

(2000) 10 KL CK 0063
In the High Court Of Kerala
Case No : W.A. No. 708/95

Chairman and Managing Director, FACT and Others	APPELLANT
Vs	
T. Krishnan Unni and Another	RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Citation : (2000) 10 KL CK 0063

Hon'ble Judges : Kurian Joseph, J.; K.A. Abdul Gafoor, J.

Bench : Division Bench

Judgement

Kurian Joseph, J.—The dispute in this case centres round the application of one of the noble ideals of the Constitution of India as provided under Article 39(d)-"equal pay for equal work"-which principle has of late been interpreted as part of the guarantees under Articles 14 and 16 of the Constitution of India.

2. The writ Petitioners were originally recruited as Junior Engineers in FACT the Respondent in the Original Petition. It is not disputed that Junior Engineers belong to the lowest managerial position in FACT. By Ext. P-1 circular, the FACT introduced a higher scale to those who were promoted to the lowest managerial positions on or before 1st January 1984. Petitioners were directly recruited as Junior Engineers on 7th April 1983 and 29th August 1983 respectively. Denial of the higher scale to them in spite of being recruited before 1st January 1984, on the only ground of being not promotees, led them to this Court in the Original Petition.

3. The learned Single Judge, by a detailed judgment, allowed the Original Petition quashing the orders denying the Petitioners the benefit of equal pay with the promotees. The learned Single Judge directed the FACT to grant the Petitioners the benefit of Ext. P-1 circular and fix their pay in the higher scale granted to the promotees. The learned Single Judge also quashed Clause (f) of Ext. P-1 circular so as to extend the benefit of higher scale to all those who were either recruited or promoted to the lowest managerial positions on or before 1st January 1984. Aggrieved, the FACT has taken up the matter in the present Writ

Appeal.

4. It is mainly contended by the Appellant before us that the Appellant was entitled to make a classification between promotees and direct recruits in the matter of grant of higher scale and that the classification thus made by them as per Ext. P-1 is a reasonable one, having a nexus to the object sought to be achieved by Ext. P-1. There is also a contention that there is no pleading in the Original Petition that the Petitioners are similarly situated like the promotees discharging the same duties and functions, and in the absence of such a pleading, the Appellant was not called upon to refer to their nature of duties, either affirming or differentiating the similarity. Particularly in a writ proceeding praying for the implementation of the principle of equal pay for equal work, in the absence of such vital and crucial pleadings, the writ Petitioners were not entitled to any of the reliefs, it is contended. The Appellant has also taken a strong objection to the application for amendment of the Original Petition filed by the writ Petitioners towards the close of the hearing of the Original Petition, which has been allowed by the learned Single Judge. It is further contended that at any rate the learned Single Judge committed a serious error in re-drafting Ext. P-1 circular. On the other hand, it is submitted by the writ Petitioners, Respondents herein, that the learned Single Judge was perfectly justified in moulding the relief, having come to the conclusion that denial of equal pay to Petitioners was unjust.

5. The principle of equal pay for equal work is now almost a settled position. However, in all the decisions settling the said principle, distinctions have been drawn by the Apex Court rather cautioning everybody that the question of implementation of equal pay arises only in a situation where the employees are similarly situated.

6. It is profitable to refer to few of the decisions in this regard. In *Randhir Singh Vs. Union of India (UOI) and Others*, , the Apex Court held as follows:

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 though those drawing the different scales of pay do identical work under the same employer. In that case, the Apex Court was dealing with the grievance regarding different scales of pay between the drivers of Delhi Police Force and the drivers of the Railway Protection Force, the latter drawing higher. The Court in that case directed higher pay to be given to the former also.

7. In *State of U.P. vs. Jashodha Nandan Gupta and Others*, a case well known in the service jurisprudence, the question for consideration was whether it was permissible to have two pay scales in the same cadre for persons having same duties and having same responsibilities (Bench Secretaries). The Apex Court at page 318 held as follows:

It is against this background that the principle of "equal pay for equal work" has to be construed in the first place. Second, this principle has no mechanical application in every case of similar work. It has to be read into Article 14 of the Constitution. Article 14 permits reasonable classification founded on different basis. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means, it cannot be denied that the quality of work performed by persons of longer experience is superior than the work of newcomers. Even in *Randhir Singh's* case (supra), this principle has been recognised. O. Chinnappa Reddy, J. observed that the classification of officers into two grades with different scales of pay based either on academic qualification or experience on length of service is sustainable. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judges. There is senior time scale in Indian Administrative Service. The entitlement to these higher pay scales depends upon seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise it would be detrimental to the interest of the service itself. 8. In *State of A.P. and Ors. etc. v. G. Sreenivasa Rao and Ors. etc.* 1989 XI LL.J. 149, the Apex Court at para 14 dealt with the principle and observed thus:

14. "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 as incentive for efficiency, are some of the eventualities when a junior may be drawing higher pay than their 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. 9. In *V. Markandeya and Ors. v. State of A.P. and Ors.* 1989 XI LL.J. 169, a case dealing with different pay scales for graduates and non-graduates, the Apex Court at para 13 held as

follows:

In view of the above discussion we are of the opinion that where two class of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the Court will strike down the discrimination and grant relief to the aggrieved employees. But before such relief is granted the court must consider and analyse the rationale behind the State action in prescribing two different scales of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility and educational qualifications required for the relevant posts, the court finds that the classification made by the State in giving different treatment to the two class of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal pay for equal work is applicable among equals, it cannot be applied to unequals. Relief to an aggrieved person seeking to enforce the principle of equal pay for equal work can be granted only after it is demonstrated before the court that invidious discrimination is practised by the State in prescribing two different scales for the two class of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by court in abstract. The question what scale should be provided to a particular class of service must be left to the Executive and only when discrimination is practised amongst the equals, the court should intervene to undo the wrong and to ensure equality among the similarly placed employees. The Court however cannot prescribe equal scales of pay for different class of employees. 10. In a recent judgment in *Suryanarayan Sahu and Others Vs. Council of Scientific and Industrial Research*, , the Supreme Court held as follows:

The principle of law which has been settled by this Court in a string of judgments is that different scales of pay can be granted based on experience and merit to the employees working in the same grade. Classification based on experience is valid. An employee having more length of service is certainly better equipped to perform his duties of an office than a relatively new employee. 11. There are umpteen number of other decisions where the Apex Court has dealt with the principle. In *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held that in the matter of introduction o U.G.C. scale to the newly recruited Professors, experienced and qualified Professors should not be left to languish in the old scale. In *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, , it was held that prescription of two scales for the Senior Draughts men putting them to two groups was discriminatory. In *M.P. Singh and Others Vs. Union of India (UOI) and Others*, the Apex Court declared that differentiating between deputationists and direct recruits in the C.B.I, in the

matter of grant of Special Pay was discriminatory and amounted to violation of the principle of equal pay for equal work. In *State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others*, the Supreme Court however held that the Lecturers working in Higher Secondary Schools were not equals to the non-technical Lecturers working in Technical Schools. In *Chaurasia's case* (supra) also the Supreme Court observed that classification based on experience is a reasonable classification. In *Randhir Singh's case* (supra) the Supreme Court observed as follows:

...It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Article 14 if sought to be applied to them. In *Sreenivasa Rao's case* (supra) the Supreme court was of the view that the principle is not of universal application and it is not as if 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. In *Markendaya's case* as also in *State of Rajasthan Vs. Gopi Kishan Sen*, and in the decision in *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, the Supreme Court held that the classification based on educational classification was certainly a valid exemption to the principle of equal pay for equal work. In *Union of India and Others Vs. Anil Kumar and Others*, also, the Apex Court was of the view that a classification based on length of service and consequential long experience as in the case of *Randhir Singh's case* was perfectly valid.

12. A conspectus of all these decisions would clearly show that though equal pay for equal work is certainly a principle underlying also Articles 14 and 16 of the Constitution of India, it was permissible to differentiate the unequals on a valid basis. Unless it is shown that there is discrimination amongst the same set of employees by the same master in the same establishment doing the same job and similarly situated on all relevant considerations, the principle of equal pay for equal work cannot be enforced. But where all relevant considerations are the same, persons holding identical posts cannot be treated differently in the matter of their pay.

13. Now we shall analyse the facts of the instant case. Clause (a) of Ext. P-1 circular reads as follows:

(a) All employees who were promoted to the lowest managerial positions on or before 1st January 1984 and were on the grade Rs. 820-1480 as on 1st January 1984 will be extended the grade Rs. 960-1710 with effect from 1st January 1984. This will not be treated as promotion and the usual procedures etc. related to promotions will not be applicable. It is further stated at Clause (f) as follows:

(f) Existing orders will continue to apply in respect of officers promoted to the scale of Rs. 820-1480 after 1st January 1984 and also to persons recruited directly from outside. However, it is significant to note that the said circular in its opening words refers to a proposal to extend the grade to Rs. 960-1710 to those who were in the scale of Rs. 820-1480 as on 1st January 1984 and that the said proposal had been under their consideration for some time. It was on the said proposal the management decided to restrict the higher scale to the promotees to the lowest managerial positions as on 1st January 1984. It is the case of the writ Petitioners that though they were recruited as Junior Engineers and formed part of the lowest managerial position in the FACT as on 1st January 1984, having been appointed on 7th April 1983 and 29th August 1983 they are denied the benefits. Originally, this benefit was extended to them, but contending that it was a mistake, the same was withdrawn and that necessitated the representations and then the Original Petition. At Ground B of the Original Petition it is contended by Writ Petitioners as follows:

The only reason stated is that the Petitioners were direct recruits and Ext. P-1 Circular is applicable only to those employees who were promoted to the lowest managerial positions as on 1st January 1984. This interpretation given to Ext. P-1 is arbitrary and wrong. As a result of denial of this benefit to the Petitioners, persons promoted as Junior Engineers subsequent to the appointment of the Petitioners as Junior Engineers are given a higher salary. The Hon'ble Supreme Court has held in several cases that all persons who are doing similar work are entitled to the same salary on the principle of equal pay for equal work. By a wrong application of Ext. P-1 Juniors to the Petitioners were given a higher scale of pay. Hence denial of higher scale to the Petitioners is violative of Articles 14 and 16 of the Constitution of India. 14. Incidentally we may also deal with a strong contention of the Appellant that there is no pleading in the writ petition that the writ Petitioners are in any way discriminated, being otherwise similarly situated like the promotees. Reference is made to the Bench decision of this Court reported in *George v. Circle Inspector of Police 1990 (1) K.L.T. 741 Bharat Singh and Others Vs. State of Haryana and Others*, and *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, . It is argued that the Petitioner who approaches the Court invoking the extraordinary jurisdiction of the Court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the Respondent to indicate its stand either by denial or by positive assertions. It is also contended that the facts must be pleaded and proved by evidence which must appear from the writ petition unlike that of a civil case where the evidence need not form part of the pleadings. But on a perusal of the grounds in the writ petition it cannot be said that the writ petition altogether lacks in pleading. All the more so, since the expression used in Ext. P-1 circular is "lowest managerial positions". In this context it is profitable to refer to Ground H of the Memorandum of Appeal which reads as follows:

(H) It is submitted that Ext. P-1 is issued in recognition of the longer service rendered by the promotees who were continuing in the grade of Rs. 820-1480 as

on 1st January 1984 and the Respondents herein being direct recruits cannot stand on equal footing as that of the promotees.... 15. Thus it can be seen that even the case of the Appellant is that what they attempted in Ext. P-1 is to make a classification based on experience gained from length of service. If that be so, naturally the Petitioners have a case as made out by them in Ground B. But that is a matter to be examined by the Appellant. If, as a matter of fact, any of the promotees have been given the higher scale after the appointment of the Petitioners in the lowest managerial positions on 7th April 1983 and 29th August 1983 respectively, naturally the Petitioners should also be given the said higher scale granted to the promotees. "Length of service" can only be the length of service in the lowest managerial position, in the scale of Rs. 820-1480. Viewed from that angle, we have no hesitation to hold that the Petitioners are entitled to be given the higher scale in case any of the promotees to the lowest managerial positions after their respective appointments to the lowest managerial position has been given the higher scale.

16. Now we may deal with the last contention of the Appellant that the learned Single Judge has overstepped the bounds of his jurisdiction. The learned Single Judge, after granting the relief to the Petitioners, went to the extent of re-drafting Ext. P-1 and making a declaration to the effect that all employees in the lowest managerial position in the establishment as on 1st January 1984 would be entitled to the higher scale. With great respect, we are unable to agree with the learned Single Judge. While it is often heard that the jurisdiction of the High Court under Article 226 of the Constitution is sky-high, it is occasionally good to be reminded of its limitations in exercise of its power of judicial review. In *State of Mysore Vs. C.R. Sheshadri and Others*, Krishna Iyer J., at para 2 held as follows:

In our constitutional scheme, a broad threefold division exists. The power to promote an officer belongs to the Executive and the judicial power may control or review Government action but cannot extend to acting as if it were the Executive. The Court may issue directions but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles. 17. In *U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others*, the Apex Court at para 10 observed as follows:

What does acting unfairly or unreasonably mean? Does it mean that the High court exercising its jurisdiction under Article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints-self-imposed undoubtedly-of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless. Again, at para 11, it is observed as follows:

In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred." Lord Diplock in *Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside* 1976 3 All E.R. 665. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. 18. In *Wade on Administrative Law*, Seventh Edn., P. 399, Prof. Wade points out:

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts *ultra vires*. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. When a Divisional Court yielded to that temptation by invalidating a Secretary of State's decision to postpone publication of a report by company inspectors the House of Lords held that the judgments "illustrate the danger of judges wrongly though unconsciously substituting their own views for the views of the decision-maker who alone is charged and authorised by Parliament to exercise a discretion". The court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits". "With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority".... 19. In *Chief Constable v. Evans* (1982) 3 All E.R. 141 at 144 the principle is beautifully summarised as follows:

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court. 20. Going by such guidance, we are constrained to observe that the learned Single Judge has overstepped the well recognised bounds of the jurisdiction conferred on the Court under Article 226 of the Constitution of India, by substituting Court's wisdom in the circular of the Appellant and thus redrafting it.

In the result, the judgment of the learned Single Judge is set aside. However, there will be a declaration that in case any of the promotees to the lowest managerial position after the respective appointment of the Petitioners in the lowest managerial position has been given the higher scale, the writ Petitioners also will be given the said higher scale.

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