
(1996) 05 AHC CK 0005
In the Allahabad High Court
Case No : C.M.W.P. No. 5327 of 1982

Radhey Shyam Bhatta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

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

Citation : (1996) 05 AHC CK 0005

Hon'ble Judges : Om Prakash, J;J.S. Sidhu, J

Bench : Division Bench

Advocate : R.C. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Om Prakash, J.—There are two sets of Petitioners represented by separate counsel. This petition was filed by five Petitioners who in the beginning were represented by Sri Yogesh Agrawal. Later Sri Yogesh Agrawal stated that his Vakalatnama be treated to have been filed only for Petitioners No. 2 and 4, when Sri R. C. Shukla filed Vakalatnama for Petitioners No. 3 and 5. Petitioner No. 1 died during the pendency of the writ petition. Therefore, only the remaining writ Petitioners are prosecuting the writ petition.

2. Admittedly, the Petitioners were appointed as Instructors in the Department of Fine Arts which has two branches; (1) Music and (2) Painting. Whereas, there was degree course in Music, only diploma course was there till 1977 in Painting. All the Petitioners were appointed as instructors in the Fine Arts (Painting) Department in various dates. In short, the case of the Petitioners is that they discharged duties and functions of Lecturers in the Fine Arts (Painting) Department and, therefore, they are entitled to the emoluments payable to a Lecturer. It is averred that a resolution dated 27.3.1974 (Annexure 2 to the writ petition) was passed by the University in the following words:

Resolved that the post of all the eight Instructors in the Department of Fine Arts

be converted into the post of Lecturers and all the confirmed incumbents working against these posts be designated as Lecturers.

Such a resolution was not approved by the State Government as appears from the impugned review order dated 15.3.82 (Annexure "4" to the counter-affidavit) rejecting the resolution passed by the University.

3. Counter-affidavits have been filed on behalf of the State of U.P. and the University. In the counter-affidavit filed for the State of U.P. it is averred that under clause 10.01, Chapter X of the Statutes of the University, there are only three categories of teachers, namely (1) Professor, (2) Reader and (3) Lecturer and that Instructors are not included in the classification of teachers and, therefore, they are not entitled to the emoluments of Lecturers. It is also stated that the grade of the Lecturer and of Instructor and their mode of recruitment are different. It is averred that under clause 10.04 of the Statute, the Instructors and Teaching Research Assistants fall in a separate category. It is also stated that the resolution passed by the University can become operative only when it is approved by the State Government and that the resolution was not approved by the State Government as there was no provision under the Statutes of the Allahabad University for converting the post of Instructors into the post of Lecturers.

4. In the counter-affidavit filed on behalf of the University, it is denied that the Petitioners have a legal right to be posted as Lecturers and to claim salary of the cadre of the Lecturers. In Para 4 of the counter-affidavit, it is stated that the Petitioners fulfilled the qualification of the Instructor but not the qualification as that of Lecturer. It is also stated that since the Petitioners were appointed as Instructors, they are entitled to the emoluments available to the class of Instructors and that the Petitioners may get emoluments of a Lecturer only when the resolution passed by the University is approved by the State Government.

5. Sri Shukla, learned Counsel for Petitioners No. 3 and 5 submits that on the principle "equal pay for equal work", the Petitioners are entitled to the same emoluments payable to the Lecturers as they have been discharging the same functions and duties which are discharged by Lecturers. Sri Yogesh Agrawal, appearing for Petitioners No. 2 and 4 submits that the Petitioners have been discriminated against the Physical Training Instructors who have already been granted the grade of Lecturer and that under the principle "equal pay for equal work", they are also entitled to the same emoluments as payable to the Lecturers.

6. The question for consideration, therefore, is whether on the principle of equal pay for equal work, Petitioners No. 2 to 5 are entitled to the emoluments as are payable to the Lecturers of the Allahabad University.

7. Sri Ashok Bhushan, appearing for the University urges that the Petitioners having been appointed as Instructors do not fall in the category of Lecturers and their qualifications, mode of recruitment and either conditions of service being

different from the Lecturers, they are not entitled to the grade of Lecturers. To show the qualification of the Instructors working in the Department of Fine Arts (Painting), our attention has been drawn to Annexure "6" to the writ petition, page 12 of which refers to instruction in painting. "Instruction in Painting" as stated at page 12 of Annexure "6" to the writ petition runs as follows:

The applicant must possess a degree/diploma in painting from a recognised University/Institution.

It is, therefore, clear that for the post of Instructor, diploma is minimum qualification. As against this, the qualification for the teachers who are classified in clause 10.01 under Chapter X of the 1st Statute, 1976 of the University as (1) Professor, (2) Reader and (3) Lecturer are laid down in clause 11.01 in Chapter XI of the Statute. Clause 11.01 (1) inter alia provides that in the case of the Faculty of Arts (except the Department of Fine Arts, Physical Education and Education), the following shall be the minimum qualifications for the post of a Lecturer in the University, namely:

(a) a doctorate or research work of an equally high standard in a relevant subject; and

(b) consistently good academic record, with first or high second class Master's degree, or an equivalent degree of a foreign University in a relevant subject.

8. No doubt, the First Statutes of 1976 of the University of Allahabad came into force on August 1, 1976 i.e., after the appointment of the Petitioner, the Petitioners have not pointed out that the qualification of Lecturer under the* Allahabad University Statutes (Old)(hereinafter referred to as the Old Statutes) were materially different. From all this, it is amply clear that the qualification of the Instructor and of Lecturer in the Faculty of Arts of which the Department of Fine Arts (Painting) is one of the department, are substantially different.

9. Clause 122 of the Old Statutes which classifies the teachers into three categories, corresponds to clause 10.01 Chapter X of First Statutes of 1976 and the qualification of teachers given in both the provisions telescope into each other.

10. Clause 123 (3) of the Old Statutes provides that Instructors or Teaching/ Research Assistants can be appointed by the Executive Council on such terms as it may deem fit. Clause 123 (3) of the Old Statutes is identical to clause 10.01 of the First Statutes of 1976. As against this clause 125 of the Old Statutes provides that subject to the provisions of the Act, teachers of the University and teachers of Research Institutes recognised by the University except in cases where by an agreement express or implied the power of appointment is vested in the Institute itself, shall be appointed by the Executive Council on the recommendation of the Selection Committee. Clause 126 of the Old Statutes further provides that there shall be a Selection Committee for the appointment of teachers mentioned in clause 125.

(emphasis supplied)

From these provisions, it is clear that the qualifications and mode of recruitment of the Instructors are materially different from those prescribed for the Lecturers.

11. The question then arises whether the Petitioners can claim the emoluments payable to the Lecturers on the principle of equal pay for equal work though their qualification, mode of recruitment and conditions of service are substantially different as compared to the Lecturers simply on the ground that there is similarity between their job and the job of a Lecturer in the Department of Fine Arts (Painting). In the State of U.P. and Ors. v. J.P. Chaurasia and Ors. AIR 1989 SC 19, the Court illuminatingly observed : (Para 17 at p. 25)

The answer to the question whether two posts are equal or should carry equal pay depends upon several factors. It does not just depend upon either the nature of work or volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective post. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties.

(Emphasis by Court)

The Court further held in Para 28 at page 28 that the principle of equal pay for equal work has no mechanical application in every case of similar work. It has to be read into Article 14 of the Constitution. Article 14 permits reasonable classification founded on different basis. It is now well-established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merits or experience could be the proper basis for classification to promote efficiency in administration. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of newcomers.

The Court then enunciated in the same paragraph on the same page:

Higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. The entitlement to * these higher pay scales depends upon seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself.

On the basis of the experience, the Court in the case of J. P. Chaurasia (supra) upheld the two scales of pay, payable to the two classes of the Bench Secretaries in the High Court of Allahabad, namely, Bench Secretary Grade I and Bench

Secretary Grade II, who indisputably discharged same duties

12. In *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, , the question arose whether the employees of two classes; (1) Hearing Therapist and (2) Senior Speech Pathologist, Senior Physiotherapist, Senior Occupational Therapist, Audiologist and Speech Pathologist working in the All India Institute of Medical Science are entitled to same salary on the principle of equal pay for equal work. The Court in the case of *Mewa Ram (supra)* summarised the legal position in Para 5 at page 1259 as follows:

While considering the question of application of principle of "Equal Pay for Equal Work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals, unequals cannot claim equality.

13. The doctrine of "Equal Pay for Equal Work" is not specifically declared a fundamental right under the Constitution. But Article 39(d), read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution enjoins the State that where all things are equal, persons holding identical posts performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. The doctrine of "Equal Pay for Equal Work" is not abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties, and responsibilities of the post. The principle of "Equal Pay for Equal Work" is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of doctrine would arise where employees are equal in every respect but they are denied equality in matters relating no the scale of pay.

14. Having come to the conclusion that two classes of employees of the All India Institute of Medical Science had different qualifications and different conditions of service, the Court denied the benefit of the principle of "equal pay for equal work" to the Petitioners.

15. Applying the principles stated hereinabove to the facts to the instant case, we are of the view that the Instructors do not belong to the rank and cadre of the Lecturers. They do not belong to the same category. Their qualifications and mode of recruitment are materially different. May be that the Petitioners taught the students in the Department of Fine Arts (Painting) who would have been taught by the Lecturers if they were there in the Faculty. The Instructors who are

far inferior in the academic qualification as compared to the Lecturer, cannot be given the scale of pay payable to the Lecturer, simply because they taught the students the same subject which the Lecturer would have taught in the Department of Fine Arts (Painting). To claim benefit of equal pay for equal work, the Petitioners have to establish that they are equal in all respects with the Lecturers. Simply because the teaching work discharged by the Petitioners is similar to the work of the Lecturer, the former will not be entitled to the grade of Lecturer. Two categories of the Instructors and Lecturers are essentially different in view of the qualifications, mode of recruitment, their experience and other service conditions.

16. Quite recently, the Supreme Court has taken similar view in the case of Chandigarh Administration v. Anita Sood (Smt.) and Ors. 1995 Supp. (3) SCC 613. In this case, the question arose whether the Teaching Assistants working in the Punjab Engineering College, Chandigarh are entitled to the pay scale of Lecturers on the basis of the principle "equal pay for equal work". The Central Administrative Tribunal accepted the contention of the Petitioner but the Tribunal's view was not accepted by the Supreme Court. The Court proceeded on the assumption that a Teaching Assistant teaches the same subject to the same students as were being taught by Lecturer/Asstt. Professor/Professor and yet took the view that the former was not entitled to the grade which the latter are entitled to. Rejecting the claim of the Petitioner, the Court opined : (Para 4 at page 614).

It is common knowledge that in various departments of a University, different subjects are taught to the same set of students by different teachers who may be Lecturers, Assistant Professors or Professors. A teacher who is a Lecturer, cannot claim that he be given the same salary as given to a Professor who teaches a different subject or the same subject to the students. The quality and standard of teaching by a Professor is bound to be of much higher standard than that of a Lecturer. Keeping in view the qualitative difference of standard of teaching between the two teachers with different designations, it cannot be claimed that they are entitled to the same pay scales. A Teaching Assistant is entirely a different class of teacher than that of the Lecturer. In the teaching profession, classification is permissible on the basis of academic qualifications, experience and the quality/standard of teaching of various classes of teachers.

From the aforesaid authority, it follows that the Petitioners cannot claim parity with the Lecturers in the matter of pay scale simply on the ground that they taught the students all the subjects in the Department of the Fine Arts (Painting) which would have been taught by the Lecturers.

17. Turning to the other question whether the Petitioners are illegally discriminated against the Physical Training Instructors who have been given appointment as Lecturers, the Petitioners have not furnished requisite information in regard to the Physical Training Instructors. We do not know as to how the Petitioners are equal to the Physical Training Instructor. No doubt,

though no supplementary counter-affidavit has been filed by the Respondents after the writ petition was got extensively amended by the Petitioners. But that is not enough for the Petitioners to succeed. The Petitioners can succeed when they establish on their own that the Physical Training Instructors were similarly situated to the Petitioners and the latter have been discriminated against the former. The fact of being similarly situated cannot be inferred simply from the designation of the Physical Training Instructors. They may have the same designation of Instructor as the Petitioners have but that alone is not enough to come to the conclusion that both the classes of Instructors are similarly situated. The Petitioners having failed to establish the essential ingredients of Article 14 of the Constitution, we decline to accept the contention of the Petitioners that they have been illegally discriminated against the Physical Training Instructor.

18. By an interim order dated 10.8.1982, learned single Judge directed that the Petitioners shall be entitled to the emoluments to the post of Lecturer with effect from September 1, 1982. By another interim order dated 28.2.1994, another learned single Judge directed that the Petitioners shall be given designation from the date of their appointment. Both these orders deserve to be vacated in view of our preceding findings subject to the observations that those who have become Lecturer during the pendency of the writ petition, they will continue to be Lecturers and they will be entitled to the emoluments of that post from the date of their appointment, but they will have to refund the difference of emoluments paid in excess to them in view of the interim order dated 10.8.1982 or any other order passed by this Court in view of their undertaking. Petitioner No. 2 not yet appointed as Lecturer, is liable to refund the entire excess payment.

19. In the result, the petition fails and is dismissed. The Petitioners shall refund the excess amount paid to them under the interim orders in view of their undertaking given to the Court.