

(2002) 08 AHC CK 0152
In the Allahabad High Court
Case No : C.M.W.P. No. 8078 of 1995

Roop Narain Dubey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) 4 AWC 3121

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : V. Singh, for the Appellant; N. Misra, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The petitioner was initially appointed on 21.1.1958 as class IV employee in Nagar Mahapalika, Kanpur. On 19.11.1958 he was appointed as Vaccinator. He being the senior most vaccinator was selected and appointed on the post of Assistant Superintendent Vaccination by Mukhya Nagar Adhikari on 6.12.1989 and was confirmed on the said post on 16.6.1990. He is working on the said post till then. It is alleged by the petitioner that he is having dual charge of Assistant Superintendent Vaccination and Supervisor of birth and death registration of entire city of Kanpur.

3. It is averred that there is only one post of Assistant Superintendent Vaccination in Nagar Nigam, Kanpur. According to the petitioner, this post is supervisory post having the duty to supervise the work of more than 50 Wards of Nagar Nigam, Kanpur. The contention of the petitioner is that after enforcement of new pay scale, the State of U. P. issued an order dated 14.2.1990 by which the salary of the various posts in Nagar Nigam have been fixed. Under the said order, the earlier pay scale of Rs. 330-495 of the Assistant Superintendent Vaccination has been revised to Rs. 825-1,200.

4. The grievance of the petitioner is that there is anomaly in the revised pay scale of the post of Assistant Superintendent Vaccination. Under the revised pay scale, the pay scale of the said post under the Health Department of the State of U. P. has been fixed in the grade of Rs. 1,200-2,040 whereas the grade of the said post in Nagar Nigam has been fixed in the scale of Rs. 825-1,200, though the persons on both the posts are performing the same work under the health department. It is stated that the only difference is that the person holding the said post in the State controls the work of vaccinator in rural areas whereas the petitioner supervises the work of vaccinator in Nagar Nigam.

5. It is contended that Assistant Superintendent Vaccination is a supervisory post and the petitioner is to supervise the entire work of the Nagar Nigam, Kanpur Nagar and as such, the respondents have committed an illegality by fixing the salary of the petitioner in the Nagar Nigam even lower than the salary of vaccinator working in the Health Department of the State Government.

6. It is alleged by the petitioner that the revised pay scale of persons whose earlier scale was Rs. 330-495 has been revised and the new pay scale of Rs. 950-1,500 has been fixed by the State Government. As such the fixation of pay of the post of petitioner in the revised pay scale of Rs. 825-1,200 is illegal and discriminatory and the scale of the post of Assistant Superintendent Vaccination has been revised without considering the responsibilities, liability and the work of the said post.

7. It is further alleged that the petitioner made a representation to the respondents for revision of the pay scale for the post of Assistant Superintendent Vaccination. When the respondents did not pass any order on the representation the petitioner filed Writ Petition No. 5292 of 1993, Roop Narain Dubey v. Mukhya Nagar Adhikari, Nagar Mahapalika. Kanpur and Ors. which was decided by the judgment and order dated 22.11.1994 passed by this Court Annexure-4 to the writ petition by directing the respondents to decide the representation of the petitioner. It is alleged that the representation has been rejected vide order dated 22.2.1995.

8. In the counter-affidavit, the stand taken by the respondents is that pay scale meant for the officers and employees of the urban local bodies have been recommended by the Equivalence Committee (Samta Samiti) appointed by the State Government and have accordingly been fixed. Further the duties and functions of the Assistant Superintendent Vaccination in the Health Department of the State Government are quite different and vary from those of the Assistant Superintendent Vaccination in the Municipal Corporation. Their liabilities and responsibilities are also different and therefore, the said post of Assistant Superintendent is not identically or similarly situated and as such, there is no jurisdiction for grant of equal scale of pay to Assistant Superintendent Vaccination posted in the Municipal Corporation.

9. It is submitted that considering the aforesaid duties and responsibilities, etc.,

the Samta Samiti recommended the revised pay scale of Rs. 825-1,200 for the post of Assistant Superintendent Vaccination w.e.f. 1.1.1986 and the pay scale of Rs. 950-1,500 cannot be granted to the petitioner even though there is similarity in the nomenclature of the post. In *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, , it was held that :

"The principle of "equal pay for equal work" should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups, excludes applicability of the principle of "equal pay for equal work"."

10. There appears from the pleadings of the parties that there is qualitative difference in functions, responsibilities and nature of work performed by the petitioner, therefore, the petitioner cannot claim discrimination under Article 14 of the Constitution. The Hon"ble Supreme Court in *Food Corporation of India Workers Union v. Food Corporation of India* and Anr. 2002 (93) FLR 720, held that :

"Having regard to the pleadings of the parties and the factual controversy Involved, we are of the view that it would not be appropriate for this Court to record its conclusions on merits. In order to give effect to the principle of equal pay for equal work, which is no doubt a constitutional obligation implicit in Article 14, we have to enter into the factual arena and embark on an investigation of disputed facts such as the workload and the working pattern in various depots of the Food Corporation of India. The mere fact that the qualitative nature of work performed by D.P.S. workers and the departmental workers is the same, is not conclusive. Other aspects highlighted in the counter-affidavit having a bearing on the volume and duration of work in the depots have to be gone into. Incidentally, the justification and expediency of continuing the direct payment system which has been recognized by various " settlements has to be looked into. A comparative study of the working pattern in various depots, the overall job requirements and the overall effect it will have on the body of workmen as a whole and the management, are all matters that may be relevant to consider. It is not a case of mere application of a legal principle to the admitted or undeniable facts. But, it depends on concrete facts brought out by evidence."

11. In *State Bank of India and Another Vs. M.R. Ganesh Babu and Others*, , it has been held that :

"The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiency reiterated in a catena of decisions of this Court. It is well-settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same

but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion, which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to Interference by the Court."

12. This Court will not itself examine the nature and responsibilities and quality of work in exercise of powers under Article 226 of the Constitution of India. The petitioner has not raised pure question of law and the plea of equal pay for equal work has to be examined with reference to Article 14 qua the nature of responsibilities, difference of quality of work and other factual matters being performed by the Assistant Superintendent Vaccination in the Health Department and the Nagar Mahapalika, Kanpur. The Equivalence Committee consisting of experts has recommended different pay scales for the above post under the State Government and the Nagar Nigam. The burden is upon the petitioner to establish his right for equal pay for equal work on plea of discrimination and in this regard, mere pleading would not be enough.

13. Apart from the above, on the disputed question of facts, a writ of mandamus cannot be granted. There is insufficient evidence on record for consideration of the issue by this Court. The issue involved in this case is not justiciable and no relief can be granted in this writ petition. Admittedly, the Equivalence Committee has considered the nature of duties, responsibilities and the liabilities of the post of Assistant Superintendent Vaccination working in rural area and the Assistant Superintendent Vaccination working in the Municipal Corporation. The High Court can issue a writ of mandamus under Article 226 of the Constitution of India only where an issue of enforcement of fundamental rights or legal rights is involved. The petitioner has failed to establish any legal right or parity on the principle of equal pay for equal work.

14. The writ petition fails and is dismissed.

15. No order as to costs.