
(1995) 04 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 10018 of 1993

T. Krishnan Unni	Vs	APPELLANT
Chairman and Managing Director		RESPONDENT

Date of Decision : 10-04-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (1996) 2 LLJ 1072

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : M.C. Sen and Jayaprakash Sen, for the Appellant; Antony Dominic, for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

D.J. Jagannadharaju, J.—This original petition is filed by two direct recruits who joined as Junior Engineers on April 7, 1993 and on August 29, 1983 in the service of the first respondent. They were in the scale of Rs. 820-1480. First respondent issued Ext.P1 Circular dated September 26, 1985 proposing to extend the grade of Rs. 960-1710 to those who were in the scale of Rs. 820-1480 as on January 1, 1984. The employees were given an option. The petitioners exercised the option and both the petitioners were granted the scale of Rs. 960-1710 under Exts.P2 and P3 orders dated December 11, 1985. Subsequently by communication dated February 27, 1986 the petitioners were informed that they were not eligible for the option to come to the scale of Rs. 960-1710. Exts.P4 and P5 were the orders under which they were informed. The re-fixation of salary made by P2 and P3 orders were cancelled. Representations were made to the Joint General Manager to reconsider the matter. Subsequently representations were repeatedly made but the management insisted upon saying that as direct recruits they are not entitled to the benefits of Ext.PI Circular and they are not entitled to the higher scale of pay. Only those people who have been promoted to that scale and who were in that post on January 1, 1984 could be

entitled to the higher scale of pay. Finally the request of the petitioners was rejected under Ext. P16 dated April 26, 1993 and hence the petitioner had to file this original petition for quashing Exts. P4, P5, P10, P11 and P16 which are arbitrary, unjust and violative of Articles 14 and 16 of the constitution of India.

2. Ext.P1 Circular relates to Junior Managerial Personnel who are in the grade Rs. 820-1480 on April 1, 1984. They were rightly given the higher scale of Rs. 960-1710 with effect from January 1, 1984. The same was cancelled without any notice and without giving them an opportunity to represent their case. As a result of the Circular Ext.PI persons promoted as Junior Engineers and subsequently appointed after the petitioners as junior Engineers are given the higher salary. The Catena of decisions of the Supreme Court held that persons who are doing similar work are entitled to the same salary on the principle of equal pay for equal work. By a wrong application of Ext.P1 juniors to the petitioners were given the higher scale of pay and the same higher scale of pay is denied to the petitioners. Subsequently when the multiple grade system was introduced with effect from January 1, 1988 all persons who completed six years in the grade of Rs. 960-1710 were given the higher grade of Rs. 1060-1930. Many of the juniors of the petitioners got benefit of that higher grade. But the petitioners are denied similar treatment. Mere protection of the seniority of the petitioners is not a solace. The petitioners only seek the benefit of the principle of equal pay for equal work. The denial of the same to the petitioners violates Articles 14 and 16 of the Constitution. Petitioners pray for a writ of certiorari quashing Exts. P4, P5, P6, P11 and P16 as arbitrary, unjust and violative of Articles 14 and 16 of the Constitution. Petitioners also pray for a writ of mandamus directing the first respondent to give the benefit of Ext.P1 Circular to the petitioners and to give them the grade Rs. 960-1710 from January 1, 1984 and consequential benefits and to refix their salary and pay the arrears of salary as per the refixation.

3. The original petition is opposed by a counter filed on behalf of the first and second respondents. In short the counter mentioned as follows: Ext.PI Circular dated September 26, 1985 clearly mentions that all employees who were promoted to the lowest managerial positions on or before January 1, 1984 and were on the grade Rs. 820-1480 as on January 1, 1984 will be given the higher grade of Rs. 960-1710. The Circular does not apply to direct recruits. Clause (f) of Ext.P1 specifically states that the existing orders will continue to apply in respect of Officers promoted to the scale of Rs. 820-1480 after January 1, 1984 and also to persons recruited directly from out-side. Petitioners being direct recruits from outside they are not eligible for the extended scale of Rs. 960-1710. By mistake Exts. P2 and P3 orders were passed granting them the benefits of higher scale of Rs. 960-1710. On scrutiny it was found that the petitioners not being employees promoted and they being direct recruits are not eligible for the higher scale of pay and accordingly Exts. P2 and P3 were cancelled under Exts.P4 and P5 orders. Petitioners were also informed that on completion of three years' service in the scale of Rs. 820-1480 they will be

considered for promotion to the grade of Rs. 960-1710. With effect from July 4, 1986 and August 29, 1986 the two petitioners were promoted to the higher scale of Rs. 960-1710, on completion of three years' service in the scale of Rs. 820-1480. There is no violation of any fundamental rights of the petitioners and hence the original petition is not maintainable. With respect to the claim that Ext.P1 Circular dated September 26, 1985 proposed to extend the grade of Rs. 960-1710 to all those people who were in the scale of Rs. 820-1480 as on January 1, 1984 is incorrect. It would apply only to the promotees to the lowest managerial position and who were in the scale of Rs. 820-1480 on January 1, 1984. For all representation given by the petitioners proper replies were given. Exts. P4, P5, P10, P11 and P16 are perfectly valid and legal and they do not violate Articles 14 and 16 of the Constitution. The various grounds raised by the petitioners are devoid of merits. It is not correct to say that under Ext.P1 Circular the respondents had given higher grade of Rs. 960-1710 to petitioners' juniors who were in the grade of Rs. 820-1480 as on January 1, 1984. That scale of Rs. 960-1710 was extended only to promotees promoted to the lowest managerial position on or before January 1, 1984, and who were in the grade of Rs. 820-1480. Exts. P4 and P5 are only orders correcting the mistakes which were inadvertently made by issuing Exts. P2 and P3 orders. There is no violation of the principle of equal pay for equal work. When multiple scales of pay are available to certain posts, it is natural that the employees with long years of experience will draw the higher scale of pay and there is no violation of Articles 14 and 16 of the constitution. The petitioners were promoted to the higher scale with effect from September 4, 1986 and August 29, 1986. Higher multiple grades are available only on completion of six years in the present grade. The petitioners were also given the higher multiple grade of Rs. 1060-1930 on their completing six years in the present grade of Rs. 960-1710. Exts P4, P5, P10, P11 and P16 are perfectly valid and the petitioners are not entitled to any relief in this original petition, and the original petition may be dismissed.

4. Advocate Sri. Jayaprakash Sen. appearing for the petitioners contends that Clause (f) of Ext. P1 is not valid. There is no ground for discrimination between promotees and direct recruits who are all in the same scale of pay. When multiple grades system is introduced persons who are juniors to the petitioners and who are given the higher scale of Rs. 960-1710 will have an extra-advantage of coming into the higher grade of Rs. 1060- 1930. The promotees and direct recruits are on the same scale and hence there is no basis for discrimination. The principle of equal pay for equal work applies. Sri Jayaprakash Sen relies upon a number of decisions : Roshan Lal Tandon Vs. Union of India (UOI), ; P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, ; Randhir Singh Vs. Union of India (UOI) and Others, ; P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, and State of Mysore Vs. B. Basavalingappa, . He contends that in view of these decisions people who are inducted into one cadre irrespective of qualification and both were doing the same work and then at a later stage no

new classification can be created. They have to be treated alike. He also placed reliance upon the decisions in *M.P. Singh and Others Vs. Union of India (UOI) and Others*, ; *Telecommunication Research center Scientific Officers" (Class I) Association and Others Vs. Union of India (UOI) and Others*, , *Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka (1991IILLJ318)(SC)* and in *Delhi Municipal Karamchari Ekta Union (Regd.) Vs. P.L. Singh and Others*, .

5. On behalf of the respondents Sri Dominic, learned counsel argues that in this original petition there is no attack against Ext.P1 or any portion of it. Hence they have to abide by Ext.P1 as one comprehensive document. There is not even an attack to the effect that Ext.P1 wrongly excluded direct recruits. Hence they are bound by Clause (f) of Ext.P1. Exts. P2 and P3 orders are issued by virtue of a mistake. A point which has not been pleaded in the original petition cannot be reconsidered by the Court. He relies upon the decision in *Suresh Kumar and Others Vs. Union of India and Another*, . In the original petition there is only emphasis on the scale of pay. There is no averment to the effect that the duties performed by them and the promotees are same and that the work is the same type of work. The principle of equal pay for equal work has no application in this case. Mr. Dominic relies upon a number of decisions in support of his arguments. He relies particularly on the decisions in *AIR 1974 753 (SC)* . *State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others*, ; *V. Markandeya v. State of A.P. (1989-II- LLJ-169)(SC)*; *State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others*, , and in *Bharat Singh v. State of Haryana 1988 (4) SSC 534*. He also relies upon the decision in *C.R. Seshan v. State of Maharashtra (1989ILJ177)(SC)*. He claims that though the promotees and direct recruits are on the same scale there is reasonable classification between the direct recruits and promotees to the lowest managerial cadre.

6. In his reply arguments Sri. Jayaprakash Sen contends that what is challenged in this original petition is exclusion of certain classes of people from the purview of Ext.P1, C.M.P. No. 25861 of 1994 was filed for amending prayer 11A in the original petition as to issue a writ of certiorari or other appropriate writ, direction or order quashing Ext.P1 to the extent that it excludes direct recruits from the benefits conferred by it. He relies upon the decision in *George v. Circle Inspector of Police (supra)* and the decision in *State of M.P. v. Pramod Bharatiya (supra)*.

7. The point for consideration is whether the petitioners are entitled to the benefits of higher scale given by Ext.P1 Circular and whether cancellation of Exts.P2 and P3 orders under Exts. P4 and P5 orders is proper. The admitted facts are On January 1, 1984 both the petitioners were working as Junior Engineers and they were on the scale of Rs. 820-1480. Under Ext.P1 Circular dated September 26, 1985 the higher scale of pay Rs. 960-1710 is sought to be given for people who were in the scale of Rs. 820-1480 on January 1, 1984 It is the claim of the petitioners that they are entitled to the higher scale and denying higher scale to them would be a violation of Articles 14 and 16 of the

Constitution. It is the claim of the management that this benefit of higher scale is available only to those employees who were promoted to the lowest managerial position on or before January 1, 1984 and that under Clause (f) direct recruits in the scale of Rs. 820-1480 are excluded from the ambit of Ext.P1. Respondents counsel specifically points out that Clause (a) of the Circular deals with the words "all employees who were promoted to the lowest managerial positions" thereby the direct recruits are not covered. Under Clause (f) direct recruits and officers who were promoted subsequent to January 1, 1984 to the scale of Rs. 820-1480 are also excluded.

8. Mr. Jayaprakash Sen contends that equal pay for equal work is the constitutional mandate and that right cannot be denied to the petitioners. There is no rationale in discriminating against direct recruits and excluding them from the benefit of Ext. P1. He relies upon a series of decisions. On the other hand the management contends that Ext.P1 is not challenged and as Ext.P1 is not challenged they have necessarily to abide by Ext.P1 including Clauses (f) and the preamble portion of Clause (a). Only due to a mistake Exts. P2 and P3 orders were issued granting the petitioners the benefit of the higher scale. It is also contended by the management that there is no plea in the Original Petition to the effect that exclusion of direct recruits under Ext.P1 is arbitrary and illegal. Hence they cannot raise the argument. He also contends that the classification between the promotees and direct recruits is quite rational and it amounts to reasonable classification. As long as the seniority of the petitioners is maintained, no injustice is caused to them by their not being given the benefit of the higher scale provided by Ext.P1. The Original Petition is devoid of merits and hence it may be dismissed.

9. As the entire matter depends upon the principles propounded by various Supreme Court decisions, I shall make an exhaustive examination of the various decisions. It would be just and proper to deal with these decisions in the chronological order. The decision of the supreme Court in Roshan Lal Tandon v. Union of India (supra) deals with the case of different groups of T.X.Rs. in the Railways and the people will have to be considered for their promotions once they come to a particular cadre. The Court observed as follows at P.580.

"At the time when the petitioner and the direct recruits were appointed to Grade "D", there was one class in Grade "D" formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade "D" were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade "C"... In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits."

The Court quoted with approval the decision in *Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd.*, .

10. The decision in *Randhir Singh v. Union of India* (supra) elaborately considered Articles 14 and 16 in the light of the Preamble and Article 39(d) of the Constitution and laid down the view that equal pay for equal work is deducible from those Articles and may be properly applied to the case of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. The Supreme Court followed the decision in *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, In *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, the Court deals with a case which is very much similar to the facts of our case. There certain persons were occupying the posts of professors. When new posts of professors were sanctioned and higher scale of pay was sought to be given to the professors as recommended by UGC the ICAR kept the existing professors in the old grade and granted the benefit of the higher scale to the new appointees. In such a context the Supreme Court observed in paragraph 13 at page 323 as follows:

"In this writ petition, the substantial grievance is that even though the three petitioners were respectively holding the post of Professor in Animal Pathology, Animal Genetics and Veterinary Parasitology from 1963, 1970 and 1970 respectively, when the pay- scale for the post of Professor on the recommendation of the University Grants Commission underwent an upward revision to Rs. 1100-1600, the ICAR instead of straightaway granting the scale to the petitioners, the holders of the posts of Professor, proceeded to issue an advertisement on May 21, 1974 inviting fresh applications for the post of Professor in the three subjects in which the petitioners were already holding the post of Professors and simultaneously appointed some others in different subjects and disciplines as Professors and gave them the revised scale while the petitioners were left to languish in the old scale (700- 1150). According to the petitioners, apart from gross discrimination in the matter of equal pay for equal work, the direct consequence of this unfair and arbitrary action of the third respondent was the adverse affectation in the seniority in the cadre of Professors because those who were appointed in the revised scale scored a march over the petitioners who continued to languish in the pre-revised scales. Petitioners contended that the situation is recreated which was adversely commented upon by the Minister in the Parliament that the recruitment policy adopted by ICAR necessitates a scientist to apply for posts and being interviewed by Selection Committee with attendant hazard and consequent frustration."

Then after quoting with approval the decision in *Randhir Singh v. Union of India* (supra) the Court observed that:

"The case in hand is a glaring example of discriminatory treatment accorded to old experienced and highly qualified hands with an evil eye and unequal hand and the guarantee of equality in all its pervasive character must enable this

Court to remove discrimination and to restore fair play in action. No attempt was made to sustain the scales of pay for the post of Professor on the doctrine of classification because the classification of existing incumbents as being distinct and separate from newly recruited hand with flimsy change in essential qualification would be wholly irrational and arbitrary. The case of the petitioners for being put in the revised scale of Rs. 1100-1600 from the date on which newly created posts of professors in sister disciplines in IVRI and other institutes were created and filled in revised scale is unanswerable and must be conceded"

Then the learned Judge referred to the representations made by the learned counsel for Union of India which indicated that the Government considered the claim and it was represented to the Court that all the petitioners would be put in the revised scales from the date fresh recruitment was made. The Court granted a writ of mandamus.

11. The decision in *P. Savita v. Union of India* (supra) lays down the principle that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently. The Court was dealing with the case of Draughtsmen working in the Ministry of Defence Production and the Director General of Ordnance Factories. After the Third Pay Commission submitted its report the Senior Draughtsmen were divided into two groups and given different scales, i.e. 330-560 and 425-700. This division into two groups was the subject of attack in the Court. A reading of paragraphs 9 to 11 clearly indicates that the division was sought to be supported on the ground of seniority, and that the senior Draughtsmen will get higher pay with increments that he earns proportionate to the number of years he is in service. Dealing with that argument the Court pointed out that for this classification the Government must be able to satisfy the Court of certain other tests which are non-existent. Since it is not in dispute that Senior Draughtsmen, belonging to the two divisions, do equal and same work. In the total absence of any plea on the side of the respondents, that the Senior Draughtsmen who are placed in the advantageous group, do not perform work and duties more onerous or different from the work performed by the appellants group. It will have to be held that this grouping violates Article 14 of the Constitution. Then the Court referred to the judgment in *Randhir Singh Vs. Union of India (UOI) and Others*, and upheld the judgment of the High Court of Madhya Pradesh. It observed as follows:

"With respect we agree with the conclusion arrived at in the above judgment that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently."

The Court observed as follows:

"The case on hand is much stronger than the facts of *Ramdhir Singh*'s case (supra). In fact case, the drivers belonged to two different departments. In this case, the senior Draughtsmen, divided into two groups are in the same department doing identical and same work. It is not a case of different grades

created on the ground of higher qualification either academic or otherwise or an entitlement by any other criteria laid down. The justification for this classification is by the mere accident of an earlier entry into service. This cannot be justified."

12. In the present case on hand also the Junior Engineers direct recruits and the employees promoted to the lowest managerial grade are in the same scale and doing same duties. The promotees cannot be given a preferential treatment.

13. *State of Mysore v. B. Basavalingappa* (supra) deals with a case of Workshop Instructors. Originally certificate holders and Diploma holders were appointed as Workshop Instructors. They were in the same scale of pay and they were doing same or similar work. Subsequently, by an order Diploma holders were given a higher scale. The Court observed in paragraph 6 as follows:

"It is admitted that at the time when this respondent was recruited there was only one cadre and that was an Instructor and only one pay scale and the certificate holder or a diploma holder both were entitled to be recruited on that post. No material is on the record on the basis of which it could be contended that there was any substantial difference at that time between the two qualifications although they were described differently. It was argued that a diploma is a higher qualification than a certificate. But neither there is any curriculum on record nor any other material to draw that inference. On the contrary this circumstance that at the time when respondent was recruited a diploma holder or a certificate holder both were entitled to be recruited as an Instructor on the same pay scale and this indicates that in those days the two were considered to be alike."

The Court further observed in paragraph 7 as follows:

"There is no material to indicate that when the pay scales were revised and subsequently when they were further revised it was done on the basis of some material indicating that the diploma became a better qualification than the certificate holder. In fact we have no further material to examine the question in the broader aspect. It appears that it was because of this that the learned Judges of the High Court accordingly disposed of the matter on the facts of this case alone and therefore did not go into the general question as to whether on the basis of educational qualification different pay scales can or cannot be prescribed and in absence of any material it will not be possible for us to go into that question."

14. In the light of this decision the case of the petitioners in the present original petition stands on a much higher footing. They are direct recruits with better qualifications than the promotees. In such a background there is no justification for their being given lower scale and for their being excluded from equality of treatment, with the promotees.

15. The decision in *M.P. Singh v. Union of India* (supra) deals with the case of different special pays given to deputationists and direct recruits. The Court

observed as follows:

"From the foregoing discussion it emerges that the Special Pay that was being paid to all the officers in the cadre of Sub Inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Unit of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from their parent departments in the various States, but it relates only to the arduous nature of the duties that is being performed by all of them irrespective of the fact whether they belong to the category of the "deputationists" or to the category of the non deputationists. That being the position, the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of Special Pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification."

The same principle equally applies to the facts of our case. To the same effect is another decision reported in *Telecommunication Research center Scientific Officers" (Class I) Association and Others Vs. Union of India (UOI) and Others*, The Court indicated in that the discrimination between direct recruits and the transferred officers regarding payment of Special Pay violates Articles 14 and 16 of the Constitution. The Court specifically pointed out that all the direct recruits are graduate engineers and have been working throughout in the T.R.C. They do the same job as the transferred officials. The Special Pay is not being paid to the transferred officials for compensating their displacement or for their qualifications. It is not deputation allowance. It is paid for the arduous and special nature of the functions to be discharged in the TRC. The rigorous test is applied while transferring them to the TRC to prevent persons of inferior calibre amongst them getting into the said centre. It does not mean that persons who are directly recruited and working in the centre are inferior to those who enter the centre by transfer.

The court observed as follows:

"We feel that there is no justification to deny the Special Pay at the same rates to the direct recruits working in the Telecommunication Research Centre. Denial of Special Pay in the above circumstances to the direct recruits amounts to violation of Articles 14 and 16 of the constitution of India."

The Court observed after referring to various decisions of the Supreme Court as follows:

"We hold that the direct recruits in the Telecommunication Research Centre are entitled to the special Pay at the same rates at which it is paid to the transferred officers working in that centre with effect from the date from which the transferred officers have been drawing the Special Pay."

16. The decision in *Dhirendra Chamoli and Another Vs. State of U.P.*, popularly known as *Nehru Yuvak Kendra case*, though relied upon by the petitioners" advocate need not be considered in this case because there the question that was considered by the Supreme Court is one of the low wages paid to casual employees who claimed parity of treatment with regular class IV employees. Similarly the decision in *Dharwad P.W.D. Employees Assn. v. State of Karnataka* (supra) is not relevant for the purpose of decision of this case because in that decision also the Court mainly dealt with the claim of casual labourers working for too long a period claiming parity of treatment with regular employees. Taking an overall picture, the economic situation and the magnitude of the problem the Court evolved certain principles.

17. On behalf of the respondents the defence is more of the technical character and it is claimed that because there is no specific plea challenging Ext.P1 and challenging Clause (f) of Ext.P1 the petitioners are not entitled to any relief. By reason of the fact that C.M.P.No. 25861/1994 is filed to amend the prayer in the petition as to issue a writ of certiorari to quash Ext.P1 to the extent that it excludes direct recruits from the benefits conferred by it. It should also be remembered that it is always open to the court exercising jurisdiction under Article 226 to grant the relief though there may not be a specific prayer. I do not find any justification for not allowing C.M.P. No. 25861/1994. It is allowed and the prayer is amended as prayed for. I shall now deal with the various decisions relied upon by the respondent counsel.

18. *State of M.P. v. Pramod Bharatiya* (supra) is a case of equal pay for equal work. The people involved are two groups of Lecturers viz. Lecturers working in the Higher Secondary schools and non-technical lecturers working in the technical schools. They were covered by different sets of service rules and they had different pay scales. By the 1986 Pay revision non-technical lecturers in technical schools are placed in the pay scale of 2000-3500 whereas Lecturers in Higher Secondary schools were kept in the scale of 1600-2900. They claimed parity of treatment with regard to pay scales. The matter first went before the Madhya Pradesh Administrative Tribunal Bench, Indore and then in appeal before the Supreme Court. Dealing with such a case the Court observed as follows:

"The qualifications prescribed for the lecturers in the Higher Secondary Schools and the nontechnical lecturers in Technical Schools are the same; service conditions of both the categories of lecturers are same and that the status of the school is also the same. There is, however, a conspicuous absence of any clear allegation and/ or material suggesting that functions and responsibilities of both the categories of lecturers are similar. Much less is there any allegation or proof that qualitatively speaking, they perform similar functions. It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities. On this score there is a noticeable absence

of material. Whether we look at the averments in, and the material produced along with, the original petition or to the averments in the counter affidavit or even to the averments in the counter affidavit filed by the Government in M.P.No. 2277 of 1985, we do not find any clear material to show that the duties, functions and responsibilities of both the categories of lecturers are identical or similar".

Then the Court pointed out that the principle of equal pay for equal work does not mean automatically their getting the same pay as the other group because the qualifications are same. The Court observed that:

"It is not a matter of assumption but one of proof. The petitioners have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Schools. They have also failed to establish that the distinction between their scale of pay and that of nontechnical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fide, either in law or in fact. It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the original petitioners have failed to discharge. Accordingly they were denied the relief".

This decision in my view has absolutely no application to the facts of our case.

19. State of U.P. v. J.P. Chaurisia (supra) is a case of bifurcation of cadre of Bench Secretaries into two grades. After discussing the entire case law regarding the principle of equal pay for equal work the Court observed in paragraph 23 at page 318 as follows:

"There is selection grade for District Judges, There is senior time scale in Indian Administrative Service. There is super time scale in other like services. The entitlement to these higher pay scales depends upon seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself."

The Court observed in paragraph 24 as follows:

"In the present case, all Bench Secretaries may do the same work, but their quality of work may differ. Under the rules framed by the Chief Justice of the High Court, Bench Secretaries Grade I are selected by a Selection Committee. The selection is based on merit with due regard to seniority. They are selected among the lot of Bench Secretaries Grade II. When Bench Secretaries Grade II acquire experience and also display more merit, they are appointed as Bench Secretaries Grade I. The Rules thus make a proper classification for the purpose of entitlement to higher pay scale..... The classification made under the Rules,

therefore, cannot be said to be violative of the right to have equal pay for equal work. There is nothing in the present case on hand to show that promotees to the scale of 820-1480 are in any way superior to the petitioners Junior Engineers who were directly recruited. Nor is there any material to show that the higher scale of 960-1710 was given to the promotees by virtue of their long service. The principle laid down in AIR 1974 753 (SC) cannot be applied to the facts of our case."

20. State of A.P. v. G. Sreenivasa Rao (supra) is a case where pay fixation is made in accordance with the Fundamental Rules. Reading of paragraphs 12 to 14 makes the matter clear. The Court observed in paragraph 12 as follows:

"The facts clearly show that in every case the pay-fixation of the junior was done under the Fundamental Rules and there were justifiable reasons for fixing the junior at a higher pay than his seniors in the cadre. It was not disputed that the said pay fixation was in conformity with the Fundamental Rules. Neither before us nor before the Courts below the validity of Fundamental Rules was challenged by any of the parties. Without considering the scope of these Rules and without advertent to the reasons for fixing the juniors at a higher pay, the High Court and the Tribunal have in an omnibus manner come to the conclusion that whenever and for whatever reasons a junior is given higher pay, the doctrine of "equal pay for equal work" is violated and the seniors are entitled to the same pay."

The Court observed in paragraph 13 as follows.

"We do not agree with the High Court/Tribunal. Doctrine of equal pay for equal work cannot be put in a straight-jacket. Although the doctrine finds its place in the Directive Principles but this Court, in various judgments has authoritatively pronounced that right to "equal pay for equal work" is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution of India. Nevertheless the abstract doctrine of "equal pay for equal work" cannot be read in Article 14. Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved, is permissible.

The Court went on the remarks in paragraph 14 as follows:

"Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay-packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay- scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex-facie be arbitrary, but if there are justifiable grounds in doing so, the seniors cannot invoke the equality doctrine. To "illustrate, when pay-fixation is done under valid statutory Rules/executive instruction, when persons recruited from different sources are given pay protection, when promotees from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency, are some of the

eventualities when a junior may be drawing higher pay than their seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal"

The principle of this decision has no application to the facts of our case. In our case the salaries are not fixed on the basis of any Fundamental Rules or regular Rules. The higher scale of pay was given by Ext.P1 circular, and it unjustly excluded the direct recruits. Such an action cannot be sustained.

21. V. Markendeya and Others Vs. State of Andhra Pradesh and Others, deals with the case of Supervisors and Graduate Supervisors who were given different pay scales. Supreme Court held that it is permissible to give preference to degree holders. Since classification based on educational qualification is a valid consideration for discriminating in matters pertaining to promotion to the higher posts. If we consider the present case in the light of this decision we find that direct recruits who are better qualified are put to a disadvantage by the way in which the management implemented Ext.P1.

22. In the decision in State of Rajasthan Vs. Gopi Kishan Sen, the Supreme Court held that differentiation based on educational qualification is valid and lower pay scales for untrained teachers and different pay scales for trained teachers are perfectly in conformity with the Constitution. Such a situation does not arise in the present case on hand.

23 P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, is a case of creation of new posts of Professors. The principle of that decision cannot be applied to the facts of our case. As pointed out earlier the observations in paragraph 17 of the judgment clearly indicate that the professors already holding the posts being left out and new entrants being given higher scale is bad.

24. Judging the facts of the case in the light of the principles enunciated in the various decisions of the Supreme Court it is quite clear that the exclusion of direct recruits from the purview of Ext.P1 is unjustified and it is not based upon any rational basis. When the object of the Circular is to give higher scale of pay to all people who were in the Grade of 820-1480 on January 1, 1984, I fail to understand how the present two petitioners can be excluded from the benefit. It should also be remembered that this denial of higher scale of pay under Ext.P1 has an adverse spin off effect and when the multiple grade system was introduced on January 1, 1988 people who had the advantage of Ext.P1 would steal a march over the petitioners. Thus throughout the career the petitioners will be suffering a loss. Exts. P2 and P3 orders were rightly passed applying Ext.P1 to the petitioners. They were unjustly withdrawn and cancelled by Exts.P4 and P5 dated February 27, 1986. The repeated representations did not give proper result and ultimately when Ext.P16 was issued the petitioners had no alternative except to seek relief through this Court. Their claim is perfectly

justified.

25. In the result the O.P. is allowed, there shall be a writ of certiorari quashing Exts. P4, P5, P6, P11 and P16 as they are arbitrary, unjust and violative of Articles 14 and 16. There shall be a writ of mandamus directing the first respondent to give the petitioners the benefit of Ext.P1 Circular and fix their pay in the higher scale of 960-1710 from January 1, 1984 and refix their salary in accordance with the Rules applicable for the subsequent years, and in substance of Exts.P2 and P3 shall be implemented and consequential benefits given on that basis. There shall be a writ of certiorari quashing Clause (f) of Ext.P1 and the words "who were promoted to" in Clause (a) of Ext. P1 shall be deleted. After deletion Clause (a) reads as follows:

"All employees in the lowest managerial positions on or before January 1, 1984 and were on the grade of Rs. 820-1480 as on January 1, 1984 will be extended the grade Rs. 960-1710 with effect from January 1, 1984. This will not be treated as promotion and the usual procedures etc. related to promotions will not be applicable."

The original petition is disposed of as above. Each party to bear its own costs.