
(1976) 07 GUJ CK 0003
In the Gujarat High Court

Smt. B.K. Mysorewala

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-07-1976

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1977) 18 GLR 482

Hon'ble Judges : D.A. Desai, J

Bench : Single Bench

Judgement

D.A. Desai, J.—Petitioner Smt. B.K. Mysorewala, questions the correctness of the order dated 29th October 1975 by which she was given the benefit of the higher pay with effect from 16th July 1975 and not with effect from 1-6-1967 as prayed for by her, and for a direction directing the respondents to pay the arrears of salary which would be payable to her once she is put in the scale of Rs. 200-340 from 1-6-1967.

2. Few facts leading to the present petition may be stated. Petitioner is serving as Linen Keeper at the S.S.G. Hospital, Baroda since 1959. At the relevant time when she joined service she was put in the scale of Rs. 125-165 and by 1967 she had reached the maximum of this scale. First Gujarat State Pay Commission revised the pay-scale of the post held by the petitioner to Rs. 160-225. Petitioner came to know that there was post of Linen Keepers in other Hospitals owned and managed by State of Gujarat and all these Linen Keepers belong to one cadre and there were two scales in operation for the post of Linen Keepers being Rs. 200-340 and 160 225. Petitioner came to know that some Linen Keepers junior to her and posted in the Civil Hospital at Surat and Mental Hospital at Ahmedabad were in the scale of Rs. 200-340, while she was continued in the scale of Rs. 160-225. In the meantime in the year 1970, Government created two posts of Linen Keepers in the scale of Rs. 200-340 and when petitioner came to know about it she represented to the Government that she should be put in the higher scale because she is senior to those who are awarded the scale of Rs.

200-340. She pointed out that she was at Sr.No. 2 in the Seniority List for Linen Keepers while Smt. D.W. Bhatt who is at Sr. No. 9 in the Seniority List and Kumari S.H. Khatri who is at Sr. No. 17 in the list have been put in the scale of Rs. 200-340 and that this results in denial of equal opportunity in the matter of appointment in public service and is violative of Article 16 of the Constitution. Her representation remained unattended. Petitioner filed Special Application No. 229 of 1974 inter alia contending that her workload compared to Linen keepers working at Civil Hospital, Surat and Mental Hospital at Ahmedabad is higher and that she is senior most Linen Keeper attached to S.S.G. Hospital at Baroda which is the second biggest hospital in Gujarat State and that refusal to put her in the higher scale is violative of Article 16 and that she has been accorded discriminatory treatment and that she should be put in the higher scale. When that petition came up for hearing, the learned Government Pleader appearing on behalf of the State produced before the Court an order dated 17th June 1975 annexure "C" made by second respondent awarding to her scale of Rs. 200-340 from the date of taking charge. In view of this order, the petition was withdrawn reserving liberty to the petitioner to move the Government for awarding retrospective operation of the higher scale. Petitioner, thereafter moved the Government to put her into higher scale from 1-6-1967 when the scale of Rs. 200-340 came into force, consequent upon the recommendations of the first Gujarat State Pay Commission. This representation was rejected by an order annexure "D" dated 19th October 1973. Petitioner has questioned the correctness of this order in this petition.

3. It is really regrettable that the Government should have adopted an attitude in this petition which is on the face of it thoroughly unfair and unjust. The facts which are not in dispute are that the petitioner has been serving as Linen Keeper at S.S.G. Hospital since 1959. There are two posts of Linen Keepers at Baroda and she is senior amongst the holders of the post. She was put in the scale of Rs. 160-225 and has continued to be in that scale. First Gujarat Pay Commission awarded higher scale of pay of Rs. 200-340 to Linen Keepers. That scale is awarded to three Linen Keepers as would be apparent from the seniority list of Linen Keepers published by the second respondent on 18th April 1975. Those who were put in the scale of Rs. 200-340 were Miss Edulji at Sr. No. 1, Smt. D.M. Bhatt at Sr. No. 9 and Kumari S.H. Khatri at Sr. No. 17. The post of Linen Keeper in which Smt. D.M. Bhatt is placed was created in 1970. Smt. D.M. Bhatt is attached to the Civil Hospital at Surat. Now, if a post was created in the scale of Rs. 200-340 for Linen Keepers, in the first instance from amongst those Linen Keepers who were serving under respondent No. 2 should have been considered for the post. That has not been done. Smt. D.M. Bhatt, who is much junior to the petitioner has been put in that scale. In fact, there are two Linen Keepers attached to the Civil Hospital at Surat since 1970 and one is in the scale of Rs. 200-340 Smt. D.M. Bhatt, another is in the scale of Rs. 160-225 Smt. N.L. Shah who is at Sr. S. No. 10 in the list. It appears from the seniority list that Smt. D. M. Bhatt Joined service on 3-10-1965 and Smt N.L. Shah joined service on

3-11-1965. Thus admittedly both of them are junior to the petitioner yet Smt. D.M. Bhatt has been put in the higher scale of Rs. 200-340 from 1970. Similarly Kumari S.H. Khatri at Sr. No. 17 in the seniority list has been put in the scale of Rs. 200-340 since 1970. It appears two posts in the upper scale were created in 1970, one for Civil Hospital at Surat and another in Mental Hospital at Ahmedabad and completely ignoring seniors in the cadre of Linen Keepers some juniors were arbitrarily and indiscriminately selected and awarded the scale. The only explanation about this unusual action of the respondents is that the posts of Linen Keepers were not brought on common cadre and cadre was formed in 1975 and that only local promotions were being given. I would presently examine that submission. The fact remains that one who came in 1965 namely Smt. D.M. Bhatt and one who came in 1969 Kum. S.H. Khatri jumped into the higher scale as awarded by the department wholly overlooking and ignoring the claim of seniors by several years. It is very unfortunate that this petitioner had to come to the High Court for compelling the Government to put her in the higher scale and it is after the petition was filed that the order dated 17th June 1975 was made and petitioner and one Smt. V.P. Vyas presumably who is shown as Smt. U.P. Vyas at Sr. No. 4 were put in the scale of Rs. 209-340. I must however make one thing very clear that the Directorate clearly recognised the injustice done to the petitioner and as soon as Smt. D.M. Bhatt and Kumari Khatri were placed in the higher scale, the Directorate immediately took up the question with Government way back in 1970 to upgrade the post held by the petitioner. Dr. O.P. Gupta, Director of Medical Education and Research has in para 5 of the affidavit in reply in terms stated as under:

I say that the proposal of upgrading the post of Linen Keeper in the scale of Rs. 200-340 at S.S.G. Hospital, Baroda, was submitted to the Government on 6-1-1970, but this proposal was not accepted by the Government under its letter No. SHB-1070-797-N of Panchayat and Health Department dated 21-2-1974.

It is implicit in this statement that not only the Directorate recognised that the post which the petitioner held ought to be in the higher scale of Rs. 200-340 but it was mandatory that she should have been placed in the higher grade in 1970 when higher grade was awarded to Kumari Khatri and Smt. Bhatt both being junior to the petitioner.

4. If in one cadre, two pay-scales are operating, one higher and another lower and if no specific qualification for being placed in the higher scale is prescribed, guarantee of Article 16 would require that persons must be awarded higher scale according to seniority and if that necessitates transfer, such transfer will have to be effected. It is no answer the problem to say that Government makes local promotions. That would be clearly arbitrary and discriminatory. When persons are brought on common cadre, there can be a promotion from that cadre to the higher post. If there are two scales operating for the cadre one higher and another lower, one can bring in the concept of promotion from the lower scale to the higher scale. There can be rules prescribing eligibility for being placed in

higher scale but in the absence of rules guarantee of Article 16 requires that promotion should be made according to seniority and if academic criterion is also not prescribed, promotion will have to be given purely on the basis of seniority. That should hold good whenever posts are caderised. It was not disputed before me that Linen Keepers belong to one cadre. All Linen Keepers serving in any hospital owned and managed by the State Government belong to one cadre with a common seniority list. There can be two scales one for higher work-load and another with little lower workload, and when two posts are in the same hospital, a higher scale post for little higher responsibility and another lower for slightly lower responsibility can be prescribed. It is just not conceivable that the person belonging to the same cadre working in different institutions should be given permanent local promotion ignoring the claims of the seniors. That was all the reply on behalf of the respondents that what was given was a local promotion when the cadre was not formed.

5. Assuming for a moment that when the cadre was not formed, local promotion could be given, it is still open to the Court to examine whether the guarantee of equality of opportunity in the matter of appointment and promotion in public service has been violated in this case or not.

6. There are posts of Linen Keepers attached to all hospitals in the State. There are two such posts in S.S.G. Hospital at Baroda and two such posts at the Civil Hospital at Surat. It is in terms conceded that S.S.G. Hospital at Baroda is second biggest hospital in this State, first pride of place being enjoyed by the Civil Hospital at Ahmedabad. As a necessary corollary, Civil Hospital at Surat may be at No. 3 or may be much lower in the hierarchy of hospitals according to size. Now let us compare the work load. From the facts which are not in dispute, before we compare the work-load let us understand as to what are the duties of Linen Keepers. It is onomatopoeic sound echoing the sense. Linen Keeper keeps, manages, provides linen to the entire hospital. Linen includes bed sheets, pillow covers, gowns, masks, and even uniforms. It is the duty of the Linen Keeper to keep a stock of it and supply the same regularly with daily and weekly change as per Rules. Bed-sheets, pillow covers would be changed every week. Rest are changed daily. The stock would be proportionate to the number of patients and beds and staff. I am only comparing the relative figures for the S.S.G. Hospital Baroda and Civil Hospital at Surat, because it is conceded that Civil Hospital at Ahmedabad stands no comparison to S.S.G. Hospital at Baroda. The sanctioned strength of beds for S.S.G. Hospital at Baroda is 924 with an average daily attendance of patients being 1200. Comparative figures for Surat Hospital is 400 to 500 patients a day. The bed strength is not known. Baroda has 11 operation theatres as against 5 at Surat. There is a glucose saline plant attached to the Baroda Hospital while Surat cannot claim any such plant. Baroda is admittedly second biggest hospital in the State and Surat comes much lower. In fact new Civil Hospital at Surat has been started only about a decade back while Baroda is an old reputed hospital. There are two posts of Linen Keepers at Baroda Hospital and two at Surat. Now here comes the angular approach of the Government.

Even though Surat Hospital is a new one which has still to establish itself in the eye of the public, it has two posts of Linen Keepers from 1965 and one of the posts has been out in the higher scale from 1970. On the other hand there are only two posts of Linen Keepers at Baroda and till 1975 none was in the higher scale, meaning thereby both were in the lower scale. Can there be anything more discriminatory than this treatment accorded to the petitioner in relation to her co-workers. Indisputably the petitioner discharges much higher work-load than the those attached to the civil hospital at Surat and yet the petitioner has the misfortune of being given the lower scale compared to her counter part in the Surat Hospital. Now again to be fair to the department, these very facts had attracted the attention of the department and recognising the inherent justice of the petitioner's claim, without anything being done on her part, the department moved simultaneously for upgrading the post at Baroda. But the Government declined to accept this very obvious proposal of the department.

7. Mr. B.J. Shelat, learned Assistant Government Pleader contended that till the ceder was formed, every promotion at the hospital level was a local promotion and no one can claim such promotion or upgrading of post as a matter of right. I have dealt with this contention. Conceding that till Linen Keepers of all Government hospitals in the State were brought on common cadre it was open to the Government to make local arrangement yet the very fact that while one doing much less work holding the post of Linen Keeper was put in the higher scale, it would not be open to the Government to deny the same to the petitioner who was Linen Keeper at Baroda having much bigger workload compared to her counterpart at Surat. Assuming that this was seeking upgrading by back door method which cannot be claimed as a matter of right, the petitioner did not claim that she should be retained at Baroda She was willing to be transferred to Surat, provided she was put in the higher scale which was legitimately due to her. Even if the cadre was not formed, it was never contended before me that the Linen Keepers were not transferable from one hospital to the other hospital Therefore, even if formal cadres were not formed Linen Keepers did belong to the cadre and what was done in 1975 was formation of regular cadre.

8. It was incidentally contended that even if the work-load at Baroda was higher, the petitioner's share was less because another post was sanctioned. This submission is without any merits because for a much smaller quantum of work at Surat there were two posts of Linen Keepers. Though this fact was once denied it was admitted at the hearing that there are two posts at Surat and this becomes very clear from the seniority list which shows that Smt. Bhatt and Smt. L.N. Shah have been working as Linen Keepers at Civil Hospital Surat from October 1965 and November 1968 respectively. Therefore, the contention of Government that the workload of the petitioner remained the same because second post was sanctioned would not carry conviction.

9. Mr. Shelat next contended that it is not correct to say that the post of Linen Keeper at Civil Hospital Surat and at Mental Hospital Ahmedabad are upgraded

but in fact these posts were created right from the beginning in the higher scale of Rs. 200-349 Assuming it is true, when post is created it was open the Government to first offer them to those who were already in service and had put in longer years of service. Overlooking their claim higher scale should not have been awarded to juniors who were working in the hospital where the posts in the higher scale were sanctioned. That would be grossly discriminatory.

10. Therefore, examining this case from any angle, it is crystal clear that the petitioner has been denied justice. She has been working as Linen Keeper from 1959. She is at Sr. No. 2 in the seniority list. She is attached to the second biggest hospital in this State. People in similar hospitals like Surat and Mental Hospital Ahmedabad having much less quantum of work compared to hers and belonging to the same cadre and junior to her are enjoying the higher scale from 1970. No attempt is made to suggest that the post in the higher scale was created in the Mental Hospital at Ahmedabad because of the peculiar conditions in which the persons attached to the Mental Hospital at Ahmedabad have been doing such a work. Such suggestion would not be available to the respondents when they simultaneously created the post in the higher scale in the Civil Hospital Surat. Therefore, here is a case in which a person rendering duties having much larger workload than the one much junior is having in a counterpart post in another hospital, and yet senior being kept in the lower pay-scale. It would tantamount to denial of equality of opportunity in the matter of conditions of service attached to the Government employees of the State and this discrimination" being violative of Article 16 must be removed.

Mr N.J. Mehta contended that discrimination came at a time when Smt. Bhatt junior to the petitioner and Kumari Khatri much junior to the petitioner were awarded higher scale in 1970 and therefore, it is just and proper that it should be remedied from the same date.

11. Accordingly this petition is allowed by issuing a writ of mandamus quashing and setting aside from the last para the words: "from the date of issue of office order by the Director of Health Service (Medical), Ahmedabad i.e. from 16-7-1975 only" in the impugned order dated 29-10-75 and directing the respondents to put the petitioner in the scale of Rs. 200-340 from the date the same scale was given to Smt. D.M. Bhatt and to pay the difference payable to her within three month from today. Rule made absolute with no order as to costs.