

A STATE OF MADHYA PRADESH THROUGH PRINCIPAL
SECRETARY & ORS.

v.

SEEMA SHARMA

B (Civil Appeal No. 3892 of 2022)
MAY 12, 2022

[INDIRA BANERJEE AND C. T. RAVIKUMAR, JJ.]

- Service Law – Madhya Pradesh Education Service (Collegiate Branch), Recruitment Rules, 1990 – Madhya Pradesh Public Health (Indian System of Medicine and Homeopathy), Class-III, Clerical and Non-Clerical Services Recruitment Rules, 1987 – Librarian-cum-Museum Assistant – UGC Scale of Pay – Respondent was appointed to the post of Librarian-cum-Museum Assistant in the pay scale of Rs. 950-25-1000-30-1210-40-1530 – After completion of 8 years of service, the respondent claimed the UGC scale of pay as paid to the persons in the senior scale of Librarian as per the 1990 Rules – The request was rejected – Writ petition in the High Court – Single Judge allowed the petition and the respondent was directed to be paid the UGC scale of pay as paid to the librarians of colleges under the Higher Education Department – Intra-Court appeal filed by the appellant was dismissed – On appeal, held: The scale of pay of a Librarian is specified in Schedule I to the said 1990 Rules but there is no designated post of Librarian cum Museum Assistant in the 1990 Rules – There is a post of Museum Assistant-cum-Librarian under the 1987 Rules – In the instant case, it would be pertinent to note that the eligibility criteria for appointment of Museum Assistant-cum- Librarian under the 1987 Rules was different from the eligibility criteria of appointment of Librarian under the 1990 Rules – It is patently clear that the 1990 Rules, were not applicable to the respondent – Hence, the appeal is allowed and the impugned orders of the High Court are set-aside – Madhya Pradesh Ayush Department (Clerical and Non-Clerical), Class-III, Service Recruitment Rules, 2013.*

- Service Law – Fixation of scales of pay – Interference of Courts – Held: The fixation of scales of pay is a matter of policy, with which the Courts can only interfere in exceptional cases where*

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there is discrimination between two sets of employees appointed by the same authority, in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect.

Allowing the appeal, this Court

HELD: 1. It is patently clear that the 1990 Rules, were not applicable to the Respondent. The 1990 Rules have been annexed to the Rejoinder filed by the appellants. The scale of pay of a Librarian is specified in Schedule 1 to the said 1990 Rules. The scale of pay of a Librarian, as specified in Schedule-I is Rs. 2200-75-2800- 100-4000. Significantly, there is no designated post of Librarian cum Museum Assistant in the 1990 Rules. The appointment letter of the respondent clearly shows that she was appointed Librarian cum Museum Assistant at a pay of Rs. 950 in the pay scale of Rs. 950-25-1000-30-1210-40-1530 along with the prevailing dearness allowance from the date of joining. Even after completion of probation, and for a period of more than 8 years, the respondent-writ petitioner did not raise any dispute with regard to her scale of pay. Under the 1990 Rules, the senior scale of Librarian is Rs. 3000-100-3500-125-5000. The respondent-writ petitioner started claiming the aforesaid scale of pay of Rs.3000-100-3500-125-5000/- after completion of 8 years of service. [Paras 9-11][802-F-H; 803-A-B]

2. On the other hand, under the Madhya Pradesh Public Health (Indian System of Medicine and Homeopathy), Class-III, Clerical and Non-Clerical Services Recruitment Rules, 1987, the scale of pay of the Museum Assistant-cum-Librarian, being the post to which the respondent was appointed was Rs. 515-10-575-15-800-20-840. That scale was revised. The Respondent-Writ Petitioner was granted the revised pay scale. Significantly, as observed above, there was no post of Museum Assistant-cum-Librarian under the 1990 Rules, but there was a post of Museum Assistant-cum-Librarian under the 1987 Rules. It appears that the Division Bench as also the Single Bench of the High Court followed the judgment of the High Court in Writ Petition No. 5438/2000 (*State of Madhya Pradesh & Anr. vs. M.K. Verma & four Ors.*) heard with other writ petitions. The judgment in the case of *M.K. Verma* pertained to librarians of Engineering Colleges

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- A and Medical Colleges and is not applicable in the facts and circumstances of the instant case. [Paras 12 & 13][803-C-E]
3. In the instant case, it would be pertinent to note that the eligibility criteria for appointment of Museum Assistant-cum-Librarian under the 1987 Rules was different from the eligibility criteria of appointment of Librarian under the 1990 Rules. Under the 1987 Rules, the minimum qualification for the post of Museum Assistant cum Librarian was graduate but under the 1990 Rules, the minimum qualification was post graduate degree. It is also well settled that there can be no equality to a wrong and/or illegality. Just because a librarian may have been erroneously granted the UGC pay scale, that would not entitle others to claim the UGC pay scale, if not applicable under the Rules. The fixation of scales of pay is a matter of policy, with which the Courts can only interfere in exceptional cases where there is discrimination between two sets of employees appointed by the same authority,
- B in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect. [Paras 19, 20 & 23][805-D-E; 806-A-B]

E *State of Madhya Pradesh & Ors. v. Ramesh Chandra Bajpai reported in (2009) 13 SCC 635 : [2009] 12 SCR 23 – relied on.*

F *State of Uttarakhand v. Sudhir Budakoti & Others (C.A.No.2661 of 2015 decided by the Supreme Court); State of Madhya Pradesh v. Narmada Bachao Anadolan reported in (2011) 7 SCC 639 : [2011] 6 SCR 443 – referred to.*

G *State of Madhya Pradesh & Anr. v. M.K. Verma & four Ors. (W.P.(C)No. 5438 of 2000) – referred to.*

Case Law Reference

G	[2009] 12 SCR 23 [2011] 6 SCR 443	relied on referred to	Para 15 Para 25
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H CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3892 of 2022.

From the Judgment and Order dated 10.08.2016 of the High Court A
of Madhya Pradesh, Bench at Indore in W.A. No. 301 of 2016.

Saurabh Mishra, AAG, Mrinal Gopal Elker, Sunny Choudhary,
Aakash Nandolia, Advs. for the Appellants.

N. K. Mody, Subash Samvatsar, Sr. Advs., Ms. Ashima Gupta,
Prabudha Singh, Pareek, Praveen Swarup, Nitin S. Tambwekar,
Seshatalpa Sai Bandaru, Sumeet Samnatsar, Kaustubh Fadnis, Advs.
for the Respondent.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

Leave granted.

This appeal is against a judgment and order dated 10.08.2016 passed by the Division Bench of the High Court of Madhya Pradesh (Indore Bench) dismissing Writ Appeal No. 301/2016 and upholding the order dated 09.02.2016 passed by the Single Bench allowing Writ Petition No. 14027/2010 filed by the respondent and directing the Appellants to grant the Respondent-Writ Petitioner the benefit of the University Grants Commission scale of pay from the date of her initial appointment.

2. By an order No./EXT/91 Order No.480 dated 27.03.1991, the Respondent was appointed to the post of Librarian-cum-Museum Assistant, Government Dhanvantri Ayurvedic College, Ujjain, in the pay scale of Rs. 950-25-1000-30-1210-40-1530 along with prevailing dearness allowance from the date of joining. The basic pay of the Respondent-Writ Petitioner was fixed at Rs.950/-.

3. The Respondent-Writ Petitioner was appointed on probation for a period of one year. The respondent successfully completed her probation and was duly confirmed in service.

4. After completion of 8 years of service, the Respondent-Writ Petitioner claimed the UGC scale of pay as paid to the persons in the senior scale of Librarian in colleges under the Higher Education Department, as per the Madhya Pradesh Education Service (Collegiate Branch), Recruitment Rules, 1990 (hereinafter referred to as the “1990 Rules”).

5. The request of the Respondent-Writ Petitioners for the higher UGC scale of pay was not acceded to. The Respondent-Writ Petitioner,

- A therefore, filed the Writ Petition referred to above, which has been allowed and the Respondent-Writ Petitioner has been directed to be paid the UGC scale of pay as paid to the Librarians of colleges under the Higher Education Department. An intra court appeal filed by the Appellants has been dismissed.
- B 6. In the High Court as also this Court, the Respondent-Writ Petitioner contended that her service conditions were governed by the 1990 Rules. The Appellants contend that the 1990 Rules were never applicable to the Respondent. The 1990 Rules were applicable to institutions under the Higher Education Department. The Government Dhanvantri Ayurvedic College, where the Respondent-Writ Petitioner was appointed was not under the Higher Education Department, but under the Ayush Department of the Government of Madhya Pradesh.
 - C 7. The Appellants pointed out that at the time of appointment, the Respondent-Writ Petitioner was governed by the Madhya Pradesh Public Health (Indian System of Medicine and Homeopathy), Class-III, Clerical and Non-Clerical Services Recruitment Rules, 1987 and not the 1990 Rules. The Appellants have made a specific averment that the State Government has made the UGC scales applicable to Colleges under the Higher Education Department, which are receiving financial aid from the UGC.
 - E 8. It is the specific contention of the Appellants that the Ayurvedic Colleges under the Ayush Department do not receive any financial aid from the UGC. The Rules applicable to institutions under the Ayush Department do not contain any provision that makes the UGC scale of pay applicable to the employees of institutions under the Ayush Department.
 - F 9. It is patently clear that the 1990 Rules, were not applicable to the Respondent. The 1990 Rules have been annexed to the Rejoinder filed by the appellants. The scale of pay of a Librarian is specified in Schedule 1 to the said 1990 Rules. The scale of pay of a Librarian, as specified in Schedule-I is Rs. 2200-75-2800-100-4000. Significantly, there is no designated post of Librarian cum Museum Assistant in the 1990 Rules.
 - H 10. The appointment letter of the respondent clearly shows that she was appointed Librarian cum Museum Assistant at a pay of Rs. 950 in the pay scale of Rs. 950-25-1000-30-1210-40-1530 along with the

prevailing dearness allowance from the date of joining. Even after A completion of probation, and for a period of more than 8 years, the respondent-writ petitioner did not raise any dispute with regard to her scale of pay.

11. Under the 1990 Rules, the senior scale of Librarian is Rs. B 3000-100-3500-125-5000. The respondent-writ petitioner started claiming the aforesaid scale of pay of Rs.3000-100-3500-125-5000/- after completion of 8 years of service.

12. On the other hand, under the Madhya Pradesh Public Health C (Indian System of Medicine and Homeopathy), Class-III, Clerical and Non-Clerical Services Recruitment Rules, 1987, the scale of pay of the Museum Assistant-cum-Librarian, being the post to which the respondent was appointed was Rs. 515-10-575-15-800-20-840. That scale was revised. The Respondent-Writ Petitioner was granted the revised pay scale. Significantly, as observed above, there was no post of Museum Assistant-cum-Librarian under the 1990 Rules, but there was a post of Museum Assistant-cum-Librarian under the 1987 Rules.

13. It appears that the Division Bench as also the Single Bench of D the High Court followed the judgment of the High Court in Writ Petition No. 5438/2000 (State of Madhya Pradesh & Anr. vs. M.K. Verma & four Ors.) heard with other writ petitions. The judgment in the case of M.K. Verma (*supra*) pertained to librarians of Engineering Colleges and Medical Colleges and is not applicable in the facts and circumstances of the instant case.

14. Significantly, in *M.K. Verma (supra)*, the Court found that E there had been complete parity in the pay scale applicable to the librarians working in Medical/Engineering Colleges till 30.06.1969. Thereafter, the UGC pay scales, accepted by the State Government were made applicable to librarians working in general/higher education colleges.

15. Be that as it may, the issues involved in this appeal are squarely G covered by the judgment dated 28.07.2009 of this Court in Civil Appeal No. 5058/2009 arising out of Special Leave Petition (Civil) No.25682/2008, *State of Madhya Pradesh & Ors. vs. Ramesh Chandra Bajpai* reported in (2009) 13 SCC 635 arising out of Special Leave Petition (Civil) No.25682/2008, where the Respondent, a Physical Training Instructor in Government Ayurvedic College had been claiming the UGC pay scale.

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A 16. This Court took note of the submission of the learned counsel for the State of Madhya Pradesh that the University Grants Commission scales of pay had not been extended to the employees of the Ayurvedic Colleges including the members of Teaching staff, governed by the 1987 Rules.

B 17. The relevant findings of this Court are set out hereinbelow for convenience :-

"9. It is not in dispute that Ayurvedic Colleges situated in the State of Madhya Pradesh are under the control of the Department of Medical Education. It is also not in dispute that at present recruitment to the post of Physical Training Instructor is regarded by the 1987 Rules. In terms of rules 5, 6 and 8 read with the relevant entries of Schedules I, II and III of the 1987 Rules, the post of Physical Training Instructor is categorized as Class II Non-Ministerial under the heading 'Establishment of Divisional Organization' and the same is required to be filled 100 per cent by direct recruitment from amongst the persons possessing the requisite educational qualification of Diploma in Physical Training.

C *The post of Sports Officer finds mention in the four Schedules appended to the 1990 Rules. By virtue of Rule 8 read with the relevant entries of Schedule II and III of the 1990 Rules, the post of Sports Officer is required to be filled as under :-*

90% by direct recruitment and 10% by promotion from amongst the Assistant Sports Officers.

F *10. The educational qualification prescribed for direct recruitment to the post of Sports Officer is a Post Graduate Degree in physical education with at least 55% marks and at the degree level of physical education, the percentage of total marks obtained should not be less than 50.*

G *11. A comparison of the provisions of the 1987 Rules and 1990 Rules clearly establish that they not only deal with different classes of employees but the educational qualifications and scales of pay prescribed for the posts enumerated in Schedules of two sets of Rules are entirely different. While the 1987 Rules regulate recruitment to Class*

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III Ministerial and Non-Ministerial posts in various colleges imparting education in India System of Medicine including Ayurvedic the 1990 rules regulate recruitment to different posts in the Educational Service (Collegiate Branch) including that of Sports Officer.”

18. In *Ramesh Chandra Bajpai (supra)*, this Court further held that it was well-settled that the doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity or quantum of work was not determinative of equality in the matter of pay scales. The Court had to consider all the relevant factors such as the mode of recruitment, qualifications for the post, the nature of work, the value of work, responsibilities involved and various other factors.

19. In the instant case, it would be pertinent to note that the eligibility criteria for appointment of Museum Assistant-cum-Librarian under the 1987 Rules was different from the eligibility criteria of appointment of Librarian under the 1990 Rules. Under the 1987 Rules, the minimum qualification for the post of Museum Assistant cum Librarian was graduate but under the 1990 Rules, the minimum qualification was post graduate degree.

20. It is also well settled that there can be no equality to a wrong and/or illegality. Just because a librarian may have been erroneously granted the UGC pay scale, that would not entitle others to claim the UGC pay scale, if not applicable under the Rules.

21. On behalf of the Respondent-Writ Petitioner, it was forcefully contended that the Respondent-Writ Petitioner had wrongly been granted scale of pay as per the Madhya Pradesh Ayush Department (Clerical and Non-Clerical), Class-III, Service Recruitment Rules, 2013, which came into force in 2013 could have no manner of application to the respondents, who became eligible for the Senior Scale in terms of the 1990 Rules. It was urged that specific Rules for the employees of the Ayush Department were framed only in 2013 and such Rules could not retrospectively be applied. However, from the recital of the Rules it is patently clear that the Rules have been framed superseding the 1987 Rules.

22. This makes it absolutely clear that at all material points of time the employees of the Ayush Department, Government of Madhya Pradesh were governed by a separate set of Rules.

- A 23. The fixation of scales of pay is a matter of policy, with which the Courts can only interfere in exceptional cases where there is discrimination between two sets of employees appointed by the same authority, in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect.
- B 24. Our attention has been drawn by Mr. Saurabh Mishra, learned counsel appearing on behalf of the Appellants to a recent judgment of this Court rendered on 07.04.2022 in Civil Appeal No. 2661/2015 (*State of Uttarakhand vs. Sudhir Budakoti & Others*), where this Court held as under :-
- C *"14. A mere differential treatment on its own cannot be termed as an "anathema to Article 14 of the Constitution". When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one.*
- D *15. Such a discrimination would not be termed as arbitrary as the object of the classification itself is meant for providing the benefits to an identified group of persons who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. Social, revenue and economic considerations are certainly permissible parameters in classifying a particular group. Thus, a valid classification is nothing but a valid discrimination. That being the position, there can never be an injury to the concept of equality enshrined under the Constitution, not being an inflexible doctrine.*
- E *16. A larger latitude in dealing with a challenge to the classification is mandated on the part of the Court when introduced either by the Legislature or the Executive as the case may be. There is no way, courts could act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials.*
- F *17. The question as to whether a classification is reasonable or not is to be answered on the touchstone of a reasonable, common man's approach, keeping in mind the avowed object*
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behind it. If the right to equality is to be termed as genus, a right to non-discrimination becomes a specie. When two identified groups are not equal, certainly they cannot be treated as a homogeneous group. A reasonable classification thus certainly would not injure the equality enshrined under Article 14 when there exists an intelligible differentia between two groups having a rational relation to the object. Therefore, an interference would only be called for on the court being convinced that the classification causes inequality among similarly placed persons. The role of the court being restrictive, generally, the task is best left to the concerned authorities. When a classification is made on the recommendation made by a body of experts constituted for the purpose, courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided.

18. A long as the classification does not smack of inherent arbitrariness and conforms to justice and fair play, there may not be any reason to interfere with it. It is the wisdom of the other wings which is required to be respected except when a classification is bordering on arbitrariness, artificial difference and itself being discriminatory. A decision made sans the aforesaid situation cannot be tested with either a suspicious or a microscopic eye. Good-faith and intention are to be presumed unless the contrary exists. One has to keep in mind that the role of the court is on the illegality involved as against the governance.”

25. This Court cannot interfere with the policy decision taken by the Government merely because it feels that another decision would have been fairer; or wiser as held by this Court in State of Madhya Pradesh vs. Narmada Bachao Anadolan reported in (2011) 7 SCC 639 and relied upon and re-affirmed in *Sudhir Budakoti & Others (supra)*.

26. For the reasons discussed above, the Appeal is allowed. The impugned orders of the High Court of Madhya Pradesh are set-aside.

27. Pending applications, if any, shall stand disposed of.