

Unikat Sankunni Menon vs The State Of Rajasthan on 5 April, 1967

Equivalent citations: 1968 AIR 81, 1967 SCR (3) 470, AIR 1968 SUPREME COURT 81, 1967 3 SCR 430, 1968 LBLJ 129, 1968 (1) SCJ 773

Author: Vishishtha Bhargava

Bench: Vishishtha Bhargava, K.N. Wanchoo, G.K. Mitter

PETITIONER:
UNIKAT SANKUNNI MENON

Vs.

RESPONDENT:
THE STATE OF RAJASTHAN

DATE OF JUDGMENT:
05/04/1967

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
WANCHOO, K.N.
MITTER, G.K.

CITATION:
1968 AIR 81 1967 SCR (3) 470

ACT:
Constitution of India-Articles 14 and 16-Rajasthan Secretariat Service (Rationalisation of Pay Scales) Rules, 1956, providing for special and Higher Grade for an Assistant Secretary in the Rajasthan Secretariat Service an promotion as Deputy Secretary in the Secretariat-Also providing for a special pay but the same grade for a member of the Rajasthan Administrative Service on promotion as Deputy Secretary in the Secretariat-Whether amounting to discrimination or denial of equality of opportunity.

HEADNOTE:
Under the Rajasthan Civil Services (Unification of Pay Scales) Rules & Schedules, 1950, a person serving in the Rajasthan Secretariat, on appointment as Deputy Secretary,

was placed in a specified pay-scale and was, in addition, entitled to - a Special Pay. Under the same Rules a member of the Rajasthan Administrative Service, on appointment as Deputy Secretary, was also entitled to draw salary in the same pay-scale and a similar Special Pay. The 1950 Rules were superseded by the Rajasthan Secretariat Service (Rationalisation of Pay Scales) Rules & Schedules, 1956, by which it was provided that for Assistant Secretaries in the Secretariat Service there would be a number of selection posts of Deputy Secretaries on an increased pay scale without any Special pay Furthermore, the scales applicable to the members of Administrative Service on appointment as Deputy Secretary were also 'revised upwards though not to the same extent as for those in the Secretariat Service and in their case the principle of Special Pay on such appointment was continued. The rules were revised again in 1961 and 1966 whereby higher pay-scales were introduced to apply to members of each service on appointment to the post of a Deputy Secretary but the system of a special pay on such appointment, was continued only for members of the Administrative Service.

The appellant, who was an Assistant Secretary in the Secretariat Service- and had been promoted as a Deputy Secretary, filed a petition under Art. 226 of the Constitution claiming that the words "without special pay" in the 1956 Rules, applicable in respect of his Service may be declared invalid and violative of Articles 14 and 16 of the Constitution. The High Court dismissed the Petition.

In the appeal to this Court it was contended, inter alia that Articles 14 and 16 were violated because, (i) the Rules, on the face of them, showed that in the case of members of the Secretariat Service appointed as Deputy Secretaries, no special pay was admissible, while such pay was admissible to members of the Administrative Service when holding similar posts; and (ii) the definition of "Special Pay" in Rule 3(31) of the Rajasthan Civil Service Rule, 1951, showed that it was meant to be additional pay in consideration, inter alia, of the specially arduous nature of duties and that if the post of Deputy Secretary was considered as involving such duties for members of the Administrative Service, there was no reason to hold that the same post was not equally arduous for members of the Secretariat Service.

HELD : There was no discrimination under Article 14 or any denial

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of equality of opportunity under Article 16. (1) The Rules, as applicable from time to time to members of the Secretariat Service on appointment to the posts of Deputy Secretaries, were, at no stage made less favourable than the Rules previously applicable to them and could not be held to be vitiated in any manner, if considered by themselves in the light of rights which the members of the Secretariat

Service possessed from time to time. [435C-D; 438E-F]

The appellant came to the post of a Deputy Secretary from the Secretariat Service which is a service distinct and separate from the Administrative Service. The methods of recruitment qualification, etc., of the two Services are not identical. In their ordinary time-scale, the two Services do not carry the same grades. Even the posts, for which recruitment in the two Services is made, are to a major extent, different. The members of the Secretariat Service are meant to be employed in the Secretariat only, while members of the Administrative Service are mostly meant for posts which are outside the Secretariat though some posts in the Secretariat can be filled by members of that service. In such a case, where appointment is made to the posts of Deputy Secretaries of government servants belonging to two different and separate Services, there can arise no question of a claim that all of them, when working as Deputy Secretaries, must receive identical salaries, or must necessarily both be given special pay. It is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No such equality is required either by Art. 14 or Art. 16 of the Constitution. [435F-436B]

All India Station Masters' and Assistant Station Masters' Association & Others v. General Manager, Central Railways and Others,, [1960] 2 S.C.R. 311; Mohanlal Bakshi v. Union of India A.I.R. 1962 S.C. 1139, relied on.

Furthermore, under the various Service Rules themselves a member of the Secretariat Service on appointment as Deputy Secretary was allowed a special higher grade, while a member of the Administrative Service continued on his old scale and only got an extra salary of Rs. 150/- per month by way of Special Pay. In such a case, no question can arise of holding that a member of the Secretariat Service must also be granted a special pay in addition to being placed in the higher grade. 'Special Pay' does not arise out of any inherent quality of being arduous in the nature of the post itself. Thus, when special pay was granted to a member of the Administrative Service on appointment as Deputy Secretary, the reason might be that the post was considered more arduous in nature than the post which would be held by him, if he had continued on a regular post borne on the cadre of his Service. In the case of an Assistant Secretary in the Secretariat Service, the post of a Deputy Secretary was already designated as a selection post for him on a grade, and there could be no question of his being granted a special pay on the basis that the post Deputy Secretary is more arduous in nature than the post of Assistant Secretary [437D-F; 438C-E]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 274 of 1967. Appeal by special leave from the judgment and order dated November 18, 1965 of the Rajasthan High Court in D. B. Civil Writ Petition No. 336 of 1964.

Brijbans Kishore and D. P. Gupta, for the appellant.

G.C. Kasliwal, Advocate-General for the State of Rajasthan and K. Baldev Mehta, for the respondent. The Judgment of the Court was delivered by Bhargava, J. The appellant, Unikat Sankunni Menon, was in the service of the Rajasthan Government in the Secretariat after Rajasthan was constituted as a State. The pay and grades of the posts in the Secretariat were governed by the Rajasthan Civil Services (Unification of Pay Scales) Rules and Schedules framed by the Rajpramukh under Article 309 of the Constitution of India. Under those Rules, an Assistant Secretary to Government drew pay in the scale of Rs. 250-25- 400-E.B.-25-500 and was, in addition, entitled to a special pay of Rs. 501-. A Deputy Secretary to Government drew pay in the scale of Rs. 500-25-700 and was, in addition, entitled to a special pay of Rs. 100/-. Subsequently, the Rajasthan Secretariat Service Rules, 1954 were framed by the Rajpramukh under Article 309 of the Constitution of India and were brought into force with effect from 10th January, 1955. Under these Rules, the appellant became a member of the Rajasthan Secretariat Service (hereinafter referred to as "the R.S.S."). He was, at that time, holding the post of an Assistant Secretary which carried the time-scale of Rs. 250-25-400-EB-25-500. He was also drawing a special pay of Rs. 75/- per month. By the notification dated 25th May, 1956, the Rajpramukh, again acting under Art. 309 of the Constitution of India, promulgated Rajasthan Civil Services (Rationalisation of Pay Scales) Rules and Schedules, 1956. Under these Rules, the grades of pay applicable to Deputy Secretaries and Assistant Secretaries were revised. The posts of Assistant Secretaries were shown as belonging to the ordinary time-scale of the R.S.S., carrying the grade of Rs. 250-25-500-EB-25-750 with a special pay of Rs. 75/-. Further, it was laid down that there will be selection posts for members of the R.S.S. which were indicated as posts of Deputy Secretaries to Government by putting this designation in brackets, and a new scale of Rs. 500-30-740-EB30-800-50- 900 without special pay was prescribed for these selection posts. In the remarks column, there was a note that, on promotion as Deputy Secretary, an Officer will receive Rs. 500/- or a minimum increase of Rs. 150/- on his basic pay as Assistant Secretary whichever is higher. These were the Rules in force when, on 10th January, 1959, the appellant was appointed as Deputy Secretary. On that date, he was drawing a salary of Rs. 475/p.m. in the ordinary time scale of the R.S.S. and was also getting a special pay of Rs. 75/- , as he was holding the post of an Assistant Secretary to Government. Consequently, on his appointment as Deputy Secretary, which was a selection post for the R.S.S., his salary was fixed at Rs. 650/-. Under the formula laid down in the remarks column, mentioned above, the salary admissible to him came to Rs. 625/-, but, since in the new grade fixed for the selection posts there was no stage at Rs. 625/-, his pay was fixed at Rs. 650/- at the next higher stage above the amount calculated in his case on the basis of the formula laid down in the remarks column. This procedure was adopted under the Government instructions. Subsequently, the grades for the posts of Dy. Secretaries and Assistant

Secretaries were again revised by the Governor of Rajasthan under the proviso to Article 309 of the Constitution by promulgating the Rajasthan Civil Services (Revised Pay) Rules, 1961. Under these Rules, the grade applicable to Assistant Secretary to Government belonging to the R.S.S. was prescribed as Rs. 360-25-560-30-590-EB-30-860-900. The Rules also indicated that this revised scale had been prescribed as a result of merging the special pay in the grade pay itself. The grade for Deputy Secretaries to Government was also revised to Rs. 550-30-820-EB-30-850-50-1100. It appears that, subsequently, there was another revision of scales of pay in the year 1966, and the latest grade applicable to the members of the R.S.S. holding the posts of Deputy Secretaries is Rs. 900-50-1500.

Apart from these various Rules which, from time to time, were applicable to members of the R.S.S., we may also indicate the Rules that were applicable to members of the Rajasthan Administrative Service (hereinafter referred to as "the R.A.S.") when holding posts of Deputy Secretaries. Under the Rajasthan Civil Services (Unification of Pay Scales) Rules and Schedules, 1950, which were in force until the year 1956, a member of the R.A.S., on appointment as Deputy Secretary, drew salary in the same grade of Rs. 500-25-700 with a special pay of Rs. 100/- in the same way as a member of the R.S.S. When the Rajasthan Civil Services (Rationalisation of Pay Scales) Rules & Schedules, 1956 came into force, this principle was departed from. While laying down the grades of pay applicable to members of the R.A.S., their senior and junior scales were combined into one scale shown as the time scale of Rs. 250-25-500-EB-25-750 with a selection grade of Rs. 500-30-740-EB-30-800-50-900 which was to be admissible personally to Officers who had been appointed substantively earlier to the grade of Rs. 500-25-700 vide Government Orders issued on 9th April, 1951 and 19th January, 1955. Then, it was further laid down that special pay would be admissible on certain posts to Officers of the R.A.S. on time scale or selection grade, and, amongst these, were the posts of Deputy Secretaries to Government. The Rules prescribed a special pay of Rs. 150/- for the members of the R.A.S. when appointed to posts of Deputy Secretaries to Government. In the subsequent revision of grades under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1961, the grade of the R.A.S. was revised to Rs. 285-25-510-EB-25-560-30-800 for the ordinary time-scale and Rs. 550-30-820-EB-30-850-50-950 for 4 3 4 posts in the senior scale, together with a selection grade of Rs. 650-50-1250. Under these Rules again, it was laid down that an Officer of the R.A.S. holding a post in the senior scale on appointment as Dy. Secretary, will be entitled to a special pay of Rs. 150/- Under the last revision in 1966, a member of the R.A.S., on appointment as Dy. Secretary, was to draw salary in his regular time-scale of Rs. 550-30-820-EB-30-850-50-1100, subject to a minimum of Rs. 640/-, with a special pay of Rs. 150/- In the case of a member of the R.A.S. holding a post in the selection grade applicable to his service, he was to draw the pay in his selection grade with a special pay of Rs. 150/. Thus, in the case of members of the R.A.S. appointed to posts of Deputy Secretaries, a special pay remained admissible, while the principle of granting special pay to members of the R.S.S. on appointment as Deputy Secretaries was abolished. It was on the basis of these Rules that the appellant filed a petition under Art. 226 of the Constitution before the High Court of Rajasthan claiming that the words "without special pay" in the Rajasthan Civil Services (Rationalisation of Pay Scales) Rules & Schedules, 1956 may be declared as invalid and violative of Articles 14 and 16 of the Constitution. The High Court dismissed the petition and, consequently, the appellant has now come up to this Court by special leave.

The claim of the appellant has to be examined in two different aspects,. The first aspect is that the Rules, as applicable from time to time to members of the R.S.S. on appointment to the posts of Deputy Secretaries, were, at no stage, made less favourable than the Rules previously applicable. As has been mentioned earlier, under the Rajasthan Civil Services (Unification of Pay Scales) Rules & Schedules, 1950, a person serving in the Rajasthan Secretariat, on appointment as Deputy Secretary, was placed in the time-scale of Rs. 500-25-700 and was, in addition, entitled to a special pay of Rs. 100/-. When the Rules were revised for the first time under the Rajasthan Civil Services (Rationalisation of Pay Scales) Rules & Schedules, 1956, a member of the R.S.S., working on the ordinary time-scale as Assistant Secretary, became entitled, on appointment as Deputy Secretary, to pay in the scale of Rs. 500-30740-EB-30-800-50-900. It is true that, on such appointment under these Rules, he was not entitled to any special pay; but the principle for fixation of pay given in the remarks column ensured that the pay admissible to the Officer would certainly be higher than the pay which would have been admissible if the earlier Rules had continued in force. The scale of pay prescribed for the post of Deputy Secretary was higher than the previous scale. Further, on promotion as Deputy Secretary, every Officer of the R.S.S. received a minimum increase of Rs. 1501/- on his basic pay as Assistant Secretary. The fact that the special pay as Assistant Secretary was ignored in fixing the pay on appointment to the post of Deputy Secretary did not result in any reduction of the emoluments to be received under the new scales, as compared with the emoluments which he would have received if the old scales had continued to remain in force. The subsequent revisions in 1961 and 1966 also observed this principle, so that the Rajpramukh or the Governor of Rajasthan, in promulgating these various Rules revising the pay scales applicable to Deputy Secretaries, ensured that no revised Rule operated to the prejudice of a member of the R.S.S., as compared with the earlier Rules under which rights had vested in him. Further, it was, at no stage, urged that the Rajpramukh or the Governor was incompetent to promulgate these revised Rules from time to time in exercise of his power under Article 309 of the Constitution. The Rules thus applicable to the member of the R.S.S. on appointment to the post of Deputy Secretary, against which the appellant made his grievance in the High Court, cannot be held to be vitiated in any manner, if considered by themselves in the light of rights which the members of the R.S.S. possessed from time to time.

The second aspect, and the one on which reliance was mainly placed by learned counsel for the appellant in this appeal, is that the Rules, on the face of them, show that, in the case of members of the R.S.S. appointed as Deputy Secretaries, no special pay is admissible, while special pay is admissible to members of the R.A.S. when holding similar posts. It is on the basis of this apparent differentiation that the appellant urged that Articles 14 and 16 of the Constitution were violated when special pay was denied to the members of the R.S.S., while special pay was admissible to members of the R.A.S. There are two reasons why this grievance put forward on behalf of the appellant has to be rejected. The first is that the appellant comes to the post of a Deputy Secretary from the R.S.S., which is a service distinct and separate from the R.A.S. The methods of recruitment, qualifications, etc., of the two Services are not identical. In their ordinary time-scale, the two Services do not carry the same grades. Even the posts, for which recruitment in the two Services is made, are, to a major extent, different. The members of the R.S.S. are meant to be employed in the Secretariat only, while members of the R.A.S. are mostly meant for posts which are outside the Secretariat though some posts in the Secretariat can be filled by members of the R.A.S. In such a

case, where appointment is made to the posts of Deputy Secretaries of government servants belonging to two different and separate Services, there can arise no question of a claim that all of them, when working as Deputy Secretaries, must receive identical salaries, or must necessarily both be given special pay. It is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he L5 Sup.CI/67----14 must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No such equality is required either by Art. 14 or Art. 16 of the Constitution. This principle was explained by this Court first in the case of *All India Station Masters' and Assistant Station Masters' Association & Others v. General Manager, Central Railways and Others*(1). In that case, the question arose about the rights of promotion of Assistant Station Masters and Guards already employed in the Railway Service. The Assistant Station Masters claimed equality of opportunity for promotion qua the Guards on the ground that they were entitled to equality of opportunity in the matter of employment or appointment to any office of the State under Art. 16(1) of the Constitution. This Court held : "It is clear that, as between the members of the same class, the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State ? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment." Proceeding further, the Court held : "There is, in our opinion, no escape from the conclusion-that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes." The same principle was later confirmed in the case of *Kishori Mohanlal Bakshi v. Union of India*(2). In that case, persons appointed to Class 11 of Income-tax Officers claimed that there was discrimination against them in the matter of pay-scales, as compared with Income-tax Officers recruited direct to the Class I Service. The Court, rejecting this argument, held : "The only other contention raised is that there is discrimination between Class I and Class II Officers inasmuch as, though they do the same kind of work, their pay scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. The contention that Art. 14 of the Constitution has been violated, therefore, fails." The claim of the appellant in the present case that, (1) [1960] 2 S.C.R. 31 1.

(2) A.I.R. 1962 S.C. 11 39.

on appointment as Deputy Secretary, he must be held entitled to receive special pay on the ground of being placed on parity with the members of the R.A.S., has, therefore, to be rejected.

The second ground, which shows that the claim made on behalf of the appellant has no basis, is that, under the various Service Rules themselves, a member of the R.S.S., on appointment as Deputy Secretary, is given pay in a grade specially and separately fixed for the posts of Deputy Secretaries,

while a member of the R.A.S., is not placed in that grade at all. Thus, under the latest Rules, a member of the R.S.S., on appointment as Deputy Secretary, draws salary in the grade of Rs. 900-50-1500. On the other hand, a member of the R.A.S., appointed as Deputy Secretary, is not granted pay in this scale. In his case, he continues to draw his salary in the scale applicable to him in the R.A.S. and is allowed a special pay of Rs. 1501-. This special pay allowed to a member of the R.A.S. is, therefore, not in addition to the pay in the grade specially prescribed for the posts of Deputy Secretaries. That grade is much higher than the grade applicable to the member of the R.A.S. which continues to apply to him on his appointment as Deputy Secretary, and it is only in addition to that lower time-scale that a member of the R.A.S. is allowed the special pay of Rs. 1501-. It is thus clear that the method of fixation of salary for members of the two Services, on appointment as Deputy Secretaries, is quite different. A member of the R.S.S. is allowed a special higher grade, while a member of the R.A.S. continues on his old scale and only gets an extra salary of Rs. 1501- per month. In such a case, no question can arise of holding that a member of the R.S.S. must also be granted a special pay in addition to being placed in the higher grade of pay prescribed for the post of Deputy Secretaries when that post is held by the member of the R.S.S. In this connection, learned counsel for the appellant drew our attention to Rule 7(3 1) of the Rajasthan Civil Service Rules, 1951, framed under Article 309 of the Constitution, defining special pay. The definition given in the Rule is that "Special Pay" means an addition of the nature of pay, to the emoluments of a post or of a government servant, granted in consideration of :-

- (a) the specially arduous nature of the duties,
- (b) a specific addition to the work or responsibility; or
- (c) the unhealthiness of the locality in which the work is performed.

It was urged by learned counsel that, if the post of Deputy Secretary was considered as involving specially arduous nature of duties for members of the R.A.S., there is no reason to hold that that post is not equally arduous for members of the R.S.S. and, consequently, there would be no justification for denying special pay to members of the R.S.S. holding such a post, when special pay is granted to members of the R.A.S. It appears to us that this submission is made on a misconception of the scope of this Rule. The Rule, in defining special pay, envisages an addition of the nature of pay to the emoluments of either a post or of a government servant and, consequently, it is clear that a special pay is to be granted, if a person is appointed to a post which is specially arduous in nature as compared with the earlier post held by him. Similarly, it may be granted to a government servant who is appointed to a post involving specially arduous duties as compared with the posts to be held by him ordinarily, while continuing in the Service in which he holds his permanent appointment. Special pay does not arise out of any inherent quality of being arduous in nature of the post itself. Thus, when special pay is granted to a member of the R.A.S. on appointment as Deputy Secretary, the reason may be that the post is considered more arduous in nature than the post which would be held by him, if he had continued on a regular post borne on the cadre of his Service. In the case of a member of the R.S.S., the post of a Deputy Secretary is already designated as a selection post for hi-in and in view of this difference between the post to which he is appointed, as compared with the post of -an Assistant Secretary earlier held by him, he is granted a

special and higher grade, so that there is no question of his being granted a special pay on the basis that the post of Deputy Secretary is more arduous in nature than the post of Assistant Secretary. The Rules, as framed, are, thus, based on well-recognised principles for granting salary to members of different Services, even when they are appointed to the same post. In these circumstances, no question arises of any discrimination under Art. 14 of the Constitution, or, of any denial of equality of opportunity under Art. 16 of the Constitution. The appeal has no force and is dismissed, but, in the circumstances of this case, we make no order as to costs.

R.K.P.S.

Appeal dismissed.