
(2001) 01 P&H CK 0188
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5012 of 1996

Vijay Kumar and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

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

Citation : (2001) 01 P&H CK 0188

Hon'ble Judges : R.C. Kathuria, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Ms. Alka Chatrath, for the Appellant; Mr. Gurminder Singh, D.A.G., for the Respondent

Judgement

N.K. Sodhi, J.—This order will dispose of two writ petitions 5012 of 1996 and 391 of 1997 both of which were ordered to be heard together as common questions of law and fact arise in them.

2. Petitioners are working as Clerks and Senior Clerks in the Education Department and are posted in different schools in the State of Punjab. Prior to the recommendations of the Third Pay Commission, 50% of the Clerks in the State were in the pay scale of Rs. 400-600 and the remaining 50% had been designated as Senior Clerks and were given the pay scale of Rs. 510-800. On the recommendations of the Third Pay Commission, the Punjab Government revised the pay scales of its employees including those of the Clerks and promulgated the Punjab Civil Services (Revised Pay) Rules, 1988 (for short the Rules) which came into force with effect from 1.1.1986. The then existing scale of Rs. 400-600 was revised to Rs. 950-1800 while the scale of Rs. 510-800 was revised to Rs. 1200-2100 in the ratio of 50:50 of the posts in the cadre. The representatives of the Clerks Association in the State had been representing to the Government to give them better scales of pay and it seems that the Government accepted the representations and issued a notification on 15.6.1990 amending the Rules. By this amendment the Government divided the cadre of Clerks in each Department

into three parts in the ratio of 20:40:40 and the basic entry scale for the Clerks was Rs. 950-1800 with an initial start of Rs. 1000/-. This scale was allowed for the total number of posts in the cadre minus the posts which had been placed in the scale of Rs. 1200-2100 (40%) and Rs. 1500-2640 (40%). The basic qualifications for recruitment as a Clerk were prescribed as Matric with second class or 10+2. The scale of Rs. 1200-2100 was allowed to 40% of the posts of Clerks who had completed 5 years service in the cadre and the incumbents were designated as Senior Clerks. The scale of Rs. 1500-2640 was allowed to the remaining 40% of the total number of posts of Clerks in the cadre after a minimum period of 10 years of service taken together as Clerk and Senior Clerk in the cadre and the incumbents were designated as Junior Assistants. It is this designation of Clerks, Senior Clerks and Junior Assistants which is now under challenge in these writ petitions filed under Article 226 of the Constitution.

3. In response to the notice of motion, the respondents have filed their reply. It is admitted that by notification dated 15.6.1990 the Rules were amended and the Clerks in each Department were divided into three parts in the ratio of 20:40:40. It is further submitted that the pay scales of Rs. 1200-2100 and Rs. 1500-2640 are allowed to those incumbents who complete 5 years and 10 years of service in the cadre provided they fall in the ratio of 20:40:40 on the basis of their seniority. The three tier grade for the Clerks is sought to be justified on the ground that it will remove stagnation within the cadre of Clerks and provide to them a channel of promotion with a better scale of pay.

4. What is contended by the learned counsel for the petitioners is that the classification of Clerks into three groups only on the basis of seniority is arbitrary, discriminatory and violative of the equality clause enshrined in Article 14 of the Constitution. The argument indeed is that each group performs the same work and discharges the same functions and duties and, therefore, the basis of the classification has no nexus with the object sought to be achieved and is, thus, violative of the principle of "equal pay for equal work". Reliance in this regard is placed on a judgment of the Supreme Court in *P. Savita and others v. Union of India and others*, 1985(3) SLR 29. Another grievance voiced by the petitioners is that some of them have even completed 5 years and 10 years of service as Clerks/Senior Clerks and yet they have not been given the higher scale of pay.

5. Having given our thoughtful consideration to the contentions advanced by the counsel for the parties and the stand taken by the respondents in their written statement, we are unable to agree with the learned counsel for the petitioners. The case of the State Government is that the cadre of Clerks was divided into three groups primarily with a view to remove stagnation within the cadre and to provide a channel of promotion within the cadre itself. With this object in view the Government bifurcated the cadre into three groups and 20% of the posts in the cadre were given the basic entry scale whereas the remaining 40% were designated as Senior Clerks in the higher scale of Rs. 1200-2100 and the remaining 40% in stall a higher scale of Rs. 1500-2640. As already observed, the

scale of Rs. 1200-2100 is allowed to 40% of the Clerks who complete 5 years of service and this class of Clerks is designated as Senior Clerks. The scale of Rs. 1500-2640 is given to the incumbents after a minimum period of 10 years of service within the cadre and they are designated as Junior Assistants. We see no infirmity in bifurcating the cadre into three groups and it can always be done to remove stagnation and to provide a channel of promotion within the cadre which is in the interest of the employees themselves. A similar question arose before their Lordships of the Supreme Court in *State of West Bengal and others Vs. Deb Kumar Mukherjee and others*, . In this case, the State of West Bengal bifurcated the cadre of Inspectors into two groups namely Inspectors Grade-I and Inspector Grade-II and these groups were given different scales of pay even though the nature of work to be performed by each group was the same. The classification and bifurcation of the cadre was challenged on the ground that it violated the principle of "equal pay for equal work" and was, therefore, violative of Article 14 of the Constitution. The Division Bench of Calcutta High Court upheld the challenge and quashed the bifurcation of the cadre of Inspectors. The appeal filed by the State Government was allowed and the bifurcation upheld with the following observations:

"The Government order dated June 4, 1965, reproduced above, makes it clear that the higher grade in the cadre of Inspectors was created with a view to provide a channel of promotion and to remove stagnation in the said cadre. 20% of the posts in the cadre were upgraded and given higher pay scale. The higher grade posts were to be filled by way of promotion from amongst the Inspectors holding the lower grade. We see no infirmity in upgrading 20% of the posts in the cadre to be filled up from amongst the senior and meritorious members of the cadre. The duties performed by the Inspectors in the two grades may be the same but no fault can be found with the classification. It is settled by a string of authorities of this Court that classification in the cadre on the ground of selection based on merit is permissible. It is well known in service jurisprudence that selection grade and super time scale based on seniority or seniority-cum-merit are permissible. The High Court fell into patent error in setting aside the classification on the ground of discrimination."

This case squarely covers the controversy raised in the present writ petition.

6. In *P. Savita's case* (supra), the State of Madhya Pradesh divided Senior Draughtsmen into two groups with different pay scales on the recommendations of the Third Pay Commission. One of the recommendations of this Pay Commission related to the scales of pay of Draughtsmen and Senior Draughtsmen. Draughtsmen were given the scale of Rs. 330-560 while Senior Draughtsmen were divided into two groups with two scales of Pay, Rs. 330-560 and Rs. 425-700. A Draughtsman could be promoted as Senior Draughtsman and the appellants before the Supreme Court were promoted Senior Draughtsmen who continued in the same scale of pay despite having been promoted. In other words, the pay of the appellants therein remained the same even though they

had been promoted as Senior Draughtsmen. This anomaly was held to be violative of Article 14 of the Constitution. The position in the cases before us is different. P. Savita's case (*supra*) is, therefore, of no help to the petitioners.

7. We find no merit even in the other grievance made by the petitioners. It is true that some of them have completed 5 years and 10 years of service in the cadre of Clerks/Senior Clerks but they would become entitled to the higher scale only when they reach in the 40% cadre of Clerks. The averment in the written statement is that the petitioners do not fall in the 40% quota of Senior Clerks/Junior Assistants and, therefore, they would not be entitled to the higher scale of pay.

In the result, there is no merit in the writ petitions and the same stand dismissed with no order as to costs.

8. Petitions dismissed.