

(1998) 05 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 20/1996

State of J&K through Executive Officer, Srinagar;
2.Administrator, Srinagar Municipality

APPELLANT

Vs

Sanitary Inspectors Association, Srinagar, Municipality
through its President

RESPONDENT

Date of Decision : 05-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) KashLJ 752

Hon'ble Judges : Bhawani Singh, J and M.Y.Kawoosa, J

Bench : Division Bench

Advocate : M.Abdul Qayoom, A.Haqani, Advocates appearing for the Parties

Judgement

1. Through the writ petition, petitioners, who are Sanitary Inspectors, Srinagar Municipality, are claiming pay scale of Rs. 13202550 (unrevised)

that was being paid to their counterparts in Jammu Municipality, Jammu.

Grievance of the petitioner is that its members are working as Sanitary Inspectors in Srinagar Municipality for the last many years and are being

paid pay scale of Rs. 9001830 (unrevised) per month. They claim that this disparity is violative of Articles 14 and 16 of Constitution of India, since

there is no justification for subjecting them to this treatment when similarly placed Sanitary Inspectors of Jammu Municipality are getting higher pay

scale for doing the same kind of work. We may point out here that the objections of respondents were not taken into consideration by Single

Judge on the ground that the same were not filed in this case. It transpired later on that the objections were filed, but they were tagged with some

other case. Consequently, on the prayer of learned counsel for Appellants, we

permitted these objections to be taken on the file of this case in the interest of justice so that the rival contentions of respective sides are considered,"" appreciated and decided once for all. The case of respondents is that in Srinagar Municipality, the Sanitary Inspectors are not qualified, meaning thereby they are neither Matriculates nor they have undergone one year course from State Medical Faculty, whereas the Sanitary Inspectors in Jammu Municipality are qualified in accordance with these rules. It is also pointed out that there is difference in the nature of functions being discharged by the Sanitary Inspectors of the two Municipalities and there is difference in the responsibility also.

2. Single Judge considered the claim of petitioners and allowed the same by the impugned Judgment, hence this Appeal.

4. Shri Altaf Haqani, learned counsel for the Appellants, forcefully contended that this petition is not maintainable for the reason that the petitioners'

Association is not registered and in the alternative, permission has not been sought from this Court for filing this petition in representative capacity in

terms of Order 1 Rule 8 of Civil Procedure Code. This submission is opposed by Shri Qayoom, learned counsel appearing for the respondents. It

is submitted that provisions of Code of Civil Procedure are not wholly applicable to writ proceedings. This apart, this is a technical objection,

therefore, must be rejected. Learned counsel further submitted that this objection is technical in nature and must not be entertained, as it defeats the

ends of justice. Learned counsel also submitted that objection of Appellants' counsel is met by the Apex Court in decision Akhil Bharatiya Soshit

Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Asson. etc. vs. Union of India and others (AIR 1981

Supreme Court 298). To bring home the point, particular reference was made to para 63 of this Judgment. It is quoted below;

63. A technical point is taken in the counteraffidavit that the 1st petitioner is an unrecognized association and that, therefore, the petition to that

extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognized union or not, the fact remains that a large body of

persons with a common grievance exists and they have approached this Court under Art. 32. Our current proconsul jurisprudence is not of

individualistic AngloIndian mould. It is broadbased and peopleoriented, and

envisions access to justice through 'class actions', 'public interest litigation', and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a nonrecognized association maintaining the writ petitions.

We are not impressed by the objection so raised by Shri Haqani for the reasons that the petitioner has specifically pointed out in the petition that the Association is duly registered in accordance with relevant statute and Mohd Maqbooi Nazar is the present President of the Association. The respondents have simply denied these averments without supporting the same by some material justifying the objection. Therefore, we have no reason to dispute the statement of petitioners that the Association is duly registered in accordance with statute. Having said so, alternative objection does not survive. Moreover, perusal of above quoted para from Apex Court decision plainly demonstrates that this kind of objection is technical in nature and cannot be entertained to defeat a case where number of persons having similar grievance want to agitate the same in a Court of Law.

Next, it was contended by Shri Haqani that difference in pay scales in the two Municipalities is based on qualification, meaning thereby the Sanitary Inspectors in Jammu Municipality are Matriculates and have also undergone one year course under the State Medical Faculty, whereas in Srinagar Municipality, all are not Matriculates and all of them have not undergone one year requisite course. This submission has no force. Both the Municipalities have been constituted by the same Act; namely, Municipal Act 2008 (1951 AD). Service Rules framed under this Act are similar for both the Municipalities. Qualification for recruitment and initial pay scale is also same. The variation in pay scale has been brought in by Executive Order passed some time later in Municipal Committee, Jammu. Although the salary of petitioners was revised from time to time, but it was not on similar lines, with the result that disparity became a matter of great disadvantage to Sanitary Inspectors of Municipal Committee, Srinagar and

through the writ petition, this discrimination was challenged. With a view to test the submission of Shri Haqani, we enquired from the learned

counsel that in case grant of pay scale available to Sanitary Inspectors of Srinagar Municipality is based on the qualification in the rules whether

those Sanitary Inspectors, who possess the qualification prescribed in the rules are being paid the same pay scale which is being paid to Sanitary

Inspectors of Jammu Municipality, learned counsel submitted, on instructions from his clients, that all the Sanitary Inspectors irrespective of

qualification are being given the same pay scale. This clinches the issue. The grant of pay scale is not, therefore, based on qualifications mentioned

in the rules as contended. Rather, it is based on Executive Orders passed from time to time revising the pay scales. Shri Haqani further contended

that Sanitary Inspectors, Jammu Municipality are discharging onerous responsibilities as compared to Sanitary Inspectors of Srinagar Municipality.

In the former case, there is fourtier supervising system and in the latter twotier system. This distinction is farcical. The hierarchical setup is

prescribed in the Act and the Rules. It is similar in both the Municipalities. Contention that in Jammu Municipality, two more officials supervise

work of Sanitary Inspectors, which is not in Srinagar Municipality, is erroneous. The officials like Ward Inspectors do not, in fact, supervise the

function of Sanitary Inspector nor share his responsibility. The functions of other officials are entirely different. Therefore, for all intents and

purposes, twotier system exists under both the Municipalities. Sanitary Inspectors of both the Municipalities discharge similar functions and

shoulder same responsibilities. Learned counsel brought to our notice certain decisions of Apex Court dealing with the 'equal wage for equal work'

rendered from time to time. These decisions are : State of Mysore v. B. Basavalingappa (AIR ^ 987 Supreme Court 411); Jaipal and others vs.

State of Haryana and others (AIR 1988 Supreme Court 1504) and Grin Kalyan Kendra Workers' Union vs. Union of India and others (AIR

1991 Supreme Court 1173). The principles laid down in these decisions are wellknown, but their application depends upon the facts of each case.

No other material has been brought to our notice by learned counsel for the Appellants pointing out that the claim of petitioners for parity of pay

scale with Sanitary Inspectors of Jammu Municipality is not correct. We quote here the observations of Apex Court in Jaipal's case (supra);

Having regard to these facts and circumstances we are of the view that there is no difference in the nature of duties of the instructors and squad

teachers and both of them carry out similar work under the same employer. The doctrine of equal work equal pay would apply on the premise of

similar work but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same

employer, with similar working conditions, the doctrine of 'equal work equal pay' would apply and it would not be open to the State to discriminate

one class with the other in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work.

We are of the considered opinion that the above observations of Apex Court squarely apply to the facts of this case. The petitioners have been

unreasonably indiscriminate in the grant of pay scale which is admissible to their counterparts in Jammu Municipality, although both the

Municipalities are formed under the same Act and have the same Master.

State Government has not challenged

7. This decision by way of Appeal, therefore, it has become final against the State Government which also contributes to the finances of

Municipalities.

No other point was urged.

The result, therefore, is that there is no merit in this Appeal and the same is dismissed.