



2. The case set up by the petitioners in the memorandum of writ petition is that the First Meghalaya Pay Commission prescribed different pay structure and scale for the Subject Post and the Reference Posts. Reference is made to the recommendation of 3rd Meghalaya Pay Commission to contend that pay scale of Rs.5300-140-5940-EB-150-8740/- was recommended for Reference Posts but pay scale of Rs.4500-120-5220-EB-130-6260-140-7660/- was recommended for the Subject Post. The 4th Meghalaya Pay Commission, however, recommended the pay scale of Rs.14100-410-16560-EB-440-20080-500-25080/- for the Reference Posts and that of Rs.12000-340-14040-EB-370-17000-420-21200/- for the Subject Post. Rule 4 of the Rules of 2018 provides that pay scale of post shall be determined in accordance with various level assigned to the corresponding existing scale(s) of pay as specified in the pay matrix in the First Schedule.

3. Mr. HL Shangreiso, learned counsel for the petitioners submitted that for the Reference Posts the pay scale of Rs.14100-410-16560-EB-440-20080-500-25080/-, corresponding pay scale on the basis of pay matrix in the First Schedule is worked out to be Rs.37,788/-, whereas, for the Subject Posts [Enforcement Inspector (Transport)], the corresponding pay scale would be Rs.32,160/-. It is contended that the petitioners submitted a memorandum dated 15.02.2008 to the Chairman of 4th Meghalaya Pay Commission demanding that they be given the same higher scale as was granted to the Inspector of other departments. After the recommendation made by 4th Meghalaya Pay Commission, the Government in Finance (Pay Revision) Department realizing that there were anomalies in prescribing



different pay structure for the Subject Post and the Reference Posts, vide order dated 21.10.2009, constituted an Anomaly Committee to examine the proposals or representation from departments/service association and individual Government employee seeking modification of the departmental recommendation as accepted by the Government. It is submitted that the petitioners submitted their detailed representation dated 10.11.2009 before the Anomaly Committee citing reasons for granting them higher pay scale as was given to the Reference Posts of other departments.

4. Learned counsel for the petitioners submitted that on examination of the memorandum submitted by the petitioners, the Commissioner of Transport Department submitted his comment before the 4th Meghalaya Pay Commission categorically stating that the incumbent on the Subject Posts are discharging similar functions as are being carried out by those of the Reference Posts in different departments, namely, Taxation, Housing, Supply, Excise etc. Therefore, he suggested that the Subject Post may be given the higher pay scale as was granted to those who were working on the Reference Posts. It is submitted that the petitioners had submitted their representation not only to the 4th Meghalaya Pay Commission and Anomaly Committee constituted thereafter but also to the 5th Meghalaya Pay Commission pointing out that the incumbent working on the Subject Post are discharging similar functions and duties, as are being done by those on the Reference Posts. Besides, their qualification and recruitment mode in service are also identical. The incumbents on the Subject Post are appointed directly through the Meghalaya Public Service Commission [MPSC]. The required minimum qualification eligibility for appointment on the Subject



Post for a candidate is that he should be a graduate in Arts, Commerce or Science and should pass the written examination as well as viva voce/interview conducted by MPSC. Similar qualification, eligibility and mode of recruitment have been prescribed for the Reference Post also.

5. Learned counsel for the petitioners has invited attention of this Court to Section 213 of the Motor Vehicle Act, 1988 [for short “MV Act”) and emphasized that the duty of the petitioners is to enforce the provisions of the MV Act and Rules thereunder and their main duties are always in the field. The nature of their works involved travelling to distant places and collection of revenue by way of fine from defaulting motor vehicle. The collection of revenue like road taxes, fees and taxes under the Meghalaya Passenger and Good Tax by the Taxation Department depends strictly on regular performance of incumbents on the Subject Post. If the enforcement wing of Transport Department is weak, the collection of revenue would fall short of the target as many motor vehicles would tend to evade payment of taxes. It is argued that the very nature of job of the petitioners is strenuous because the Transport Department has maximum number of check-gates as compared to other departments like Taxation, Directorate of Mineral Resources and Autonomous District Council. Besides, the incumbents working on the Subject Post have to coordinate with other departments and district administration from time to time for requisitioning vehicles for public and administrative purposes. The services of those working on the Subject Post are required by district administration for mobile court duties as and when necessary and they are also entrusted the duties during general



elections of Parliament, Legislative Assembly and Autonomous District Councils.

6. Learned counsel for the petitioners further argued that the unequal scale of pay on the posts, which are otherwise equal, in the instant case, has no reasonable classification. It has no rational relationship with the object ought to be achieved because functions and responsibilities required to be discharged by those who are working on the Subject Post and Reference Posts are identical. Providing two different pay scales for them amounts to meeting out unequal treatment to equally situated person which is violative of Articles 14 and 16 of the Constitution of India. It is also argued that the Subject Post and the Reference Posts are having similar hierarchy and similar rules. Learned counsel submitted that the petitioners had submitted the memorandum dated 06.02.2017 before the 5th Meghalaya Pay Commission highlighting their grievances and seeking parity of pay scale. The Commission, however, without considering any such aspect highlighted by the petitioners, mechanically recommended two different pay scales for the Reference Posts and the Subject Post. It is on that basis that the Government accepted the aforesaid recommendation and framed the Rules of 2018. Rule 4 of the Rules of 2018 provides for two different pay scales for Reference Posts and Subject Post inspite of the fact that they are discharging similar function.

7. Learned counsel in support of his arguments has relied upon the following judgments:-



- (i) ***Randhir Singh v. Union of India & ors: (1982) 1 SCC 618;***
- (ii) ***State of U.P. & ors v. J.P. Chaurasia & ors: (1989) 1 SCC 121;***
- (iii) ***State Bank of India & anr v. M.R. Ganesh Babu & ors: (2002) 4 SCC 556;***
- (iv) ***Vasu Dev Singh & ors v. Union of India & ors: (2006) 12 SCC 753;***
- (v) ***Union of India & ors v. Rajesh Kumar Gond: (2014) 13 SCC 588 and;***
- (vi) ***State of Punjab & ors v. Jagjit Singh & ors: (2017) 1 SCC 148***

8. Relying on the judgment of the Apex Court in the case of ***Vasu Dev Singh & ors v. Union of India & ors: (2006) 12 SCC 753***, learned counsel for the petitioners argued that the Apex Court in that case held that interpretation of law is made by the superior court and, therefore, the opinion of expert is open to judicial review. The Apex Court also in the case of ***State of U.P. & ors v. J.P. Chaurasia & ors: (1989) 1 SCC 121*** held that whenever the expert bodies had not evaluated the duties and responsibilities as per law, the matter would be open to judicial review. Learned counsel in the alternative submits that the 2nd Meghalaya Pay Commission while acknowledging the fact that the petitioners are performing onerous duties than those working on the Reference Posts had required the respondents to review the cadre of the petitioners. It is, therefore, prayed that this writ petition may be allowed.

9. Mr. ND Chullai, learned Additional Advocate General appearing for the State respondents submits that the petitioners have no legal and fundamental rights to seek parity in pay scale by comparison between the



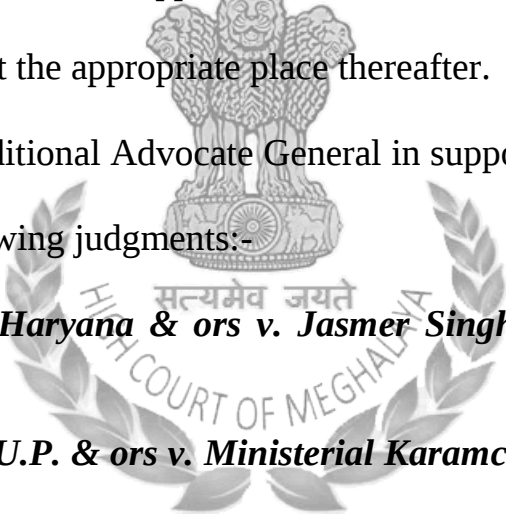
Subject post and the Reference Posts merely on the ground of similarity in the method of recruitment and minimum qualification. If it is accepted, the petitioners could even claim parity with Indian Administrative Service officers, who too are eligible for recruitment on the basis of qualification of mere graduation. Moreover, similarity of name in the nomenclature/designation of the Subject Post, namely, Enforcement Inspector (Transport) Department and the Reference Posts, namely, Inspectors of Taxation, Housing, Supply, Revenue and Excise Department, confer no vested right on the petitioners to claim identical pay scale with those of Reference Posts. It is argued that the Apex Court has repeatedly held that numbers of factors like nature of duties, promotional avenues, strength of the cadre etc. are to be seen and examined before a claim can be made for equal pay. Subsequent to the recommendation of 2nd Meghalaya Pay Commission, the issue of parity of pay scale had been examined by 3rd, 4th and 5th Pay Commissions and rejected each time.

10. Learned Additional Advocate General submitted that even the Anomaly Committee has gone into this aspect and did not agree with the contentions of the petitioners that they are entitled to parity with pay scale of Inspectors of the various other departments. In fact, the 3rd Meghalaya Pay Commission in para 10.42.4 of its report examined the prescribed scale of pay, status and responsibilities of Inspectors of various other departments and held that they are not identical and there is no case for consideration of parity in pay in all departments. The 4th Meghalaya Pay Commission also did not make any recommendation for giving parity of scale to Inspectors of all departments. Learned Additional Advocate General has invited attention



of this Court to Annexure-5 to the writ petition showing the functions and duties of the Subject Post and Reference Posts. It also contains the reasons assigned by the Commission for not agreeing the recommendation of pay parity to the Enforcement Inspector (Transport) *vis-à-vis* Inspectors of various other departments. Learned Additional Advocate General apart from referring to the Rules of 2018, also referred to the relevant provisions of the Meghalaya Transport Service Rules, 2017, the Meghalaya Labour Service Rules, 2000, the Draft Meghalaya Taxation Service Rules, 2011, the Meghalaya Excise (Subordinate) Service Rules, 2010 and the Meghalaya Food and Civil Supplies Service Rules, 2001, reference to which shall be made at the appropriate place thereafter.

11. Learned Additional Advocate General in support of his arguments has relied on the following judgments:-

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- (i) ***State of Haryana & ors v. Jasmer Singh & ors: (1996) 11 SCC 77;***
 - (ii) ***State of U.P. & ors v. Ministerial Karamchari Sangh: (1998) 1 SCC 422;***
 - (iii) ***S.C. Chandra & ors v. State of Jharkhand & ors: (2007) 8 SCC 279;***
 - (iv) ***Steel Authority of India Limited & ors v. Dibyendu Bhattacharya: (2011) 11 SCC 122 and;***
 - (v) ***Punjab State Electricity Board & anr v. Thana Singh & ors: (2019) 4 SCC 113.***

12. We have given our anxious consideration to the rival submission and the material placed on record. Before we proceed over to examine the matter on merits, we deem it appropriate to refer to some of the decided case law on the subject to find as to what parameters apply for directing



parity of pay scale on the principles of equal pay for equal work by the High Court in the scope of Article 226 of the Constitution of India.

13. The Supreme Court in the case of ***Kshetriya Kisan Gramin Bank***

v. D.B. Sharma & ors: (2001) 1 SCC 353 held as under:-

“7. The next question that arises for consideration is, as to what extent the High Court would be justified in exercise of its extraordinary jurisdiction under Article 226 to interfere with the findings of an Expert Body like the Equation Committee. In *State of U.P. and Ors. vs. J.P. Chaurasia and Ors: (1989) 1 SCC 121*, this Court unequivocally held that in the matter of equation of posts or equation of pay, the same should be left to the Executive Government, who can get it determined by expert bodies like Pay Commission, and such Expert body would be the best judge to evaluate the nature of duties and responsibilities of the posts and when such determination by a Commission or Committee is made, the Court should normally accept it and should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

14. The Supreme Court in the case of ***S.C. Chandra & ors v. State of***

Jharkhand & ors: (2007) 8 SCC 279 held as under:-

“33. It may be mentioned that granting of pay scale is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.: (2007) 1 SCC 408*.

35. In our opinion fixing pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State. Realizing this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).

36. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply



vide *Govt. of W.B. v. Tarun K. Roy and others* (2004) 1 SCC 347.”

15. The Supreme Court in the case of ***Steel Authority of India Ltd. & ors v. Dibyendu Bhattacharya: (2011) 11 SCC 122*** held as under:-

“26. In *Union of India & ors v. S.L. Dutta & anr: (1991) 1 SCC, 505*, *Union of India & ors v. N.Y. Apte & ors: (1998) 6 SCC 741*, *State of U.P. & ors v. J.P. Chaurasia & ors: (1989) 1 SCC 121* and *Kshetriya Kisan Gramin Bank v. D.B. Sharma & ors: (2001) 1 SCC 353*, this Court held that the determination that two posts are equal or not, is a job of the Expert Committee and the court should not interfere with it unless the decision of the Committee is found to be unreasonable or arbitrary or made on extraneous considerations. More so, it is an executive function to fix the service conditions, etc. and lies within the exclusive domain of the rule-making authority. (See also *T. Venkateswarulu v. Executive Officer, Tirumala Tirupathi Devasthanams & ors: (2009) 1 SCC 546*).”

16. The Supreme Court in the case of ***State of Haryana & ors v. Jasmer Singh & ors: (1996) 11 SCC 77*** while considering Articles 39(d), 14 and 16 of the Constitution held that it is not always easy to apply the principles of equal pay for equal work. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations or even in the same organization. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. It has been repeatedly observed by the Supreme Court



that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are mala fides, its evaluation should be accepted.

17. The Supreme Court in the case of ***Harbans Lal v. State of H.P.:(1989) 4 SCC 459*** while determining the issue of parity in pay, large number of considerations and various dimensions of the job are required to be taken up by the courts. The accuracy required by the job and the dexterity in entails may differ from job to job. It cannot be evaluated by the mere averments in the self-serving affidavits or counter affidavits of the parties. It must be left to be evaluated and determined by expert body. The Supreme Court in *Harbans Lal's* case (supra) held as under:-

“11. The discrimination complained of must be *within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical locations though owned by the same master.* Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principles of ‘equal pay for equal work’ cannot be enforced.” (emphasis added)

18. The Supreme Court in the case of ***Mewa Ram Kanojia v. AIIMS: (1989) 2 SCC 235*** while considering the issue with regard to pay parity between Speech Therapists and Audiologist and held that merely because Speech Therapists who performs similar duties and functions in other institutions, are paid higher pay scales is no good ground to accept the petitioner's claim for equal pay. There may be difference in educational qualifications, quality and volume of work required to be performed by the hearing therapists in other institutions. The person claiming parity must sufficiently produce material before the court to adjudicate upon such a



complicated issue of factual determination. More so, if the employer is not the same, the principle of equal pay for equal work would not be applicable.

19. The Supreme Court in the ***S.C. Chandra & ors v. State of Jharkhand & ors: (2007) 8 SCC 279*** in para 35 held as under:-

“35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realizing this, this Court has in recent years avoided applying the principle of equal pay for equal work, *unless there is complete and wholesale identity between the two groups* (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).”

20. The Supreme Court in the case of ***S.P. Shivprasad Pipal v. Union of India & ors: (1998) 4 SCC 598*** in para 5 held as under:-

“5. it is not open to the court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps the only question the court can enquire into is whether the four principles cited above had been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the court can operate.”

21. In ***State of U.P. & ors v. Ministerial Karamchari Sangh: (1998) 1 SCC 422***, the Apex Court in para 15 held as under:-

“15. It is also settled proposition that the evaluation of such jobs for the purpose of pay scales must be left to expert body and unless there are any mala fides, its evaluation should be accepted. In *Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India*¹: [(1988) 3 SCC 91; 1988 SCC (L&S) 673; (1988) 7 ATC 591] this court observed as follows: (SCC p.100, para 7)

“7. Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the 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 make 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. It is important to emphasize that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of right.”

22. The Supreme Court relying in the case of ***Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India*** reported in (1988) 3 SCC 91 in para 7 held as under:-

“7. Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the 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 make 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.* It is important to emphasize that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of right.”

23. The law that can culled out from the afore discussed judgments is that evaluation of the job for the purpose of deciding the pay scales is best left to the expert bodies like Pay Commission/Equivalence Committee/Anomaly Committee etc. It cannot be judged by mere volume of work. Although, functions of the two posts may be similar or same which may apparently look similar, but there may be difference in reliability and responsibility. The issue of fixation of pay scale falls exclusively in the domain of the executive which exercise it can undertake on the advice of the Experts. The Courts should not normally tinker with



the fixation of pay scale is based on various factors such as nature of duty, responsibility, reliability, quality of work and level of skill required for a particular kind of job of a post. Unless it is shown to have been made with some extraneous considerations, the Courts cannot substitute the pay scale fixed by the employer in the rules or otherwise, by another pay scale. So long as the decision of the executive is bonafide and reasonable and is based on an intelligible criterion, which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination and is not open to interfere. Application of the principles of equal pay for equal work in such matters should not be over simplified as it may have cascading effect giving rise to similar demand in different cadres thereby disturbing the equilibrium otherwise maintained under the relevant pay rules.

24. In the present case, three Pay Commissions in their reports, namely, 3rd, 4th and 5th Pay Commissions have consistently declined to equate the pay scale of the Subject Post with those of the Reference Posts. Even the Anomaly Committee having examined the issue declined to accept the arguments of the petitioners. Mere similarity of name in the nomenclature, namely, Inspectors of Taxation, Housing, Supply, Revenue and Excise Department with Enforcement Inspectors by itself cannot be the basis for granting same pay scale to the incumbent on such post in different departments regardless of the nature of duties, object and strength of the cadre etc. It may be true that the qualifications and mode of recruitment may, along with many other factors, can be consideration for equating the



pay scale of different posts of the same department but those two factors alone cannot form the basis for such a determination.

25. Even otherwise, there is lot of difference in the mode of recruitment on various posts under the different rules. The appointment to the post of Labour Inspector is made by direct recruitment. As per the details furnished, the said appointment is based on the result conducted by MPSC. For the recruitment of Inspector of Taxes is, however, to the extent of 90% by direct recruitment on the basis of competitive examination conducted by MPSC and 10% from amongst the ministerial staff. As far as the post of Inspector of Excise is concerned, 50% by promotion to those Inspectors of Excise who have rendered more than 5 years continuous service and 50% by direct recruitment on the basis of the examination conducted by MPSC. The post of Inspector of Food and Civil Supplies is filled up by promotion from amongst the Sub-Inspectors of Food and Civil Supplies, who have rendered more than 5 years continuous service. However, the post of Enforcement Inspectors, on which the petitioners are working, is filled up to the extent of 33% by promotion from amongst the Assistant Enforcement Inspectors, who possess Graduate degree and experience of not less than 5 years of continuous service but remaining 67% are filled up by direct recruitment on the basis of the competitive examination conducted by MPSC. Therefore, it cannot be said that there is absolute similarity of conditions of eligibility and mode of recruitment between the Subject Post and the Reference Posts.



26. Now coming to the judgments cited by the learned counsel for the petitioners, the Supreme Court in the case of ***Union of India & ors v. Rajesh Kumar Gond: (2014) 13 SCC 588*** was dealing with a case where the respondent, who was a Junior Hindi Translator, working in the office of the Director General of Commercial Intelligence and Statistics under the Commerce Industry, sought parity of pay with the Junior Translators who were working in the Central Secretariat Official Language Service. Both the posts required the work of translation to be done and, therefore, the Tribunal came to the conclusion that there was no reason to deny parity of pay. The Supreme Court in the case of *Rajesh Kumar Gond's* case (supra) held that in the light of the facts of the case that both the incumbents working on the Subject Post and Reference Post as Hindi Translators and as no material placed before the Tribunal about the functional distinction between them, the Supreme Court refused to interfere with the order of the Tribunal. Learned counsel for the petitioners relied upon the judgment of the Supreme Court in the case of ***State of Punjab & ors v. Jagjit Singh & ors: (2017) 1 SCC 148*** where the temporary employees working on the same post claimed parity of pay with regular employees as they were performing same duties as discharged by regular once. In the case of ***State Bank of India & anr v. M.R. Ganesh Babu & ors: (2002) 4 SCC 556*** the respondents claimed parity in salary fitment with Probationary Officers and Trainee Officers was held to be not discriminatory. The Supreme Court in the case of ***Randhir Singh v. Union of India & ors: (1982) 1 SCC 618*** granted parity of pay to the drivers working in Delhi Police Force with the drivers working in the Central Government and Delhi Administration. All



the cited judgments are thus distinguishable on facts, ratio whereof does not apply to the present case. The parity of differentiation defines various factors such as nature of duties, responsibilities, reliability and quality of work and the Court should left open to the Expert Body for that purpose.

27. In the light of the decision above, we do not find any merit in this writ petition, writ petition is accordingly dismissed, with no order as to costs.

(H.S. Thangkhiew)
Judge

(Mohammad Rafiq)
Chief Justice

Meghalaya
29.11.2019
"*Lam* AR-PS"

