

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- SWP No. 498/2004

1. **Jagdish Kumar, Age 30 years**Appellant(s)/Petitioner(s)
S/o Sh. Hans Raj
R/o Vill. Pachel. P. O. Arnia,
Tehsil Bishnah
2. **Reyaz Ahmed, Age 35 years**
S/o Habibullah
R/o Lohar Sanzar,
Kokarnag, Anantnag,
At present, New Plot, Jammu.
3. **Princy Thaploo, Age 30 years**
D/o P. L. Taploo
203 Krishna Nagar,
Canal Road, Jammu.

Through: Ms. Shivani Jalali, Advocate.

Vs

1. **State of Jammu and Kashmir,**
Through Principal Secretary to Govt.,
Civil Sectt.,
Srinagar/Jammu
2. **State Pollution Control Board,**
J&K, Jammu
Through its Chairman

..... Respondent(s)

Through: Mr. Amit Gupta, AAG.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
(05.03.2024)

(ORAL)

01. In the instant petition filed under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:-

- i. **Issue an appropriate writ, order or direction in the nature of mandamus to the concerned respondents for placing the petitioners in the higher grade i.e. 2000-2300 (pre-revised) which is being given to similarly placed persons in other State Govt. departments in order to satisfy the mandate of Article 39(d), 14 and 16 of the Constitution of India.**

ii. **Direct the concerned respondents to declare the petitioners as separate cadre of service by framing of proper recruitment rules in order to safeguard the service rights of the petitioners in all aspects and remove the stagnation.**

02. The background facts under the shade and cover of which the aforesaid reliefs are prayed by the petitioners are that pursuant to an advertisement notice No. 3 of 1997 dated 29.04.1997 issued by J&K Service Selection Board, Jammu (for short "**the SSB**"), posts of Data Operators carrying the grade of 950-1500 (pre-revised) came to be advertised besides other posts to be filled up in various government departments including the respondent 2 – State Pollution Control Board.

03. The petitioners claimed to be possessed of the eligibility qualification prescribed for the posts applied and after participation in the selection process conducted by SSB, came to be appointed in the intending department i.e. State Pollution Control Board – respondent 2 herein in terms of Order No. 35 of 1999 dated 11.03.1999, Order No. 60 of 1999 dated 13.04.1999 and Order No. 68 of 1999 dated 24.04.1999 respectively.

04. The petitioners state to have been appointed against the posts in a lower grade of 950-1500 and alleging to have no option claim to have joined against the posts carrying the said pay-scale.

- 05.** It is being stated that the posts of Data Entry Operators (Computer)/Computer Operator in Agriculture Department advertised by SSB vide notice No. 3 of 1996 dated 24.12.1996 as also the same posts in the High Court of J&K carry a higher grade reflected in a letter addressed *inter se* the Department of Agriculture to the High Court of J&K showing the sanctioned posts of Computer Operator carrying the grade of 1400-2300. It is further stated that even the pay-scale of Computer Operator in the Forest Department as well carry the pay-scale of 1400-2300, which fact is being supported by a letter dated 28.04.1997 addressed by the Principal Chief Conservator of Forests, Jammu.
- 06.** It is being further stated by the petitioners that upon coming to know about the aforesaid disparity in the pay-scales in the posts in question held by them and the equivalent posts in the Agriculture Department, Forest Department and the High Court, a representation came to be submitted by them to the Chairman, State Pollution Control Board on 09.02.2000 for removal of the pay anomaly and the discrimination, which representation was not responded to necessitating the filing of the instant petition.
- 07.** **Objections** to the petition have been filed by the respondents wherein it is being, *inter alia*, stated that the

posts of Data Operators carrying the pay-scale of 950-1500 (Pre-revised) in the respondent 2 - Board came to be filled up after a process of selection was undertaken by the Board and the petitioners after participating in the process of selection conducted by the Board came to be selected and consequently appointed against the posts in question carrying the grade of 950-1500.

08. It is being further stated that the posts in question i.e. the post of Data Operator in the Board carrying pay-scale of 950-1500 is distinct and different in nature, nomenclature and workload from the post referred by the petitioners in other departments and, as such, the petitioners have no claim which can be entertained.

09. It is being further stated that the petitioners, upon being selected and appointed against the posts in the Board accepted the appointment voluntarily without any objection, as such, cannot seek a higher grade on any grounds.

Heard learned counsel for the parties and perused the record.

10. The core issue raised by the petitioners in the instant petition is traceable to the principle of “**equal pay for equal work**”. Article 16(1) read with Article 14 and 39(d) of the Constitution of India guarantees ‘**equal pay for equal work**’ so that the court would strike down in equal scales

of pay for identical work which is based on no classification or irrational classification. However, the person, who asserts that there is equality in work has to prove it, however, the equality is not to be based in designation or nature of work, but on several other factors like, responsibilities, reliabilities, experience, confidentially involved, functional need and requirements commensurate with the position in hierarchy, the qualification required.

A reference in regard to above to the judgment of the Apex Court passed in case titled as **“State Bank of India & Anr. Vs M. R. Ganesh Babu & Ors.”** reported in **2002 (4) SCC 556** would be relevant herein wherein following has been observed and laid down:-

“It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of

the authorities concerned which, if arrived at bona fide reasonably and rationally, was not open to interference by the court.”

- 11.** Having regard to the aforesaid principle and proposition of law and reverting back to the case in hand, the petitioners herein for the purpose of seeking parity of scale of pay in their case have referred to and relied upon the employees working in the J&K Forest Departments, in the High Court of J&K as also in Agriculture Department, besides a similar post advertised in advertisement Notice No. 3 of 1996.

A deeper and closer examination of the plea and the documents supporting the said plea relied upon by the petitioners would manifestly show that the parity is being sought *qua* advertisement notice No. 3 of 1996 *qua* the post of “Computer Assistant” in Fishery Department as also the post of “Computer Analyst” in the same department and the post of “Computer Operator” in Forest Protection Force, besides placing reliance on a letter claimed to have been addressed by the Director Agriculture to Deputy Registrar, High Court of J&K dated 26.04.1997 pertaining to the post of “Computer Operator” carrying the pay-scale of 1400-2300 as also a letter dated 28.04.1997 addressed by the Principal Chief Conservator of Forest to the Deputy Registrar (Computer), High Court of J&K reflecting therein the grades attached to the post of “Computer Operator” as 950-1400. A reference has also been made for the purpose

of claim of the petitioners on the advertisement notice No. 3 of 1997 also pursuant to which the petitioners came to be appointed *qua* the post of “Data Entry Operators” in the Finance Department carrying the grade of 1200-2040.

- 12.** The petitioner though in order to buttress their claims have referred to the aforesaid facts and the documents, yet have failed to show that the aforesaid posts they are appointed against and the posts with which the petitioners are seeking parity are same and similar in regard to the functions, responsibility, reliability and confidentiality. A general plea raised by the petitioners for invoking the principle of “**equal pay for equal work**” without even remotely showing the applicability of the principles laid down by the Apex Court in the judgment (*supra*) cannot be entertained. The claim of the petitioners seemingly is misconceived and legally unsustainable.
- 13.** Viewed thus, the petition is found to be without any merit and is, accordingly, **dismissed**.

(JAVED IQBAL WANI)
JUDGE

JAMMU
05.03.2024

Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**