
(1978) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 38 of 1974

M.P. Polytechnics Gazetted Officers Association, Bhopal and
others

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 26-09-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 226, 31
States Reorganisation Act, 1956 — Section 115

Citation : (1979) MPLJ 125

Hon'ble Judges : G.P. Singh, C.J.; J.S. Verma, J

Bench : Division Bench

**Advocate : Gulab Gupta, for the Appellant; S.L. Saxena, Government Advocate,
for the Respondent**

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

The petitioners 2 to 5 namely, K.G. Pillay, K.N. Rao, P.S. Danayak and C.S. Tiwari, are employed in Government Polytechnics as Principal, Head of the Department, Lecturer and Assistant Lecturer respectively. Petitioner No. 1 is the Madhya Pradesh Polytechnics Gazetted Officers Association. By this petition under Article 226 of the Constitution, the petitioners pray that the Government be directed to give them the benefits of the Madhya Pradesh Unification of Pay Scales and Fixation of Pay on Absorption Rules, 1959, and the Madhya Pradesh Revision of Pay Rules, 1961.

The stand of the Government is that the Unification of Pay Rules, 1959, and the Revision of Pay Rules, 1961, were not applied to the teachers in technical institutions and that to them, the revised pay scales sanctioned on the recommendations of the Government of India with effect from 1st December 1959 were made applicable. By notification dated 3rd May 1978, the 1959 Rules and 1961 Rules were both retrospectively amended from the date of their

commencement by inserting Rule 3-A. Rule 3-A so inserted, in so far as it is relevant here, specifically provides that the 1959 Rules and 1961 Rules will not apply to the teachers in technical institutions to whom revised pay scales sanctioned on the recommendation of the Government of India with effect from 1st December 1959 are applicable. Learned Counsel for the petitioners submits that the insertion of this retrospective rule has deprived the petitioners of the salary that has accrued to them under the aforesaid rules and that the amendment retrospectively made contravenes their rights under Articles 19 and 31 of the Constitution. The reply of the Government Advocate to this contention is that Rule 3-A only makes clear what was implicit in the rules and that on a proper construction and application of the rules it should be held that they never applied to the petitioners.

The present State of Madhya Pradesh was formed on 1st November 1956 under the States Re-organisation Act, 1956. The new State broadly consists of four integrated units namely, Mahakoshal area of the erstwhile Madhya Pradesh, the erstwhile States of Madhya Bharat, Vindhya Pradesh and Bhopal. Different pay scales were applicable in the various units for same or similar posts. The State Government, therefore, decided to unify the pay scales and to bring all the Government servants who, were absorbed in the new State in the unified pay scale. It appears that the most beneficial pay scale out of the various pay scales in force in the different units for the same post was selected as the unified scale. It was to give effect to this policy that the Madhya Pradesh Unification of Pay Scales and Fixation of Pay on Absorption Rules, 1959, were made, by a Notification dated 30th November 1959. The rules were given retrospective effect from 1st April 1958.

Rule 2 (k) of these 1959 Rules defines "unified scale" to mean "a scale of pay fixed by Government, and so described, by a general or special order in this behalf whether passed before or after the coming into force of these rules." The expression "allocated Government servant" is defined by Rule 2 (a) to mean "a person in the service of a former State allotted or deemed to have been allotted to serve the State of Madhya Pradesh under the provisions of section 115 of the States Re-organisation Act, 1956, and continued in the service of the new State." The expression "new entrant" as defined by Rule 2 (e) means "a Government servant appointed or deemed to have been appointed on or after the 1st November 1956." Rule 4, in so far as relevant, provides that the pay scale applicable to an allocated Government servant on 1st April 1958 or on such earlier date as may have been fixed in this behalf by a general or special order, shall be unified scale applicable to his post of absorption. Rule 6, in so far as relevant, provides that the pay scale applicable to a new entrant shall be the unified scale. Rule 13 reserves a power in the State Government to relax or suspend the operation of any of the provisions of these Rules in the case of an employee or category of employees of Government in such manner and to such extent as may appear to be just and equitable or necessary or expedient in the public interest

A perusal of the 1959 Rules will show that an allocated Government servant or a new entrant becomes entitled to be placed in the unified scale of the post in which he has been absorbed or to which he has been appointed provided there is a unified scale fixed by the Government for that post. Unless and until the Government fixes a unified scale for a particular post, the incumbent of that post is not entitled to be placed in the unified scale. Indeed, as already seen, the expression "unified scale" as defined by Rule 2 (k), itself means a scale of pay fixed by the Government and so described by a general or special order in this behalf. The unified scale of pay for a particular post or set of posts, therefore, comes into existence only when there is a general or special order of the Government fixing a scale of pay for the post or posts and describing it as a unified scale. It is common ground that the Government did not pass any general or special order fixing unified scale of pay for teachers in technical institutions. As no unified scale of pay was fixed for the posts held by the petitioners, they did not become entitled to any benefit under the 1959 Rules. Learned Counsel for the petitioners, however, submits that although no unified scale of pay was fixed for teachers in technical institutions, there is a duty cast on the Government under the rules to fix such a unified scale and that if the Government does not do so, its action would amount to discrimination violating the petitioners' rights under Articles 14 and 16 of the Constitution. It is this argument which we have now to examine.

We have already reproduced the definition of unified scale which is given in rule 2 (k). The definition, in terms, does not cast any obligation on the State Government to fix unified scale for every post. There is also no other rule making it obligatory for the State Government to fix unified scale of pay for all posts. Indeed, rule 13, which enables the State Government to relax or suspend the operation of the rules in case of an employee or category of employees, strongly supports the inference that the rules do not cast any obligation on the State Government to fix unified scale of pay for any particular post or for all posts under the State. The question then is whether non-fixation of unified scale of pay in respect of teachers in technical institutions has infringed their rights under Articles 14 and 16 of the Constitution. The material placed before us in this connection shows that the teachers in technical institutions stand as a class and they are given the benefit of revised pay scale recommended by the Government of India. It is for this reason that the Government decided not to give them the benefit of the 1959 Rules. Annexure R-II is a letter dated 12th April 1959 from the Government of India to the State Government recommending certain scales of pay for teachers in Engineering Colleges and other technical institutions including Polytechnics. The scales of pay mentioned in this letter were recommended by the All India Council for Technical Education to bring about uniformity and improvement on all India basis. The Government of India, in consultation with the Planning Commission, accepted the recommendations of the All India Council for Technical Education and recommended the same for adoption by the various State Governments. In the same context are the letters

of the Government of India dated 29th August and 31st August 1960 (Annexures R-V and R-VI). From this correspondence it is clear that the Government of India recommended not only the revised pay scales but also the qualifications, to the educational and professional, for the various posts for which the revised scales were recommended. The State Government accepted the recommendations of the Government of India and the benefit of revised pay scales as recommended was made available to the teachers in technical institutions including Polytechnic from 1st December 1959. The pay scales adopted under this scheme were not in any way inferior to the pay scales which would have been adopted had the scheme of unification of pay scales been applied to these teachers. For example, the best pay scale for the post of Principal of a Polytechnic was in force in the Mahakoshal unit of the State. This pay scale was Rs. 850-50-900-40-1100 and this would have been the unified scale for the post. The revised pay scale recommended by the Government of India for this post is Rs. 800-40-1000-50-1250. It will thus be seen that as the teachers in technical institutions were being dealt with on All India basis on the recommendations of the Government of India, they stood as a class and the State Government's action in not giving them the benefit of the 1959 Rules did not violate either Article 14 or Article 16 of the Constitution.

Learned Counsel for the petitioner, however, submits that the revised pay scales recommended by the Government of India did not become available to the petitioners immediately but they became available to them as and when they fulfilled the requisite qualifications prescribed for availability of the revised pay scale and, therefore, there was discrimination. In our opinion, there is no substance in this argument. The teachers in technical institutions were dealt with on All India basis. Their pay scales and qualifications for availing of those pay scales were recommended by the Government of India and adopted by the State Government. If the petitioners at the time when the revised scales were applied were not qualified to get those scales, it is their misfortune and the State Government's action cannot be held to be violative of the petitioner's fundamental rights. It is not disputed that many teachers in the technical institutions were qualified from the very beginning to get the revised scales. It is also not disputed that as and when the teachers who were initially not qualified became qualified, the benefit of revised scales was made available to them. In the circumstances, no question of any discrimination arises.

Learned Counsel for the petitioners, in support of his submission on the point of discrimination, has relied upon *Purshottam Lal and Others Vs. Union of India (UOI)* and *Another, and Laljee Dubey and Others Vs. Union of India (UOI) and Others*, . In *Purshottamlal's* case, the petitioners were Research Assistants in the Forest Research Institute and College, Dehra Dun. The revised pay scales, as recommended by the Second Pay Commission were applied to them from 21st June 1962. The petitioners' contention was that the revised pay scales of similar posts in similar sister institutions under the same Ministry had been implemented from 1st July 1959. The petitioners' contention was accepted and it was held

that the implementation of the Report of the Pay Commission in respect of some employees and not in respect of the petitioners violated Articles 14 and 16 of the Constitution. Laljee Dubey's case related to classification of Checkers as Clerks which had been referred to a Committee. The recommendations of the Committee were sanctioned by the Government. The recommendations were, however, implemented in case of some of the employees only and not in respect of others belonging to the same group. This was held to be discriminatory. These cases have no application on the facts of the instant case. We have already stated that the teachers in technical institutions stand as a class. Their pay scales are fixed on All India basis on the recommendations of the Government of India. The pay scales adopted on the recommendations of the Government of India for these teachers are in no way inferior to the pay scales fixed on the principle of unification. The non-application of the principle of unification of pay scales to the teachers in technical institutions is based on an intelligible differentia. The classification is reasonable. For these reasons, there is no violation of Articles 14 and 16.

We now come to the Madhya Pradesh Revision of Pay Rules, 1961. In October 1959, the State Government constituted a single member Committee of Enquiry comprising of Shri Justice Tarachand Shrivastava to enquire into the emoluments and conditions of service of the State Government employees. The Committee submitted its report on 30th March 1960. The Committee recommended revision of pay scales. The report of the Committee was not as a whole accepted. In this connection, the Government issued a notification dated 30th November 1960, which was published in the Government Gazette dated 30th November 1960 to indicate as to what part of the report was accepted and what was not accepted. The Committee dealt with the teaching staff in the technical colleges in paragraphs 32 to 36 of its report. The Government did not accept this part of the report. With reference to paragraphs 32 to 36 of the report, which are described in the notification as dealing with "Teaching staff in technical colleges--Engineering and Medical Colleges", the Government's decision, as stated in the notification, is in these words : "As Government have not agreed to the equation of the teaching posts in Engineering and Medical Colleges, the existing different scales for the posts in the two kinds of colleges will continue." Paragraphs 32 to 36 of the report also dealt with Polytechnics. There is no separate reference to the polytechnics in the notification. It, however, appears to us that the expressions "technical colleges" and "Engineering Colleges"" as used by the Government in the notification, cover the Polytechnics. The Government did not accept the recommendations" of the Committee even for Polytechnics. Even in the report of the Committee, Polytechnics were mentioned under the heading "Technical Colleges" and subheading "Engineering and Medical Colleges" (See p. 67 of the Report). It is, therefore, futile to contend that since it is not expressly mentioned in the notification that the recommendations of the Committee in respect of Polytechnics were not accepted, it must be inferred that the recommendations were accepted for the Polytechnics. To implement the

recommendations made by the Committee, the Madhya Pradesh Revision of Pay Rules, 1961, were framed Rule 2 (7) of these rules defines "revised scale" to mean "the scale of pay fixed by the State Government and so described by a general or special order in this behalf". Rule 7 says that the revised scale of pay shall apply to all Government servants with effect from 1st July 1960 provided that the Government servants may elect to continue to draw pay in the existing scale. Rule 4 confers power on the State Government to relax or suspend the operation of any of the provisions of the rules in the case of an employee or category of employees. It will be seen from the definition of revised scale that an employee gets the benefits of revised scale under Rule 7 only when a scale of pay described as revised scale is fixed by a general or special order by the Government for a particular post. The Government did not fix any revised scale for teachers in technical institutions as it had not accepted the recommendations of the Committee to that extent. As no revised scale was fixed by the Government for the teachers in technical institutions, the petitioners were not entitled to claim any benefit under the 1961 Rules. There is also no obligation laid by the Rules on the Government to fix revised scale for each and every post. The petitioners, therefore, cannot claim that the Government should be directed to fix revised scales of pay for teachers in technical institutions under the 1961 Rules.

As regards the argument that the Government in not fixing any revised scale of pay under the 1961 Rules for the teachers in technical institutions has contravened Articles 14 and 16 of the Constitution, we have earlier mentioned that the teachers in technical institutions stand as a class and they are governed by the revised pay scales accepted by the Government on the recommendations of the Government of India on All India basis. Further, the revised pay scales as recommended by the Tarachand Committee are in no way better than the revised pay scales accepted by the Government for technical colleges on the recommendations of the Government of India. We have earlier mentioned that the pay scale of Principal of Polytechnics so fixed by the Government is Rs. 800-1250. In addition to this pay scale, the incumbent is entitled to Rs. 100 as Dearness Allowance. The Tarachand Committee recommended Rs. 900-1100 as the pay scale for the post of Principal. No Dearness Allowance is, however, available under the Committee's recommendations after the basic salary of Rs. 500. It will thus be seen that the total emoluments payable to a Principal under the Government of India scale are still better than those recommended by the Tarachand Committee. For the reasons earlier given, the argument based on Articles 14 and 16 of the Constitution must fail.

It will be seen from the above discussion that the 1959 Rules as also the 1961 Rules were not applicable to the teachers in technical institutions. The insertion of Rule 3A in these Rules retrospectively from the date of their commencement by notification dated 3rd May 1978 was only to clarify the existing situation. The amendment was made as a matter of abundant caution. Rule 3A so inserted does not, therefore, deprive the petitioners of their salary that had accrued to them

under the aforesaid Rules and it does not contravene their rights under Articles 19 and 31 of the Constitution.

The State Government appointed another Committee for revision of pay scales and conditions of service of its employees. This Committee comprised of Shri Justice K.L. Pandey. To implement the recommendations of the Committee, the Government framed the Madhya Pradesh Revision of Pay Rules, 1973. The definition of the expression "existing scale" contained in Rule 2 (c) of these Rules, includes the revised pay scales sanctioned on the recommendations of the Government of India for teachers in technical institutions with effect from 1st December 1959. Rule 3 of these Rules fixes new revised scales as shown in column 4 of Annexure I to the Rules in place of Tarachand pay scales shown in column 4 thereof. The Tarachand pay scales shown in column 4 expressly include the "existing scale" which, as defined, includes the scale of pay for teachers in technical institutions as sanctioned by the Government on the recommendations of the Government of India. The teachers in technical institutions thus can get the benefit of the 1973 Rules. Their pay scales are revised in accordance with Annexure I of the Rules. For example, the pay scale of Rs. 800-1250 which was the pay scale for the post of Principal in Polytechnics, as recommended by the Government of India, is now revised and the revised pay scale is Rs. 950-50-1350 (see Item No. 69 of Annexure I) The petitioners are getting the benefit of the 1973 Rules.

In the result, the petition fails and is dismissed. There shall, however, be no order as to costs. The security deposit be refunded to the petitioners.