
(1998) 08 J&K CK 0038
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1305 Of 1997

Ghulam Hussain Bhat and others

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 31-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 3 SCT 256 : (1999) 2 SriLJ 336 : (1999) SriLJ 336

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : Sanjay Kakkar, H.C.Jhelmeria, Advocates appearing for the Parties

Judgement

1 .Petitioners have presented this petition seeking to quash Govt. order No: 149Agri of 1989 dated 27.02.1989, issued by respondent No. 1

whereby two grades of Inspectothers of Panchayat have been created by the respondents, which according to the petitioners are in disregard to

the judgment delivered in writ petition No:342/74 and is violative of the principle of ""equal pay for equal work."" They further seek a writ of

mandamus to enforce the principle of ""equal pay for equal work"" for placing the petitioners also in the payscale of Rs. 17603200 of the post of

Inspector Panchayat.

2.Respondents have filed objections which have been treated as counteraffidavit on their behalf.

3.Petitioners are substantively holding the posts of Village Level Workers (VLW), except petitioner No. 5 who is working as Inspector panchayat

GradeI, in the payscale of Rs. 17603200. The order dated 22.6.1989 came to be issued pursuant to a judgment of this court dated 29.3.1985

delivered in writ petition No.342/74 which related to the disputes of Chhajju Ram and 12 others Vs. State and others. In the petition, the court

passed the folio wing directions:

.....The respondents 1 and 2 are directed to fix the seniority of the petitioners in accordance with the directions given above with those of the

respondents 3 to 11 so as to equalise them with the same scale of pay subject to their eligibility based on the basis of experience and educational

qualifications, which may be equalised with the graduates as Inspector Panchayat to bring them at par with the respondents if not done so far and

to frame the rules accordingly so as not to place the petitioners on an unequal footing with the respondents for the purpose of promotion. The

benefit of equalisation of the pay shall be given to the petitioners in accordance with the rules, which may be framed for the purpose, if not done so

far.....

It is evident from the aforesaid direction that the court has not directed the respondents to put whole of the category of the Inspector Panchayat

in a single particular pay scale. The judgment has been implemented by the respondents by creating the posts of Inspector Panchayat in

two pay scales identifying as Panchayat Inspector Grade I and Grade II. These posts have been encadred in the service rules issued under SRO 133

of 1990, known as "Jammu and Kashmir Rural Development Subordinate Service Recruitment Rules, 1990" (hereinafter called the Rules). The

executive cadre of the department contains the posts of Panchayat Inspector Grade I and Grade II in Ac pay scale of Rs. 11502050 and Rs.

13002550 (Prerevise) respectively to be filled up in the manner prescribed there under which is reproduced as below:

Class Category Designation Grade Mini Method

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qualification.

I. 1. XX XX XX XX

2.(a) XX XX XX XX XX

(b) Panchayat 13002550 100% by promotion from

Inspector Class I, category 3(a) and

Grade I 3(b) having minimum of 5 years

CLASS II service in the said category.

3.(a) Panchayat 11502050 90% by promotion

from category

Inspector I with minimum academic

Grade II qualification of matriculation

and five years service in that category and

XX XX XX XX XX XX XX

The contention of Mr. Jhalmeria is that such a classification is not permissible since the nomenclature of the posts is the same and the duties being

performed are identical. In support of his contention he has relied upon AIR 1984 S.C. 541 (P.K.Ramachandran Aiyar Vs. Union of India)

wherein the Apex Court held:

The Principle 'equal pay for equal work' is deductible from Articles 14, 16 and 39 (d) and may be properly applied to the 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, AIR 1982 SC 879 followed." He has also relied upon AIR 1993 SC 287 (State of Madhya Pradesh Vs. Parmod Bharati), wherein it is

held:

Equal pay for equal work, it is self-evident, is implicit in the doctrine of equality enshrined in Article 14, it flows from it. Because clause (d), Article

39 spoke of 'equal pay for equal work for both men and women' it did not cease to be a part of Art. 14. To say that the said rule having been

stated as a directive principle of State policy is not enforceable in a court of law is to indulge in sophistry. Parts IV and III of the Constitution are

not supposed to be exclusionary of each other. They are complementary to each other. The rule is as much a part of Article 14 as it is of clause

(1) of Art. 16. Equality of opportunity guaranteed by Article 16(1) necessarily means and involves equal pay for equal work. It means equally that

it is neither a mechanical rule nor does it mean geometrical equality. The concept of reasonable classification and all other rules evolved with

respect to Articles 14 and 16(1) come into play wherever complaint of infraction of that rule falls for consideration. In this context, it would be

appropriate to refer to the definition of the expressions 'same work or work of similar nature' contained in Clause (h) of Section 2 of the Equal

Remuneration Act, 1976, enacted by Parliament to implement Article 39(d) of the Constitution and the obligation created by the Convention

concerning equal remuneration for men and Women.

Workers for work of equal value to which India is a signatory. It would be evident from that definition that the stress is upon the similarity of skill,

effort and responsibility when performed under similar conditions. Further, the quality of work may vary from post to post. It may vary from

institution to institution. This reality cannot be ignored or overlooked. It is not a matter of assumption but one of proof. Since the plea of equal pay

for equal work has to be examined with reference to Art. 14 the burden is upon the persons complaining of discrimination to establish their right to

equal pay, or the plea of discrimination, as the case may be.

He has further drawn attention of the court at AIR 1998 S.C. 1193 (Union of India Vs. Bijoy Lal Ghosh) wherein the Supreme Court held:

In the process of winding up of Dandakaranya Project (DDP) all educational institutions run/under it were handed over to the State Govt. of M.P.

and Orissa and primary school teachers/ respondents who were in excess were declared surplus and rendered to central (surplus staff) cell at same

pay scale they were drawing then. On their redeployment they were relieved of their duties from DDP for joining in different Central Govt. Offices.

They are entitled to higher pay scale as per recommendation of National Commission on Teachers headed by Prof. D.P.Chatopadhyaya in terms of

circular dated 12th Aug., 1987 during period from 1st Jan. 1986 till 1st April 1986 i.e. date from which report was given effect and date on which

they were declared surplus. The stand that on date of circular i.e. 12th Aug., 1987 there could not be any consideration for primary school

teachers under DDP as institution under DDP was no more in existence as it stood transferred to State or for lack of either consideration or lack of

approval cannot be accepted. That apart, the use of words "organisations like" and the word "etc." In letter dated 12th Aug., 1987 issued by

HRD Ministry according to recommendations of National Commission indicates similar other organisations, institutions etc., the same was

not exhaustive, and it includes the teachers who were working in DDP as the

respondents, if for the aforesaid reasons their claims were not considered, this nonconsideration of their legitimate claim, when all such belonging to that class received at the relevant date, is arbitrary and violative of Art. 14 of the Constitution. Particularly when during this interim period they were Govt. servants and were drawing pay scale as per 4th pay Commission report which was interim in nature as it awaited pay scale to be given by national pay Commission. And more so when Central Govt. has accepted National Commission Report and gave benefit to all its teachers working in union territory and some of its deptt. and that all States in India have also accepted the same.

However, this judgment is not relevant to the petitioner's case and is distinguishable on facts.

4.Learned counsel for the respondents in rebuttal has urged that the classification of two grades for the category of Inspector Panchayat is

permissible as the same has been made keeping in view the experience, length of service, responsibility towards the discharge of duties and the

manner and method of recruitment and promotion. The petitioners are not holding the posts of Panchayat Inspectors, except petitioner

No.5, who is already in the grade for which relief is sought. Therefore, they are not entitled to maintain the petition being not performing the duties

of Inspector Panchayat in any manner. Apart from this, in order to make out and bring round his first argument, he has sought support from the

judgment in case V.Markandya and others Vs. State of Andhra Pradesh and others (AIR 1989 SC 1308) paras 13 and 10 whereof are relevant

and extracted as below:

... where two class of employees perform identical or similar duties and carrying out the same functions with same measure of responsibility having

same academic qualifications, they would be entitled to equal pay. If the state denies them equally in pay, its action would be violative of Arts. 14

and 16 of the Constitutions, 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, order, 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 principles 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."" (Para 13)

... The principle of equal pay for equal work is not abstract one, it is open to the state to prescribe different scale pay for different cadres having

regard to nature, duties, responsibilities and educational qualifications. Different grades are laid down in service with varying qualification for entry

into particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scales for

different cadres. The application of doctrine arises where employees are equal in every respect, in educational qualifications, duties, functions and

measure of responsibilities and yet they are denied equality in pay. If the classification for prescribing different scales of pay is founded on

reasonable nexus the principle will not apply. But if the classification is founded on unreal and unreasonable basis it would violate Arts. 14 and 16

of the constitution and the principle of equal pay for equal work, must have its way.....

(Para 10)

5. Applying the test laid down by the Supreme Court in this case, petitioners cannot be treated to be equal seeking payparity. The posts of

Panchayat Inspector GradeI are to be filled up 100% by promotion providing

promotional avenues to panchayat Inspector GradeII. The length of service for the post of Panchayat Inspector GradeI is 5 years as panchayat Inspector GradeII. The method of recruitment to the posts of Panchayat Inspector GradeII and I, is materially different and distinct. 90% of the posts of Panchayat Inspector GradeII are to be filled up by promotion from category of Panchayat Supervisors in the pay scale of Rs. 15502550 (prerevised) with 5 years service and 10% by promotion from the same category from amongst the graduates having two years service. The principle of 'equal pay for equal work' can be made applicable only where employees are equal in every respect in educational qualification, duties functions and measures of responsibility and length of service. From the analysis of the Rules, classification made by the State in providing two different grades thereby providing promotional avenues for the category of Panchayat Inspectors GradeII to the posts of Panchayat Inspectors GradeI, is permissible and is founded on rational basis in order to achieve the object of providing promotional avenues to Panchayat Inspector GradeII, therefore, the principle of 'equal pay for equal work' cannot be applied as the petitioners have not proved to be equals. The manner and method of recruitment and eligibility qualification for holding the post is also different. For what has been stated above writ petition fails and is accordingly dismissed.