

(1997) 12 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 6558 of 1985

Naranbhai G. Patel and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 03-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 2 GLR 1254

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Jivanlal G. Shah, for the Appellant; H.L. Jani, for the Respondent

Judgement

S.K. Keshote, J.—The petitioners by this Special Civil Application are raising a question - whether the fixation of a lower grade for persons belonging to the cadre of Social Workers and other cadres but not holding Post-Graduate degree is violative of Arts. 14 and 16 of the Constitution of India when a higher grade is fixed for persons belonging to the same cadre or cadres but holding Post-Graduate degree.

2. In para 30 of this Special Civil Application, the petitioners stated that when the Gujarat State Extension Educators' Mahamandal, which is a Union of the Extension Educators, came to know about the fact of prescribing of two pay scales for the same post on the basis of the qualifications, it filed a petition in this Court being Special Civil Application No. 3388 of 1981 in August, 1981 or thereabout and this Court was pleased to issue a Rule in the said petition and was also pleased to pass an interim order restraining the respondents of the said petition from calling upon the petitioners of the said petition to repay difference in salary consequent to the clarification made by the State Government as aforesaid and also restraining them from degrading the petitioners of the said petition to a lower grade Rs. 425 - 700 and from denying them the grade of Rs. 550 - 900 inter-alia. It has further been stated by the petitioners that the aforesaid petition was filed by the Association of Extension Educators and that

however since some individuals were being affected by the impugned orders of the State Government, the petitioners also believed that the benefit of the orders passed by this Court would be available to the petitioners also and that therefore, they did not file any separate petition, as the matter was taken up by the Association, who was a party in the aforesaid petition. Then the petitioners have come up with a case that despite the orders of this Court, the Panchayats adopted a discriminatory attitude and that though the Gandhinagar District Panchayat under whom the petitioners are working at present did not make recovery but relegated the petitioners to the scale of Rs. 425 - 700 on the ground that the petitioners were not holding the Post-Graduates degree and that the petitioners, therefore, are not getting the pay scale of Rs. 550 - 900 even though their brethren in Mehsana District Panchayat and other State Institutions are getting the benefit of the grade of Rs. 550 - 900.

3. The Special Civil Application No. 3388 of 1981 has been decided by this Court on 13/21-7-1984 and the prescribing of two pay scales for the post in question with reference to the qualifications was held to be valid and legal. However, so far as the question of recovery of amount stated to be paid in excess to the Graduates Social Workers holding other similar posts was concerned, it was also held to be valid.

4. The learned Counsel for the respondents contended that this Special Civil Application is squarely covered by the decision of this Court given in Special Civil Application No. 3388 of 1981.

5. The Counsel for the petitioners though does not dispute the fact that to the extent where the grievance of the petitioners in this Special Civil Application is against the prescribing of two pay scales, the matter is squarely covered but so far as the second part of the prayer regarding the recovery of the excess amount paid to the petitioners is concerned, it is not squarely covered. The learned Counsel for the petitioners further contended that against the judgment of this Court given in Special Civil Application No. 3388 of 1981, the petitioners therein have already preferred L.P.A. The L.P.A. is admitted and interim relief has also been granted. The L.P.A. is stated to be pending before this Court.

6. The Counsel for the petitioners made two-fold submissions further. Firstly, he contended that as the L.P.A. is pending against the judgment of this Court in Special Civil Application No. 3388 of 1981, hearing of this Special Civil Application may be deferred till the L.P.A. is decided. Second contention is made that this matter may be referred to the Larger Bench.

7. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

8. The first contention of the Counsel for the petitioners is devoid of any substance. It is true that against the judgment of this Court in Special Civil Application No. 3388 of 1981, L.P.A. has been preferred by the petitioner therein but that judgment has not been reversed so far and the judgment which has

been given by this Court aforesaid still holds the field and as such it has to be taken to be the judgment in the identical matter, and to defer the hearing of this petition only on this ground is not desirable. Similarly, the matter cannot be referred to the Division Bench as I am not in agreement with the judgment given by this Court in Special Civil Application No. 3388 of 1981. The petitioners can take up this matter before Division Bench by filing L.P.A. or they can await for the decision of L.P.A. as earlier they were awaiting for the decision of this Court in Special Civil Application No. 3388 of 1981.

9. I have gone through the judgment of this Court given in Special Civil Application No. 3388 of 1981 carefully and I am of the considered opinion that the matter is squarely covered by the said judgment to the extent where the claim of the petitioner pertains to higher pay scale which has been prescribed only for those Social Workers and holders of identical posts who are Post-Graduates. Though I am in full agreement with the judgment given by the learned brother Justice J. M. Panchal in Special Civil Application No. 3388 of 1981 but still I am giving some of my reasons on the basis of which the claim of the petitioners for higher pay scale deserves no acceptance.

10. It is true that the petitioners were appointed earlier to the date of notification, Annexure "A", i.e., 15th July, 1996 and in the pay scale of Rs. 195 - 245 but the State Government can legitimately prescribe two different pay scales for the same post with reference to qualifications. In the year 1966 itself, the Government decided to prescribe two different pay scales for the posts which the petitioners are holding with reference to qualifications but the Sarela Pay Commission was not agreeable to the prescribing of two different pay scales with reference to qualifications. However, it is not in dispute that the Desai Pay Commission has recommended two different pay scales for the holders of the posts which the petitioners are holding with reference to qualifications and those recommendations have been accepted by the Government and those have been given the statutory recognition by framing of the Gujarat Civil Services (Revision of Pay) Rules, 1975. So two different pay scales have been prescribed for same post on the basis of qualifications, i.e., higher pay scale for the holder of Post-Graduate degree and lower pay scale for only Graduates.

11. In the case of Shyam Babu Verma & Ors. v. Union of India & Ors. reported in 1994 ICLR 747, their Lordships of the Hon"ble Supreme Court have laid down that on the basis of qualifications, two different pay scales can be prescribed for a post. The qualitative differentiation is there in the performance of duties by the holders of a post with reference to possessing higher and lower qualifications and as such to maintain this qualitative differentiation, two pay scales could have been prescribed for a post with reference to qualifications. In the present case, higher pay scale is prescribed for the holders of the qualification of Post-Graduate and the petitioners who are only Graduates cannot take any exception to the same. The persons holding different qualifications can be put in two different classes and this classification cannot be said to be irrational or arbitrary or

without there being any nexus to make this classification with the object sought to be achieved. So the contention of the Counsel for the petitioners made in this Special Civil Application that prescribing of two different pay scales for a post with reference to qualifications is violative of Arts. 14 and 16 of the Constitution does not stand to any merits or substance.

12. Recently their Lordships of the Hon^{ble} Supreme Court have considered the matter of parity of pay scales in the case of State of Tamil Nadu and Another Vs. M.R. Alagappan and Others, etc., and accepted the principle that qualification may be one of the good considerations for prescribing of two different pay scales.

13. So taking into consideration the totality of the facts of this case, I do not find any merits in the contention of the Counsel for the petitioners that two different pay scales could not have been prescribed only on the ground of qualifications.

14. So far as the second grievance of the petitioners regarding the recovery of the excess amount paid to them is concerned, the period has to be divided into two parts. First part is the period during which the petitioners have drawn the pay in the pay scale of Rs. 550 - 900 till June, 1981 and second the period subsequent to June, 1981. The Government has on or about 30th June, 1981 taken a positive view that those Social Workers and the Extension Educators who did not hold the Post-Graduate degree and who are appointed prior to 1-6-1967 shall be given the revised grade of Rs. 425 - 700 and not the grade of Rs. 550 - 900 and the amount of salary drawn by them on the basis of grade of Rs. 550 - 900 in excess of the amount of salary which they could have drawn on the basis of Rs. 425 - 700 shall be recovered from them. So the recovery of the excess amount paid to the petitioners earlier to 30th June, 1981 may be of the erroneous act of the respondents but the petitioners cannot be blameworthy of the same. The petitioners have not snatched away something from the pocket of the respondents but as the matter remains to be in dilemma whether they are entitled to the pay scale of Rs. 550 - 900 or Rs. 425 - 700, they were given the pay scale of Rs. 550 - 900 for all the time to come till the order of the Government passed on or about 30th June, 1981, came into light. In view of this fact, the recovery of the excess amount for the period earlier to 30th June, 1981 stand on altogether different footing and in this case before effecting any such recovery, the respondents have to give an opportunity of hearing to the petitioners and then to consider that if they are not entitled to the pay scale of Rs. 550 - 900 then whether the excess amount paid to them has to be waived or not. However, in case after 30th June, 1981 they have been paid the pay in the pay scale of Rs. 550 - 900 then certainly the recovery could have been ordered. So to the aforesaid extent this writ petition deserves to be partly allowed and it is hereby ordered to the respondent-State of Gujarat to consider the question of waiver of recovery to be made for the excess amount stated to be paid to the petitioners till 30th June, 1981 after giving notice and opportunity of hearing to them. However, in case ultimately the Government decides not to waive this recovery, then a reasoned order may be passed and copy of the same may be

sent to the petitioners and liberty is granted to the petitioners for revival of this Special Civil Application in case of difficulty. To the aforesaid extent, this Special Civil Application stands partly allowed and Rule stands disposed of accordingly with no order as to costs.

15. Application partly allowed.