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C.A.No. 5765 OF 1997

ITEM No.101 (PH)

Court No. 11

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.5765/1997

State of West Bengal & Anr. Appellant (s)

vs.

T.K. Ghosh & Ors. Respondent (s)  
(With office report)

Date:4/2/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) Mr. L. Nageshwar Rao,ASG  
Mr. J. Kar,Adv.  
Mr. Rana Mukherjee,Adv.  
Mr. Siddharth Gautam,Adv.  
Mr. Goodwill Indeevar,Adv.

For Respondent (s) Mr. Ranjan Mukherjee,Adv.  
Mr. Sanjoy Ghosh,Adv.  
Mr. Satish Vig,Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

(Sarojbala)(Promila Nagpal)

PA to Addl.Registrar

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5765 OF 1997

State of West Bengal & Anr. Appellant(s)

Vs.

T.K. Ghosh & Ors. Respondent(s)

O R D E R

This is an appeal preferred by the State of West Bengal impugning the judgment of the Calcutta High Court allowing the writ petition filed by the respondents claiming equal pay for equal work and special pay and allowances for certain kind of duties provided under the Rules. The learned Single Judge allowed the writ petition holding that the writ petitioners/respondents could not be denied same allowances for similar duties discharged by other employees and the special pay and other allowances as admissible under the Rules. The appeal preferred against the judgment of the learned Single Judge by the State of West Bengal was dismissed by the Division Bench.

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The brief facts necessary for dealing with the controversy involved in this appeal are that draftsmen consisting of different categories are members of West Bengal Subordinate Engineering services. There seems to be different categories of draftsmen right from the beginning. For the period between 1951-1963, there have been three categories of draftsmen;

- 1) Having Overseers qualification in the scale of Rs.150-250;
- 2) Having Sub Overseers qualification in the scale of Rs 100-225; and
- 3) Passed certificate of Government College of Arts, in the scale of Rs.80-180.

In the year 1961 the above scales were revised to Rs. 200-400, Rs.175-300, Rs.150-250 respectively. Thereafter, a Pay Committee seems to have been constituted and the draftsmen were placed in five categories adding two more to the existing categories, namely, School Final Certificate with experience alone in the scale of Rs. 125-200 and fifth category of those who have been appointed on the basis of experience alone in the scale of Rs.100-140. In 1997 Second Pay Commission again reduced five categories into three, they being (1) overseer and sub-Overseer in the pay scale of

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Rs.300-600, (ii) Government passed certificate and SF Certificate in the scale of Rs.230-425, (iii) those who had only experience in the pay scale of Rs.180-350. The above scales were revised again to Rs.380-910, Rs.340-750 and Rs.280-670 respectively.

So far as the two categories of the draftsmen as they used to be earlier, namely Overseer and sub-Overseer they have been placed in one scale of pay and there was no grievance about it. However, the draftsmen placed in category (ii) and (iii), namely, those who had Government School passed certificate or SF Certificate and those who have only experience to their credit, claimed to be placed in the category of Overseer and sub-Overseer in the scale of Rs.380-910. They filed a writ petition in the High Court. Besides the claim for the same emoluments for similar work, they also claimed other allowances, for example, special allowance, cycle allowance and arduous duty allowance etc. The claim was preferred mainly on three grounds. First, that draftsmen constitute one category and discharge similar work, therefore, there should not be any distinction in the matter of emoluments to be paid to them. The principle of equal pay for equal work would according to the petitioners/respondents, be applicable in their cases. The next contention seems to have been that in other departments

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such different categories have been merged into one category and one pay scale has been made admissible to them, therefore, the same should be done insofar as draftsmen in different departments are concerned. In support of their contentions they had referred to some decisions of this Court. The learned Single Judge held that the draftsmen have been discharging similar duties and that being the position they are entitled to the same emoluments. It is further held that the academic qualifications will have no bearing on the amount of the emoluments paid for the similar nature of work. In this connection, our attention has particularly been drawn to the observation made by the learned Single Judge to the effect 'in the instant case, draftsmen having different qualifications even though they are given different pay scales, do identical nature of work and that the work load does not depend on the qualification of the draftsmen concerned.'

The learned counsel for the Respondents has also drawn our attention to another observation made to the effect, "Accordingly, I hold on the basis of the materials placed before this Court that prescribing different pay scales for draftsmen having different educational qualification doing the same identical nature of work, cannot be done and

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accordingly such fixation of different pay scales on the basis of mere academic qualifications was prescribed by the pay rules concerned, is illegal, without jurisdiction and is liable to be set aside."

The learned Division Bench also referred to the findings of the learned Single Judge observing that it had considered the facts and the nature of duties performed by different categories of draftsmen threadbare while holding that draftsmen of different categories performed identical nature of work. We, however, find that in the order of the Single Judge, the nature of work and duties performed by different categories of draftsmen have not even been mentioned, much less discussed threadbare as observed by the Division Bench. On the other hand we find

d that there is an averment made in the writ petition itself, in paragraph 37, the relevant part of which is quoted below :-

" The drawing Branch is constituted of a Draftsman Grade II and one Draftsman Grade III. The work is allocated to them according to their status, capabilities and list of duties laid down for each grade of Draftsmen. The "strengthened" Division, the Draftsmen Grade-II is replaced by Draftsman Grade-I. This Branch deals with following subjects :-

- (a) Recording of plans and drawing and maintenance of register of buildings, roads and bridges.
- (b) Preparation and scrutiny of estimates, drawings and contract documents from technical point of view.
- (c) Maintenance of accounts of Survey and Drawing Instruments in the Division.

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That the Public works Department Code, Vol-I 1970 (Edn. Published by the Government of West Bengal Public Works Department has specified, inter alia, the functions of Draftsmen in Rule No. 299, Chapter-III- "Record, Drawings and completion Plans."

The above averment made in the writ petition itself indicates that the duties and responsibilities of the draftsmen differ from category to category. The work is also allocated according to their status and capabilities. We find that other further details have not been indicated in the petition but the fact remains that it cannot be said that all the draftsmen despite difference in their capabilities discharge identical nature of work and duties as has been found by the High Court though without discussing or indicating the nature of duty being discharged by them. So far as the same nature of duties is concerned, it will be relevant to refer to Prayer (a) made in the writ petition which we quote below :-

" for a Writ of and/or in the nature of Mandamus directing the respondents to rationalise the scale of pay of the petitioners by removing the anomalies and to give effect to the Codes and Rules by allotment of full work, responsibility and duty to the petitioners."

The learned counsel for the Respondents has submitted that this prayer has been made for the duties in addition to

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normal work so as to make the Respondents entitled for special pay and other allowances including cycle allowance and allowance for arduous work. The prayer quoted above itself indicates that the Respondents were not being assigned the same work or the work of the same nature and responsibility.

So far as proposition of law is concerned, there cannot be nor there is any dispute that one would be entitled for equal pay for the equal work but that alone is not and cannot be the sole criteria much less where it has also not been established that all the persons of the Subordinate Engineering services constitute one class of draftsmen performing the identical nature of duties. Even though, there may be similar nature of work yet distinction is permissible based upon their educational qualifications. In support of this proposition the learned counsel for the appellants has placed reliance upon a decision of this Court reported in 2004 (1) SCC 347 Government of W.B. vs. Tarun K. Roy and Others more particularly the observations made in paragraph 14 which are as follows -

" 14 - Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source or recruitment or other relevant considerations the said doctrine would be

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automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently." The observation of the proposition in law in the above case is clear that persons having different qualifications though performing similar job can be treated differently.

The other case which has been relied upon is reported in 1994(2) SCC 521 Shyam Babu Verma and Others vs. Union of India and Others, a reference is more particularly made to the observations of the Court in Paragraphs 8 and 9 of the judgment as follows -

"It has been clearly held that it is always open to the State Government to put its employees in the same service in different categories for the purpose of the scale of pay according to the qualifications possessed by them."

The learned counsel for the Respondents tried to distinguish the case on facts but so far as the principle enunciated is concerned, it is quite clear. Yet another decision reported in 1993 (1) SCC 539 State of Madhya Pradesh and Another vs. Pramod Bhartiya and Others referred to by the learned counsel for the Respondents, also holds that such a distinction is permissible depending upon the qualitative difference of the work/duty which are performed by the employees. There is, therefore, no manner of doubt

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that the educational qualifications may be considered as a valid basis for categorising the employees though discharging similar duties, but possessing different qualifications having bearing on quality of work discharged. As we have already observed, in the case in hand it could not be established, though so observed by the High Court, that different categories of draftsmen performed the identical nature of duties much less of same quality. The fact that there are different nature of duties, is also established by the averments made in the writ petition itself as referred to in the earlier part of this judgment. Otherwise also it appears to reason that where more than one class of employees are designated as draftsmen, having qualifications ranging from Overseers to nil technical qualification or only experience, the duties of higher responsibilities requiring more efficient handling would obviously be assigned to the persons having better and higher technical qualifications rather than to those who have no qualification or have mere experience or some other certificate plus experience. The purpose seemed to be to provide and assign different kinds of duties to different category of officials in the same class based on their qualification.

The learned counsel for the appellants has also submitted that in 1994 new Rules have been framed and qualifications have

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been prescribed for recruitment for the post of draftsmen, constituting one category of draftsmen having the same qualifications.

In so far as it relates to the claim made for the special allowance and any other allowance namely cycle allowance and any allowance for arduous duties or work places which are not hygienic, suffice it to say that it appears that such duties were not being assigned to the petitioners/respondents which is evident from prayer contained in clause (b) of the prayers made in the writ petition. The factual position is also reflected to the same effect in the averments made in the other parts of the writ petition as well. The kind of observation made by the High Court that the petitioner had been going to such places along with other draftsmen may not be of much help to them. Again we find it difficult to issue any such direction to authorities to take or assign any particular kind of work to the petitioners so as to make them entitled for such allowances.

The learned counsel for the respondents then submits that the method of recruitment for all the categories of draftsmen is the same as at the stage of initial entry into the service they all have to pass through the prescribed written test. We are afraid, it may not be possible to accept the said contention in absence of any such material placed on the

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record, at least none has been pointed out to us to hold that some common written test was required to be passed by all those who have been working as draftsmen, belonging to different categories including those who were required to hold no educational/technical qualifications but only experience. We, therefore, find no force in this submission too advanced before us.

In view of the discussion held above the judgments and orders passed by the High Court are not sustainable. The appeal is, therefore, allowed. The orders passed by the High Court are set aside.

It is informed that most of the respondents have already retired and some of them are no more, their legal heirs have not been brought on record. In the above circumstances it is provided that if any amount has been paid to the respondents on account of special pay or any other allowance there would be no recovery of the same.

Parties to bear their own costs.

.....J.  
(BRIJESH KUMAR)

.....J.  
(ARUN KUMAR)

NEW DELHI  
FEBRUARY 4, 2004