

(1996) 03 RAJ CK 0030

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 295 of 1995

Dr. D.C. Dudi and Others

APPELLANT

Vs

University of Rajasthan and Another

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 3 RLW 253 : (1997) 1 WLC 189 : (1996) 1 WLN 638

Hon'ble Judges : R.P. Saxena, J;Gyan Sudha Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Gyan Sudha Misra, J.—The plea of equal pay for equal work which has often been raised before the different judicial forums and authoritative pronouncements are already galore on this question, has once again been raised in this special appeal by the appellants herein, who have been teaching in graduate and post-graduate classes in different subjects in the University of Rajasthan and are being paid only an honorarium at Rs.75/- per period. Although, according to their case, their appointments have all the trappings of appointment as Lecturer on substantive or ad hoc basis, still they have been facing discrimination on the count of payment of salary /remuneration. This had been the common cause of all these petitioners which prompted them to file a writ petition bearing SBCWP No. 1177/1995, which had been placed before a learned Single Judge of this Court, who by order dated 8.3.1995 was pleased to dismiss the same holding therein that the appointment of the petitioners had been on part time basis and, hence, they could not claim the salary of lecturers who had substantively been appointed. A writ petition of similar nature had also been filed in this Court before the Principal seat of this High Court at Jodhpur which took a different view and had allowed the writ petition holding that the lecturers who had been appointed on honorarium basis were entitled to the emoluments of regularly appointed teachers. However, the petitioners could not

get the benefit of the aforesaid judgment and order dated 26.5.1995 since an appeal had been preferred before the Division Bench against the judgment and order of the learned Single Judge of the High Court at Jodhpur which was still pending and was subsequently allowed on 19.7.1995. But prior to that the SBCWP No. 177 of 1995, which was preferred by the petitioners stood dismissed by order dated 8.3.1995. Hence, this Special Appeal u/s 18 of the Rajasthan High Court Ordinance, 1969.

2. The appellants herein hold the degree of Ph.D. in different subjects and possess the requisite eligibility for substantive appointment on the post of lectures in various subjects in the University of Rajasthan. But ever since 1989, no selections have been held by the University of Rajasthan for the purpose of making substantive appointment on the vacant post of lecture in any of the subjects. Hence, a stop-gap arrangement had been evolved by the respondent University, whereunder eligible persons were appointed as Lecturers on ad hoc basis at the commencement of the academic session and were continued in service upto the end of the academic session where after their services were terminated in order to save the University from the liability of paying the vacation salary and were thereafter re- employed in the same fashion in the subsequent academic session and for this purpose circulars were issued from time to time. The appellants herein had been employed in the aforesaid manner from the year 1990. In the year 1994, a fresh circular dated 21.9.1994 was issued by the respondent University of Rajasthan and the appellants were engaged for teaching under-graduate and post- graduate students in their respective subjects for which they were paid honorarium of Rs. 75/- per period. Gradually, this arrangement made by the University gave rise to a feeling of exploitation and a sense of discrimination to the appellants as they felt that although they are discharging the same nature of functions which are being discharged by regularly selected teachers, yet they are deprived of the salary paid to the regular appointees and were also denied the salary for the vacation leave etc. and other fringe benefits. As already stated hereinabove, the appellants feeling aggrieved, were constrained to invoke the extraordinary write jurisdiction of the High Court under Article 226 of the Constitution of India by filling a writ petition which stood dismissed giving rise to this Special Appeal.

3. In view of the various pronouncements of the Supreme Court as also of this Court itself, delivered by the Principal Seat of this High Court at Jodhpur, which by this time had already been decided on 19.7.1995, one would have thought that the University of Rajasthan would not choose to contest this matter, but the University still chose to file a counter-affidavit on 18.12.1995 and sought to contest. It accordingly, negatived the claim of the appellants and took the plea that the petitioner, appellants herein are taking classes in various subjects in pursuance of the contract awarded to them by the Heads of Departments in subjects of Geography, Psychology, Public Administration, Economics and English and each one of them are taking classes under individual contracts and for different durations in the academic session. It was further contended that the

academic year 1994-95 having come to an end their contract under the Scheme dated 21.9.1994 has since come to an end and some of them have entered into fresh contracts in accordance with the fresh scheme framed by the University of Rajasthan dated 27/29 July, 1995. A technical plea was, therefore, first of all, taken up that there being no change in the new scheme under which the petitioners have accepted their contract the appeal has become infructuous as there is no subsisting contract in absence of scheme. It was also stated by the University that permanent vacancies in the University Departments have not been filled as the ordinance concerning the academic and other qualifications as per the UGC guidelines for appointment of teachers have not been finalised and due to this, temporary appointments are made and allowed to continue and, it was for this reason that under the scheme dated 21.9.1994, the appellants were engaged on honorarium basis to cover the uncovered workload which is taken into account after admission of the students to various courses and the time table and the period to teachers both substantive and temporary are assigned for catering to the additional requirement if any in a particular department after considering the recommendation of the Heads of Departments. The policy, according to the University, was formulated to serve the best interest of the students. The University, however, before making the said appointments vide Circular dated 21.9.1994 obtained an under-taking from the applicants who are Ph.D. holders that if assigned to work, they would not serve or be employed at any other place out of the University. It, however, accepted the position that on the basis of the attendance sheets duly certified by the Department, the bills for payment for the periods actually taken is prepared and honorarium is paid on that basis. This arrangement is sought to be justified on behalf of the University by stating that there is no element of exploitation, or illegality or incongruity in this type of arrangement as the University is not receiving any grant from the State Government and in absence of any budgetary support no strength in the category of substantive vacancies can be increased on the basis of regular salary.

4. It is quite obvious that the action of making appointments on honorarium basis on year to year basis, which according to the phraseology used by the University circular was introduced "in order to cover the uncovered workload of teaching in the University" has been assailed on behalf of the appellants as an action most arbitrary, illegal and unreasonable. In this regard, learned counsel for the appellants addressed this Court at length and satisfied that the nature of function discharged by these appellants are not in any way less or inferior than that what is being performed by the Lecturers who are regularly appointed. On hearing the counsel for the parties, on this count, we are satisfied that the appellants, although, are paid on the honorarium basis, their nature of duties is in no manner different from other regularly selected appointees. If that is the position, we have not been able to understand the rationale of discrimination in payment of the remuneration to the appellants especially in the wake of the various pronouncements of the Supreme Court as also this Court. However, since the respondent University initially thought it proper to contest this appeal, it

became essential on behalf of the appellants to refresh the case laws on the question of equal pay for equal work. Attention of this Court was, therefore, first of all, invited to AIR 1992 SC 699 in the matter of *Karnataka State Private College Lecturers' Association v. State of Karnataka* where the so-called temporary teachers were paid the fixed salary of Rs. 10/- less than the minimum payable to the regularly employed, obviously to negative their claim for regularisation and regular salary and other incidental benefits. This method of payment was deprecated and the learned Judges observed that an appointment may be temporary or permanent, but the nature of work being similar, and the temporary appointment even though may be due to exigency of service and the non-availability of permanent vacancies or as the stop gap arrangement till the regular selection is completed, yet there could be no justification for paying the teachers so appointed a fixed salary by adopting a different method of payment, than a regular teacher. Fixation of such emolument was held to be arbitrary and violative of Article 14 of the Constitution of India. The learned Judges further observed that a temporary or ad hoc employee may not have claim to be permanent without facing selection, or being absorbed in accordance with the rules, but no discrimination can be made for the same job on the basis of method of recruitment. Such injustice was held to be abhorring to the constitutional scheme. Thus, the practice of appointing teachers temporarily for a year with break of a day or two after three months by privately managed degree colleges which had been receiving grant-in-aid from the State Government was deprecated by the Apex Court. A similar view was taken also in the case of *Vijay Kumar and others Vs. State of Punjab and others*, where part time lecturers not gainfully employed elsewhere were entitled to be paid according to the minimum of pay scale prescribed for regularly appointed lecturers, the duties of which post they were discharging during the period of their appointment as part time lecturer. Thus, there are series of decisions on this question including the one which has been pronounced by a Division Bench of this Court itself on 19.7.1995 in *D.B. Civil Special Appeal No.537/1995* in the matter of *Jai Narain Vyas University of Jodhpur v. Narendra Singh Rathore and Ors.* (a copy of which has been annexed herewith the memo of appeal). But it would be wholly unnecessary to discuss the facts and ratio of the decisions in each of those cases as all the decisions have consistently laid down that the employer is bound to pay to such employee according to the minimum of the pay scale prescribed for the post, the duties of which such an employee is discharging. In *Vijai Kumar's* case, the teachers were part time lecturers and not temporary lecturers, yet no distinction had been made in regard to payment on the basis of the nature of appointment, but what was considered important was the nature of duties which was discharged by them.

5. Confronted with the settled position of law in regard to the claim of the appellants, a suggestion was given by this Court to the learned counsel for the respondents, whether the University would still insist on contesting the matter and happily wiser counsel prevailed on the university authorities and it had to

concede from sense of justice that it is agreeable to pay the minimum of pay scale to the teachers which are being paid to the regularly selected lecturers in view of the opinion expressed by this Court that the question involved herein is "stare decisis" and no departure could be made in case of the appellants herein without there being any distinguishing feature in their case from the cases relied upon in support of the case of the appellants. Necessity therefore is not required to proceed further in the matter.

6. Consequently, this special appeal is allowed and the order dated 8.3.1995 passed by the learned Single Judge is hereby set aside and accordingly it is declared that the appellants who have been appointed on honorarium basis to cover the uncovered load of the respective departments are entitled to the salary equivalent to the minimum of the pay scale of the regularly appointed lecturers of the Rajasthan University from today. The respondents are also restrained from discontinuing services of the appellants till regular appointments to the post of Lecturers are made in accordance with law. The respondents shall be at liberty to assign the work to the appellants, which is assigned to the regularly appointed Lecturers.

7. No order as to costs.