

(2006) 01 DEL CK 0078
In the Delhi High Court
Case No : LPA 403 of 2000

Union of India (UOI)

APPELLANT

Vs

Dr. Abbas Ali Khan

RESPONDENT

Date of Decision : 23-01-2006

Acts Referred:

Citation : (2006) 130 DLT 367 : (2006) 87 DRJ 241

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Kailash Gambhir and Gaurav Sharma, for the Appellant; B.B. Sawhney M.N. Nasir and Yasmeen Zafar for Respondent Nos. 1 to 45 and V.K. Rao and A. Mazumdar for Respondent No. 48, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 23.3.2000.

2. Heard counsel for the parties and perused the record.

3. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. Briefly, the prayer in the writ petition was for a mandamus directing the respondents to pay to the petitioners the same amount of stipend which was and/or is being paid to Post Graduate MD Students of Modern Medicine till 1.1.1996.

5. The writ petitioners are students of a Post Graduate Course in Unani in Jamia Hamdard, which is a deemed university. Their claim is that they are entitled for the same stipend as is being paid to the Post Graduate MD students of Modern System of Medicine. In its counter affidavit in the writ petition the Central Government stated that it has got no role in fixing the rate of stipend paid to the PG students of Respondent No. 4 institution/Jamia Hamdard. The Jamia Hamdard is a private institution which is a deemed university and is not under the control

of the Central Government. It is governed by the rules and regulations of the Government of NCT of Delhi. The stipend is also fixed by the State Government. As regards A.K.Tibia College, Aligarh Muslim University and Banaras Hindu University these institutions are under the control of the University Grants Commission. The claim of the petitioners for enhanced stipend was considered in consultation with the Ministry of Law and Justice but it was decided that since Jamia Hamdard is neither a Central University nor a National University, it is for the State Government to decide the rate of stipend to the PG students.

6. A counter affidavit was filed by the Govt. of NCT of Delhi. It is stated in paragraph 4 of the counter affidavit therein that there is no constitutional or statutory obligation on the Delhi Government to fix a salary or stipend of employees/students of the Jamia Hamdard, which is a deemed university. The claim of the employees, students etc. can only be against their employer/institution. No relief can be sought against the Delhi Government.

7. In our opinion, the facts of the case are squarely covered by a recent decision of Division Bench in Delhi Tapedic Unmulan Samiti v. Babita Rani and Ors. in LPA No. 2554/2005 decided on 16.1.2006.

8. It may be mentioned that the claim of the petitioner only rests on the principal of "equal pay for equal work".

9. The principle of "equal pay for equal work" has often been misunderstood and there is a plethora of litigation demanding higher pay on the basis of the principle 'equal pay for equal work'. However, this principle has been considerably watered down in recent decisions of the Supreme Court.

10. It has been clarified by the Supreme Court now in a series of decisions that there are certain settled principles for deciding/ determining the claim of parity in pay scales on the basis of equal pay for equal work. In recent decisions the Supreme Court has considerably diluted its own earlier decisions as it was realized that a mechanical interpretation of the principle of equal pay for equal work was creating great practical difficulties.

11. In State of Haryana and Another Vs. Tilak Raj and Others, the Supreme Court considered the doctrine of equal pay for equal work in the context of daily wagers of the Haryana Roadways. After taking note of a series of earlier decisions the Supreme Court observed:

A scale of pay is attached to a definite post and in case of a daily wager, he holds no post. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of duties of either categories and it

is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

12. In *State of U.P. v. Ministerial Karamchari Sangh*, AIR 1998 SC 303, Supreme Court observed that even if persons holding the same post are performing similar work but if the mode of recruitment, qualification, promotion etc. are different it would be sufficient for fixing a different pay scale. Where the mode of recruitment, qualification and promotion are different in the two categories of posts, there cannot be any application of the principle of equal pay for equal work.

13. In *State of Haryana Vs. Jasmer Singh and others*, , the Supreme Court observed that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work by different persons in different organizations. Persons doing the same work may have different degrees of responsibilities, reliabilities and confidentialities, and this would be sufficient for a valid differentiation. The judgment of the administrative authorities concerning the responsibilities, which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally was not open to interference by the court.

14. In *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, , the Supreme Court observed:-

In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula.

15. In *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, , the Supreme Court observed that fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge.

16. As held by the Supreme Court in *State of Haryana and Another Vs. Tilak Raj and Others*, , the principle of "equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between the two groups i.e. the group claiming parity with the other group. In the present case, it

cannot be said that there is such complete and wholesale identity between the two groups i.e. PG students of Modern Medicine and PG students of Unani system. Modern Medicine and Unani are different systems of medicines and thus there is no complete and wholesale identity between these two groups. Thus, the principle of "equal pay for equal work" does not apply.

17. For the reasons given above, the appeal is allowed and the impugned judgment of the learned Single Judge is set aside.