
(1987) 02 AHC CK 0045
In the Allahabad High Court
Case No : Writ Petition No. 6100 of 1982

Kumari Shashi Bala Roy Sharma and Another	APPELLANT
Vs	
State of U.P. & Anr.	RESPONDENT

Date of Decision : 09-02-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39(d)

Citation : (1987) 02 AHC CK 0045

Hon'ble Judges : U.C.Srivastava, J and P.Dayal, J

Final Decision : Allowed

Judgement

U.C. Srivastava, J.—The petitioners who are Assistant Employment Officers in the department of Training and Employment from the year 1976 have preferred this writ petition against the State Government and the Director of the department concerned praying for issuance of a direction in the nature of mandamus, commanding the State Government to grant to the Assistant Employment Officer the same pay scale which has now been granted to the District Employment Officer from the date of revision in the pay scale. The petitioner were directly selected on the basis of competitive examination, held by the U.P. Public Service Commission, and the posts which were advertised by the Public Service Commission included the posts of Assistant Employment Officer, District Employment Officer, Assistant Sales Tax Officer, Reformation Officers, Deputy Regional Marketing Officers etc. Some of the persons who were selected were posted as Assistant Employment Officer while others as District Employment Officers and that the petitioners were appointed for both in scale of Rs. 400750 and there was a common seniority list of the Assistant Employment Officers and of District Employment Officer, maintained by the Department. It appears that those who were posted in bigger districts were appointed as Assistant Employment Officers and those who were posted at smaller districts were appointed as District Employment Officer. On the basis of the recommendations made by the Second pay commission, the State Government vide order dated 28.6.1982 provided the scale of Rs. 6251240 for the Assistant Employment

Officers and a different scale has been provided for the District Employment Officers i.e. Rs. 7701600. Even the Stenographers and the Office Superintendents of the headquarters who also work under the supervision and subordination of the Assistant Employment Officers were given a grade of Rs. 6251360. Instances have been given by the petitioners regarding interchange of these two posts viz. Assistant Employment Officer and District Employment Officer.

2. The petition has been contested by the State Government and the facts that basic qualifications, mode of selection and appointment for the posts of different nomenclature are one and there is no distinction between Assistant Employment Officer and the District Employment Officer, have not been disputed. According to the State Government, junior persons are posted as Assistant Employment Officers and senior ones are posted as District Employment Officers and the cadre of these two posts is rather different. It has not been disputed that the seniority list of the department contains both the Assistant Employment Officers and District Employment Officers and the mode and manner of their recruitment were same and similar. The petitioners have pointed out that selection is given on the basis of seniority in the same cadre in spite of those two nomenclatures and at times the duties of Assistant Employment Officer are more difficult than that of the District Employment Officer. It seems that the State Government, vide G.O. No. 1482/36.3.83, dated 6.5.1983 required the District Employment Officers to write the character rolls of the Assistant Employment Officer and vide notification dated 25.5.1985 it was provided that the Assistant Employment Officer were to be promoted as District Employment Officer.

3. Copy of the Office order no. 093/294/1193 dated 6,2.1976 which was issued by the Director, Training and Employment, U. P., Lucknow which is on record, makes it clear that these two posts were inter changeable and the same was also done in the past. Neither in the advertisement nor in the appointment letter there was any bifurcation of these two posts which were of the same cadre and carried same emoluments. It is not the case of the state that those who got higher position were to be appointed as District Employment Officers and those who got lower position were to be appointed as Assistant Employment Officers. The petitioner has also filed copy of the G.O. dated 29.9,1981 to show that eight posts are interchangeable apart from other instance. Though some explanation of the same has been given as to why such posting has been made but no explanation has been given in respect of one Sri Bharat Lal who was District Employment Officer in Basti but thereafter he was posted as Assistant Employment Officer at Faizabad itself. From the G.O. No. 1482/3651983 dated 6.5.1983 which authorises the District Employment officers to write character rolls of the Assistant Employment Officers and the order dated 25.5.1985 indicates that the cadre of Assistant Employment Officers and District Employment Officers was bifurcated. There appears to be no Justification of reasonable ground for bifurcation of the cadre subsequently when Employment Officers of these two designations belong to the same cadre and their mode of

manner of appointment is the same, there being also no difference in qualifications. These posts until now were also interchangeable. The petitioners have stated that the Assistant Employment Officers are required to perform more problematic duties than others as they deal with every department of the Central Government and the State Government to find out avenues for employment and they also deal with private employers and the private corporations etc, This paragraph has not been denied on behalf of the State but it has been pleaded that the nomenclature indicates that the post of Assistant Employment Officer is subordinate to the post of District Employment Officer and the Assistant Employment Officer assists the District Employment Officer in day to day work while the District Employment Officer looks with the administrative affairs . The basis on which two pay scales have been created of these persons being that Assistant Employment Officers do the desk work and" that most of them are promoted from clerical cadre though 90% under the Standing orders are to be direct recruits is obviously not correct. The State Government before applying two grades and bifurcating the cadre did not apply its mind to the correct factual position, in *Randhir Singh v. Union of India* (AIR 1982 SC 879) it has been observed that it is well known that there can be and there are different grades in service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualification or experience based on length of service reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal work would be an abstract doctrine Article 14 sought to be applied to them. Again in *P. Savita v. Union of India* (AIR 1985 SC 1124) the court reiterated the view expressed in *Randhir Singh's* case (Supra) in preference to somewhat conflicting view expressed in *Kishori Mohan Lal Bakshi v. Union of India* (AIR 1962 SC 1139) and on the facts of the case observed that in the absence of evidence that different grades created on the ground of higher qualification whether academic or otherwise or on entitlement by any other criteria laid down or that the Senior Draughtsmen who were placed in an advantageous group performed work and duties more onerous or different from the duties performed by the appellants group, there was no justification for this classification which was based on the mere accident of an earlier entry into service. The court also observed that it would be a great injustice etc. to continue the appellants on the scales of pay of Draughtsmen even after promotion as Senior Draughtsmen which is destructive of all incentive and initiative in the service.

4. The basis of two pay scales instead of one and classification based on wrong assumption of facts is unreasonable and is discriminatory and violative of Article 14 of the Constitution of India. These facts also indicate that a discrimination has been made between the District Employment Officer and the Assistant Employment Officer, duty of both of whom are within a wider sphere of duty of Employment Office, without any reasonable basis or ground.

5. In these circumstances, the writ petition is allowed. Let a mandamus be issued directing the opposite parties to consider and to grant the Assistant Employment Officers the same pay scale which has now been granted to the District Employment Officers from the date of revision of pay scales within a reasonable period, say, within three months from today. There will be no order as to costs.