

(1997) 07 AHC CK 0030
In the Allahabad High Court
Case No : Special Appeal No. 157 of 1991

Dr. Bajrang Bahadur Singh and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39
Udaipur University Act, 1962 — Section 2

Citation : (1997) 07 AHC CK 0030

Hon'ble Judges : D.P. Mohapatra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : S.N. Srivastava and S.P. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

D.P. Mohapatra, C.J.—The short question that arises for determination in this case is whether the principle "equal pay for equal work" is applicable to the case of the Appellants? Their claim having been rejected by the learned single Judge by judgment dated 27.9.1991 in Civil Misc. Writ Petition No. 13343 of 1989, they filed this appeal challenging the said judgment.

2. The relevant facts of the case, sans unnecessary details, may be stated thus:

Both the Appellants. Dr. Bajrang Bahadur Singh and Dr. Arun Kumar Misra, were appointed as Demonstrators in Lal Bahadur Shastri State Homeopathic Medical College, Allahabad, which is an educational institution owned, controlled and managed by the State Government since 1981. The Petitioner-Appellants claimed salary as Lecturers on the sole ground that they have been teaching students since 11.12.1981 as the posts of Lecturers in the Institution were vacant. Several documents have been annexed to the writ petition to show that the Appellants were teaching students regularly and occasionally they were appointed as paper setters and external examiners also. In some of the correspondence of the Principal, they have been described as Lecturers (Annexures 2C and 2E). In the

circumstances, according to the Appellants, they are entitled to the salary of Lecturers since 11.12.1981. The claim is based on the principle of equal pay for equal work".

The Respondents, as is evident from the counter-affidavit; have not controverted the case of the Appellants that they have been teaching students in the institution. Their stand is that the Appellants were entrusted teaching work as Demonstrators and not as Lecturers. It is the further case of the Respondents that the post of Lecturer being a gazetted post, appointment has to be made in consultation with the Public Service Commission. The Appellants have not appeared before the Public Service Commission for recruitment to the post of Lecturer. Indeed, subsequently during the pendency of the case in this Court, one of the Petitioner-Appellants, Dr. Arun Kumar Misra, has been appointed as Lecturer on the recommendation of the Public Service Commission. The Respondents contend that the principle of "equal pay for equal work" does not extend to the case of the Appellants. On the case of the parties, as shortly discussed above, the question formulated earlier, arises for consideration.

3. Equal pay for equal work is, no doubt, a constitutional goal enshrined in Article 39(d) of the Constitution as one of the directive principles of State policy. The principle may also arise for consideration in a case in which discrimination or denial of equal opportunity in service under Articles 14 and 16 of the Constitution is alleged. It is also to be borne in mind that while providing for equal protection of law and equal opportunity in State service, reasonable classification based on intelligible differentia is not prohibited.

4. At the commencement of his argument, Sri S. P. Gupta, Senior Advocate appearing for the Appellants, made it clear that the Appellants are neither claiming in this case appointment to the post of Lecturer, nor are they claiming the scale of pay of Lecturer, nor are they contending that the two posts (Demonstrator and Lecturer) should be equated with each other. All that they claim, submitted Sri Gupta, is that since they have been doing teaching work since December, 1981, which is the job of a Lecturer, they should be paid the differential amount in the salary of the two posts. It is relevant to note here that in the writ petition or in the affidavits filed in the case, the Petitioner-Appellants have not made any attempt to show that the Demonstrators in the Institution discharge similar duties and bear similar responsibilities as Lecturers.

5. The applicability of the principle "equal pay for equal work" has been considered by the Apex Court in several decisions. We may notice here a few such decisions which, we feel, are relevant for the present case.

6. In the case of Chandigarh Administration v. Smt. Anita Sood and Ors. , the Court held that Teaching Assistants cannot be granted pay scale of Lecturers on the ground that they teach same subjects to same/similar students as was being done by the Lecturers. The relevant discussions in the judgment are quoted hereunder:

We proceed on the assumption that a Teaching Assistant teaches the same subjects to the same students as were being taught by the Lecturers/Assistant Professors/Professors. It is common knowledge that in various departments of a University different subjects are taught to the same set of students by different teachers who may be Lecturers, Assistant Professors or Professors. A teacher who is a Lecturer, cannot claim that he be given the same salary as given to a Professor who teaches a different subject or the same subject to the students. The quality and standard of teaching by a Professor is bound to be of much higher standard than that of a Lecturer. Keeping in view the qualitative difference of standard of teaching between the two teachers with different designations it cannot be claimed that they are entitled to the same pay scales. A Teaching Assistant is entirely a different class of teacher than that of the Lecturer. In the teaching profession, classification is permissible on the basis of academic qualifications, experience and the quality/standard of teaching of various classes of teachers.

7. In the case of State of West Bengal and Others Vs. Monirujjaman Mullick and Others, , the Apex Court rejected the contention raised on behalf of the Instructors in various non-formal educational centres in different districts of the State of West Bengal that they were entitled to the same scales of pay and allowances as were being paid to primary school teachers on the basis of principle of "equal pay for equal work". The Supreme Court took the view that the non-formal educational centres cannot be equated with the primary schools which are regularly run by the Education Department of the State Government; that apart from the basic qualitative difference between the two institutions even the nature of work of the non-formal instructors and the primary school teachers is not identical; that the method of appointment, the source of recruitment, method of teaching, hours of teaching and the mode of payment are entirely different; and that In the facts and circumstances of the case the High Court fell into patent error in applying the principle of equal pay for equal work".

8. In the case of State of West Bengal and others Vs. Deb Kumar Mukherjee and others, , the Apex Court ruled that it is well-known in service Jurisprudence that selection grade and super time-scale based on seniority or seniority-cum-merit are permissible. In that case, the: Court rejected the plea that the Inspectors in Housing Department should be equated with the Inspectors in the Animal Husbandry Department of the State Government and given the pay scales which are being drawn by Inspectors in the Animal Husbandry Department. Considering the point, the Court observed:

The duties performed by the Inspectors In the two grades may be the same, but no fault can be found with the classification. It is settled by a string of authorities of this Court that classification in the cadre on the ground of selection based on merit is permissible. It is well-known in service Jurisprudence that selection grade and super time-scale based on seniority or seniority-cum-merit are permissible. The High Court fell into patent error in setting aside the

classification on the ground of discrimination.

9. In the case of Sita Devi and others etc. etc. Vs. State of Haryana and others, , the Supreme Court, referring with approval to a previous decision. In State of Mysore and Another Vs. P. Narasing Rao, , observed that indeed, in that case both the matriculate and non-matriculate tracers formed one single category with one single pay scale earlier. It was only at a later stage that a distinction was made between matriculates and non-matriculates, which led to the said proceedings. The Court proceeded on the assumption that both matriculates and non-matriculate tracers were doing the same kind of work, yet the classification made was upheld as permissible under Articles 14 and 16 of the Constitution. Distinction on the basis of the educational qualifications was upheld as valid. On the ultimate analysis, the Court observed:

We are, therefore, of the opinion that the grievance made by the Petitioners is unacceptable. We may also mention that apart from relying upon the decision of this Court in Jaipal and Others Vs. State of Haryana and Others, and claiming that the benefit given to matriculate teachers should also be given to them, no attempt has been made in the writ petition to allege and establish that their qualifications, duties and functions are similar to those of squad teachers.

A similar view was taken by the Supreme Court in the case of Union Territory, Chandigarh Vs. Krishan Bhandari, , where the Supreme Court declined to accept the plea that Science Supervisors in the Union Territory of Chandigarh are entitled to the same scale of pay as admissible to the District Science Supervisors in the State of Punjab.

10. Sri S.P. Gupta placed strong reliance on the decision of the Supreme Court in the case of Gopal Krishna Sharma and others, . In that case, the Court considered the claim of Research Assistants/Associates in the scale of Rs. 700-1,600, which, on the recommendation of the University Grants Commission, was granted to other members of the teaching staff. The Research Assistants claimed that they belong to the teaching faculty and, therefore, are entitled to get salary in the pay scale of Rs. 700-1,600 at the lowest scale of the teaching staff. The Supreme Court took note of the definition of teacher" in Section 2 (j) of the Udaipur University Act, 1962, and the Statute 47 of the University, which provided that teacher means a person appointed or recognised by the University for the purpose of instruction or conducting and guiding research or extension programmes and includes a person who may be declared by the statute to be a teacher. The Court held that Research Associates cannot be treated at par with Research Assistants in the matter of grant of scale merely on the ground that the educational qualification for appointment in the two posts was identical. The Court further held that the educational qualification and method of recruitment of Research Associates was the same as for Research Assistants as was evident from Resolution 153 and their Job-charts were identical; that like Research Assistants, Research Associates also conduct and guide research work. In such circumstances, the Supreme Court accepted the contention that on the principle

of equal pay for equal work", the University could not be permitted to exploit the market condition of large scale unemployment of educated youth and availability of surplus qualified persons by offering them a paltry consolidated pay of Rs. 1,100 per month. At the same time, the Court made it clear that they could not claim to be placed on a scale of pay since they were never on a time scale like their colleagues, i.e. Research Assistants. The Court ultimately took the view that ends of justice would be met if it was ordered that Research Associates be allowed a consolidated salary to be worked out by placing them on a basic salary of Rs. 700 (which is the minimum of scale of Rs. 700-1,600 allowed to Research Assistants) and granted monetary benefits thereon in the form of such allowances allowed to a regular employee drawing a basic pay of Rs. 700 per month. The Court made it clear that their appointment would, however, continue to be what it was and they would not belong to the cadre of Research Assistants merely because their consolidated salary was ordered to be worked out on the minimum of the time scale allowed to Research Assistant, i.e., Rs. 700-1,600; similarly they would not be equated with Lecturers/Assistant Professors in status and salary and they would continue to carry out the same duties and functions which they were carrying out including assisting Assistant Professors. Their demand for placement in the scale of Rs. 700-1,600 was rejected.

11. This decision, in our opinion, is clearly distinguishable from the case in hand. As noted earlier, the Petitioner-Appellants have neither pleaded nor established any similarity between the posts of Demonstrators and Lecturers of the institution. Further, there is no statutory provision, as in the Supreme Court case, to the effect that Demonstrators are members of teaching faculty or are teachers. On the other hand, from the Supreme Court decision the principle is clear that unless a person is found to have held a post in a cadre, he is not entitled to the benefit of the scale of pay admissible to the members of the said cadre and cannot base his claim for higher salary admissible to persons holding post in the cadre.

12. From the conspectus of views taken in the aforementioned decided cases, the position is clear that to substantiate a claim of higher scale of pay/salary on the basis of the principle "equal pay for equal work" the Petitioner-Appellants will have to establish that they are equally placed in all respects with the person or persons whose scale of pay/salary they claim. They must allege and prove that the mode of recruitment, eligibility qualifications prescribed, the nature of duties/responsibilities discharged/shouldered, the work done and the service rules (if any) applicable to the two posts are similar. They cannot succeed in the case merely by showing that they have been discharging same duties which are being discharged by persons holding the other class of posts.

13. In the present case, as noted earlier, the Petitioner-Appellants based their claim of salary of Lecturer merely on the basis that they were teaching students which was also a duty to be discharged by a Lecturer. Further, as the materials on record reveal, the Petitioners-Appellants were assigned duty of teaching by

the Principal as an internal arrangement In the College. In all probability, the Petitioners-Appellants readily accepted the assignment of teaching duty by Principal with the hope to get weightage on the basis of teaching experience at the time of recruitment to the post of Lecturer. By such internal arrangement in the institution, no legally enforceable rights could be created in favour of the Petitioner-Appellants. It also does not render any assistance to them in application of the principle of "equal pay for equal work" In the case.

14. On the analysis made and for the reasons stated in the foregoing paragraphs, we have no hesitation to hold that the learned single Judge was right in rejecting the claim of the Petitioners for salary as admissible and paid to Lecturers on the principle of "equal pay for equal work". Thus, the appeal being devoid of merit is dismissed, but in the circumstances of the case there shall be no order as to costs.