

APANGSHU MOHAN LODH AND ORS.

v.

STATE OF TRIPURA AND ORS.

OCTOBER 30, 2003

[V.N. KHARE, C.J. AND S.B. SINHA, J.]

*Service Law:*

*Equal pay for equal work—Practising advocates—Engaged as part-time lecturers—Claim for proportionate equal pay for equal work—Held, the question of determining the pay scale of a person serving an institute arises only in the event he is appointed in terms of the statute operating in the field and not by reason of the terms and conditions of a contract entered into by and between him and the State—Advocate—Lecturers were engaged on purely contractual basis—They could not be granted the minimum scale of pay of Assistant Professors as they were not full time employees—The post of part-time lecturer is not contemplated as a cadre post under the Rules—The claimants being not in the regular employment, principles of service jurisprudence cannot be extended to an advocate who is acting as a part-time lecturer—Contract employment.*

*Vijay Kumar and Ors. v. State of Punjab and Ors., AIR (1994) SC 265, held in applicable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4086-4087 of 1998.

From the Judgment and Order dated 16.9.97 of the Gauhati High Court at Agartala Bench in W.A. No. 31 and C.M. (W.A.) No. 272 of 1997.

Sanjay Parikh and A.N. Singh for the Appellants.

Rajiv Mehta, Ms. Mona and B. Aggarwalla for the Respondents.

The following Order of the Court was delivered :

The appellants herein belong to legal profession and are practising advocates. They were appointed as Part-Time Lecturers in M.B.B. College,

- A Agartala on a fixed pay. The appellants filed a petition under Article 226 of the Constitution before the Gauhati High Court, Agartala Bench, for issuance of a writ or in the nature of *mandamus* to the respondents to accord unto them proportionate equal pay for equal work, for working as Part-Time Lecturers. A learned Single Judge of the High Court accepted the plea of the appellants herein and allowed the petition. Aggrieved, the respondent-State
- B of Tripura preferred a Letters Patent Appeals before a Division Bench of the High Court. There was a delay of 460 days in filing the appeal and, therefore, the State of Tripura filed an application for condonation of delay. The Division Bench of the Gauhati High Court condoned the delay in filing the appeal and upon hearing the parties allowed the same. Consequently the judgment and
- C order of the learned Single Judge was set aside. Aggrieved, the appellants are in appeal before us.

Learned counsel appearing for the appellants urged that since filing of Letters Patent Appeal was grossly delayed and there being no explanation for condonation of delay, the High Court ought not to have condoned the same.

- D We do not find any merit in this submission. The division Bench found that the State had made out sufficient cause for condonation of delay. This power of condonation is discretionary and has to be liberally construed.

- E Learned counsel then urged that the appellants being Part-Time Lecturers were entitled to proportionate increase in the remuneration on the principle of parity in pay. Before the High Court, no such plea was taken. The learned Single judge of the High Court had applied the principle of equal pay for equal work as contra distinguished from the principle of parity in pay and in giving the directions strongly relied upon the decision of this Court in *Vijay Kumar and Ors. v. State of Punjab and Ors.* reported in AIR (1994) SC 265.

- F Mr. Sanjay Parikh, learned counsel appearing on behalf of the appellants categorically stated that the appellants being Part-Time Lecturers, the principle of equal pay for equal work would not apply to the instant case. The learned counsel fairly and candidly stated that the appellants had not and could not have prayed for regularization of job not could invoke the provisions of the
- G *Minimum Wages Act.*

- H The Division Bench in its impugned judgment distinguished the decision of this Court rendered in *Vijay Kumar* (supra) holding, *inter alia*, that the principle of equal pay for equal work would not be applicable in the present case as the appellants did not pray for their absorptions as a regular teacher.

It is true that the respondents did not file any counter affidavit before the High Court but a counter affidavit has been filed in this Court. It has categorically been stated in the said counter affidavit that even on the earlier occasion, although the remuneration of the appellants was raised from Rs. 250 to Rs. 700, but the same was not done in terms of any policy decision of allowing the appellants the minimum basic pay of the regular Assistant Professor but it was done with a view that the practising lawyers may not refuse the post of Part-Time Lecturers. It is the categorical stand of the respondents that the revision of the pay scale of the regular Assistant Professors has nothing to do with the payment of remuneration to the Part-Time Lecturers.

The appellants herein have been engaged on purely contractual basis. It is not the case of the appellants that they were appointed in terms of the extant rules for appointment of regular teacher. The question of determining the pay scale of a person serving the institute arises only in the event he is appointed in terms of the statute operating in the field and not by reason of the terms and conditions of a contract entered into by and between the State and the appellants. The appellants, therefore, in our opinion, had no legal right to obtain a writ of or in the nature of *mandamus* directing the respondents herein to grant the minimum scale of pay of the Assistant Professors. A direction to pay salary at the minimum of the pay scale of the post of Assistant Professor could not be given in favour of the appellants as they were not full time employees. Mr. Parikh has drawn our attention to the fact that apart from working as Part-Time Lecturers, the appellants were also bound to check the answer books of the examination and also set question papers in university examinations. The respondents in their counter affidavit have also explained the said situation stating that for such work they are entitled to get extra remuneration from the university.

The post of Part-Time Lecturer is not contemplated as a cadre post under the Rules. The appellants being not in the regular employment, the principles of service jurisprudence cannot be extended to an advocate who is acting as a Part-Time Lecturer.

For the above reasons, we do not find any merit in these appeals. The appeals fail and are, accordingly dismissed.

There shall be no order as to costs.

R.P.

Appeals dismissed.