

(1991) 12 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12969 of 1991

Krishan Lal Sehgal, Actor and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 03-12-1991

Acts Referred:

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

Citation : (1993) 1 ILR (P&H) 237

Hon'ble Judges : V.K. Bali, J;A.L. Bahri, J

Bench : Division Bench

Advocate : K.G. Chaudhry, for the Appellant; Mani Ram, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—In this second bout of litigation, the Petitioners who are Actors, Stage Masters, Harmonium Masters and Tabla Masters and are employees of the Department of Public Relations, Haryana elamour for the same pay as is being given to the persons on the same posts and in the same very department in Rural Community Theatre and who are performing the same and similar kind of duties. The grievance is of discrimination against the State of Haryana for not following the doctrine of "equal work equal pay". Necessary facts need to be noticed first.

2. Petitioners are working in the office of District Public Relations Officer in the State of Haryana as Actors, Stage Masters, Harmonium Masters and Tabla Masters in the pay scale of Rs. 950-1,400. The members of Rural Community Theatre in the same very department who were working on the same posts as the Petitioners are, under the same employer have their pay scales fixed at Rs. 1,400-2,600. For removing the disparity in the pay scales, the Petitioners through their Associations made number of representations to the Respondents but when the same were cold shouldered they had no choice but to take up the matter in this Court by way of Civil Writ Petition No. 891 of 1991. The matter came up for hearing before a Division Bench and,-vide order, dated January 18,

1991, a direction was issued to the Respondents to decide the representations of the Petitioners within three months. The representation having been decided against the Petitioners, vide order, dated May 13, 1991, the Petitioners per necessity have approached this Court for the second time. The posts of the Petitioners are of technical nature and they require more skill, manual labour and time to perform their duties as compared to their counter-parts in the Rural Community Theatre. The Petitioners are the members of drama party. They stage their shows to entertain the public at the District Level, State Level, National Level and International Level whereas the members of Rural Community Theatre stage their shows to entertain the public only in rural areas within the District. It is the case of the Petitioners that they had staged their shows to entertain the people on behalf of the State of Haryana in Asiad 82 at Delhi as well as in "Apna Ustav" 1986. Besides, they also staged their shows in various States from time to time like Bombay, Ladakh, Mizoram, Goa and Nagaland. Although the members of Rural Community Theatre have duties confined in the rural area of the District yet they were being given the pay scale of Rs. 1,400-2,600. The Petitioners further contend that the very nature of duties that are performed by them show that they are required to possess particular type of skill as the words Actors, Harmonium Masters, Stage Masters and Tabla Masters themselves indicate whereas similar persons employed on the same posts in Rural Community Theatre are not required to possess particular type of skill they may put them at higher level. The only distinction between the two is that whereas the Petitioners stage their shows at State Level, National Level and International Level, the persons employed in Rural Community Theatre stage their shows at District Level, That being the position, if the Petitioners are not entitled to higher pay scale than that of persons employed in Rural Community Theatre, they are at least entitled to equal pay. The representation as ordered to be decided by this Court was rejected on the ground that prior to revision in the pay scales with effect from January 1, 1986. Harmonium Master, Tabla Master, Stage Master and Actors were drawing pay scale of Rs. 400-600 whereas the pre-revised scale of artists working in the Rural Community Theatre was higher i.e. Rs. 525-900 as also the duties/mode of recruitment and minimum qualifications are quite different in the case of the Petitioners and the persons employed on the same posts in Rural Community Theatre. It is for these two reasons, as referred to above, that the representation of the Petitioners was rejected.

3. The Writ Petition has been opposed and it has been mainly averred in the written statement that the posts held by the Petitioners are not of technical nature but can be termed as skilled one. Further it is the case of the Respondents that persons working in Rural Community Theatre were not recruited directly but were in fact recommended by the Subordinate Services Selection Board for their appointment as Tabla Performer and Harmonium Performer and that the posts of Rural Community Theatre and drama parties are not interchangeable. It is further the case of the Respondents that the persons employed in the drama parties have to perform basically within the district and

they only give drama shows whereas the Rural Community Theatre is set up by the Department for the artical performances which have nothing to do with the drama shows. It is on the aforesaid count that the nature of duties of the two sets of employees is said to be different.

4. After hearing the learned Counsel for the parties, We are of the considered view that this petition has merit and, therefore, must succeed. It is not disputed that both the sets of employees either working at the office of District Public Relations Officer in the State of Haryana or Rural Community Theatre are performing the same kind of duties. Both the sets of employees have the same employer. The fact that one set of employees is performing in the rural areas in the district at the district level whereas the other set of employees is performing in the districts or at State Level Functions; no distinction in the nature of duties could possibly be made out. While considering the principle of equal pay for equal work, it is not necessary to find out similarity by mathematical formula but there must be a reasonable similarity in the nature of work, performance of duties, the qualification and the quality of work performed by them and it is not permissible to have classification in services particularly for the purpose of pay scales. Even though the principle of equal pay for equal work has not assumed or has been expressly declared by the Constitution as fundamental right but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution "equal pay for equal work" has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution of India. In *Bhagwan Dass and Others Vs. State of Haryana and Others*, , it was held that once the nature and functions and the work of two persons are not shown to be dis-similar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine. Even though the case of the Petitioners is that they were recruited in the same manner as their counter-parts in Rural Community Theatre yet even if it is not so and the mode of recruitment in two wings in the same department is from a different source, that would not provide a valid ground for making any distinction with regard to pay scales of two sets of employees. In identical facts when the Staff Artistes of Doordarshan claimed equal pay as their counterparts in Film Division were getting, the Supreme Court in " *Y.K. Mehta and Others Vs. Union of India (UOI)* and Another, . held that the Directive Principles contained in Part IV of the Constitution, though not enforceable by any Court, are intended to be implemented by the State of its own accord so as to promote the welfare of the people. The Principle of "equal pay lor equal work", if not given effect to in the case of one set of Government servants holding same or similar posts, possessing same qualifications and doing the same kind of work, as another set of Government servants, it would be discriminatory and violative of Article 16 of the Constitution.

5. As referred to above, the Petitioners are holding the same posts in the office of District Public Relations Officer in the State of Haryana as are being held by

their counter-parts in Rural Community Theatre. The very nature of jobs suggests that it has to be of the same kind. The distinction sought to be made out by the Respondents and which has been noticed above is not justified to deny the pay-scales to the Petitioners which are given to the persons working in the Rural Community Theatre. The action denying the equal pay to the Petitioners is discriminatory and violative of Article 14 of the Constitution of India.

6. In view of what has been observed above, order Annexure PI,-vide which the representation of the Petitioners was rejected is set aside and a direction is issued to the Respondents to grant to the Petitioners pay scales of Rs. 1,400-2,600 with effect from the date the same were paid to the employees on the same or equivalent posts in Rural Community Theatre. The arrears that may be due must be paid within a period of three months from today. This Writ Petition succeeds but with no order as to costs.