

(2002) 03 MP CK 0107

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 2039 of 1999 and 2311, 2313 and 5438 of 2000

State of M.P. and others

APPELLANT

Vs

M.K. Verma and others

RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 1 MPJR 265 : (2002) 3 MPLJ 25

Hon'ble Judges : Bhawani Singh, C.J.;K.K. Lahoti, J

Bench : Division Bench

Advocate : Brian D'Silva, Dy. A.G, for the Appellant;

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.—These writ petitions (W.P. No. 5438 of 2000, State of M.P. and Anr. v. M.K. Verma and four others, W.P. No. 2311 of 2000, State of M.P. and two others v. Ravishankar Gupta and another, W.P. No. 2313 of 2000, State of M.P. and Anr. v. Suit. Joginder Kaur and three others and W.P. No. 2039 of 1999, State of M.P. and two others v. K.M. Pathak) are directed against order of M..P. State Administrative Tribunal, Jabalpur (SAT) dated January 8, 1999. We propose to decide them by this judgment as common questions of law and facts are involved for consideration and determination. SAT decided five cases but the State of M.P. has not challenged the order with regard to T.A. No. 1216 of 1988 - M.K. Thoke and Ors. v. State of M.P. and another, pertaining to Librarians in Government Engineering Colleges, thereby accepting the order of SAT directing payment of same pay scale to them as was being paid to Librarians/Physical Training Instructors serving in Colleges of General/Higher Education, like Colleges of Arts, Commerce and Science.

2. Respondents are Librarians/Physical Training Instructors in Medical Colleges and College of Education in the State. They claim that pay scale recommended by University Grants Commission and allowed by the State to Librarians/Physical Training Instructors in Colleges of General/Higher Education (Arts, Commerce

and Science) from 1-7-1969 be also granted to them because apart from qualifications, the nature of duties, responsibilities and dimension of work discharged by Librarians/PTIs in all kinds of institutions is the same. This being so, non-grant of the same pay scale to them violates Arts. 14 and 16 of the Constitution of India, as such defeats principle of "equal wage for equal work" without real distinction being pointed out for the discriminatory behavior nor can the same be culled out from set of facts making out basis for classification between these categories. SAT was approached for challenging this action. By order dated 2-1-1995, the claim was allowed and State was directed to extend the same benefit to Librarians working in Colleges of Engineering, Medical and Education. This order was challenged in the Apex Court by the State. Appeal was allowed on the ground that once the Respondents were held to be non-gazetted Class III, they could not claim pay scale of Gazetted Class II employees. However, the Apex Court directed the SAT to examine whether classification by the State between Librarians of Engineering, Medical and Education was reasonable and whether any direction was required to be given to the State. Precisely, the Apex Court said:

However, the Tribunal shall examine whether the classification of Librarians in General Colleges of Education and Colleges of Engineering, Medical and College of Education is reasonable and as to whether any direction is required to be given to the State Government.

Consequently, SAT examined the question. The impugned decision dated 8-1-1999 holds that:

19. We, therefore, hold that such a classification of Librarians/PTIs in general Colleges of higher education and Engineering and Medical Colleges and Colleges of Education is unreasonable and arbitrary. The petitions referred above are, therefore, allowed and it is directed that the State Government shall treat the Librarians/Physical Training Instructors serving in Engineering and Medical Colleges as well as the Colleges of Education in the same manner in the matter of fixing their pay scales, as it has treated the Librarians/Physical Training Instructors serving in the Colleges of Higher/General Education, such as Colleges of Arts, Commerce and Science. These directions being issued by the Tribunal be complied with by the Department concerned within three months of communication of this order to the Respondents in all of the said cases.

It is reported that State Government has complied with this direction of SAT in case of Librarians/PTIs in Engineering Colleges from 1-3-1973. It is pointed out that vide order dated August 21, 2001, the State Government has implemented the order of SAT with regard to Librarians/PTIs in Medical Colleges from this date. Therefore, short question that remains for determination is whether classification of Librarians/PTIs working in Colleges of Education, General/Higher Education, Engineering Colleges and Medical Colleges is reasonable and whether the order of extending the pay scale to Librarians of Medical Colleges from August, 2, 2001 is arbitrary and unreasonable.

3. The State of M.P. came into existence with effect from 1-11-1956 by amalgamation of Mahakoshal, Madhya Bharat, Vindhya Pradesh and Bhopal States. In these States, different pay scales were available for all categories including Librarians/PTIs. Consequently, Librarians/PTIs in all the Colleges were placed in a unified pay scale of Rs. 150-250 taking into consideration conditions of recruitment, qualifications, duties and responsibilities etc. Under M.P. Civil Service (General Conditions of Service) Rules, 1961, the Librarians in all Colleges were given same status namely, Class-III non-gazetted. Tarachand Pay Commission 1961 gave the Librarians pay scale of Rs. 190-300 with status of Class-III non-gazetted maintaining complete parity on account of similar pay qualification, nature of work/duties, responsibilities and method of recruitment.

However, by Government order dated 19-7-1971, the State adopted U.G.C. pay scale of Rs. 300-600 with effect from 1-7-1969 for Librarians working in Colleges of General/Higher Education (Arts, Commerce and Science) denying the same pay scale to the Librarians working in Colleges of Engineering, Medical and Education. For the first time, parity between Librarians was disturbed but nature of duties, responsibilities and volume of work discharged by the Librarians in all Colleges remained the same. Classification of Librarians into two groups is irrational, discriminatory and violative of Arts. 14 and 16 of the Constitution, so is the action of the State Government declaring Librarians working in Colleges of General/Higher Education Class II Gazetted on 21-6-1972, Respondents submit. Although the State Government has taken the plea that these Colleges are distinct and separate from other Colleges under Higher Education, but it has not been demonstrated how when nature of duties, responsibilities and volume of work is same. Further, after taking into account these facts, claim of Librarians of Engineering Colleges has been allowed, vide order No. F. 19-189142-1 dated 22-4-1999 and thereafter of Librarians of Medical Colleges, vide order No. F. 9-20/99/55/Med. Edn/one dated August 21, 2001. There is no justification to deny the same to Librarians/PTIs of Colleges of Education.

4. Before giving consideration to the contentions raised by respective parties, desirable it would be to record what the Apex Court has said in some of the numerous pronouncements rendered from time to time in such matters. In *Randhir Singh Vs. Union of India (UOI) and Others*, , it has been said in paragraph 6 that:

6. We concede that equation of post and equation of pay are matters primarily for Executive Government and expert bodies like Pay Commission and not for Court but we must hasten to say that where all things are equal that is where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different department." In *Dhirendra Chamoli and Another Vs. State of U.P.*, , the Apex Court said that principle of equal pay for equal work value is implicit in expression "there shall be equality before law and equal protection of law." In *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , the

Apex Court ordered payment of same wages as were being paid to permanent employees, to daily wage workers since they perform identical work. The Court observed that:

The Central Government, the State Government and likewise all public sector undertakings are expected to function as model and enlightened employers and arguments such as these which were advanced before us that the principle of equal pay for equal work is an abstract doctrine, which cannot be enforced in a Court of law should ill come the mouths of State and State undertakings." Thereafter, in *R.D. Gupta v. Governor, Delhi Administration and Ors.* 1987 (5) ATC 65, the Court said in para 20 that:

It is not the case of the Respondent that the Municipal Staff in the electricity wing perform more onerous or more exacting duties than the Ministerial staff in general wings. It, therefore, follows that all sections of Ministerial staff should be treated alike and all of them held entitled to the same scales of pay for the work of equal nature done by them." In *Bhagwan Dass and Others Vs. State of Haryana and Others*, the Apex Court said in paragraph 11 that:

We need not enter into the merits of the respective modes of selection. Assuming that the selection of the Petitioner has been limited to the cluster of a few villages whereas Respondents 2 to 6 were selected by another mode wherein they had faced competition from candidates from all over the country. We need not examine the merits of these modes for the very good reason that once the nature and function and the work are not shown to be dissimilar, the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine." In *Jaipal and Others Vs. State of Haryana and Others*, the Apex Court observed in paragraph 6 that:

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 two classes of persons do same work under the same employer, with similar responsibility, under 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." Further, in paragraph 7, the Apex Court said:

Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter of Directive Principle of State Policy, but it is fundamental in nature. The purpose of the article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal pay for equal work has been implemented by this Court in *Randhir Singh Vs. Union of India (UOI) and Others*, *Dhirendra Chamoli and Another Vs. State of U.P.*, and *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*,

4-A. Adverting to these cases, there had been complete parity in the pay scale available to Librarians/PTIs working in these Colleges upto 30-6-1969. Thereafter, higher UGC pay scale accepted by the State was made applicable to Librarians working in General/Higher Education Colleges. So, they have been classified Gazetted Class II, because they have been given higher pay scale recommended by University Grants Commission, and accepted by the State Government presumably on the ground that the State was to pay only 20% of the expenses, rest to be borne by the Central Government for some years, which was not available to Librarians in Colleges of Engineering, Medical and Education. But the question for determination is whether the classification can be justified under Articles 14, 16 and 39 (d) of the Constitution. We hold that this kind of classification is impermissible in law.

5. It is found that after re-organization of the State in 1956, the Librarians/PTIs were placed in the same pay scale and assigned non-gazetted class-III status. This position continued upto 30-6-1969. This parity was disturbed when higher pay scale was allowed to Librarians of Colleges of General/Higher Education and because of that, they were given Gazetted Class II status even by relaxation of educational qualifications. But the Librarians/PTIs working in the Colleges of Engineering, Medical and Education have been denied the same pay scale and status. The Librarians/PTIs working in these Colleges satisfied all the existing conditions as to educational qualifications laid down by the Government. They discharged more onerous and multifarious duties instead of similar duties as against their counter-parts in Colleges of General/Higher Education. The State Government has not made any change in their duties, functions and responsibilities. Consequently, payment of higher pay scale to one and denial thereof to the other infringes principle of equality. Classifying equals as unequals is prohibited by Arts. 14, 16 and 39 (d) of the Constitution of India, more-so, when their duties and responsibilities are onerous, specialized, vocational, developmental and research oriented, as compared to Librarians working in Colleges of General/Higher Education. Therefore, the SAT has rightly held that classification of Librarians/PTIs in Colleges of General/Higher Education and Colleges of Engineering, Medical and Education is unreasonable and arbitrary. Consequently, direction has been given for treating the Librarians/Physical Training Instructors in Colleges of Engineering, Medical and Education in the matter of fixation of pay scale as has been done in the case of Librarians/Physical Training Instructors in Colleges of General/Higher Education. That apart, the State has allowed the relief to Librarians/PTIs working in Engineering Colleges from 1-1-1973. It has also allowed the same to the Librarians of Medical Colleges with effect from August 21, 2001.

6. As a result, writ petitions are dismissed and order dated January 8, 1999 passed by the SAT is upheld. The Librarians/PTIs of Colleges of Medical and Education shall be allowed higher pay scale from 1-1-1973 (Bhagwan Sahai Carpenter and Ors. v. Union of India and Anr. 1989 (2) SLR 184). Costs on parties.