

PETITIONER:
STATE OF WEST BENGAL AND ORS.

Vs.

RESPONDENT:
MADAN MOHAN SEN AND ORS.

DATE OF JUDGMENT 03/02/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1993 SCR (1) 397 1993 SCC Supl. (3) 243
JT 1993 (4) 48 1993 SCALE (1) 413

ACT:
Constitution of India, 1950-Articles 14 and 16-Agragami of West Bengal Civil Emergency Force and Fireman and leaders of West Bengal Fire Service-Whether situated similarly-Equal pay on equal work, whether applicable.
Civil Service-West Bengal Civil Emergency Force-Post of Agragami-Claim for higher pay scale at par with the Fireman and Leaders in the West Bengal Fire Service-Legality of -Equal pay for equal work-Application of.

HEADNOTE:
The respondents in this Civil Appeal were working as Agragamies. They riled Writ Petitions before the High Court, claiming that, since they were similarly placed to the Firemen and Leaders in the West Bengal Fire Service, they must be given the same pay scale as was admissible to the said Firemen and Leaders. The State Government denied the claim on the ground that the duties and functions performed by the respondents and the Firemen and leaders were totally different and distinct.
The Writ Petition was allowed by a Single Judge. The Government preferred an appeal before the Division Bench of the High Court
The Division Bench, on a comparison of the academic qualifications and physical requirements found that the Agragamies were in no way differently situated from the Firemen/Leaders in the West Bengal Fire Service and that the Agragamies performed more onerous duties and thus their claim for higher pay Scale was perfectly just and proper. Affirming the decision of the Learned Single Judge, the Division Bench dismissed the Writ Appeal.
The State filed the present Appeal by Special Leave challenging the Judgment of the Division Bench of the High Court, contending that the Agragmies and Firemen/Leaders in The Fire Service Department of West Bengal were not similarly situated in the matter of recruitment, conditions of service and duties and responsibilities discharged, that the Fire-fighting
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training given to the Agragamies was in no way similar to the one Imparted to Firemen/Leaders. That the Services of Agragamies were indented upon by the Fire Services

Department only in times of emergency or acute need and as such they could not be equalled with other categories. In these departments that the Pay Commission had prescribed a lower pay Scale for the Agragamies which was neither discriminatory nor it amounted to treating equals unequally. Respondents submitted that in fact Agragamies performed more onerous duties than firemen/leaders and they do not lag behind in the matter of academic qualification or physical requirements for recruitment, that having regard to the nature of duties and responsibilities performed by them the Agragamies were justly entitled to the higher scale granted to them by the High Court.

Allowing the appeal, this court,

HELD : 1.01. It would be evident from a comparison of the nature of duties, responsibilities and functions of the Agragamies and Firemen/Leaders of Fire Service Department that they are neither same or similar. The firemen and leaders are the members of the Fire Service Department whereas the Agragamies are members of West Bengal Civil Emergency Force meant as an auxiliary force to assist the various Government departments and agencies in times of emergency and acute need. No doubt they are also members of a Government Service and they too have to report to their office and be available for such duties as they may be called upon to perform, but it would not be correct to say that they perform the same or similar duties as that of Firemen or Leaders of the Fire Service Department. [403G-H, 404A]

1.02. There is bound to be a difference in the quality of Fire fighting job of both of them. Firemen and leaders are a specialised fire fighting force while the Agragamies are, so to speak 'jacks of all trades' having been given elementary training in various fields. When called upon to assist, Agragamies assist fire fighting personnel including firemen and leaders just as they assist personnel of other department. It is idle to contend that they perform the same duties and functions as firemen/leaders. [404B-C]

1.03. Merely because the academic qualification and physical requirement of both are similar or that the Agragamies are also given a
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certain fire-fighting training alongwith other training, it cannot be said that they perform similar duties, functions and responsibilities as the firemen/leaders. [404E]

1.04. The respondents have failed to establish the crucial facts entitling them to the higher pay-scale. They have also failed to prove that they are discriminated in any manner in the matter of pay. [404F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 405 of 1993. From the Judgment and Order dated 21.11.90 of the Calcutta High Court in F.M.A.T. No. 1841 of 1986.

G. Ramaswamy, Santosh Hegde, D.K. Sinha and J.R. Das for the Appellants.

S.K. Bandhopadhyay and Somnath Mukherjee for the respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Heard the counsel for the parties. Leave granted.

The appeal is directed against the judgment of the Division Bench of Calcutta High Court affirming the judgment of the learned Single Judge declaring that 'Agragamies' in West

Bengal Civil Emergency Force are entitled to be placed in the scale of Rs. 280-617 on par with the Fireman in the West Bengal Fire Service. Agragamies were in the scale of Rs. 230-414. The said pay scales have since been revised to Rs. 980-1756 and Rs. 830-1357 respectively. The relief has been granted applying the doctrine of equal pay for equal work. The recruitment and conditions of service of the West Bengal Civil Emergency Force (W.B.C.E.F.) are governed by West Bengal Subordinate Services and Subordinate Other Services (Recruitment of Employees of the West Bengal Civil Emergency Force) Rules, 1975. It consists of several categories including Agragamies. The posts of Agragamies are to be filled by direct recruitment, preference being given to trained West Bengal National Volunteers Force Personnel or ex-service personnel. The educational qualification prescribed is upto Class VI standard. Certain physical

standards are also prescribed besides the age requirement. According to the supplementary affidavit filed on behalf of the Government of West Bengal in this court, there are no prescribed duties and responsibilities for Agragamies. They are meant as primary units of the Civil Emergency Force of the State Government. Their services are generally requisitioned for assisting the various State Agencies in emergency situations. Their assistance is taken by police personnel in maintenance of law and order and at the time of elections. Other authorities too take their assistance in the case of natural calamities like flood and storms. They are also indented upon by fire-fighting personnel in case of major fire and other natural calamities. Under normal conditions, Agragamies are confined to their respective camps and asked to perform the duties of santries. According to the letter dated 22.3.1984 written by the Commandant, W.B.C.E.F., Howrah to the Deputy Secretary to the Government of West Bengal and Ex-Officio Joint Director of Civil Defence, the duties performed by the Agragamies are manifold. Their assistance is taken even during the international tournaments, visits of V.I.Ps. and foreign dignitaries, in loading and unloading of essential commodities during emergency, garbage clearance, pump operation during flood and drought, fire fighting, first-aid duty, Inoculation and vaccination and so on and so forth. In March 1984, their total strength is stated to be 558.

The above material establishes that this force does not have any prescribed duties and that they are employed as auxiliary cadres by several departments of the Government in case of emergency and acute need. For this purpose, it appears, the Agragamies are made to undergo several types of training viz., West Bengal National Volunteers Force training, fire-fighting training, special board training, electrical training, wireless training and training in driving the vehicles. As stated above, they were placed in the scale of Rs. 230-414 (since revised to Rs. 830-1357). It also appears that as and when vacancies in the cadre of firemen and leaders in the West Bengal Fire Service and other categories in other departments arise. Agragamies are absorbed therein subject to their eligibility and suitability.

The Agragamies, hereinafter referred to as "respondents", filed a writ petition in the Calcutta High Court being C.R. No. 15583(W) of 1981 seeking a higher pay scale which writ petition was disposed of on August 17, 1982 by a learned Single Judge. The learned Single Judge directed the respondents (writ petitioners therein) to make a representation to the State

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Government giving the particulars of their training and nature of work. The State Government was directed to consider the said representation within four months in accordance with law. The respondents accordingly made a representation but no decision was taken by the State Government within four months. They again approached the High Court with another writ petition being C.R. No. 6755 (W) of 1983. Their case was that since in the matter of educational qualifications, mode of recruitment, conditions of service and duties and responsibilities they are similarly placed to firemen and leaders in the West Bengal Fire Service, they must be given the same pay scale as is admissible to the said firemen and leaders, namely the scale of Rs. 280-617 (since revised to Rs. 980-1756). This was opposed by the State Government. According to the government, the various pay scales recommended by the Pay Commission, an expert body, had been accepted by the government, and hence there is no room for complaining of any discrimination. They submitted that the duties, functions and responsibilities performed by the respondents on one hand and the firemen and leaders in the Fire Service Departments on the other are totally different and distinct and that there can be no comparison between both the categories.

The writ petition was allowed by a learned Single Judge by his judgment and order dated 19th May, 1986. The learned Single Judge directed the State Government extend the scale of Rs. 280-617 to the respondents with effect from April 1, 1981 together with arrears payable within twelve weeks from the date of communication of the said order to the State Government. The Government of West Bengal preferred an appeal against the judgment of the learned Single Judge. The Division Bench found, on a comparison of the academic qualifications and physical requirements that the Agragamies are in no way differently situated from the firemen/leaders in the West Bengal Fire Service and that indeed Agragamies performed more onerous duties and that, therefore, their claim for the said higher pay scale were perfectly just and proper. The Division Bench expressed the following opinion finally :

"It, however, appears to us that Firemen and the leaders being associated with the Fire Services are to render primarily fire fighting duties and therefore the nature of duties and functions performed by them cannot be strictly the same duties and functions as performed by

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Agragamies but the fact remains that the Agragamies are also to render services are also requisitioned for fighting the fire besides and it cannot be contended that they are not discharging similar duties and functions in fighting the fire. It also appears to us that as a matter of fact, they are discharging duties and functions which may be more onerous than the duties and functions being performed by the Firemen of the West Bengal Fire Services."

Accordingly, the decision of the learned Single Judge was affirmed and the writ appeal dismissed.

In this appeal, it is submitted by Sri G. Ramaswamy, learned counsel for the State of West Bengal that the Agragamies and firemen/leaders in the Fire Service Department of West Bengal are not similarly situated whether in the matter of

recruitment, conditions of service or duties and responsibilities discharged. Counsel pointed out that Agragamies are eligible for being absorbed in the category of firemen/leaders in case of vacancies subject to their eligibility and suitability which shows that they are inferior to firemen/leaders' category. May be that Agragamies are given various types of training so as to enable them to assist the various State Agencies, one of them being fire-fighting training but the said training is in no way similar to the one imparted to firemen/leaders. It is submitted that the Pay Commission which is an expert body has prescribed a different but lower scale for Agragamies than the firemen/leaders and it cannot be said that the scale so prescribed is either discriminatory or that it amounts to treating equals unequally. Only in times of emergency or acute need, services of Agragamies are indented upon by Fire Service Department also just like any other department of the State. For that reason, they cannot be equated with one or the other category in those departments, it is submitted. Strong reliance is placed upon a recent decision of this court in State of Madhya Pradesh v. Pramod Bhartiya, (1992) 5 J.T.653 to which one of us (B.P. Jeevan Reddy, J.) was a party.

On the other hand, the learned counsel for the respondents sought to sustain and justify the decision of the learned Single Judge as well as the Division Bench of the Calcutta High Court. He submitted that in fact Agragamies performed more onerous duties than firemen/leaders and they do not lag behind in the matter of, academic qualification or physical

requirements for recruitment. It is submitted that having regard to the nature of the duties and responsibilities performed by them the Agragamies are justly entitled to the higher scale granted to them by the High Court.

In Pramod Bhartiya, it was held, after a review of several earlier judgments of this court that what is really material is whether two categories performed similar functions and discharged similar duties and responsibilities and not whether their qualifications And/or service conditions are similar. The definition of the expression 'same work or work of similar nature' contained in clause (h) of Section 2 of Equal Remuneration Act, 1956 was relied upon as providing a guidance in the matter of determination whether the duties, functions and responsibilities of two categories can be said to be same or similar. It was also emphasised that the quality of work may vary from post to post and institution to institution and that a realistic view should be taken in such matters. Let us examine the facts of this case from the aforesaid point of view. We have already set out the duties and functions of Agragamies. Now let us examine the duties and functions performed by firemen/leaders in the Fire Service Department of the West Bengal Service. They are set out in Annexure 'D' to the supplementary affidavit filed by the Government of West Bengal in this matter. These duties include the duty at the fire station, to keep the fire station premises including appliances, rooms, offices, workshops etc. clean and tidy, to keep himself in readiness to attend to fire and other emergency at shortest possible time, to keep himself acquainted with the topography of his own and adjoining areas as well as fire risk in such areas, to carry out proper maintenance and handling of equipment and other implements, to inspect the fire appliances and to keep them in a workable condition, perform parade and drills as per schedule routine and to attend all kinds of demonstration

and training, to perform guard/sanitary duty at the fire station and so on. They have to perform both night duty and day duty as may be assigned to them and even on Sundays in their turn.

It would be evident from a comparison of the nature of duties, responsibilities and functions of the Agragamies and firemen/leaders of fire Service Department that they are neither same nor similar. The firemen and leaders are the members of the Fire Service Department whereas the Agragamies are members of West Bengal Civil Emergency Force meant as an auxiliary force to assist the various government departments and agen-

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cies in times of emergency and acute need. No doubt they are also members of a government service and they too have to report to their office and be available for such duties as they may be called upon to perform. But it would not be correct to say that they perform the same or similar duties as that of firemen or leaders of the Fire Service Department. There is bound to be a difference in the quality of fire-fighting job of both of them. Firemen and leaders are a specialised fire-fighting force while the Agragamies are, so to speak 'jacks of all trades' having been given elementary training in various fields. When called upon to assist, Agragamies assist fire-fighting personnel including firemen and leaders just as they assist personnel of other departments. It is idle to contend that they perform the same duties and functions as firemen/leaders. They assist not only the Fire Service Department but police department, Municipal Authorities, Medical and Health Authorities, Social Service Department and so on and so forth. It is not clear as to why the respondents have picked upon the particular category of firemen/leaders of Fire Service Department to claim a particular higher pay scale. It is not as if they are attached to Fire Service Department. As stated rightly by the learned counsel for the State, the Agragamies are eligible for absorption as firemen/leaders in the Fire Service Department, in the case of vacancies being available, subject to eligibility and suitability. They are governed by different service conditions and merely because the academic qualifications and physical requirements of both are similar or that the Agragamies are also given a certain firefighting training along with other training, it cannot be said that they perform similar duties, functions and responsibilities as the firemen/leaders. The respondents have failed to establish the crucial facts entitling them to the higher pay-scale. They have also failed to prove that they are discriminated in any manner in the matter of pay.

For the above reasons, the appeal is allowed and the judgment of the learned Single Judge of the Calcutta High Court and the judgment of the Division Bench affirming it are set aside. There shall be no order as to costs.

This order does not preclude the Government of West Bengal from extending a higher pay scale to the respondent's category if it is found warranted.

B.V.B.D.

Appeal allowed.

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