

(2015) 10 KL CK 0132
In the High Court Of Kerala
Case No : W.P. (C). No. 28548 of 2012 (P)

Jobish Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 234, 309, 311

Citation : (2015) 10 KL CK 0132

Hon'ble Judges : P.V. Asha, J.

Bench : Single Bench

Advocate : P.C. Sasidharan, Advocate, for the Appellant; Lillie Leslie, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

P.V. Asha, J.—Aggrieved by the placement in a scale of pay lower to even the corresponding revised scale, consequent to the pay revision, petitioner has approached this Court, challenging Ext. P7 order issued by the Government and seeking fixation of pay on par with Offset Printer in Kerala University.

2. The syndicate of the 2nd respondent - Sree Sankaracharya University of Sanskrit (hereinafter referred to as "University"), on 5.3.2005, resolved to set up a printing unit in the University and to create the unavoidable posts for the same, with prior approval of Govt. Accordingly, the University as per Ext. P2 letter dated 18.3.2005, forwarded the details of the posts to be created and requested for approval for creation of the posts including that of Printer. In this letter, the University explained the requirement to have a full fledged printing unit and the requirement of a Printer among other posts in order to meet the exigency of printing works in the University, for which a mini offset printing unit was already established in the University. It was pointed out that experienced and permanent hands were required for the same. The letter contained the details regarding number of those unavoidable posts to be created, scale of pay, method of appointment and qualification for the same, which has to be

incorporated in the University Statute and the provisions of the schedule of non teaching service, by way of amendment. Approval was sought, for creation of posts including that of a Printing Machine Operator (Printer) having the scale of pay of Rs. 3590-5,400. The qualification prescribed was (i) S.S.L.C or equivalent, (ii) Certificate of Diploma in Printing Technology and (iii) Minimum 3 years" experience in a reputed printing press. Method of appointment was shown as direct recruitment on the basis of merit, inviting applications through a notification and age limit was prescribed as not more than 35 years with usual relaxations.

3. After getting approval from the Government, for creation of posts, the University issued Ext. P1 notification dated 25.6.2005, inviting applications for appointment to the various posts including that of Printer in the scale of pay of Rs. 3590-5400, from among candidates with SSLC; Certificate/Diploma in Printing Technology and experience for a period of not less than 3 years in a recognised (Government/University) printing press. The petitioner, who was having Plus Two with Diploma in Printing Technology and experience in press work, submitted application for the post and he was appointed in the post on 22.09.2006.

4. In the meanwhile, the Government had ordered revision of pay based on the report of 8th pay revision commission, as per G.O.(P) No. 145/2006/Fin dated 25.3.2006, with effect from 1.7.2004. Based on this, the petitioner's pay was fixed in the scale of pay of Rs. 5930-9590, the corresponding revised scale. Based on a subsequent rectification in the revised scale of pay, his pay was thereafter fixed in the scale of Rs. 6080-9890.

5. It is pointed out that the scale of pay of a Printer in a letter press in other Universities and in Government press, as on the date of Ext. P2 i.e in 2005, ie. (Printer Grade II), was in the lower scale of Rs. 3350-5275 which was revised to 5510-8590 in the 8th pay revision with effect from 1.7.2004. Similarly, the qualification prescribed for them was pass in 8th standard and KGTE/MGTE letter press machine work. In the case of the petitioner who was to work on Offset Machine, requisite qualification is SSLC with certificate or Diploma in Printing Technology with 2 years" experience.

6. The petitioner's pay was thereafter revised to Rs. 5930-9590 and thereafter to Rs. 6080-9830. But in the pay revision order, issued on 26.2.2011, based on the 9th pay revision, a unified scale of pay was introduced for the posts in all the Universities in Kerala. In this process, the scale of pay of the petitioner happened to be revised to Rs. 9940-15380, which is the revised scale of pay of Printers in letter presses. This was at a time when the scale of pay of Rs. 6080-9830, (which the petitioner was drawing) was revised as Rs. 10480-18300 and that of Offset Printers in other Universities was revised as 14620-23480.

7. Seeing this anomaly occurred in the Pay Revision, on account of the unification, the petitioner submitted a representation before the University and

the University in turn, addressed the Government as per Ext. P3 letter pointing out the injustice caused to the petitioner, referring to the proposal submitted by the University for approval for creation of posts, explaining the requirement of a Printer for the University where Offset Machines are operated, the higher qualifications prescribed for the post in the 2nd respondent University, compared to the 8th standard with KGTE or MGTE (lower) for the Printers of other Universities in Kerala, etc; even for the offset Printer of Kerala University, SSLC with certificate in Printing Technology is the requisite qualification without insisting experience. The University further explained the duties and responsibilities attached to the post of Printer under them - to attend the duty of an Offset Printer while discharging other duties like cutting, pre-press and post-press. It was pointed out that the qualification prescribed for an Offset Printer in the Kerala University was lesser than that of this University, even though the duties and responsibilities of a Printer in the University are similar to that of an Offset Printer in other Universities. On account of the unification of the scale of pay of Printers of various Universities, the scale of pay of Printer in the University happened to be revised in a lower scale. The University addressed the Government again in Ext. P4 letter dated 30.01.2012 reminding the concurrence granted for creation of post of Printer in the Printing Unit of the University in the scale of pay of 3590-5400; the higher qualifications fixed for the post and the duties and responsibilities involved in operating an Offset Printing Machine.

8. The University has filed a counter affidavit supporting the case of the petitioner and at the same time pointing out the negative attitude of the Government in Ext. P7. The Government filed a counter affidavit stating that there existed no parity in the scale of pay of Printer attached to the University with the scale of pay of Offset Printers attached to the University of Kerala. It is stated that as on the date of notification issued by the University for the post of Printer, the scale of pay of an Offset Printer in the Kerala University was higher and the post is specifically mentioned as Offset Printer in the Statute of the Kerala University, whereas the post in Sree Sankaracharya University is notified as Printer only. It is therefore stated that, in the 9th Pay Revision Order, the scale of pay of 9940-16580 is sanctioned to Printer and what is sanctioned to an Offset Printer is 14260-25280. According to the 1st respondent, the scale of pay of a Printer in all the Universities other than the Kerala University is the same and the post available in those Universities are that of Printer. It is further stated that the Finance Department examined the matter with reference to the notification to the post, University Statute etc. relating to qualification, nature of duties and responsibilities of an Offset Printer in comparison with other Universities and advised the Government that there is no parity in scale of pay during the previous pay revision and that the scale of pay of Printer in the University and Offset Printer in the Kerala University cannot be equated.

9. The petitioner has filed a reply affidavit pointing out that the petitioner is brought under the unified scale of pay of Printers only on account of the nomenclature of the post, without taking into consideration the duties and

functions attached to the post or qualification prescribed for the same.

10. I heard the learned counsel appearing on either side. It is seen that the post of Printer in the University was created with approval of Government based on Ext. P2 proposal. As on 18.03.2005, ie. on the date on which the University addressed the Government, by Ext P2, the requisition made on the basis of the resolution of the Syndicate to create posts, was for concurrence for creation of the post of "Printing Machine Operator (Printer)", specifically showing the scale of pay attached to the post as Rs. 3590-5400 and the qualification prescribed as SSLC and certificate/Diploma in Printing Technology with two years" experience. It is pertinent to note that at the relevant time the qualification prescribed and the scale of pay attached to the post of Printing Machine Operator (Printer) sought to be created in the University and that of Printer in the other Universities are as follows:

11. In Ext. P2 letter it was specifically pointed out that the printing unit was already set up with a mini offset printing machine. Now the Government have found that since the printing unit is being operated with a mini offset machine alone, it is not necessary to revise the scale of pay as in the case of an Offset Printer. In fact what was stated in Ext. P2 was that a mini offset machine was already established for the urgent works; for a full fledged unit, permanent posts with qualified hands are necessary. At any rate whether the machine is mini offset or otherwise, the technology to be adopted in operating the unit is one and the same and at any rate, it is not the same as that is required for operating a letter press. It is pertinent to note that the qualification fixed for the post of an Offset Printer at the relevant time was only SSLC with certificate in printing technology, without experience, lower than what was prescribed for the post of Printer in the University. The fact that the Printers (Printer Grade II) in other Universities are operating only letter press; whereas the Printer in the 2nd respondent University is operating Offset Printing Machine would show the difference and the heavy duties and higher responsibilities attached to the post of a Printer in the 2nd respondent University. The skill for operating a letter press and that for an Offset Printing machine is distinct and different. The non-inclusion of the post in the schedule to 1st Statute, on account of subsequent creation of the post in the year 2005, cannot be a reason to reject the request. Therefore, unification of the scale of pay of the post of Printer in the University and those in other Universities can only be considered as arbitrary and done without application of mind to the peculiar circumstances arising in the University. The Government did not care to look into any of these aspects, in response to the repeated requests from the University, as per Exts. P3 or P4. A perusal of Ext. P2 requisition and the pay revision orders at the relevant time in respect of the scale of pay of the post of Printers in other Universities would reveal that the post of Printer, which was specifically shown as Printing Machine Operator (Printer) in Ext. P2, was in the scale of pay different from those existed in other Universities and a higher pay was fixed apparently because of the duties attached to printing unit with offset machines, for which qualifications in higher

degree were fixed. The reasons stated for rejection of the request of the University as per Ext. P7 as well as the contentions raised in the counter affidavit of the 1st respondent reveal that they have not considered any of these relevant materials in the correct perspective.

12. According to the 1st respondent, there was no parity in the previous pay revision orders as far as the post of Printer in the University is concerned. But such a statement has been made without looking into the fact that the scale of pay for the post was fixed as Rs. 3590-5400 at a time when the scale of pay admissible to the Printers in other Universities and Govt. Press was 3350-5275. Petitioner's pay - ie. 3590-5400 was revised as Rs. 6080-9830. It was only in the 2009 pay revision order that a reduced scale of pay of 9940-15380 was granted, because of the unification. In fact, the corresponding revised scale of pay admissible to the pre-revised scale of Rs. 6080-9830 is Rs. 10480-18300, as can be seen from the pay revision order G.O(P) No. 86/2011/Fin dated 26.02.2011.

13. The question of parity in pay is to be decided by the executive. But when the executive does not act considering the relevant aspects and denying the benefits admissible to the employees considering the irrelevant matters, this Court will be justified in directing the Government to act in accordance with law. The question to be looked into in the present case, ie. in the case of the Printer under the 2nd respondent University is the duties and responsibilities attached to the post of Printer as well as the qualification prescribed for the post. In this case, right from the date on which the University decided to create the post for concurrence, a different scale of pay was shown and was sought for creation of the post in a particular scale of pay different from that existed in other Universities in view of the fact that the Printer has to operate machines of modern printing technology. The Government accorded sanction for the same and the appointee enjoyed the scale of pay and the benefit of pay revisions, till the unification of the post. Just because the nomenclature of the post happened to be "Printer", the Government cannot deny a higher scale of pay on par with the scale of pay which he was allowed to enjoy till the unification. The revision of pay is for enhancing the scale of pay which the employee was getting. He cannot be put on a lower scale denying, at least a corresponding revised scale of pay, merely looking at the nomenclature.

14. Apart from challenge against the order Ext. P7, the petitioner also seeks parity in pay with that of Offset Printer in the Kerala University. In this context, the learned counsel relied on the judgment State of Kerala Vs. B. Renjith Kumar and Others, . There the apex court was considering a case of Presiding Officers of the Industrial Tribunals seeking pay parity with the District Judges. They were being paid the same scale prior to 1998. But when pay was revised in the case of members of subordinate judiciary, on recommendations of Shetty Commission report, it was not extended to the Presiding Officers of the Industrial Tribunals. Contention was that appointment of Presiding Officers of the Labour Court were

under Article 234 of the Constitution of India while that of the Presiding Officers of Industrial Tribunals were not so. In the writ petitions filed by them, this Court found that the mere fact that the Presiding Officers of the Industrial Tribunals are not appointed on the recommendation of the High Court or that they are not under the control of the High Court cannot, by itself, be a good reason to treat them differently. The apex court after considering the issue, held as follows:

"14. It is not in dispute that the officers who presided over the Labour Courts and those appointed as Presiding Officers of the Industrial Tribunals do decide disputes under the ID Act, 1947. There is no qualitative difference in the nature of functions or duties attached to the categories of posts. This parity having been recognised and accepted by the State Government for more than 30 years, the High Court, in our view, has rightly observed that the mere fact that the Constitution refers to the appointment of District Judges alone cannot, by itself, be a good ground for treating the Presiding Officers of the Industrial Tribunal and the District Judges differently. The High Court held that even the Presiding Officers of the Industrial Tribunals are not outside the ambit of the Constitution as the protection of rules framed under Article 309 as also under Article 311 is available to them."

15. As already explained, the duties and responsibilities attached to the post of Printer under the University has already been explained by the 2nd respondent University in Ext. P2 as well as Exts. P3 and P4. The qualifications and the scale of pay with reference to the post of Printers and Offset Printers under the other Universities and in Government press are also detailed above. In the above circumstances, this is a fit case where the respondents shall look into the claim raised by the petitioner for granting him the scale of pay admissible to the Offset Printer in University, especially when the pay revision commission has already decided to unify the post under the Universities. While considering this, the nomenclature of the post shall not be the criteria for extending the revised scale of pay admissible to the post of a Printer operating an Offset Printer machine.

16. The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court and the Apex Court. The doctrine of "equal pay for equal work" forms a part of the directive principles of State policy in Article 39(d) of the Constitution. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, the doctrine of "equal pay for equal work" has assumed the status of fundamental right as held in *Randhir Singh Vs. Union of India (UOI) and Others*, .

17. Further in *Union of India (UOI) and Others Vs. Dineshan K.K.*, , the Apex Court held that if the necessary material on the basis whereof the claim for parity of pay scale is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled the decision of the Central Government denying the benefits of same rank and pay structure to a Radio Mechanic in Assam Rifles as was given to other Central paramilitary

forces was held to be clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.

18. In the above circumstances, I find that denial of at least the corresponding revised scale of pay of Rs. 6080-9830, admissible to standard pay scale, if not, the revised scale of pay admissible to the Offset Printer in the Kerala University, was quite unjust and illegal. Petitioner's claim for parity with Offset Printer in Kerala University deserves to be considered by the respondents, with due regard to the technology adopted in the Press in Offset Printing, the duties and responsibilities attached to the post, qualification prescribed, etc. in the correct perspective.

Accordingly, I quash Ext. P7. The 1st respondent is directed to reconsider the matter including the petitioner's claim for parity with Offset Printer of Kerala University, in the light of the above observations and to revise the scale of pay in tune with the description of the post given in Ext. P2, within a period of three months from the date of receipt of a copy of this judgment.

With the above observations, this Writ Petition is disposed of.