
(1989) 09 AP CK 0014

In the Andhra Pradesh High Court

Case No : W.A.M.P. 186 of 1988 and W.A. 1090 of 1987

A.P. Agricultural University

APPELLANT

Vs

T.V. Sanath Kumara and Others

RESPONDENT

Date of Decision : 21-09-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 32, 39

Citation : (1995) 3 LLJ 334

Hon'ble Judges : Syed Shah Mhd. Quadri, J; Jayachandra Reddy, J

Bench : Division Bench

Advocate : B. Siva Reddy, in Rev. W.A.M.P., P. Ramachandra Reddy, for B. Adinarayana Rao, in W.A. No. 1090 of 1987, K.N. Jwala and A.P. Rao in writ petitions, for the Appellant; Siva Reddy, Standing Counsel in W.A. 1090 of 1987, P. Ramachandra Reddy, for B. Adinarayana Rao in Rev. W.A.M.P., O. Adinarayana Reddy and M. Panduranga Rao in other Writ Appeals, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mohammed Quadri, J.

1. In all these cases, application of the doctrine of equal pay for equal work" and the cognate principle "no senior should get salary less than his junior" falls for consideration. They are therefore heard together and are being disposed of by this common judgment.

2. The Respondent in W.A. No. 1090/87 is the petitioner in Review W.A.M.P. No. 1869/88. When this writ appeal came up before us, it was contended by the respondents herein (appellants in the writ appeal) that the employees of Agricultural University who were juniors to the petitioners were being paid higher salary than the appellants and that question was covered by a judgment of a Bench of this Court in State of A.P. v. B.V.S. Sai Prasad and Ors. 1987(1) ALT 225, and that following that judgment many writ petitions including that filed by their juniors were allowed and therefore the pay of the appellants should also be fixed on par with their juniors. It was further stated by the learned counsel for

the appellants, which was not disputed by the learned Standing Counsel for the respondent-University that the appellants as well as the persons referred to by them were all working as U.D.Cs. It was on this basis that we passed the following order on March 10, 1988:

"In any event, in the instant case admittedly all the petitioners are working as U.D.Cs. in the University. In other writ petitions, the juniors have succeeded. Therefore, it may not be fair for them to treat the petitioners differently."

The writ appeal is accordingly allowed as prayed for. However this shall be subject to the result by the Supreme Court in the matter pending before it. No costs."

3. In this review petition, the learned Standing Counsel for the University contends that the representation that both the appellants as well as the other employees who were said to be juniors, were all working as U.D.Cs was based on a common mistake of fact whereas in fact the appellants were working as Superintendents and the persons referred to by them were working as U.D.Cs., therefore, there is an error apparent on the face of the record in the order of this Court dated March 10, 1988 allowing the writ appeal; he further contends that the judgment of Division Bench of this Court in *State of A.P. V.B. v. S. Sai Prasad and Ors.* (supra) was reversed by the Supreme Court in *State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others*, . For these reasons he prays that the judgment under review be set aside and the Writ Appeal be dismissed.

4. Sri P. Ramachandra Reddy, the learned counsel for the respondents (appellants in the writ appeal), contends that the promotion of the appellants as superintendents was only temporary and that the appellants sought a writ of mandamus from this Court directing the University to fix their salary on par with their juniors on two grounds:

(i) that no senior can be paid salary less than the amount drawn by his junior.

(ii) that the doctrine of "equal pay for equal work" should be applied.

He fairly concedes that on the first ground the claim of the appellants cannot be pursued, but contends that the second ground is still available and on that basis the appellants are entitled to the relief claimed in the writ appeal; therefore, submits the learned counsel, no ground has been made out to set aside the order under review.

5. From a perusal of the affidavit filed by the appellants in the writ petition as well as the counter affidavit filed by the respondents, it is evident that the appellants were working as Superintendents on the date of the writ petition whereas Messrs. M. Mastan Hussain Khan, Ambadas and Shaik Karama were working as U.D.Cs. Thus they were not in the same category. Therefore, it is an error apparent on the face of the record.

6. Now application of "equal pay for equal work" doctrine remains to be

considered. This was at one time considered to be a mere abstract doctrine. But in *Randhir Singh Vs. Union of India (UOI) and Others*, Chinnappa Reddy J, speaking for the Supreme Court, observed:

"It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal.

xx xx "Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle "Equal pay for Equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification."

In that case in an application under Article 32 of the Constitution a driver-constable in the Delhi Police Force demanded that his scale of pay should atleast be the same as the scale of pay of other drivers in the service of the Delhi Administration. The Supreme Court allowed the petition and granted the relief.

7. In *Bhagwan Dass v. State of Haryana* 1987 2 CLR 229 : 1987 LLJ 1662 the Supreme Court laid down that once it is shown that the nature of the duties and functions discharged and the work done is similar, the doctrine of "equal pay for equal work" is attracted. In that case, the Supervisors appointed under adult education scheme on temporary basis were not given regular scales of pay on par with the permanent Government employees.

The Supreme Court held-

"When the duties and functions discharged and work done by the supervisors appointed on regular basis and those appointed on temporary basis in the education department are similar, the fact that the scheme under which temporary appointments are made is a temporary scheme and the posts are sanctioned on an year to year basis having regard to the temporary nature of the scheme cannot be a factor which could be invoked for violating "equal pay for equal work" doctrine."

8. In *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, . The Stenographers in the Customs and Excise Department and Stenographers in the Central Secretariat were recommended different scales of pay by the Pay Commission. That was challenged on the ground that the functions of both the categories are the same and that they cannot be given different grades. Holding that "equal pay for equal work" is a fundamental right, the Supreme Court observed:

"..... 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 valid 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 emphasise 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 that right. If the differentiation has been sought to be justified in view of the nature and the types of the work done that is on intelligible basis."

9. In *State of U.P. v. J.P. Chaurasia* AIR 1989 SC 19 the Bench Secretaries in the Allahabad High Court were paid more emoluments than Section Officers prior to 1965. They were treated as superior class to Section Officers and were paid higher pay scales. The Pay Commission and Pay Rationalisation Committee have evaluated the respective duties and responsibilities of the two posts and found that the Section Officers perform more onerous duties and bear greater responsibilities than Bench Secretaries and accordingly recommended higher grade for the Section Officers than that recommended for Bench Secretaries. The State Government accepted the same. This was challenged by the Bench Secretaries. The High Court held that in so doing, the Government have violated the constitutional right of equal pay for equal work. On appeal the Supreme Court held that the question whether the two posts are equal and should carry equal pay has to be answered with reference to several factors and that the answer does not just depend upon either the nature of work or volume of work done but on evaluation of duties and responsibilities of the respective posts. If there is any such determination by a Commission or Committee, the Court should normally accept it and the Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

10. In *State of A.P. v. G. Sreenivasa Rao* (2 supra), payment of higher salary to juniors was questioned as being violative of the principle of "equal pay for equal work". This contention found favour from a learned single Judge of our High Court. The appeal against that judgment was dismissed by a Division Bench holding that granting of higher pay packet to a junior person than that of a senior under any circumstances is discriminatory. Allowing the appeal of State filed against the judgment of the Division Bench, the Supreme Court observed thus:

"Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection when promotee from lower cadre or a

transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or incentive for efficiency, are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved."

From the above discussion, the following principles may be deduced:

(1) The doctrine of "equal pay for equal work" is a concomitant of the principle of equality enshrined in Article 14 of the Constitution; providing a single running scale for a cadre satisfies the mandate of the doctrine.

(2) Making differentiation on the evaluation of nature and type of work done or other intelligible basis which is reasonable and has a nexus with the object of differentiation or classification in prescribing different scales of pay, is not violative of the doctrine.

(3) The doctrine does not imply that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.

(4) The principle that pay of a junior should not be more than that of his senior" is a necessary corollary of equality doctrine; circumstances such as pay fixation under valid statutory rules or executive instructions, pay protection, payment of advance increments, (which are illustrative not exhaustive) may result in increase of pay of a junior or stoppage of increment by way of punishment or stoppage at the stage of efficiency bar and the like may be responsible for a senior drawing less pay, justify departure from the principle and satisfy the requirements of equality doctrine.

11. Bearing these principles in mind, we shall now advert to the facts of the cases before us. Since the facts in all these cases are similar, it would be enough to refer to the facts in W.A. No. 1090/87.

12. The Agricultural University was established under A.P. Agricultural University Act in 1963. On July 10, 1966, the agricultural colleges, veterinary colleges, home-science colleges under the control of the Government and the Osmania University were transferred to the Agricultural University. The University framed rules with regard to service conditions of the employees in December, 1965. The petitioners were appointed by direct recruitment for the post of Assistants carrying pay scale of Rs. 140-250 between 1965 and 1968. On 1.7.1966 four sections from Directorate of Agriculture were transferred along with the staff to the Agricultural University. So also on 1.5.1967 one section from Animal Husbandry along, with staff was transferred to the Agricultural University. The employees of these departments were holding the posts of U.D.Cs. and Superintendents having scales of pay which were less than the scales of pay in

the Agricultural University for the corresponding posts. In 1968 the A.P. Agricultural University (Recruitment to posts in Administrative Office) Regulations, governing the employees in the administrative office were issued. In regard to employees in colleges/research stations, the A.P. Agricultural University (Recruitment Regulations) 1969 were framed. From June 17, 1969, the transferred posts of U.D.Cs. were equated with the posts of Assistants in the scale of Rs. 140-250 and the Posts of Superintendents were equated with the posts of Section Officers and the seniority of the transferred employees was fixed below the direct recruits in, the respective posts. In 1969, the Government introduced the scheme of Selection Grade posts which was adopted by the University in 1972. Three persons viz., Mustaq Hussain Khan, Ambadas and Shaik Karama whose services were transferred as U.D.Cs. to the Agricultural University in 1964-66 and whose posts were later equated the posts of Assistants in Agricultural University in 1969-1970, were given selection grades in 1972 in the implementation of the selection grade scheme in accordance with the clarification issued by the Government in Memo No. 1058/PC/71-1 dated 12.8.1971. So also, the direct recruit employees of the University in the posts of Assistants were given selection grade. But before the turn of the petitioners in that grade could come, the selection grade posts were abolished consequent upon the introduction of new pay scales in 1975. The grievance of the petitioners is that they are senior to the said three persons in the post of assistants but their pay is less than the said persons even though they have been promoted and were working as Superintendents. They, therefore, sought a writ of mandamus directing the respondent-University to fix their pay on par with the said persons.

13. The learned single Judge held that the petitioners and the said persons were in different categories; superintendents constitute one category and the Upper Division Clerks constitute another category, so they were not entitled to equal pay. The learned Judge further held that the mere fact that the juniors who were working as U.D.Cs. were getting higher pay than the superintendents who constituted different category, did not entitle the latter to complain that "equal pay for equal work" was violated and dismissed W.P. No. 16936/86 on 8.6.87. It is the correctness of this judgment that is assailed before us in Writ Appeal No. 1090/87.

14. Sri P. Ramachandra Reddy, the learned counsel for the appellant, contends that after the direct recruits and the transferred employees were placed in one single category of assistants (U.D.Cs.), the respondent-University could not have upgraded the transferred employees by giving selection grade. He further contends that the question of fixation of pay which results in a junior drawing higher pay than his senior is permissible in a case of application of principle that no junior should draw more pay than his senior, but it is not relevant while applying the doctrine of "equal pay for equal work".

15. Sri Siva Reddy, the learned Standing Counsel for the Agricultural University on the other hand contends that just as protection of last drawn pay in the next

higher grade is a good ground in the application of the principle that no junior should draw more pay than his senior, it is also a valid ground in the case of application of the principle of "equal pay for equal work". He says that the transferred employees were given selection grade as long back as in 1975-76 but that was not questioned by the petitioner at any time before filing the writ petition nor is the same questions" in the writ petition, as such the appellants cannot complain of the correctness of giving selection grade to the transferred employees: He further submits that if in the lower post the petitioner is given the higher pay that has to be protected in the next post and that is what is done in the case of the transferred employees, and therefore the petitioners cannot have any legitimate grievance.

16. In support of his first contention, strong reliance is placed by Sri P. Ramachandra Reddy on the judgment of the Supreme Court in Bhagwan Sahai Carpenter and others Vs. Union of India and another, and it is contended that upgradation of only some of the trades while leaving the other trades as it is, was held to be discriminatory, so also the upgradation of some of the posts of the U.D.Cs. by awarding higher scales of pay to the transferred employees should be held to be discriminatory. We are afraid we cannot accept the contention of the learned counsel and in our view this case is of no assistance to him. In that case, the petitioners were working in various categories of trades viz.. carpenter, mason, painter, upholsterer, plumber, pipefitter, sawyer etc., in Military Engineering Services under the Ministry of Defence. Some of the trades were upgraded and higher scales of pay were fixed on the basis of recommendation of the expert committee constituted by the Union of India. This was challenged by the members of the left out trades as being arbitrary and discriminatory. It may be noted here that, at the time of hearing, it was represented before the Supreme Court that the President of India has accorded sanction to the upgradation of the semi-skilled trade (left out trades) to the skilled trade. The only controversy that remained to be resolved by the Supreme Court was as to from what date the upgradation should be given effect to. The Supreme Court directed that the benefit of the pay scales to the upgraded skilled trade should be given effect to from 16.10.1981, the date from which the other skilled trades were given effect to. The question of upgradation of some of the trades from out of the existing trades, did not survive for consideration of their Lordships of the Supreme Court. What is held is that allowing higher scale of pay to employees of some of the trades from an earlier date while denying the same benefit to members of other trades in the skilled grade will be discriminatory and contrary to the equality clause envisaged in Articles 14 and 16 of the Constitution. In the instant case, the transferred employees were not upgraded in their existing posts. The increase in the emoluments of the transferred employees was the result of granting them selection grade in the post held by them earlier which was done in pursuance of Govt. Memo No. 1058/PC/71-1 dated 12.8.1971 in the implementation of the scheme of giving selection grade. The appellants did not question grant of selection grades to the persons referred to above for over 15

years, nor did they question the same in these proceedings. None of them is impleaded as parties to this writ petition. We are told that out of the said three employees, Sri Ambadas had gone to the Osmania University and one of the remaining employees had retired. The validity of the action of the respondent-University in awarding selection grade to the said persons cannot be gone into even collaterally in their absence. It would also be unjust to allow the appellants to rake up the said issue at this stage. We are, therefore, not inclined to pronounce upon the validity or otherwise of the implementation of the scheme of giving selection grade to the said persons and applicability of G.Q. Ms. No. 190 dated June 10, 1983. Even if it is accepted for the sake of argument that the giving of selection grade to the said employees is bad as contended by the appellants, it cannot be a ground for them to claim that the same benefit be extended to them as admittedly they cannot get the selection grade according to Rules. In our view, the doctrine of "equal pay for equal work" does not mean that if due to any mistake or even illegality, some benefit is conferred on an employee, the same should be perpetuated by giving the same benefit to the others who are not entitled to the same under the Rules. The illegality, if brought to the notice of the Court in appropriate proceedings may be set right, but it cannot be directed to be repeated for no writ can be issued to extend benefits in violation of law; it is issued only to enforce the law. Consequently, the first contention of the appellant falls.

17. It has already been noticed above that doctrine of equal pay for equal work is satisfied if a single running scale is provided for a cadre and that it does not mean that the members in a cadre must receive the same pay packet. This is not an absolute rule in the sense that under no circumstances persons doing equal work can get unequal pay and having regard to the incidents of service conditions, it has also been seen that variety of circumstances would result in persons in the same cadre getting unequal pay. Reasons like granting of increment for higher educational qualifications, passing departmental tests, award of special or personal pay etc. and likewise stoppage of increments at the stage of efficiency bar or due to punishment are some instances which result in persons drawing unequal pay in the same cadre. Once it is accepted that justifiable circumstances may result in a junior drawing more pay than his senior, it follows that they carve out an area of exception to the doctrine of equal pay for "equal work" and in that area no complaint of violation of the doctrine can be entertained. We, therefore, cannot countenance the second contention of Sri P. Ramachandra Reddy.

18. For all these reasons the pay of the appellants cannot be fixed on par with the pay of the said persons-juniors to the appellants. However, we make it clear that the direction given by the Supreme Court in *State of Andhra Pradesh and Ors. v. G. Sreenivasa Rao* (supra) in regard to payments already made, shall hold good in respect of these employees also.

19. The Review W.A. M.P. No. 1869/88 is allowed and the judgment of the

learned single Judge dated June 8, 1987 in W.P. No. 16936/86 is confirmed and accordingly W.A. No. 1090/87, W.P. Nos. 17731/87, 17732/87, 5221/88, 5236/88, 5241/88, 5336/88, 5425/88 and 5291/88 are dismissed and W.A. Nos. 490 and 986/88 are allowed. Having regard to the circumstances of these cases, parties are directed to bear their own costs.