
(2001) 02 MP CK 0055
In the Madhya Pradesh High Court
Case No : L.P.A. No. 469 of 2000

State of M.P. and Another	Vs	APPELLANT
Dr. P.K. Shrivastava and Others		RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 5 MPHT 349 : (2001) 3 MPLJ 1

Hon'ble Judges : Bhawani Singh, C.J.; Arun Mishra, J

Bench : Division Bench

Advocate : Brian Da" Silva, Dy. A.G, for the Appellant; S.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

State of Madhya Pradesh is assailing the order passed by in Writ Petition No. 2939/89 by which the learned Single Judge allowing the writ petition, a direction has been given to the State to revise the pay scales of the respondents who are lecturers in the faculty of Education in various colleges receiving grant-in-aid from the Government, similar to the pay scales as is given to the Lecturers/ Assistant Professors of the Government aided Colleges of Arts, Science and Commerce faculty with effect from 1986.

The respondents are working in the private Colleges which were receiving 100% grant-in-aid. Though they perform same function, their pay scales are different from those as are given to their counter parts in the Government Colleges and in other faculties in aided Colleges. While revising the pay scales under Revision of Pay Rules, 1990 which were made applicable with effect from 1986, their salary was not revised. The respondents are serving in various colleges known as College of Education which impart teaching in the Course which give eligibility to an incumbent to take up teaching assignments. The respondents allege that

though they are serving in various colleges/ faculties of education, the pay scales of Arts, Science and Commerce faculties/ Colleges were revised but while extending the "Revision of Pay Rules" discrimination has been meted out to them by not extending the benefit of the same whereas in the Government Colleges and the Government aided Colleges, in Arts, Science and Commerce faculties, the benefit of "Revision of Pay Rules" has been given uniformly. The respondents allege that there was no rationale or intelligible criteria behind such a classification. They discharge the same duties, they have the same responsibilities and liabilities as their counter parts in other faculties/Colleges of the Government and aided institutions and there was no valid reason to deny them the benefit of Revision of Pay Rules which as a matter of fact is necessary to do to keep the pay scale in tune with current devaluation and trends. Respondents further alleged that there were 9 Universities in the erstwhile State of Madhya Pradesh, established under the provisions of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (Act No. 22 of 1973) (hereinafter referred to as the Act). Under the said Act, statutes have been framed which are common to all the Universities. Statute No. 10 deals with Board of Studies. Regulation 8 thereof deals with Faculty of Education. The Faculty of Education has been opened in several affiliated Colleges. There is also a Government College of Education. Few Universities have Departments in the shape of Faculty of Education. The respondent allege that they are governed by Statutes and Ordinances under the Act. They further allege that their pay scales used to be revised from time to time based on recommendations of different Pay Commissions. The respondents further allege that the mode of their recruitment, conditions of service are governed by Statute Nos. 27 and 28 framed under the Act. The teachers in Government Colleges are governed by the M.P. Education (Collegiate Branch) Recruitment Rules, 1967. The scales of pay of the Teachers of those Colleges which receive grant-in-aid are governed by the Rules called Madhya Pradesh Revised Grant-in-Aid Rules, 1979. Their service conditions are governed by Madhya Pradesh Ashaskiya Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 (Act No. 20 of 1978) (hereinafter referred to as the 1978 Act). By Act No. 26 of 2000 the name of the Act No. 20 of 1978 has been changed to Madhya Pradesh Ashaskiya Shikshan Sanstha (Anudan Ka Praday) Adhiniyam, 1978."

The respondents further allege that no discrimination could be meted out to them vis-a-vis to the Lecturers/Assistant Professors and the persons serving in other faculties such as Arts, Commerce and Science as the work-load, qualifications and standard of work expected from them are similar to the Teachers employed in other faculties. The age of retirement is similar to other counter part in the aided institutions. Number of class and teaching load taken by them is similar. Thus, the respondents claim equal pay for equal work and also that they have been unequally treated in the matter of pay scale. The Government had appointed a Committee consisting of four persons which had recommended to the Government to pay same pay scales at par with the

teachers of other faculties. The respondents further allege that they are entitled to the same pay scales which are being paid to other persons similarly placed in the other faculties. The respondents further allege that even in Polytechnic Institutes, the Revision of Pay Rules have been applied. The staff of those institutes is getting UGC scales of pay. Even the Librarians working in the Department College or Faculty of Education itself are also being paid UGC scales of pay and so also other non-teaching staff serving in the department/College of Education. Thus, the action of non-revising the salary of the respondents is arbitrary and unconstitutional.

The Government did not file the return before the Single Bench whereas the Writ Petition was filed on 2-5-89 and decided on 26-9-2000 i.e. after about 11 years.

Learned counsel for the State has mainly urged that the opportunity to file the return ought to have been granted to the State and the learned Single Judge has erred in not granting opportunity to the State to file the return. He further submits that for want of opportunity of filing the return, it was not possible for the Government to rebut the submissions of the respondents. He further submits that the benefit of Revision of Pay Rules has not been extended to the Assistant Professors in Government Colleges of Education. It is submitted that the lecturers in the Government Colleges and Private Colleges cannot be placed at par with each other because different rules are applicable initially at the time of initial recruitment and the learned Single Judge has not considered the case in accordance with the modified provisions of the 1978 Act retitled as Madhya Pradesh Ashaskiya Shikshan Sanstha (Anudan Ka Praday) Adhiniyam, 1978 as amended by Act No. 26 of 2000.

After hearing the learned counsel for the parties, we are of the opinion that this appeal has no merit and deserves to be dismissed.

The main submission raised by the learned counsel for the appellant-State is that the State was not afforded reasonable opportunity to file the return, be examined.

The writ petition (W.P. No. 2939/89) was filed on 3-5-89. It came up for hearing for the first time on 5-5-89. It was admitted by this Court on 6-10-89 for final hearing and the notice was issued to the respondents in the said petition on payment of P.F. within 7 days. It was necessary for the appellants-State to file the return on service of the notice sent in the year 1989 which required the appellants to submit the reply by 11th January, 1990. Thereafter the matter came before the Single Bench on 26-9-94 and the order-sheet dated 26-9-94 records that an application for early hearing was filed. Government Advocate sought last opportunity to file return, which opportunity was granted and the Single Bench ordered that the return be filed within three weeks. It was also made clear that if return filed within the time given above, the petition shall be heard without return. Thereafter, the matter was posted on 9-12-94. The Government did not file the return. However the case was adjourned for want of

issuance of SPC to respondent Nos. 1 to 7. The order-sheet of the said date i.e. 9-12-94 shows that no further time was sought by the Government. Thus, the last opportunity granted on 26-9-94 for filing the return within three weeks was not utilized and the said right came to be closed. The case was again listed on 3-2-95, 24-2-95 and 11-9-95 but still the return was not filed. Subsequently the matter was taken up by the Single Bench on 12-9-95. Since the respondent No. 3 in the said petition i.e. Madhya Pradesh Uchcha Shiksha Anudan Ayog came to be abolished, time was sought for finding out the substitute of the respondent No. 3. However, still on the said date i.e. 12-9-95 it does not appear that the return was filed by the Government nor any prayer was made to give it further time. The matter was thereafter listed on 22-7-96, 19-8-96, 31-10-96 and 19-11-96 but the return was still not filed. It appears that on 24-2-98 on behalf of the Government new set of lawyers had filed the Vakalatnama and the case was fixed for 2-3-98 for final disposal, but still the return was not filed. On 11-3-98, again the case was ordered to be fixed for final hearing in the week commencing 6-4-98. The case was listed on 13-4-98. Since on that date, the counsel for the petitioners (respondents herein) did not appear, the case was dismissed for default. However, the writ petition was later on restored and the matter came up for hearing again on 12-2-99, 30-3-99 and 9-4-99. On 30-3-99 and 9-4-99 though the counsel for the State appeared but did not file any return nor sought any opportunity to file it. Thereafter, the case was ultimately heard by Single Bench on 26-9-2000 and the learned Single Judge had ultimately decided the writ petition by the impugned order.

Thus, it cannot be said that after the petition was admitted for hearing on 6-10-89, no opportunity was given to the appellants for filing the return. We find that more than reasonable time and opportunity to file the return was afforded to the appellants and hence, the submission raised in this regard is rejected.

The main question on merits in the instant case is whether the action of the State can be said to be justified in not revising the pay scales of the Lecturers (Assistant Professors) in the College of Education whereas the pay scales of all other categories of Lecturers and Assistant Professors in Government Colleges and other aided private Colleges and University faculties have been revised. The Government has revised the pay scales of Lecturers/Professors other teaching and also that of non-teaching staff in the aided Institutions. The school teachers of the aided institutions were also given benefit of with respect to the applicability of the Revision of Pay Rules and direction was given to State for paying them same pay scales and D.A. as revised in Government Schools by a Division Bench of this Court in Suresh Kumar Dwivedi and Ors. v. State of M.P. and Ors. 1994 MPLJ 73 which direction was affirmed by the Apex Court. Initially, the decision of this Court was set aside and the matter was remanded to this Court for re-examination by Apex Court with certain directions. Thereafter, the writ petition was allowed on 23-3-84 which order was affirmed by the Apex Court.

The question for consideration is whether, while revising the pay scales of

Lecturers, Professors etc. of the other Government Colleges which have also been made applicable to the aided institutions, the State can discriminate in not extending the benefit of Revision of Pay Rules to the teachers working in the College of Education?

In the case of *State of Mysore Vs. B. Basavalingappa*, the question arose for consideration before their Lordships was whether difference in pay scales on the basis of educational qualification was justified? It was held that in subsequent revision of pay scale different pay scales could not be enforced for the same post merely on the basis of a holder of a certificate or a Diploma when the person will perform the same duties and do the same work. Difference made on the basis of educational qualifications was held to be not justified.

High Court of Punjab in *Mohinder Maur (Mrs.) Librarian v. The State of Haryana and Ors.* (1989) 4 SLR 92 (93) has laid down that when the pay scales have been revised by Government regulation, benefit of the Regulation should be granted to employees similarly placed should be granted to employees similarly placed.

Yet in another case *Manohar Singh v. The State of Haryana and Ors.* 1991 (1) SLR 216, High Court of Punjab & Haryana considered the question where the Engineer-in-Chief and Additional Chief Electoral Officer prior to the revision, were carrying the same pay scales; duties and responsibilities of both posts were equal, there was revision of pay scale of only of the post of Engineer-in-chief and not of Additional Chief Electoral Officer. The action was held to be discriminatory to impermissible level.

Yet in the case of *P.M. Patil v. Agriculture Produce Market Communication* 1982 Lab IC (NOC) 55 (Karnataka) High Court decided the matter in the context where duties and responsibility of two sets of employees on different posts were same and both were granted the same pay scale, granting revised pay scale only to one of them was held to be discriminatory.

Their Lordships of the Supreme Court in the case of *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, also considered the question where the Third Pay Commission classified the Senior Draughtsman in the Ministry of Defence Production in two groups and recommended higher pay scale for one group, not on any merit-cum-seniority basis, but only on seniority-cum-fitness basis and there was no denial anywhere that both these types of Draughtsmen did the same work and discharged the same functions and duties, the grouping was held to be violative of the provisions enshrined in Article 14 of the Constitution of India.

High Court of Delhi in the case of *Mr. J.S. Khanna and Ors. v. University of Delhi and Ors.*, (1981) 1 Serv. L.J. 357 (367) : ILR (1980) 2 Delhi 1404, has also considered the similar question of revision of pay scale of Senior Grade Lecturers from prospective date instead of retrospective date from which the pay scale of

other categories were revised, was held to be arbitrary. Matter also came to be considered by Bombay High Court in the case of Maharashtra State Medical Teachers Association and Ors. v. State of Maharashtra and Ors. 1988 M L.J. 1068 where the State Government by its Resolution dated 25-10-1977 revised pay scales of all the categories of the Universities as well as their affiliated Colleges with retrospective effect from 1-1-1973 but did not fix pay scales of Medical Teachers merely on the ground of non-sharing the burden to the extent of 80% by the Central Government, was held to be discriminatory, violative of Articles 14 and 16 of the Constitution of India.

Though the recommendation of the Pay Commission for revising the pay scale is recommendatory in nature but once the Government adopts such recommendations and revise the pay scales on the basis of such recommendation, has implemented them for the similar post of Lecturers/Professors in the Arts, Science and Commerce faculties in Government Colleges, University faculties and aided institutions and other institutions for teaching and non-teaching staff. There should be some intelligible basis for making distinction between the Lecturers/Professors working in other Government Colleges or aided institutions and the Lecturers/Professors of College of Education for not extending the benefit of Revision of Pay Rules. In the backdrop of the fact that the State has not shown any rationale of its action discriminating one set of employees even before us, we have no option except to reject the State's submission that it could validly not revise the salary when it has revised of others.

The right of education has already been recognized as one of the fundamental right in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . It is surprising that the State has not so far done justice to the Lecturers/Professors working in the College of Education by not giving them the benefit of Revision of Pay Rules. The education imparted in the College of Education enables the students to become teacher on whom the building of the nation depends. The importance of College of Education and its significance cannot be said to be less in any manner than that of Arts, Science and Commerce faculties of Government Colleges or aided institutions. Even to the School Teachers, the benefit of Revision of Pay Scales has been extended but not to the Teachers of the College of Education whereas in College of Education other staff salary has been revised.

The averment which has been made in the writ petition has to be accepted that work-load, qualifications and standard of work expected from the respondents are similar to the teachers employed in other faculties, such as, Arts, Commerce and Science. Service conditions such as rules of recruitment, qualification for appointment, age of retirement, Service Rules of Assistant Professors and Professors in faculty of Arts, Commerce and Science are equal in all faculties of all Government Colleges and aided institutions as also in all Departments of College of Education. Thus, in the College of Education also, every essential condition remains the same. Hence, there cannot be any discrimination. It

appears that the duties and responsibilities of teachers working in the College of Education are the same as that of counter parts in Arts, Commerce and Science faculties in the Government Colleges and aided institutions. They are performing the identical work and similar duties and carry out the same functions with the same measure of responsibility, having same academic qualifications as are required to be done by their counter parts in Arts, Commerce and Science faculties in Government Colleges and aided institutions. Thus, if the State denies them the equality without any rationale basis, such action definitely amounts to denial of equality before the law or the equal protection of the laws, violative of Article 14 and denial of opportunity in matters of public employment, violative of Article 16 of the Constitution of India.

In *Dr. I.M. Pandya and Ors. v. State of Gujrat and Anr.* 1984 Lab IC 241 : (1984) 2 SLR 352 High Court of Gujrat has also struck down the distinction between the teaching technical and non technical subjects (Mathematics, Physics, Chemistry, and those of teaching technical subjects in Engineering College for awarding revised pay scale. It was held that the action is violative of Article 16 of the Constitution.

In another case the High Court of Andhra Pradesh (1991) 1 APWR 236, considered the question where the recommendation made by the Inter-departmental Committee regarding revision of pay scales of Government of India employees including Medical Officers were accepted by the Government of India and the concerned Unit Heads had also implemented the same, non implementation of the same so far as Medical Officers in CRPF were concerned on the alleged ground that it would affect the discipline in the Force was held to be clearly arbitrary and discriminatory.

The appellant-State has not given any explanation for creating disparity in not giving the benefit of Revision of Pay Rules to the respondents either before the Single Bench or in the present Letters Patent Appeal.

Their Lordships of the Supreme Court in the case of *V. Markendeya and Others Vs. State of Andhra Pradesh and Others*, and in *Delhi Municipal Karamchari Ekta Union (Regd.) Vs. P.L. Singh and Others*, have laid down that the persons engaged in different departments were doing the similar work and as such, were entitled to similar benefit.

In the case of *Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others*, it was held that the teachers of the aided schools must be paid the same payscale and dearness allowance as teachers in Government Schools.

In *Y.K. Mehta and Others Vs. Union of India (UOI) and Another*, where the same pay scale was denied to the staff Artistes but was provided to their counter parts in Film Division under the same Ministry was held to be discriminatory, violative of protection given under Article 16 of the Constitution of India. When two posts under two different wings of the same Ministry are not only identical but also involve the performance of the same nature of duties, it will be unreasonable and

unjust to discriminate between the two in the matter of pay. One of the directive principles of State policy is "equal pay for equal work", which, if not given effect to in the case of one set of Government servants holding same or similar posts, possessing same qualifications and doing the same kind of work, as another set of Government servants, it would be discriminatory and violative of Articles 14 and 16 of the Constitution. Same view has been taken in the case of Grih Kalyan Kendra Workers" Union Vs. Union of India and others, , Randhir Singh Vs. Union of India (UOI) and Others, and Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, .

It is surprising as to how the State has denied so long to revise the pay scale of the respondents when the pay scales have been revised in respect of similar category of employees. The rates of all essential commodities are increasing day by day and the rising prices have resulted in devaluation of Rupee and rising trend of inflation. Duty is cast on the Government to revise the pay scale from time to time in which it has failed, only with respect to small section of employees without showing justification. It has not been justified in the instant case as to for what reasons the benefit of Revision of Pay Rules was not extended to the category of respondents in the instant case, who are Lecturers in College of Education.

The direction issue by the learned Single Judge for giving the benefit of Revision of Pay Rules with effect from 1-1-86 cannot be said to be unjust in any manner and calls for no interference. The pay scale obviously has to be revised as was done in the case of other educational institutions, in the faculty of Arts, Commerce and Science and actual benefit has also to be given to the respondents from the date it has been extended to other similarly placed employees in the faculty of Arts, Commerce and Science in Government Colleges as well as in other institutions receiving grant-in-aid.

The ground which has been urged in the memorandum of appeal that the Single Bench has failed to take notice of the revised grant-in-aid Rules 1979 and the amended Act "Madhya Pradesh Ashaskiya Shikshan Sanstha (Anudan Ka Prathey) Adhiniyam, 1978" amended by Act No. 26 of 2000 by which Government's liability to release grant-in-aid has changed. There is reduction of 20% in the grant for the current year 2000-2001. It was not the question raised in writ. The writ is confined to the revising the pay scale and is not with respect to Government liability to pay cent percent grant-in-aid which it has decided to reduce in phased manner. We are not commenting anything on that aspect of the matter. The Government has to pay the grant-in-aid as per the existing rules prevailing from time to time. It was extending 100% grant-in-aid till 2000, the burden of which obviously will have to be borne by the State.

We find no merit in the present appeal. The same is dismissed. Costs on parties.