

ITEM NO.301

COURT NO.4

SECTION XII

## S U P R E M E C O U R T O F I N D I A

## R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).33048/2011

(From the judgement and order dated 24/11/2010 in WPC No.27155/2009 of The HIGH COURT OF MADRAS)

UNION OF INDIA &amp; ORS.

VERSUS

AIR &amp; DD TECHNICAL EMPLOYEES ASN. &amp; ANR 22-01-83 Respondent (8)

(With appln(a) for directions and prayer for interim relief and office report)

Date: 10/01/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYAFor Petitioner(s) Mr. Rajeev Sharma, Adv.  
Mr. Uddyam Mukherjee, Adv.  
Mr. Sahil Bhalaik, Adv.For Respondent(s) Mr. Jayant Bhushan, Sr. Adv  
Mr. Manish K. Bishnoi, Adv.  
Mr. Pal lav Mongia, Adv.  
Ms. S. Raj Mohan, Adv.UPON hearing counsel the Court made the following  
O R D E R

The only question which arises for consideration in this petition is whether the High Court was justified in ordaining notional revision of pay scale of the members of respondent No.1 AIR and DD Technical Employees Association with effect from 1.7.1983.

On the recommendations of the Third Pay Commission, the technical staff viz. Technicians and Senior Technicians working in various cadres in All India Radio and Doordarshan were granted the pay scale of Rs.330-480 at par with Lighting Assistants Grade-II and Grade-I. Subsequently, the pay scale of these cadres was revised to Rs.1200-1800.

The Staff Artists of Doordarshan, namely, Cameraman Grade-II, Sound Recordists and Lighting Assistant/Lightman filed writ petitions under Article 32 of the Constitution and claimed parity in the matter of pay scale with their counter parts in the Films Division. This Court allowed the writ petitions vide judgment - Y.K.Mehta v. Union of India 1988 (Supp) SCC 750 and held:

"When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay. One of the Directive Principles of State Policy, as embodied in clause (d) of Article 39 of the Constitution, is equal pay for equal work for both men and women. The provision of Article 39(d) has been relied upon by the petitioners. The Directive Principles contained in Part IV of the Constitution, though not enforceable by any court, are intended to be implemented by the State of its own accord so as to promote the welfare of the people. Indeed, Article 37 provides, inter alia, that it shall be the duty of the State to apply these principles in making laws. Even leaving out of our consideration Article 39(d), the principle of "equal pay for equal work", if not given effect to in the case of one set of government servants holding same or similar posts, possessing

same qualifications and doing the same kind of work, as another set of government servants, it would be discriminatory and violative of Articles 14 and 16 of the Constitution. Such discrimination has been made in respect of the petitioners, who are the Staff Artistes of Doordarshan, by not giving them the same scales of pay as provided to their counterparts in the Films Division under the same Ministry of Information & Broadcasting. The petitioners are, therefore, entitled to the same scales of pay as their counterparts in the Films Division."

The Court directed that the Recordists/Sound Recordists in the Films Division shall be given revised pay-scale of Rs.550-900 with effect from 1.1.1978 and Cameramen Grade-II shall be given the pay scale of the Cameramen of the Films Division, i.e., Rs.650-960 with effect from 1.8.1979. The Court further directed that the Lighting Assistants/Lightmen shall be given the pay scale of Assistant Cameramen in the Films Division, i.e., Rs.425-700 with effect from 1.12.1983.

Later on, Senior Assistant Cameramen in the Films Division were placed in the pay scale of Rs.1400-2300 and the pay scale of Lighting Assistants was accordingly revised from Rs.1200-1800 to Rs.1400-2300. When the members of respondent No.1 demanded parity with the Lighting Assistants, their pay scale was revised to Rs.1320-2040 vide Office Memorandum dated 5.12.1997 with effect from 1.1.1996. By an order dated 25.2.1999, the Government upgraded the pay scales of Technicians and

Senior Technicians to Rs.4500-7000 and Rs.5000-8000 respectively. However, despite favourable recommendations made by Director General, All India Radio, they were not given the benefit of revision of pay scale with retrospective effect from 1.7.1983 so as to bring them at par with Lighting Assistants.

O.A. No.390 of 2006 filed by respondent No.1 was dismissed by Madras Bench of the Central Administrative Tribunal simply by relying upon the decision of the Principal Bench in O.A. No.164 of 1999 which had negated the claim for parity primarily on the ground of delay.

The Division Bench of the High Court allowed the writ petition filed by respondent No.1 by recording the following observations:

"On going through the materials, we are of the considered opinion that once the respondents have brought the pay scales of the petitioners on par with the Lighting Assistant Grade II and I respectively, extending the benefit of fixation of notional pay from 1983 to the Lighting Assistant Grade II and I and denying the same to the Technician and Senior Technician, without assigning any reasons, would amount to violation of principles of natural justice. Even in the order passed by the first respondent dated 03.09.2004, no reasons were given while rejecting the proposal. Further, as per the communication dated 11.06.2006, which is placed across the Bar by the learned counsel for the respondents during the course of the arguments, the post of Lighting Assistants had already become a dying cadre due to technological upgradation and it is not a valid ground to reject the claim made by the petitioners. Secondly, relying on the agreement entered into between the parties and using the terms and conditions of the

agreement against the benefit of the petitioners is also held to be arbitrary. When there is a correspondence with regard to making estimates about the financial implications and after making such financial estimates by the Association, it is not fair on the part of the first respondent to reject the same on flimsy grounds, which were not mentioned as on the date of rejection."

The Division Bench of the High Court then took cognizance of the statement made by the counsel for respondent No.1 that the concerned employees will not claim arrears and directed that their pay scales be revised notionally with effect from 1.7.1983.

Shri Rajiv Sharma, learned counsel for the petitioners argued that the High Court committed grave error by ordering notional revision of the pay scale of the Technicians at par with Lighting Assistants ignoring that the two cadres are distinct and separate and there is no similarity in the duties of the Technicians on the one hand and the Lighting Assistants on the other. However, he could not draw our attention to any tangible evidence to substantiate this statement. Learned counsel also failed to explain the rationale of denial of parity in the matter of pay scales to the Technicians working in All India Radio and Doordarshan vis-à-vis Lighting Assistants Grade-II and Grade-I despite the fact that they were paid salary in the identical pay scale till 1.7.1983 and that parity was restored after a gap of about 13 years with effect from 1.1.1996. In the absence of any cogent explanation for differentiating the two cadres in the matter of revision of

pay scales, it is not possible to find any fault with the direction given by the Division Bench of the High Court. Rather, it must be held that by ordering revision of pay scales of the Technicians at par with the Lighting Assistants, the High Court has acted in consonance with the spirit of Articles 14 and 16 of the Constitution.

With the above observations, the special leave petition is dismissed.

*JK*  
(Parveen Kr. Chawla)  
Court Master

*bdh*  
(Phoolan Wati Arora)  
Court Master



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