

(1989) 04 SC CK 0013

In the Supreme Court Of India

Case No : Civil Appeal No. 764 of 1978 (From the Judgment and Order dated July 5, 1974 of the Andhra Pradesh High Court in W.A. No. 71 of 1974)

V. Markendeya and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 06-04-1989

Acts Referred:

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

Citation : AIR 1989 SC 1308 : (1989) 58 FLR 871 : (1989) 2 JT 108 : (1989) LabIC 1556 : (1989) 2 LLJ 169 : (1989) 1 SCALE 860 : (1989) 3 SCC 191 : (1989) 2 SCR 422 : (1989) 3 SLJ 34

Hon'ble Judges : Kuldip Singh Singh, J;K. N. Singh, J

Bench : Division Bench

Advocate : H.S. Guru Raja Rao, S. Markandeya, Chitra Markandeya, G. Seshagiri and Usha Saraswat, for the Appellant; P.A. Choudhary, Senior Advocate and T.V.S.N. Chari, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Singh, J.—This appeal is directed against the judgment and order of a Division Bench of the High Court of Andhra Pradesh setting aside the order of a learned single Judge, dismissing the appellants' writ petition made under Article 226 of the Constitution.

2. The appellants are members of the Andhra Pradesh Engineering Subordinate Service as Supervisors in Category 1 of the Engineering Branch. The Engineering Branch Category 1 includes officers, namely, Supervisors, Overseers, Head Draftmen, Civil Draftmeh, Artists Draftmen, Tracers, Blueprint Operators and Building Mistries. Supervisors are recruited by direct recruitment as well as by promotion from amongst the Overseers. The cadre of supervisors include degree holders in engineering and diploma or licence holders. Both perform the same duties and functions in the engineering branch. Promotion to the post of Assistant Engineer, the next higher post is made from amongst the post of

supervisors, in accordance with the Andhra Pradesh Engineering Service Rules 1967. ' Graduate overseers are given preference in the ratio of promotion to the post of Assistant Engineer inasmuch as the quota of promotion is four to one from amongst the graduate supervision and non-graduate supervisors. In addition to the disparity in the matter of promotion, graduate supervisors and non-graduate supervisors are granted different pay. On recruitment to the service of supervisors a graduate supervisor is granted higher starting" salary than non-graduate supervisors. Subsequently, a lower pay scale was prescribed for the non-graduate supervisors. Aggrieved the non-graduate supervisors filed two writ petitions in the High Court of Andhra Pradesh under Article 226 of the Constitution challenging validity of discrimination in prescribing two different scales of pay. The appellants contended that diploma-holder supervisors were entitled to the same scale of pay as prescribed for the graduate supervisors on the principle of equal pay for equal work as they constituted the same service and performed the same duties and functions as those performed by graduate supervisors. The State Government contested their case on the pleading that graduate supervisors and diploma supervisors always remained separate and they were never fused into one service. The two class of employees discharged the same functions and carried out similar duties, but the State was justified in prescribing different pay scales for historical reasons, and also on the basis of difference in the educational qualifications. Plea of discrimination against non-graduate supervisors was denied. A learned single Judge of the High Court Justice O. Chinnappa Reddy (as he then was) by his judgment and order dated February 25, 1974 held that the State practised invidious discrimination without there being valid justification between the two categories of supervisors graduates and non-graduates. The learned Judge allowed both the writ petitions and issued mandamus to the State Government to accord the same scale of pay to the non-graduate supervisors as prescribed for the graduate supervisors under the Government Order dated June 13, 1969. On appeals preferred by the State of Andhra Pradesh a Division Bench of the High Court set aside the judgment of the learned single Judge and dismissed the writ petitions on the finding that the State practised no discrimination and the appellants were not entitled to relief on the principle of equal pay for equal work. Hence this appeal by special leave.

3. This is the second round of litigation by the Diploma-holder Supervisors. Earlier they had challenged the grant of higher quota of promotion for graduate Supervisors on the ground that when graduate and non-graduate Supervisors, belong to the same cadre, and are eligible for promotion, then giving preferential treatment to graduates amount to denial of equal opportunity to the non-graduate Supervisors. This Court in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, , rejected the challenge holding that two categories of Supervisors were never fused into one class and have throughout remained distinct and apart. The non-graduate Supervisors have again challenged the disparity in the pay scale prescribed for the two class of supervisors.

4. Since controversy in the present appeals centers round the pay of the

Supervisors it is necessary to refer to the history of pay scales prescribed for the Supervisors. Prior to 1958 the scale of pay prescribed for Supervisors was Rs. 100-5-1-250 (sic) but directly recruited graduate Supervisors were granted initial starting salary at Rs. 150/- on the date of their initial appointment while a diploma holder Supervisor was paid starting salary of Rs. 100A only, though the same pay scale was prescribed for both the degree-holders and diploma-holders, On his appointment a graduate Supervisor was designated as Junior Engineer while a non-graduate continued to be designated as Supervisor, In 1958 the scale of pay of Supervisors was revised to Rs. 100-5-150-7. 1/2-200-10-300 but graduate Supervisors were continued to be granted higher starting salary at Rs. 180/- on the date of their initial appointment. Later, the starting salary of graduate Supervisors was raised to Rs. 200/- and their pay was fixed in the pay, scale of Rs. 200-10-300. In 1961 the scale of pay of Supervisors was again revised according to which non-graduate Supervisors were granted pay-scale of Rs. 180-7.1/2-210-10-2,80-15-400, while Junior Engineers (graduate Supervisors) were granted the scale of Rs. 250-15-400. Though different pay scales were provided for non-graduate Supervisors and graduate Supervisory but the maximum pay for both the categories was maintained at the same level, irrespective of the Supervisor being a graduate or non-graduate. The State Government further revised the pay scale of both the categories of Supervisors by the Government Order No. 173 dated 13th June, 1969 according to which the scale of pay of non-graduate Supervisors was revised to Rs. 200-12-320-16-400 while the scale for Junior Engineers (graduate Supervisors) was revised to Rs. 300-20-600. The revised pay scales made substantial difference in the matter of pay between the graduate supervisors and non-graduate supervisors, which gave rise to the disputes before the High Court.

5. Mr. H. S. Gururaja, Rao, learned Counsel for the appellants urged that non-graduate Supervisors and graduate Supervisors constitute the same class as they belong to the same service and both the class of officers are fused into one, as the two posts are inter-changeable. The graduate Supervisors are no doubt designated as Junior Engineers but the work and duties of both are the same, and both set of officers are treated at par for every other purpose. Since the two categories of officers were fused into one, the State denied equality by prescribing different scales of pay for the non-graduate supervisors. Learned Counsel further urged that even if the graduate Supervisors (Junior Engineers) and non-graduate supervisors constitute two different categories, but since they have been carrying out, the same work and performing the same duties carrying the same responsibility, without any distinction the doctrine of equal pay for equal work is fully applicable and on that basis the non-graduate Supervisors are also entitled to the same pay scales as prescribed for the graduate Supervisors (Junior Engineers). Learned Counsel emphasised that for application of the principle of equal pay for equal, work it is not necessary that the two class of officers must belong to one integrated service instead if the, nature of the two posts are identical or similar, the principle would, apply. He referred to a number

of decisions, reference to which will be made at the appropriate stage. Shri P. A. Chaudhry, learned Counsel appearing for the respondent State seriously, congested the correctness of the submissions made on behalf of the appellants and urged that in view, of the Constitution Bench decision of this Court in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, the appellant are not enticed to any relief.

6. Since the Division Bench of the High Court 'rejected the petitioners' claim for equal pay in view of. the findings of Constitution Bench of this Court in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, it is necessary to refer to that case in some detail. In Shujat Ali's case non-graduate Supervisors of Andhra Pradesh had challenged validity of the rule which gave preferential treatment to graduate Supervisors (Junior Engineers) for 'promotion to the post of Assistant Engineer on the ground that it violated the equality clause enshrined under Articles 14 and 16 of the Constitution. In that context, the question arose whether the preferential treatment given to graduate Supervisors was justified on any reasonable classification or it was arbitrary and irrational Bhagwati, J. speaking for the Constitution Bench after considering various decisions of this Court observed as under : (at p. 1655 of AIR)

But where graduates and non-graduates are both regarded as fit, and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him.

The above observation would show that the Constitution Bench held that fixation of quota giving preference to graduate Supervisors amounted to denial of equal opportunity to the non-graduate Supervisors. But after making the aforesaid observations the Constitution Bench considered the history of the graduate Supervisors and non-graduate Supervisors under the Andhra Pradesh Rules and thereupon, it recorded findings that the graduate Supervisors have always been treated as a distinct and separate class from non-graduate Supervisors both under the Hyderabad Rules as well as under the Andhra Pradesh Rules and they were never treated as equals. The Bench observed as under : (at p. 1656 of AIR)

The pay-scale of Junior Engineers was always different from that of non-graduate Supervisors and for the purpose of promotion, the two categories of Supervisors were kept distinct and apart under the Andhra Rules even after the appointed

day. The common graduation list of Supervisors finally approved by the Government of India also consisted of two parts, one part relating to Junior Engineers and the other part relating to non-graduate Supervisors. The two categories of Supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise by reasons of differential treatment being given, to them.

In view of the aforesaid findings of the Constitution Bench which relate to this very cadre of Supervisors, it is difficult to accept the appellants' contention that the graduate Supervisors and non-graduate Supervisors were integrated into one class of service and that no differential treatment is permissible to the non-graduate Supervisors. The Constitution Bench on elaborate discussion held that the equality clause under Articles 14 and 16 of the Constitution was not violated in the matter of promotion of graduate Supervisors and non-graduate Supervisors, as the graduate Supervisors and non-graduate Supervisors constituted two different classes. The necessary consequence of the Constitution Bench findings are that the classification of Supervisors into two classes on the basis of historical reasons is valid and . it does not offend Article 14 or 16 of the Constitution. Once the classification is upheld it is difficult to hold that non-graduate Supervisors are entitled to the same pay scale as prescribed for graduate Supervisors as equality in pay is permissible with equals and not with unequals. There is basic difference between the two class of Supervisors as graduate Supervisors hold degree in Engineering while non-graduate Supervisors are only Diploma and Licence holder and they have all along been treated differently on the basis of difference in educational qualifications.

7. In *State of Mysore and Another Vs. P. Narasing Rao*, the question arose whether two different pay scales could be prescribed for the employees working in the same service on the basis of educational qualification. In the State of Mysore tracers included matriculates and non-matriculates. The Government prescribed higher pay scale to matriculate tracers although non-matriculates and matriculates tracers both were performing the same duties and functions. The non-matriculate tracers challenged the validity of different pay scales on the ground that it violated the guarantee of equality under Articles 14 and 16 of the Constitution as there was no valid reason for making distinction. The High Court accepted their contention and allowed their petition holding that there was no valid reason for making distinction as both matriculate and non-matriculate tracers were doing the same kind of work and the denial of different scale of pay was in violation of Articles 14 and 16 of the Constitution. On appeal by the State Government this Court set aside the order of the High Court on the finding that higher consideration for fixing different pay scales and the classification of two grades of tracers did not violate of Articles 14 and 16 of the Constitution. The Constitution Bench observed as under : (at p. 352 of AIR)

The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down

qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have a better educational qualification besides technical proficiency of a tracer.

Classification in service founded on the basis of educational and academic qualifications is now well recognised. It is open to the Administration to give preference to a class of employees on the basis of educational qualifications having regard to the nature of duties attached to the post for the purposes of achieving efficiency in public services. It is permissible to give preference to degree-holders as was held by this Court in *The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another*, and *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . Since classification on the basis of educational qualification is a valid consideration for discriminating in matters pertaining to promotion to the higher post, there is no reason as to why the same principle is not be applicable for prescribing scales of pay. Having regard to the findings recorded by the Constitution Bench in *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, that graduate Supervisors and non-graduate Supervisors constitute two distinct class, the non-graduate Supervisors cannot validly claim parity with the graduate Supervisors regarding pay scales. The appellants grievance that they have been denied equality in violation of Article 14 or 16 of the Constitution is not sustainable.

8. Learned Counsel for the appellants urged that even if the appellants' grievance regarding violation of Articles 14 and 16 of the Constitution is not sustainable, the appellants are entitled to the same scale of pay as granted to the graduate supervisors on the principle of 'equal pay for equal work' enshrined under Article 39(d) of the Constitution. He placed reliance on the decision of this Court in *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*, ; *Dhirendra Chamoli and Another Vs. State of U.P.*, ; *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, ; *Bhagwan Dass and Others Vs. State of Haryana and Others*, and *Jaipal and Others Vs. State of Haryana and Others*, . In view of these authorities the learned Counsel contended, there is no justification to disregard the doctrine of 'equal pay for equal work' as graduate Supervisors and the non-graduate Supervisors both have been doing the same work with the same responsibilities without there being any difference in the duties and functions of the two categories of officers.

9. 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. Provisions contained in the Chapter on Directive Principles of State Policy cannot be enforced by courts although the principles contained therein are fundamental in nature for the governance of our country. The Court has no power to direct the Legislature to frame laws to give effect to the Directive Principles as contained in Part IV of the Constitution or to induct the Legislature from making any such law. But while considering the question of enforcement of fundamental rights of a citizen it is open to the Court to be guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained. The purpose of Article 39(d) is to fix certain social and economic goals for avoiding any discrimination amongst the citizens doing similar work in matters relating to pay. If the Court finds that discrimination is practised amongst two set of employees similarly situated in matters relating to pay, the Court must strike down discrimination, and direct the State to adhere to the doctrine of "equal pay for equal work" as enshrined under Article 39(d) of the Constitution. Fundamental rights, and the Directive Principles constitute "conscience of the Constitution". The Constitution aims at bringing about a synthesis between 'Fundamental Rights' and 'Directive Principles of State Policy' by giving to the former a place of pride and to the latter a place of permanence, together they form core of the Constitution. They constitute its true conscience and without faithfully implementing the Directive Principles it is not possible to achieve the welfare State contemplated by the Constitution, see His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, .

10. In Randhir Singh Vs. Union of India (UOI) and Others, and later in Dhirendra Chamoli and Another Vs. State of U.P., , Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, , Bhagwan Dass and Others Vs. State of Haryana and Others, , Jaipal and Others Vs. State of Haryana and Others, and P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, , this Court implemented the principle of 'equal pay for equal work'. The Court granted relief on the principle of equal pay on the basis of same or similar work performed by two class of employees under the same employer even though the two class of employees did not constitute the same service. But in all the aforesaid cases relief was granted only after it was found that discrimination was practised in giving different scales of pay in violation of the equality clause enshrined under Articles 14 and 16 of the Constitution. The principle of equal pay for equal work was enforced on the premise that discrimination was practised between the two set of employees performing the same duties and functions, without there being any rational classification. The principle of 'equal pay for equal work' is not abstract one, it is open to the State to prescribe different scale of pay for different cadres having regard to nature, duties, responsibilities and educational qualifications. Different grades are laid down in service with varying qualification for entry into, particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scales for different cadres. The application of doctrine arises where employees are equal in every respect, in

educational qualifications, duties, functions and measure of responsibilities and yet they are denied equality in pay. If the classification for prescribing different scales of pay is founded on reasonable nexus the principle will not apply. But if the classification is founded on unreal and unreasonable basis it would violate Articles 14 and 16 of the Constitution and the principle of 'equal pay for equal work', must have its way. In the decisions reference to which have been made by the learned Counsel for the appellants, this Court granted relief, after recording findings that the aggrieved employees were discriminated in violation of the equality clause under Articles 14 and 16 of the Constitution, without there being any rationale for the classification.

11. In a number of decisions of this Court the claim for equal pay for equal work has been negated on the ground that the different pay scales prescribed for persons doing similar or same work is permissible on the basis of classification founded on the measure of responsibilities, educational qualifications, experience and other allied matters. In *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, Justice Sabyasachi Mukharji said : (SCC p. 100, para 77 : (at p. 1297, para 7 of AIR)

There may be qualitative differences as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right.

The learned Judge further, observed : (SCC pp. 104-105, para 11) : (at p. 1300, para 11 of AIR)

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. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived at mala fide either in law or in fact.

12. In *State of U.P. and Others Vs. J.P. Chaurasia and Others*, this Court negated the claim of Bench Secretaries for equal pay for equal work on the basis of reasonable classification based on merit, experience and seniority though both set of employees were performing the similar duties and having

similar responsibilities. In *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, , this Court refused to grant relief to the petitioner for parity in pay on the application of the principle of 'equal pay for equal work' on the ground of reasonable classification on the basis of educational qualifications.

13. In view of the above discussion we are of the opinion that where two class of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the Court will strike down the discrimination and grant relief to the aggrieved employees, but before such relief is granted the Court must consider and analyse the rationale behind the State action in prescribing two different scales of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the Court finds that the classification made by the State in giving different treatment to the two class of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal pay for equal work is applicable among equals, it cannot be applied to unequals. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the Court that invidious discrimination is practised by the State in prescribing two different scales for the two class of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination the principle of equal pay for equal work cannot be enforced by Court in abstract. The question what scale should be provided to a particular class of service must be left to the Executive and only when discrimination is practised amongst the equals, the Court should intervene to undo the wrong and to ensure equality among the similarly placed employees. The Court however cannot prescribe equal scales of pay for different class of employees.

14. In the instant case the graduate overseers have all along been treated separate entity from the non-graduate supervisors and they have been drawing different pay since long. The Constitution Bench has already recorded findings that two set of officers, namely, graduate Supervisors and non-graduate Supervisors do not belong to the same class of service and unequal treatment relating to promotion is justified on the basis of educational qualification. Therefore the classification made between the graduate Supervisors and non-graduate Supervisors is reasonable and the State Government did not violate Articles 14 and 16 of the Constitution in prescribing different scales of pay for them. In result, the appeal fails and is accordingly dismissed. There will be no order as to costs.