U.P. STATE ELECTRICITY BOARD & ANR. A

v.

AZIZ AHMAD

(Civil Appeal No. 318 of 2009)

JANUARY 20, 2009 B

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Labour Law – Equal pay for equal work – Respondent, a Boiler Overhauling Mechanic, claimed higher pay scale on the ground that post of Boiler Overhauling Mechanic was equivalent to the post of Boiler Mistry or Fitter – Burden of proof – Held: Was on the respondent-workman – He was required to prove that the three posts were identical and similar – Tribunal erred in placing the burden on the employer to prove the job requirements of the three posts, and in coming to the conclusion that the posts were identical on basis of pleadings alone – Pleadings were required to be proved – In absence of evidence, Tribunal was not justified in coming to a conclusion that the nature, duties and responsibilities of the three posts were identical and similar – Matter remanded to Industrial Tribunal for fresh adjudication. C D E

Respondent, a Boiler Overhauling Mechanic in Appellant-Board, claimed higher pay scale on the ground that the post of Boiler Overhauling Mechanic was equivalent to that of the post of Boiler Mistry or Fitter. Respondent claimed that the persons holding the post of Boiler Overhauling Mechanic, Boiler Mistry or Fitter were doing identical or similar nature of work and discharged the same functions and responsibilities. F G

The Industrial Tribunal held in favour of Respondent holding that he was entitled to the pay scale of `Skilled-A' category as admissible to the Fitter. The order was

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A upheld by the High Court. Hence the present appeal.

Disposing of the appeal, the court

HELD: 1.1. The Tribunal went on to record a finding that none of the parties had filed an objective data with B regard to the work assessment of the aforesaid posts and thereafter erroneously put the burden on the employer to record the job requirements of the three posts in question and to prove and establish that they are not identical. [Paras 12 and 13] [380-B-D]

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1.2. The burden to prove a particular fact is always on the person who alleges the same. In the present case it was the contention of the respondent-workman, who claimed that the job requirements, nature and D responsibilities of the post of Boiler Mistry/Fitter are identical and similar with that of the Boiler Overhauling Mechanic. The burden, therefore, was on the workman to prove and establish the aforesaid facts by leading cogent and reliable evidence. He was required to place E documentary evidence in support of the same. The Tribunal as also the High Court while affirming the award changed the rule of the game by placing the entire burden of proof on the management that the posts are not identical. [Paras 13 and 15] [380-D-E; 381-G]

F 1.3. The Industrial Tribunal committed a manifest error of law and of fact initially by placing the burden on the employer to prove and establish the job requirements of the said three posts, and thereafter, again committed an error in coming to the conclusion that the posts are G identical on the basis of the pleadings of the parties alone. Pleadings are required to be proved and so long evidence is not led in support of the pleadings no reliance can be placed only on the pleadings without there being any cogent evidence in support of the

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pleadings. The Tribunal expressly stated in its findings that none of the parties have filed any objective data in regard to the work assessment of the posts of Boiler Overhauling Mechanic, Boiler Mistry or Fitter. In absence of such evidence the Tribunal was not justified in coming to a conclusion that the nature, duties and responsibilities of the three posts are identical and similar. [Para 17] [384-D-G]

1.4. The matter is remanded to the Industrial Tribunal for fresh adjudication in accordance with law. The parties are however allowed an opportunity to lead further evidence in support of their claims and counter claims regarding the status and position of the aforesaid three posts. The Tribunal should see to it that the claims and the rebuttal of the said claim should be supported by cogent and reliable evidence. For that matter the Tribunal shall render an opportunity to the parties to lead their evidence in support of their case and on the basis of the records, as available, the Tribunal would decide afresh the issue whether the nature, duties and responsibilities of the said three posts are identical, and thereafter, the Tribunal should answer the reference. Consequently, both the award passed by the Tribunal as also the judgment passed by the High Court are set aside and the matter is remitted back to the Industrial Tribunal for decision in terms of the aforesaid observations. [Paras 18 and 19] [384-G-H; 385-A-D]

State of M. P. v. Pramod Bhartiya, **[(1993) 1 SCC 539];** *Union of India v. Tarit Ranjan Da* **[(2003) 11 SCC 658];** *State of Haryana v. Charanjit Singh,* **(2006) 9 SCC 321;** *Secy.,Finance Deptt. v. W. B. Registration Service Assn.,* **1993 [Supp (1) SCC 153] and** *Gyan Prakash v. Union of India* **[(1997) 11 SCC 670], relied on.**

A **Case Law Reference:**

[(1993) 1 SCC 539]	**relied on**	**Para 14**
[(2003) 11 SCC 658]	**relied on**	**Para 14**
(2006) 9 SCC 321	**relied on**	**Para 14**
1993 [Supp (1) SCC 153]	**relied on**	**Para 15**
[(1997) 11 SCC 670]	**relied on**	**Para 16**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 318 of 2009.

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From the Judgment and Order dated 27.10.2005 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 336 (S/S) of 2000.

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Pradeep Misra, T. Mahipal and Manoj Kr. Sharma for the Appellants.

A.P. Mohanty for the Respondent.

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The Judgment the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. The issue which arises for consideration in this appeal is whether the post of Boiler Overhauling Mechanic is equivalent to that of the post of Boiler Mistry or Fitter so as to enable the workman, respondent herein to draw higher pay scale than what is being given to him. There is no dispute with regard to the fact that the post of Boiler Overhauling Mechanic is a different post than that of the post of Boiler Mistry which is equivalent to that of Fitter in 'Skilled – A' Category.

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3. The workman, respondent herein was appointed as coolie in the service of the appellant Board with effect from 1.4.1969 in the pay scale of Rs. 55-90. He was thereafter designated as Helper in the same pay scale of coolie and

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worked in the said post till 13.9.1977. Thereafter he appeared before the Selection Committee No. 2 for being promoted to the post of Boiler Overhauling Mechanic. In the said selection, by order dated 13.9.1977 the respondent was declared successful consequent upon which he was offered the post of Boiler Overhauling Mechanic in the then pay scale of Rs. 80-145. The aforesaid pay scale, however, has been revised with the passage of time. He joined the duties of Boiler Overhauling Mechanic on 14.9.1977 and since then he performed his duties accordingly. It is stated that he was also looking after the work of Fitter in addition to the work of Boiler Overhauling Mechanic. In terms of the policy his employment in the Board was confirmed as against the post of coolie with effect from 1.4.1976 under order issued by the competent authority on 14.9.1978.

4. The allegation was that one Shri Jogeshwar Prasad, who was working at Sohawal Power House, Faizabad as Boiler Mistry was given the status of 'Skilled-A' worker and was given the pay scale of Rs. 150-285 with effect from 1.4.1969. The respondent-workman claimed that the same pay scale which has been given to Jogeshwar Prasad should also be given to him. In terms thereof he raised an industrial dispute contending *inter alia* that since the work of Boiler Overhauling Mechanic and Boiler Mistry are identical and the nature and responsibilities are also similar, he is entitled to get the same pay scale on the principle of equal pay for equal work. He claimed that his pay should be fixed in the pay scale of Rs. 150-285 with effect from 1.4.1977, as revised from time to time.

5. The aforesaid industrial dispute raised by the Union on behalf of the respondent-workman was referred to the Tribunal for adjudication under the following terms:

> "Whether the employers should give pay scale of Skilled Category -A to Shri Aziz Ahmad, son of Shri Rashid Mohammad, Boiler Overhauling Mechanic? If yes, then from which date and with what other details?"

A 6. The Tribunal, on receipt of the aforesaid reference, issued notices to the parties upon which the parties appeared and filed their respective pleadings. The evidence was also led by the parties by producing witnesses in support of their case. The Tribunal, after hearing the parties, passed an award on B 17.2.1999 holding that the work being done by the workman Aziz Ahmad as Boiler Overhauling Mechanic is the same as the work of Fitter and that the pay scale of the posts of Boiler Mistry and the fitter was Rs. 150-285 and that on the settled principle of equal pay for equal work, workman Aziz Ahmad is C entitled to the same pay scale as that of the Fitter. The Tribunal held that the said workman Aziz Ahmad would be entitled to the pay scale of 'Skilled-A' category as admissible to Fitter with effect from 14.9.1977, but however, as he appeared before the Conciliation Board in 1989, it was held that he would be entitled to the benefit of the aforesaid pay scale only with effect from D 1.1.1989.

7. Being aggrieved by the aforesaid award passed by the Industrial Tribunal, the appellant Board preferred a writ petition in the High Court of Allahabad which was entertained and was E heard on merit. The learned Single Judge by his judgment and order dated 27.10.2005 dismissed the writ petition holding that no interference was called for. It was held by the learned Single Judge that the Tribunal rightly came to the conclusion that the workman had actually worked as Boiler Mistry and had F discharged superior functions of the post which was equal to that of Fitter.

8. The appellant being aggrieved by the order passed by the learned Single Judge and award passed by the Tribunal filed the present appeal on which notice and stay order were issued. G Consequent thereupon this appeal was listed for hearing.

9. Mr. Pradeep Misra, learned counsel appearing for the appellant Board submitted before us that the respondent-workman was made aware of his status and position through H the appointment letter issued to him making it clear that he had

been appointed to the post of Boiler Overhauling Mechanic in the pay scale of Rs. 80-145 which he accepted and had also received all the benefits on the basis of the said pay scale. It was submitted that having accepted the aforesaid position the respondent cannot turn back and claim for change in his pay scale on the ground of equal pay for equal work. It was also submitted by him that the duties and responsibilities attached to the post of Fitter or Boiler Mistry are much more higher than that of the duties and responsibilities attached to the post of Boiler Overhauling Mechanic, and therefore, the Tribunal as also the learned Single Judge were not justified in holding that the duties and responsibilities of the aforesaid posts are similar.

It was further submitted that there is no evidence or material placed on record to substantiate that duties and responsibilities attached with the post of Fitter or Boiler Mistry are similar and identical in all respects to that of the duties and responsibilities attached to the post of Boiler Overhauling Mechanic and in absence of clear evidence in that regard it was inappropriate on the part of both the learned Single Judge of the High Court as also of the learned Industrial Tribunal to pass an award in favour of the workman.

10. Mr. A.P. Mohanty, learned counsel appearing for the respondent-workman, however, sought to justify both the award as also the judgment and order of the learned Single Judge upholding the award contending *inter alia* that from the pleadings of the parties and depositions recorded by the Labour Court, if it is possible to come to the conclusion that both the posts carry the same duties and responsibilities or identical responsibilities and status, then the Tribunal could have and accordingly has rightly passed the award in favour of the workman.

11. In order to appreciate the aforesaid contentions we have carefully scrutinised the records including the documents and the depositions. We have carefully analysed the findings recorded by the Tribunal in paragraph 12 of the award. In the

A said paragraph the Tribunal recorded that the issue to be determined is whether the workman Aziz Ahmad is doing similar work as that of the work of Fitter or Boiler Mistry.

12. Having framed the aforesaid issue for consideration, B the Tribunal immediately went on to record a finding that it was unfortunate that none of the parties had filed an objective data with regard to the work assessment of the aforesaid posts. The learned Tribunal put the burden on the employer to record the job requirements of the aforesaid posts and to prove and establish that they are not identical. The aforesaid findings of C the learned Tribunal were also upheld by the learned Single Judge.

13. In our considered opinion the aforesaid findings are incorrect and cannot be upheld. The burden to prove a particular D fact is always on the person who alleges the same. In the present case it was the contention of the respondent-workman, who claimed that the job requirements, nature and responsibilities of the post of Boiler Mistry/Fitter are identical and similar with that of the Boiler Overhauling Mechanic. The E burden, therefore, was on the workman to prove and establish the aforesaid facts by leading cogent and reliable evidence. He was required to place documentary evidence in support of the same.

14. The principle that the burden of proof is on a person F who alleges it has been reiterated by this Court innumerable times. For reference we may extract the following passages from the judgment of this Court in *State of M.P. v. Pramod Bhartiya,* [(1993) 1 SCC 539]:

G **"13**.....It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the original petitioners H (respondents herein) have failed to discharge."

Further in *Union of India v. Tarit Ranjan Da* [(2003) 11 SCC 658] wherein one of us (Dr. Arijit Pasayat) was a member this Court held:

> "**9**..... Further, the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work. On the contrary, the person who asserts that there is equality has to prove it. The equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equally relevant."

The said principle was retreated subsequently in *State of Haryana v. Charanjit Singh,* (2006) 9 SCC 321 wherein it was held:

> "**19**.....In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof....."
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> **20**.....In each case the court must satisfy itself that the burden of proving that the work and conditions are equal is discharged by the aggrieved employee"

15. The Tribunal as also the High Court while affirming the award changed the rule of the game by placing the entire burden of proof on the management that the posts are not identical. Whether the aforesaid posts are identical and whether the persons holding the post of Boiler Overhauling Mechanic, Boiler Mistry or Fitter are doing identical or similar nature of work and discharge the same functions and responsibilities are required to be adjudicated upon and decided by making an analysis of their nature of duties,

A responsibilities, pay scales and other factors which are required to be considered for deciding such an issue. This Court in a number of decisions has laid down the guiding factors and principles as to how the issue with regard to equation of posts is to be considered and analyzed. In *Secy., Finance Deptt. v.* B *W.B. Registration Service Assn.*, 1993 [Supp (1) SCC 153] this Court enumerated the factors to be taken into consideration for job evaluation:

> "**12.** We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the C appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay D Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which E even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the F external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his G responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the H exercise of his powers (vii) the need to co-ordinate with

other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/ technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm

A conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

16. Moreover in *Gyan Prakash v. Union of India* [(1997) 11 SCC 670] it was held that application of the principle of B equal pay for equal work cannot be claimed merely because there was delegation of certain powers. The ratio of the aforesaid decision is applicable to the facts of the present case as the claim of the Respondent for a higher pay scale is also on the ground that he was discharging the duties of a higher C post also, without however, giving any factual details in that regard.

17. Being conscious of the aforesaid legal position we are of the considered opinion that the learned Industrial Tribunal D committed a manifest error of law and of fact initially by placing the burden on the employer to prove and establish the job requirements of the said three posts, and thereafter, again committed an error in coming to the conclusion that the posts are identical on the basis of the pleadings of the parties alone. E Pleadings are required to be proved and so long evidence is not led in support of the pleadings no reliance can be placed only on the pleadings without there being any cogent evidence in support of the pleadings. Pleadings are required to be proved by leading evidence. The Tribunal expressly stated in F its findings that none of the parties have filed any objective data in regard to the work assessment of the posts of Boiler Overhauling Mechanic, Boiler Mistry or Fitter. In absence of such evidence the Tribunal was not justified in coming to a conclusion that the nature, duties and responsibilities of the G three posts are identical and similar.

18. Therefore, we have no other option but to remand this matter to the Industrial Tribunal for fresh adjudication in accordance with law. We, however, allow the parties an opportunity to lead further evidence in support of their claims H and counter claims regarding the status and position of the

aforesaid three posts. The Tribunal should see to it that the claims and the rebuttal of the said claim should be supported by cogent and reliable evidence. For that matter the Tribunal shall render an opportunity to the parties to lead their evidence in support of their case and on the basis of the records, as available, the Tribunal would decide afresh the issue whether the nature, duties and responsibilities of the said three posts are identical, and thereafter, the Tribunal should answer the reference.

19. Consequently, we set aside both the award passed by the Tribunal as also the judgment passed by the learned Single Judge and remit back the matter to the Industrial Tribunal for decision in terms of the aforesaid observations. It is needless to say that since it is an old matter, the Tribunal should render a priority in hearing of this matter and would make all endeavour to decide the matter, preferably within a period of six months.

20. The appeal is disposed of in terms of the aforesaid order.

B.B.B. Appeal disposed of.