

Y.K. Mehta And Ors vs Unlon Of India & Anr on 26 August, 1988

Equivalent citations: 1988 AIR 1970, 1988 SCR SUPL. (2) 604, AIR 1988 SUPREME COURT 1970, 1989 SCC 134, (1988) 3 SCJ 427, 1988 SCC (SUPP) 750, (1988) 2 LAB LN 924, (1988) 2 KER LT 57, (1989) 1 SERVLJ 97, (1988) 4 SERVLR 290, (1989) 1 LABLJ 255, 1988 UJ(SC) 2 663, (1988) 3 JT 466 (SC), 1989 SCC (L&S) 133

Author: M.M. Dutt

Bench: M.M. Dutt, E.S. Venkataramiah

PETITIONER:

Y.K. MEHTA AND ORS.

Vs.

RESPONDENT:

UNLON OF INDIA & ANR.

DATE OF JUDGMENT 26/08/1988

BENCH:

DUTT, M.M. (J)

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DUTT, M.M. (J)

VENKATARAMIAH, E.S. (J)

CITATION:

1988 AIR 1970 1988 SCR Supl. (2) 604

1988 SCC Supl. 750 JT 1988 (3) 466

1988 SCALE (2) 444

CITATOR INFO :

RF 1989 SC 19 (27)

ACT:

Central Civil Services (Classification , Control and Appeal) Rules, 1966: Doordarshan-Staff Artists-Whether Government. Servants-Whether entitled to parity in pay with their counterparts in Film Division of Ministry of Information and Broadcasting.

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Constitution of India, Articles 14, 16, 37 & 39(d): Equal pay for equal work-Two posts under two different wings of the same Ministry-Identical and involving performance of same nature of duties-Unreasonable and unjust to discriminate in the matter of pay.

HEADNOTE:

The Government by an order dated March 9, 1979 revised the fee scales of certain categories of Staff Artists in Doordarshan with retrospective effect from January 1, 1973 on the analogy of the recommendations of the Third Pay Commission made in respect of regular Government servants but the categories of the petitioners were denied the benefit by giving them junior scales.

In these writ petitions they assailed the said order as discriminatory and violative of Arts. 14 and 16(1) of the constitution. Their case is that the nature of work performed by them is similar to that performed by their counterparts in the Film Division and the qualifications required for appointment to these categories of Staff Artists are also the same as required in the cases of their counterparts in the Film Division. They, therefore, claimed that they should be declared Government servants and given the same pay scales as given to their respective counterparts in the Film Division of the same Ministry of Information and Broadcasting with effect from the respective dates of their appointments.

The petitioners' claim was contested by the respondents by contending that the Staff Artists of Doordarshan were not Government servants but were engaged on contract basis, that they were not of the same class as the employees of the Film Division and that they were therefore not entitled to the same scales of pay.

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PG NO 605

Allowing the writ petitions,

HELD: 1. The Staff Artists of Doordarshan including the petitioners are Government servants. They possess all the criteria of a Government servant. They are holding civil posts under the Government. They are being appointed up to the age of 55-60 years on a time scale like a regular Government servant. Their contract runs till the age of retirement as in regular government service. [608E, B, 606F]

Union of India v. M.A. Chowdhary, AIR 1987 SC 1526, applied.

2.1 The petitioners perform the same duties as those performed by their counterparts in the Film Division, under the same Ministry of Information and Broadcasting. When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it would be unreasonable and unjust to discriminate between them in the matter of pay. [609D]

2.2 One of the Directive Principles of State Policy as embodied in clause (d) of Art. 39 of the Constitution is equal pay for equal work for both men and women. The Directive Principles contained in Part-IV of the Constitution though not enforceable by any court, are

intended to be implemented by the State of its own accord so as to promote the welfare of the people. Article 37 provides, inter alia, that it shall be the duty of the State to apply these principles in making law. [609E-F]

2.3 The principle of "equal pay for equal work", if not given effect to in the case of one set of Government servants holding same or similar posts, possessing same qualifications and doing the same kind of work as another set of Government servants it would be discriminatory and violative of Arts. 14 and 16 of the Constitution.[609G]

Such discrimination has been made in respect of the petitioners. They are, therefore, entitled to same scales of pay as their counterparts in the Film Division.[609H-610A]

[The petitioners to be given the new scales of pay with effect from the first day of the month of the year in which each writ petition was filed, except the petitioners in writ Petition Civil No. 1756 of 1986 who are to be given such scales of pay With effect from December 1,1983. They would also be entitled to the substituted scales of pay and consequential benefits. The respondents to disburse to the petitioners the arrear amounts being the difference in the pay-scales within four months.][610B-C,E-F]

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JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 1239 of 1979, 974 of 1978 & 1756 of 86.

(Under Article 32 of the Constitution of India.) P.Rama Reddy, R.K. Jain and R.P. Gupta for the Petitioners in W.P. No. 1239 of 1979 and W.P. No. 1756 of 1986.

M.K. Ramamurthy, J. Ramamurthy and B. Parthasarathy for the Petitioner in W.P. No. 974 of 1978.

G. Ramaswamy Additional Solicitor General, A.K. Ganguli, Miss A. Subhashini and K. Swamy for the Respondents in W.P. No.1239 of 1979.

Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by DUTT, J. In these writ petitions, three categories of Staff Artists of Doordarshan under the Ministry of Information and Broadcasting, namely, Cameraman Grade-II, Sound Recordist and Lighting Assistant/Lightman, have claimed that they should be declared as Government servants and should be given the same pay-scales as given to their respective counterparts in the Film Division under the same Ministry.

The Staff Artists were originally appointed on renewable contracts for 3-4 years' duration, but that practice has since undergone a change and they are now appointed up to the age of 55-60 years on a

time-scale. They are, however, employed on contract basis till the age of 55-60 years, that is, the contract runs till the age of retirement as in regular Government service.

In 1973, the Third Central Pay Commission considered the pay-scales of the employees in the Film Division including those of the Staff Artists. The Commission, however, excluded the cases of Staff Artists from its consideration on the ground that they were not Government servants but contract employees. It may be stated at this stage that the emoluments that are paid to the Staff Artists are termed as 'fees' and the scales of pay are termed as 'Fee Scales', the reason being that they are contract employees and not Government servants.

PG NO 607 By an order dated March 9, 1977, the Government revised the Fee Scales of the Staff Artists in Doordarshan on the analogy of the recommendations of the Third Central Pay Commission made in respect of regular Government servants. The revised Fee Scales came into force with effect from January 1, 1973. It appears that up to the post of Cameraman Grade-II in Doordarshan, the same scales of pay of equivalent posts in the Film Division as per the recommendation of the Third Pay Commission were given, but from the stage of Cameraman Grade-II or Sound Recordist up to the post of Lighting Assistant/Lightman, the same pay- scales of equivalent posts in the Film Division were not given. The pay-scale of Cameraman under the Film Division is Rs.650-960, while the pay-scale of the equivalent post of Cameraman Grade-II in Doordarshan was fixed at Rs.550-900. Similarly, the pay-scale of Sound Recordist in Doordarshan was fixed at Rs.425-750 instead of Rs.550-900 as fixed in the case of the Sound Recordist in the Film Division. The pay-scale of Lighting Assistant/Lightman was fixed at Rs.330-480, while the pay-scale of equivalent post in the Film Division, namely, Assistant Cameraman, was fixed at Rs.425-750.

It is the case of the petitioners that the nature of work performed by them is similar to that performed by their counterparts in the Film Division. The qualifications required for appointment to these categories of Staff Artists, are the same as required in the cases of their counterparts in the Film Division. In the circumstances, it is submitted by the petitioners that the said Government order dated March 9, 1977 is discriminatory and violative of Articles 14 and 16(1) of the Constitution. Accordingly, in these writ petition it has been prayed that the petitioners should be declared as Government servants and paid the same scales of pay as paid to their counterparts in the Film Division with effect from the respective dates of their appointments.

The respondents have opposed the writ petitions by filling counter-affidavits. It has been averred in the counter-affidavits that the Staff Artists of Doordarshan are not Government servants, but they are engaged on contract basis. It is submitted that as they are not of the same class as of the employees in the Film Division, they are not entitled to the same scales of pay. With regard to the Sound Recordists, petitioners in Writ Petition (C) No. 974 of 1978, it is the case of the respondents that there is no such post in the Film Division as "Sound Recordist". It is averred that in the Film Division, there are three posts, namely, the Chief Sound Recordist, the Recordist and the Assistant Recordist. It is, accordingly, contended that in Doordarshan, the organisational structure is entirely different and consists of only one category of post, that is, the Sound Recordist.

PG NO 608 The first question as to whether the Staff Artists of Doordarshan are Government servants or not, need not detain us long. It was already been noticed that although initially their appointments were made on contract basis, subsequently the Staff Artists were being appointed up to the age of 55- 60 years on a time scale like a regular Government servant. Indeed, they possess all the criteria of a Government servant. The question once came up before us in Union of India v. M.A. Chowdhary, AIR 1987 SC 1526, which was disposed of by the following order:-

"Shri A.K. Ganguli, learned counsel for the Union of India submits that Art. 311 of the Constitution is applicable to the Staff Artists of the All India Radio. We are of the view that the statement made on behalf of the Government represents the true legal position because the Staff Artists are holding civil posts under the Government. In view of the above statement, this appeal filed against the judgment of the High Court of Allahabad in Special Appeal No. 258 of 1974 which has also taken the view that Art. 311 is applicable to those Staff Artists has to be dismissed. This appeal is accordingly dismissed. No costs."

It will appear from the order extracted above that we took the view that the Staff Artists of All India Radio were holding civil posts under the Government. There is no distinction between the Staff Artists of All India Radio and those in the Doordarshan. Accordingly, we hold that having regard to the service conditions of the Staff Artists of Doordarshan and in view of the said decision, the Staff Artists of Doordarshan including the petitioners are Government servants.

The contention of the respondents that the category of Staff Artists designated as 'Sound Recordist' has no counterpart in the Film Division is without any substance. It may be that in the Film Division, the designation is 'Recordist' and not 'Sound Recordist' but, in our opinion, it is quite immaterial. It is not the case of the respondents that the nature of duty of the Recordist in the Film Division is something else than that of the Sound Recordist in Doordarshan. Indeed, it is the case of the petitioners in Writ Petition (C) No. 974 of 1978, who are all Sound Recordists of Doordarshan, that they perform the same duties as performed by their counterparts in the Film Division, that is, the 'Recordists' or 'Sound Recordists' as PG NO 609 the case may be. At this stage, it is significant to notice that the last sentence of paragraph 6 of the Reply Affidavit of the respondents to the Rejoinder of the petitioners in Writ Petition (C) No. 974 of 1978, affirmed by Shri Sailendra Shankar, the Director General of Doordarshan, reads as follows:

"I reiterate that the petitioners cannot be compared with the Sound Recordist of the Film Division, who are regular civil servants."

The above statement is an admission of the fact that there is the post of 'Sound Recordist' in the Film Division. It may be that really the designation in the Film Division is 'Recordist', but the use of the designation as 'Sound Recordist' in the statement extracted above suggests that the 'Recordists' in the Film Division and the 'Sound Recordists' in Doordarshan are counterparts of each other. The contention of the respondents is, accordingly, rejected. We have gone through the averments in the writ petitions and those made in the counter-affidavits filed by the Director General of Doordarshan and we have no hesitation in holding that the petitioners perform the same duties as those

performed by their counterparts in the Film Division. When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two, in the matter of pay. One of the directive principles of State Policy, as embodied in clause (d) of Article 39 of the Constitution, is equal pay for equal work for both men and women. The provision of Article 39(d) has been relied upon by the petitioners. The Directive Principles contained in Part-IV of the Constitution, though not enforceable by any court, are intended to be implemented by the State of its own accord so as to promote the welfare of the people. Indeed, Article 37 provides, inter alia, that it shall be the duty of the State to apply these principles in making laws. Even leaving out of our consideration Article 39(d), the principle of "equal pay for equal work", if not given effect to in the case of one set of Government servants holding same or similar posts, possessing same qualifications and doing the same kind of work, as another set of Government servants, it would be discriminatory and violative of Articles 14 and 16 of the Constitution. Such discrimination has been made in respect of the petitioners, who are the Staff Artists of Doordarshan, by not giving them the same scales of pay as provided to their counterparts in PG NO 610 the Film Division under the same Ministry of Information and Broadcasting. The petitioners are, therefore, entitled to the same scales of pay as their counterparts in the Film Division.

But the question is as to from which date they will be entitled to the scales of pay as prescribed for their counterparts in the Film Division. The petitioners have claimed that such scales of pay should be admitted to them with effect from their respective dates of appointments. After having given a careful thought to this aspect, we are of the view that ends of justice will be met sufficiently, if such scales of pay are given to the petitioners with effect from the first day of the month of the year in which each writ petition was filed in this Court except that in the case of Writ Petition (C) No. 1756 of 1986 such scales of pay shall be given to the petitioners with effect from December 1, 1983.

In the circumstances, all these writ petitions are allowed. The Sound Recordists, who are the petitioners in Writ Petition (C) No. 974 of 1978, shall be given the pay- scale of the Recordist/Sound Recordist in the Film Division i.e., Rs.550-900 with effect from January 1, 1978. The Cameramen Grade-II, who are the petitioners in Writ Petition (C) No. 1239 of 1979, shall be given the pay-scale of the Cameraman of the Film Division i.e., Rs.650-960 with effect from August 1, 1979. The Lighting Assistants/Lightmen, who are the petitioners in Writ Petition (C) No. 1756 of 1986, shall be given the scale of Pay of Assistant Cameraman in the Film Division i.e., Rs.425-700 with effect from December 1, 1983. The petitioners in all these writ petitions will also be entitled to the substituted scales of pay and consequential benefits. The respondents are directed to disburse to the petitioners the arrear amounts being the difference in the pay-scales within four months from today. There will, however, be no order as to costs.

P.S.S.

Petitions allowed.