(2000) 11 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 406 of 2000

Rajasthan Excise Preventive Force Employees Coordination Committee Jaipur — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 226, 39

Citation : (2001) 2 RLW 903 : (2001) 1 WLC 535 : (2001) 2 WLN 437

Hon'ble Judges : P.P. Naolekar, J;Arun Madan, J

Bench : Division Bench

Advocate : Ajay Rastogi, for the Appellant;

Judgement

Madan, J.

(1). Appellant, Rajasthan Excise Prevenlive Force Employees Coordination Committee (For short "Committee") representing all the employees belonging to the cadre of Preventive Force employed in the Excise Department of the Government of Rajasthan, has preferred this special appeal challenging the impugned Judgment dated 13.7.99 passed by the learned Single Judge dismissing SB Civil Writ Petition No. 2207/88.

(2). In aforesaid writ petition, the appellant committee sought directions for granting pay scales to the Patrolling Officers Gr- II at par with Excise Inspectors Gr-II with effect from commencement of the Pay Scale Rules, 1969, with all revisions under subsequent Revised Pay Scales Rules of 1976, 1983, and 1987. besides consequential benefits.

(3). It has been contended by Shri Ajay Rastogi that the duties of the Patrolling Officer Gr-II and Excise Inspectors Gr-11 are identical inasmuch as the work of the Patrolling Officer Gr-II is much more arduous man that of the Excise Inspector Gr-II but the Patrolling Officers Gr-II having rendered service for last 15 years are being paid salary in the scale of 925-1800 whereas their counterparts holding post of Excise Inspector Gr-II who have also rendered 15 years service, are drawing salary in the scale i.e. 1120-2050, inasmuch as Grade-1 Excise Inspectors and Patrolling Officers have been treated at par, creating disparity with the pay scales of Excise Inspectors & Patrolling Officers of Grade II notwithstanding similar and/or same work and, according to Shri Rastogi, this is clearly a serious infraction of the constitutional mandate as to the right of equality envisaged/guaranteed in Articles 14, 16 and 39(d) of the Constitution of India.

(4). We have heard the learned counsel for the appellant committee and perused the writ petition, reply and rejoinder thereto besides impugned Judgment of the learned Single Judge. As averred in the writ petition, initially Excise and Taxation Department was bifurcated in the year 1964, whereby some Patrolling Officers opted for Excise Department while others for Commercial Taxes Department and accordingly those opted for Commercial Taxes Department were merged in the cadre of Inspectors and the Patrolling Officers opted for Excise Department were treated as Excise Inspectors Gr-II and thereafter upon abolition of Gr-III there were designated as Excise Inspector Gr-II, for being governed by the Rajasthan Subordinate Services (Recruitment and Other Conditions of Service) Rules, 1960.

(5). However, as a result of the aforesaid bifurcation, admittedly, separate Service Rules were enacted for the subordinate service so also for preventive force, viz. Rajasthan Excise Subordinate Service (General Branch) Rules, 1974 and Rajasthan Excise Subordinate Service (Preventive Branch) Rules, 1976, and according to these Rules of 1974 & 1976, the minimum qualification prescribed for recruitment to the post of Patrolling Officer Gr.II was graduation with alieast certificate "C" grade of NCC, white for Excise Inspector Gr-II it was merely a graduation.

(6). The case of the State Government (respondents) While denying the claim of the appellant employees'' committee, in the reply thereto was that different pay scales are prescribed as a result of differences in the nature and volume of work, functions, recruitment sources, degree of responsibilities etc. According to the respondent State, admittedly the Patrolling Officers are responsible for (1) security and maintenance of arms and ammunitions, vehicles alongwith other items (2) the control and disciplined administration of preventive forces under its command, and (3) to execute and implement orders with regard to the prevention of smuggling and cultivation of opium and narcotic plants so also its illicit distillation in accordance with rules and directions issued by the Government; whereas the Excise Inspector Gr-II duly appointed by direct recruitment with minimum qualification of graduation are having manifold duties being governed by the Rajasthan Excise Subordinate Service Rules and further entrusted with general functions of supervision of the shops, investigation of cases of thefts, then by filing challans in various courts and by safeguarding public interest therein. Thus the Excise Inspectors Gr-II are posted at various distilleries, warehouses, pharmacies and laboratories so as to function for the statutory duties laid down under relevant rules framed under the Rajasthan Excise Act, 1950. On the basis of these facts and averments, (supra), the respondent State in its reply, contended that the duties of Excise Inspectors are more onerous than those of the Patrolling Officers and that being so, materially different in nature and further that it was not a promotion but merely a case of redesignation as Patrolling Officer Gr. 11 from Grade 111 Officer.

(7). Having considered rival claims and counter claims as well as material on record, we are prima facie of the view that in the claims and counter claims pleaded by the parties, there are disputed facts as to the equivalence or similarity in the duties, responsibilities nature and volume of the work performance on the part of Patrolling Officers qua Excise Officers of Grade II so as to establish the claim on the principles of equal pay for equal work, notwithstanding the source of recruitment. In the case at hand, the Patrolling Officers of the Excise Department have been segregated creating a distinct class of officers as Excise Inspectors Gr. II, obviously because their duties were being distinguished by virtue of statutory rules framed under the Excise Act or even under the Service Rules, as has been pleaded by the respondent Stale. Be that as it may, in our considered view, the disputed questions of fact have been raised while denying the claim of equality in the matter of pay and work performance of the two sets of Inspectors in the Excise Department, so also making claims complicated by way of alleging disputed facts on record with a view to describe the work performance of Excise Inspectors Grade II as a distinct class having no equivalence qua other set of class viz. post of Patrolling Officer Grade II. Hence the learned Single Judge has committed no error of law much less of any jurisdiction by not adjudicating upon questions of fact in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India.

(8). As regards decision cited by Shri Ajay Rastogi, learned counsel for the appellant viz. Chandigarh Administration vs. Rajni Vali (1), it was a case where Lecturers appointed to teach different subjects namely Humanity and Commerce in 11th & 12th classes of the School established under permission of competent authority and which was receiving grant in-aid since December, 1967, were denied benefit of grant in-aid and parity of pay due to difficulty of additional financial burden and, therefore, in a writ petition, the High Court directed the State Administration to pay the Lecturers (respondents 1 to 12) the same salary as is being paid to their counter parts in the privately managed Government aided schools in Chandigarh and in appeal by the State Administration, the Apex Court held that in viev of the undisputed factual position viz., the school was established after due permission; duly recognised by the Chandigarh administration, and then was upgraded to a Higher Secondary School with the permission to start 11th & 12th classes with subjects of Humanities and Commerce and that the school has been receiving grant in-aid from the Chandigarh Administration, the State administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources and it is for the authorities running the administration to find out the ways and means of securing funds for the purpose, in view of the fact that the State Government provides grant in aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. In the instant case, the facts as discussed above are totally disputed and it is also not the case of the State herein, as has been in afore cited case lhat the State denied the parity of pay on account of paucity of funds. Hence the ratio of decision (supra) is not attracted to the present case because of the facts being distinguished and does not help in any manner.

(9). Resultantly, we find no merit in this special appeal and, therefore, the special appeal being devoid of any substance is dismissed in limine.

