court, some of which were noted in the last mentioned O.J.C. No. 1110 of 1991. Despite this, the entitlement of the N.M.R. employees to get wages equal to those being paid to the regularly employed counterparts has been questioned in this petition. The basis of this question is that the appointment of work-charged staff and the regular staff is governed by certain rules and regulations, who are also often asked to perform duty beyond the prescribed hours in case of emergency without payment of any additional emoluments/remuneration, whereas the N.M.R. employees are engaged for specific duty hours only and do not render work equal to that of the employees appointed on regular basis. Another reason assigned for not treating these two classes of workers equal for the purpose of equal pay is that the regularly employed persons are under the disciplinary control of the employers, whereas the N.M.R. employees are not.

4. Let us see whether on the aforesaid grounds we would be justified in departing from the consistent view taken by this Court in the earlier noted and many other decisions. We have no difficulty at all in accepting the submission of the learned Government Advocate that the principle of "equal pay for equal work" cannot be applied where the responsibilities of the two posts would differ, inasmuch as equal pay must depend upon the nature of the work done, and it cannot be judged by the mere volume of work, because there may be qualitative difference as regards reliability and responsibility; and so, though the functions may be the same, responsibilities of the same may make a difference as stated in Federation of All India Customs and Central Excise Stenographers v. Union of India, AIR 1988 SC 1291. We have also no reservation in accepting the submission that if on analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility and educational qualifications required for the relevant posts, it is found that the classification made by the State in giving different treatment to the two classes of employees is founded on rational basis having nexus with the object sought to be achieved, the classification must be upheld, as the principle of equal pay for equal work is applicable to equals, it cannot be applied to unequals. This is what has been stated in

para 13 of V. Markendeya v. State of Andhra Pradesh 1989-II-LLJ-169(p. 176).

5. There are no materials before us to say that the nature of duties, functions, responsibilities etc. discharged by the regularly employed workmen are in any way different from those of the workmen employed on N.M.R. basis. It may be stated here that, as pointed out by this Court in para 5 of Pradyumna Kumar v. Orissa State Financial Corporation, (1990 Lab IC NOC 95), it is for the opposite parties denying equal pay to establish the exact nature of duties and responsibilities of the regularly employed persons so that the Court may know if these are different in so far as the persons employed on daily wage basis are concerned.

6. In the case at hand, all that we find is the aforesaid averment in the counter regarding the difference "in the duties of the two classes of persons. Let us see whether these differences are hypertechnical or meaningful or have any rational nexus with the distinction sought to be made out. In this connection, we may first refer to Bhagwandas v. State of Haryana, AIR 1987 SC 2049 in which it was held that equal pay cannot be denied to persons doing similar work on the ground that the mode of recruitment is different, nor can the same be denied on the ground that the appointments of the persons concerned are under a temporary scheme. What should be the approach to be adopted to find out whether a particular work is same or similar is spelt out in Machinnon Machkenzie & Co. v. Audrey D'Costa 1987-I-LLJ-536. The following observations finding place in paragraph 7 are apposite in this regard (p.541):

".....Whether a particular work is same or similar in nature as another work can be determined on three considerations. In deciding whether the work is the same or broadly similar, the authority should take a broad view; next, in ascertaining whether any differences are of practical importance, the authority should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed, not those theoretically possible. In making comparison, the authority should look at the duties generally performed..."

This shows that a broad view of the matter has to be taken and a theoretical possibility of difference in the discharge of duty should not prevail in this regard. Judged on this touchstone, it may be stated that the fact, that regular employees have to perform work beyond office hours in case of emergency without additional payment, whereas N.M.R. employees cannot be called upon to perform the same, as stated in paragraph 3 of the counter affidavit filed on behalf of opposite party No. 2, is a mere theoretical possibility, because, as common experience shows, the regularly employed persons are hardly ever required to discharge such functions. The averment made in this paragraph 3 itself says that this happens "in case of emergency". We do not think what happens in an emergent situation, indeed, can be, taken note of to decide what payment should be made for work done under ordinary circumstances.

7. It would also be apposite to refer in this connection to S.D. Mathur v. Hon'ble Chief Justice of Delhi High Court AIR 1988 SC 2073: wherein a challenge was made by the Superintendents of the Delhi High Court to their being treated on a par with the Private Secretaries of Judges and the Court Masters for the purpose of their promotion to the next higher post of Assistant Registrar. The Court while dealing with this grievance made certain pertinent observations as to when can holders of different posts be treated as equals. It was stated in this regard that in treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same, nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay scales or status in service or carrying Substantially heavier responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay scales or substantially lower responsibilities and duties or enjoying much lower status in service.

8. The above shows that a pragmatic view has to be taken in the context and a hypertechnical view would not be permissible. Judged in this light, we do not find any reason to treat the two classes of workers differently.

9. In so far as the the question of disciplinary control is concerned, it would be enough to say that this has no rational connection with the question of payment to be made for equal work being discharged by the two classes of workers.

10. In so far as the prayer for regularisation is concerned, there is no difficulty in accepting the same in view of the well settled position in law that persons employed for long years (this period has been accepted as 5 years continuous service by this Court) are entitled to regularisation. It may indeed be stated that this aspect of the matter is not challenged before us.

11. In the result, the petition is allowed and it is ordered that the petitioners would be paid wages equal to the similarly situated persons employed on regular basis. This would be done from January 2, 1990 on which date this application was filed. Those of the petitioners who have served continuously for a period of five years by today would also be regularised.

B.N. Dash, J.

12. I agree.