

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.259 OF 2016**

DISTRICT : MUMBAI

1. Udyog Sanchanalaya Kshetra Sahayak)
Sanghathana, (Vaidh Mapan Shastra Yantrana,)
Maharashtra Rajya, Mumbai))
(No.RGA/1973/77319-11J Represented through)
its President, Shri D.K. Tandale, having address)
at Devkai Niwas, Sharadnagar, Bhagasi Road,)
Satana, District Nashik)
2. Shri Vishal Deoraj Dhonde,)
3. Shri Dattu Janrao Patil,)
4. Shri Dilip Kondiram Kale,)
5. Shri Sanjay Sankhe,)
6. Shri Kailash Bandu Sonawane,)
7. Shri Shyamlal Khemchand Terke,)
8. Shri Roopchand Limbaji Fulzale,)
9. Shri Vivek Sonu Zarekar,)
10. Shri N.B. Antake,)

All working as Field Assistants in the office of)
Controller of Legal Metrology Mumbai/Aurangabad
C/o Shri D.B. Khaire, Advocate, MAT, Mumbai)..Applicants

Versus

1. Principal Secretary,)
Food & Civil Supplies & Consumer Protection)
Department, Mantralaya, Mumbai)
2. The Principal Secretary,)
Finance Department, Mantralaya, Mumbai)
3. Controller of Legal Metrology,)
Fountain Videsh Sanchar Nigam Building No.1,)
7th Floor, M.G. Road, Hutatma Chowk, Fort,)
Mumbai)
4. The Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai)..Respondents

Shri D.B. Khaire – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.P. Kurhekar, Member (J)

RESERVED ON : 29th August, 2019

PRONOUNCED ON : 04th September, 2019

PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri D.B. Khaire, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. All the above ten applicants affiliated to Udyog Sanchanalaya Kshetra Sahayak Sanghathana, (Vaidh Mapan Shastra Yantrana, Maharashtra Rajya, Mumbai) working under the control of Legal Metrology under the Department of Food & Civil Supplies and Consumer Protection, Mumbai, Maharashtra, have filed this OA praying:

(i) *To declare the post of Field Assistants as technical posts and grant appropriate pay scale and grade pay to the applicants.*

(ii) *To declare the post of Field Assistant as a technical post in the light of submissions made by respondent no.1 before the 7th Pay Commission.*

(iii) *To direct respondent no.1 to send proposal of the applicants before the Pay Anomaly Committee appointed in pursuance of 7th Pay Commission after declaring the post of Field Assistant as a technical post by the respondents.*

3. In support of the above prayers the applicant has submitted as under:

“6.12 That the post of Field Assistant is a technical post in the Department of Public Works Department, Water Resources Department, Rural Development Department. The different posts are granted different salaries than that of ministerial staff. However, in the department of Legal Metrology the pay scale for the post of Field Assistant and Clerk is same. The applicant further submits that on 7.10.2010 a representation was submitted to the respondent no.1 and the grievances of Union were submitted. The applicant further submits that the nature of work of Inspector and Field Assistant is almost similar. However, there is a large disparity between the pay scale of Inspector and that of Field Assistant and as per the Recruitment Rules, the appointment to the post of Field Assistant is made by way of nomination from amongst candidates who have passed

SSC Examination and who have secured the ITI Mechanist or Fitter Trade certificate.

6.16 In the Fifth Pay Commission also the Pay Equivalence Committee has recommended the pay scale of Rs.4000-6000/- i.e. pay scale of technical posts to the incumbents possessing two years ITI certificate. Also the Pay Equivalence Committee had expressed the same opinion about the Field Assistant in the department of Legal Metrology also. It may not be out of context to mention here that in the communication dated 16.10.2007 the respondent no.3 namely, the Controller of Legal Metrology had recommended to the respondent no.1 to declare the post of Field Assistant as a technical post. However, despite this the respondent no.1 did not consider the case of applicant Union.”

(Quoted from page 9-12 of OA)

4. The applicants have also submitted duties for the post of Field Assistant such as inspecting the weighing machine in petrol pump, weighing bridge, mechanical weighing scale, weight of gas, cylinders and measuring instruments. The applicant submits that they work with the Inspectors in above duties but they are not given pay scale of Inspectors. According to the applicants the Field Assistants are entitled for the pay scale of Inspector after 12 years of service. The applicants have submitted representation to this effect on 30.8.2010 to respondent no.1 but the proposal was not submitted to the Pay Anomaly Committee in time. Thereafter the Union has been submitting representations to this effect from time to time. On 22.3.2011 and 2.2.2018 to respondent no.3 recommended Field Assistants to be declared as at par with other technical posts in other departments (Exhibit G). According to the applicants on 20.4.2012 respondent no.3 recommended to respondent no.1 that the posts of Inspectors be filled in by way of promotion from Field Assistants in the ratio of 30:70 (Exhibit H).

5. Ld. Advocate for the applicant has relied on the following judgments:

(i) Randhir Singh Vs. Union of India & Ors. AIR 1982 SC 879. This judgment is in the context of duties performed by Driver in Delhi Police vis-à-vis Drivers working in Railway Protection Force. The Supreme Court allowed the petition. The relevant portion of the judgment is as under:

6. We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, 304 duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Art. 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.

(ii) Shri Milind K. Meshram & Ors. Vs. State of Maharashtra & Ors. OAs No.626 & 646 of 2014 decided by this Tribunal on 21.3.2016. In this judgment the Tribunal directed the respondent no.1 to place the representation of the applicants before the Pay Anomaly Committee to remove the discrepancies.

Submissions by the respondents:

6. The respondents have filed affidavit in reply and contested the claim of the applicants. The relevant portion of the reply reads as under:

“2. The Applicant i.e. Udyog Sanchanalay Kshetra Sahayak Sanghathana is not registered with the G.A.D. and as per the judgment of the Hon’ble Tribunal in O.A.No.55/2009 of the Maharashtra Rajya Patbandhare and Bandhkam Karmachari Sanghatana V/s State of Maharashtra decided on 04.03.2009 by the Aurangabad Bench held that registration of association is necessary otherwise cannot filed the O.A. Therefore, the present O.A. may be dismissed on this ground alone.

5. *As per Maharashtra Civil Services (Revised Pay) Rules, 2009 pay scale of Civil Engineer Assistant (PWD and Water Resources Dept.) in Vith Pay Commission is Rs.5200-20200 + 2400 G.P. and pay scale of Field Assistant Legal Metrology is Rs.5200-20200 + 1900 G.P. It means that proportion of increase in Vith Pay Commission is related to Vth Pay Commission pay scale. Therefore contentions related to pay scale of Applicant are denied. Comparative statement of Qualification , Duties,*

Responsibilities and Pay scale of Field Assistant, F.C.S. and C.S. and Civil Engineering Assistant of Water Resources Department and Public Works Department is annexed.

6. *All the Field Assistants are not required to pass I.T.I. Machinist or Fitter Trade and Field Assistant is not performing technical work in Legal Metrology Department. Hence, it is not proper to declare Field Assistant as a technical post.*

9. *As per Sec.14 of the Legal Metrology Act, 2009, Field Assistant is eligible to be promoted as Inspector, Legal Metrology (Jr.Grade) subject to fitness and seniority provided, he posses the qualification as prescribed in Rule 28 of the Legal Metrology (General) Rules, 2011. Rule 19 of the Maharashtra Legal Metrology (Enforcement) Rules, 2011 also provides the same. Rule 28 of the General Rules provides as follows:-*

(1) *No person shall be appointed as Legal Metrology Officer unless he -*

(a) *is a graduate of a recognized University in Science (with Physics as one of the subjects), technology or engineering or holds a recognized diploma in engineering with 3 years professional experience: and*

(b) *is able to speak, read and write the regional language of the State.*

The Inspector of Legal Metrology is a Legal Metrology Officer as per Sec.14 of the Act. Considering this provision Filed Assistant who complies with the above requirements can be promoted to the post of the Inspector (Jr.Grade).

As per the ratio provided presently 22 posts of Inspector can be filled up by way of promotion of the candidates who are Field Assistants. It is

fact that for promotion on the post of Inspector adequate candidates having the requisite educational qualification are not available in the cadre of Field Assistants. Government has promoted 20 Field Assistant to Inspector Legal Metrology and Government has temporally promoted 12 Field Assistants on the posts of Inspector (Jr.Grade) Legal Metrology, if government will raise the quota of promotion i.e. 10:90 to 25:75 , 29 posts of Inspector Legal Metrology will remain vacant and it will so much of negative effect on Legal Metrology department's work. It is a consumer related department; So Government can't put so much of Inspectors posts vacant because Inspector is back bone of Legal Metrology Department.

15. *It is not true that nature of work of Inspector and Field Assistant is almost similar since the Inspector is appointed as per Sec.14 of the Legal Metrology Act, 2009 and he has to perform duties and the responsibilities conferred on him by the Act, whereas, duty of the Field Assistant is to assist him in this work. Accordingly, Pay Scale of these posts are different. It is contended that appointment to the post of Field Assistant is made by way of nomination only from amongst the candidates who have passed S.S.C examination and who have secured I.T.I Machinist or Fitter Trade Certificate.*

As such it is clear that all the Field Assistants are not required to posses I.T.I. Certificates.

21. *The contention of the applicant in this para are misleading. In fact, as stated in forgoing paras Field Assistant is not conferred any duty and responsibility directly by the Act. As such, he is not responsible for collection of any fee so far as it relates to verification and stamping of weight and measure. So also, he is not authorized to inspect any weight, measure, weighing or measuring instrument in a field.*

33. *With reference to Ground 7.4, I say that it is true that Respondent No.3 has recommended to declare the post of Field Assistant as technical.*

However, the same is not decided yet and will be dealt within due course by considering nature of duties and other factors.

34. *With reference to Ground 7.5, I say that the representation of the Applicant was submitted on the last date of submission to the Pay Anomaly Committee. The representation was required to be scrutinized. Hence, the same could not be submitted to the committee for want of time.*

35. *With reference to Ground 7.6, I say that the pay scale of Field Assistant in Legal Metrology Organization in Vth Pay Commission is fixed as Rs.3500-4500+G.P.1900 whereas the pay scale of Agriculture Assistant (4000-6000), Arogya Sevak (4000-6000), Civil Engineer Assistant (4000-6000) and Junior Technical/ Skilled Workers (All Trades) in the Rural Development Department, Agriculture Department, Public Health Department, Public Works Department and Higher and Technical Education Department is greater than the pay scale of Field Assistant. Hence the pay scale fixed for Field Assistant in Vth pay scale is worth by considering the above scenario i.e. taking into consideration their nature of duties.”*

(Quoted from page 39-49 of OA)

7. The respondents have submitted that the OA is without any merit and may be dismissed.

8. The Ld. CPO for the respondents has relied on the following judgments:

(i) Union of India Vs. P.V. Hariharan, 1997(12) CPSC 446 : 1997(3) SCC 568. Relevant portion of the same reads as under:

“5. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue.

Very often, the doctrine of "equal pay for equal work" is all being misunderstood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

(ii) Punjab State Electricity Board & Anr. Vs. Thana Singh & Ors. (2019) 4 SCC 113. The relevant portion of head note of the same reads as under:

"Reiterated, equation of pay scales must be left to Government and decision of experts – Courts must refrain from interfering therewith.

Grant of parity in pay scale depends upon comparative evaluation of job and equation of posts – Person claiming parity must produce evidence to prove similarity in nature of duties and functions – In absence of any pleadings or material produced by respondents to prove similarity in educational qualifications requisite for post, mode of recruitment, nature of work, duties, responsibilities, promotional channels, etc. respondents cannot claim as a matter of right parity in pay scale merely on ground that they were categorized in same Group XII – Duties and nature of work of Head Clerk and Internal Auditors are entirely different from Sub Fire Officers – Further, if such contention is accepted it would mean extending benefit of parity in pay scale to other posts in Group XII involving huge financial repercussions – Impugned judgment granting parity in pay scale set aside."

9. Issue for consideration:

(i) Whether the prayer made by Association falls within the jurisdiction of the Tribunal to decide?

- (ii) Whether directions can be issued to remove the pay anomaly and categorize particular group as technical for the purpose of pay scale?

Discussion and findings:

10. The facts submitted by the applicants make it clear that this is grievance of a category of persons who desire to be declared as technical category. The association which is agitating the cause on behalf of these employees has not provided details of registration with the GAD and as per the judgment and order dated 4.3.2009 passed by the Aurangabad Bench of this Tribunal in OA No.55 of 2009, registration of association is necessary otherwise they cannot file the OA.

11. As clarified by the respondents all Field Assistants do not possess the ITI certificates and therefore it will not be proper to presume that all of them possess technical background. The demand made by the applicants to be promoted as Inspectors is already provided in the case of those who fulfill the necessary eligibility criteria. Comparing the job in other departments and therefore demanding parity with them depends upon the proof to be produced regarding nature of duties and functions. It also needs to be taken into account the educational qualification requisite for post, mode of recruitment, nature of work, duties, responsibilities, promotional channels etc. Accepting any such contention would mean extending benefit of parity in pay scale to other posts involving huge financial repercussions. In view of the foregoing the Hon'ble Supreme Court has reiterated that equation of pay scale must be left to Government and decision of experts. The Hon'ble Supreme Court is forthright in observing that Courts/Tribunals must refrain from interfering therewith. [(Punjab State Electricity Board & Anr. Vs. Thana Singh & Ors., (supra)].

12. The directions given by the Hon'ble Supreme Court are final and have to be abided in toto. This Tribunal cannot consider any matter beyond directions as mentioned above by the Hon'ble Supreme Court.

13. It would be therefore appropriate that the applicants agitate their cause before appropriate forum for appropriate remedies.

14. The Original Application is therefore dismissed for the above reasons. No order as to costs.

(A.P. Kurhekar)
Member (J)
4.9.2019

(P.N. Dixit)
Vice-Chairman (A)
4.9.2019

Dictation taken by: S.G. Jawalkar.