

(1991) 09 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13343 of 1989

Dr. Bajrang Bahadur Singh and Another

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 27-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39

Citation : (1991) 2 AWC 553

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

B.M. Lal, J.—By means of this petition under Article 226 of the Constitution, the Petitioners seek issuance of a writ of mandamus directing the Respondents to pay to them the salary equal to the Lecturers in Lal Bahadur Shastri State Homeopathic Medical College, Allahabad with effect from 11-12-1981.

2. In short, the admitted facts leading to this petition are that, Petitioners Dr. Bajrang Bahadur Singh and Dr. Arun Kumar, are Demonstrators in Lal Bahadur Shastri State Homeopathic Medical College, Allahabad. This institution is owned, controlled and run by the State of U.P.

3. The only contention raised on behalf of the Petitioners is that they are discharging the functions of the Lecturers in the aforesaid College, as such they are entitled to the pay scale applicable to the post of Lecturer. In support thereof, it is contended that since Respondent No. 3 is taking the job of Lecturer from the Petitioners with effect from 11-12-1981, therefore, they be held entitled to the salary of Lecturers from that date.

4. The pivotal question that poses itself for consideration in this petition is about the applicability of the principal "Equal pay for Equal work."

5. No doubt, Part III of the Constitution which speaks of fundamental rights of the citizen does not envisage equal pay for equal work. However, the scope of Article 39(d) appearing in Part IV (Directive Principles of State Policy) of the Constitution if read together with Article 14 & 16 of the Constitution, if certainly declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay, and failure to comply the same amounts to discrimination violative of Article 14 & 16 of the Constitution.

6. This being so, if all requirements being equal that is equal qualification for the post and holding the same cadre of post, performing identical and similar duties under the same master and quality of the work performed is the same, if such employees are discriminated in the matter of pay differently with that of being paid to others, then definitely the doctrine of equal pay for equal work comes into play, but where the cadre is different prescribing different qualifications and pay scales for Demonstrators, Lecturers, Readers and Professors, the principle of equal pay for equal work cannot be applied as it is always open to the master to pay different pay scales for different cadres having regard to educational qualifications, duties and responsibilities performed by the incumbents appointed on that posts.

7. On being asked that if his contention is accepted, then what would be the difference between Lecturer and Professor, the learned Counsel for the Petitioners while giving example of Senior Advocate and Junior Advocate could not substantiate his argument satisfactorily. In this regard the ratio laid down in *Dr. C. Girijambal Vs. Government of Andhra Pradesh*, cannot be lost sight of wherein the Apex Court while dealing with the same situation observed that though dressing of any injury or wound is done both by a doctor as well as a compounder, but surely it cannot be suggested that for doing this job a doctor cannot be paid more than the compounder. Similarly, a case in Court of law is argued both by a senior and a junior Advocate, but it is difficult to accent that in the matter of remuneration both should be treated equally. As it was held it is thus clear that in the field of rendering professional services at any rate the principle of equal pay for equal work would be inapplicable.

8. This being the touch stone the; facts of the present case, if tested with the ratio laid down in *Dr. C. Girijambal's case (supra)*, *Randhir Singh Vs. Union of India (UOI) and Others*, and subsequent decisions following *Randhir Singh's case (supra)*, it is apparent that they do not fulfil the requirements as laid down in *Randhir Singh's case (supra)* and *Jaipal and Others Vs. State of Haryana and Others*, -Here, it will not be out of place to mention that Article 14 of the Constitution does not: forbid reasonable classification. What is necessary in order to pass the test of permissible classification under Article 14, is that the classification must not be arbitrary, artificial or evasive.

9. In a recent pronouncement of the Apex Court in *Grih Kalyan Kendra Workers' Union Vs. Union of India and others*, it has been ruled that while considering

the principle of equal pay for equal work it is not necessary to find out similarly by mathematical formula, but there must be a reasonable similarity in the nature of work, performance of duties, the qualification and quality of work, performed by them. Further, it has been emphasised by the Apex Court that it is permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved. This being the ratio laid down in *Grih Kalyan Kendra Workers' Union (supra)*, as observed above, the Petitioners' case does not fit in within the said classification of services that is Demonstrators and Lecturers though more or less performance of duties are the same.

10. Here in the present case the Lecturers whose cadre is altogether different from that of Demonstrators, carry more responsibilities towards teaching the pupils. Therefore, in the opinion of this Court, the differentiation so made between the Demonstrators and Lecturers will not amount to discrimination violative of Article 14 & 16 of the Constitution.

11. If the submission of the learned Counsel for the Petitioner is accepted, then there would be No. classification amongst the job of Demonstrator, Lecturer, Reader and Professor, and the Petitioners in that event would not only make themselves entitled to claim the pay scale of Lecturers but that of Professors as well, which in the opinion of this Court cannot be permissible under the garb of principle of equal pay for equal work as there does not appear to be a reasonable similarity considering different cadres of the job of Demonstrator, Lecturer and Professor though more or less nature of the work performed by them all may be skin.

12. Apart from what has been stated above, the opinion of this Court also gets support with the view expressed by the Apex Court in *State of U.P. v. J.P. Chaurasia* AIR 1989 SC 19, wherein dealing with the same issue, it was observed that more often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The question equation of posts or equation of pay must be left to the Executive Government and it must be determined by expert bodies like Pay Commission.

13. For the reasons given above, No. case is made out for grant of the relief as sought for.

14. In the result, the petition fails and is accordingly dismissed.