
(2001) 01 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1856/99

State of M.P. and others	Vs	APPELLANT
Virendra Pal Singh and others		RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2001) 2 MPHT 269

Hon'ble Judges : S.P. Shrivastava, J;N.G. Karamdelkar, J

Bench : Division Bench

Advocate : Shri. K.B. Chaturvedi, for the Appellant; Shri D.K. Katare and Shri V.P. Khare, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the learned Government Advocate for the petitioners as well as the learned counsel representing the contesting respondents.
2. Perused the record.
3. The contesting parties have exchanged their affidavits. With their consent, this writ petition is being disposed of finally at this stage.
4. The facts in brief shorn of details and necessary for the disposal of this writ petition lie in a narrow compass.
5. The respondents arrayed as respondent Nos. 1 to 4 were recruited and appointed against the posts of Gram Sahayak during the period from 24-10-1988 to 5-7-1995. The Rules regulating the recruitment and appointment relating to the post of Gram Sahayak, prescribes the minimum educational qualification of having passed the Higher Secondary or its equivalent examination before a candidate could be considered for appointment on the said post. It is not disputed by the learned counsel for the parties that the aforesaid rules prescribing the minimum eligibility criteria regarding the educational qualification

even today continues to be the same as it was prior to 1986.

6. The State Government accepting the recommendations of Vora Committee relating to the Revision of pay-scales, issued an order on 4-2-1990 fixing the date 28-11-1988 from which date the revised pay-scale was to become admissible. Prior to that date the post of Gram Sahayak was with pay-scale of Rs. 950-1530/-. From 28-11-1988, however those Gram Sahayaks who were "under-graduates" were allowed the time scale of pay of Rs. 1150-1800 whereas those Gram Sahayaks who had to their credit the graduate degree were allowed pay-scale of Rs. 1200-2040.

7. The respondent Nos. 1 to 4 had filed their claim petition u/s 19 of the Administrative Tribunals Act praying that they be given the same pay-scale as was being given to the similarly situated graduate colleagues, with effect from 1-1-1996 and the benefits of the corresponding revised pay-scale of Rs. 4000-6000/-.

8. The aforesaid respondents alleged that they were being illegally discriminated in the matter of payment of salary. It was asserted that there was no difference in the nature of work, performance of duties or the quantity and the quality of their work which was being discharged by the graduates and non-graduates Gram Sahayaks. It was further asserted that there could be no two pay-scales in the same cadre, specially in the absence of any nexus having been established pointing out any discriminating features which could justify the grant of higher pay-scale to a Gram Sahayak, merely on the ground that he had graduate degree to his credit specially when the minimum eligibility criteria fixed in the statutory rules which was found sufficient for the discharge of duties attached to the post of Gram Sahayak, remained unaltered.

9. The return/counter affidavit had been filed by the present petitioners before the Tribunal in opposition to the claim petition referred to hrcinabove. A perusal of the return filed by the petitioners, makes it clear that the assertion of the respondent Nos. 1 to 4 on the question relating to the absence of any distinguishable features in the duties performed by the graduate and under-graduate Gram Sahayak was not disputed. The only ground which had been put forth by the petitioners in support of difference in the pay-scale was disclosed to be the recommendations of the Vora Committee which recommendation had been accepted by the State Government. It may, however, be noticed that the petitioners had asserted that holding of the higher qualifications is always beneficial and the claimants are free to have such higher qualifications and get the benefits on that basis.

10. The Tribunal vide its impugned judgment and order dated 5-8-1999 allowed the petition filed by the respondent Nos. 1 to 4 holding that there could be no two pay-scales for the same cadre unless the mode of recruitment and mode of selection process for such posts are different. In support of its conclusion, the respondent-Tribunal also relied upon the observations made by the learned

Single Judge of this Court in the case of Brijendra Narain Dikshit Vs. State of M.P. and others, in M.P. No. 334/82, decided on 26-6-1985 pointing out that this difference in the pay-scales, based on the educational qualifications is not permissible as it violates the equality clause in the matter of public employment, and further indicating that the employer may give some incentive for such higher qualification and not different pay-scales. In view of the aforesaid, the Tribunal issued a direction requiring the present petitioners to allow the pay-scales to the claimants as was given to the other employees of the same cadre having higher qualification who were serving in the same cadre in which the applicants were serving from the date on which such pay-scale was given to those employees.

11. Learned Government Advocate representing the petitioners has strenuously challenged the direction of the respondent-Tribunal asserting that the higher educational qualifications could be a valid ground for providing a different time scale of pay and the mere fact that the different pay-scales were being provided to the members of the same cadre, could not be held to be unsustainable as Found by the Tribunal. It is further urged that the higher educational qualification can be a valid ground for two group of employees falling in the same cadre and such a classification cannot be said to be unreasonable hit by Articles 14 and 16 of the Constitution of India.

12. Learned counsel for the respondents has, however, urged that from the claim petition, it is apparent that neither the minimum eligibility criteria prescribed in the rules for the post of Gram Sahayak, had been altered, nor there was any difference in the nature of the duties of the Gram Sahayak. The benefits extended to one group of the Gram Sahayak on the basis of higher educational qualification was wholly uncalled for and unsustainable in law. The contention urged is that if the State Government had agreed to provide higher pay-scale to the persons holding graduate degree, which could not be the reasonable ground for extending the higher pay-scale to them, the same benefit ought to have been extended to all the employees of the same cadre including the present respondents as the job requirement continues to remain the same.

13. In the case of Food Corporation of India etc. etc. Vs. Om Prakash Sharma and others [1999(1) S.L.J. 140], the Apex Court had occasion to consider an identical question and taking into consideration its previous decision, it had been indicated that although, the educational qualification is a proper basis of classification for promotion but it can be so far achieving administrative efficiency. It was further observed that it could not be overlooked that there may be cases where the difference in the educational . qualification may not be sufficient to give any preferential treatment to one class of candidates as against another. It was further observed that whether the classification is reasonable or not must necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. In para 29 of the aforesaid decision, it was clearly observed that the validity of the classification has to be judged on the facts and circumstances of each case.

14. In the present case, what we find is that the petitioners had made absolutely no attempt to establish that the nature of the work on the post of Gram Sahayak was such that it required higher educational qualification. If duties attached to the post of Gram Sahayak could be performed with equal efficiency by both the under-graduate or graduate Gram Sahayak, there could be no justification for providing different pay-scales on the basis of higher educational qualification. As has already been noticed hereinabove, the assertion of the contesting respondent the correctness whereof was not disputed, is that the job requirement for the post of Gram Sahayak having a graduate degree to their credit and those who do not have any such degree, continues to remain the same. No attempt was made by the petitioner to show that the nature of the work attached to the post in question was such which required higher efficiency which could be expected from graduates and not from under-graduates. No nexus between the object of dividing the cadre in two groups for different pay-scales while keeping in tact the minimum eligibility criteria in respect of educational qualification at the time of joining the cadre which was only High School or the equivalent examination, could be pointed out.

15. In the aforesaid circumstances, the minimum educational qualification for being considered for appointment to the post of Gram Sahayak as prescribed in the statutory Rules remaining unaltered, there could be no justification for carving out two groups of employees of the same cadre simply on the basis of the higher educational qualification.

16. In the present case, on the facts noticed hereinabove, the correctness, whereof has not been disputed in any manner, we are of the opinion that there could be absolutely no justification for the petitioners to provide a higher time scale of pay to one group of employees of the same cadre. In this case, the impugned action is clearly hit by the vice of discrimination where equals are being treated unequally, which cannot be sustained.

17. In the aforesaid view of the matter, it is apparent that the respondent/claimants could not be granted the relief, sought for, as even according to them, there was no difference whatsoever in the job requirement and duties attached to the post of Gram Sahayak discharged by them and those with the higher educational qualification. A Gram Sahayak in the facts and circumstances referred to hereinabove, could not be held entitled to a higher time scale of pay simply on the ground of his having graduate degree to his credit .

18. It may, further, be noticed that in its decision in the case of Vrinda Devi (Smt.) Noor Jahan and others, reported in 1998 mpLJ 210, rendered by a Division Bench of this Court it had been indicated that it all depends upon the facts and circumstances of the case which may be of varied nature where the interference by this Court exercising its extraordinary jurisdiction contemplated under Article 226 of the Constitution may or may not be warranted. If a case is made out warranting an interference while exercising the jurisdiction envisaged under Article 226 of the Constitution of India expressly providing for the issuance

of writs etc., the High Court cannot shirk its responsibility to exercise its authority to take the appropriate action. In fact, the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India has to be exercised for advancing the justice and not to thwart the same.

19. We are of the considered opinion that in a case where the relevant facts established on the record come to the notice of this Court which warrant an action and the intervention of equity is called for, there can be no impediment for issuing an appropriate writ or direction for undoing the wrong if it is required in the interest of justice or public interest.

20. In view of our conclusions indicated hereinabove, this writ petition succeeds. The impugned order of the Tribunal requiring the petitioners to allow the same pay-scale to the claimants/respondent Nos. 1 to 4 as was given to other employees of the same cadre having higher qualification and serving in the same cadre in which the applicants are serving, from the date on which such pay scale was given to those employees, is quashed. Their Claim Petition (O.A. No. 744/98) is dismissed.

21. It is, however, left open to the petitioners to take further action in accordance with law with a view to ensure uniformity in the grant of pay scale to the Gram Sahayak and remove the disparity in the light of the observations made hereinabove. We hope and trust that appropriate action in this regard shall be taken expeditiously.

No order as to costs.

22. Writ Petition allowed.