State Of Madhya Pradesh And Another vs Pramod Bhartiya And Others on 8 October, 1992

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Bench: Kuldip Singh, N.M. Kasliwal, B.P. Jeevan Reddy

ORDER

B.P. Jeevan Reddy, J.

1. Equal pay for equal work, it is self evident, is implicit in the doctrine of equality enshrined in Article 14, it flows from it. Because Clause (d) of Article 39 spoke of "equal pay for equal work for both men and women" it did not cease to be a part of Article 14. To say that the said rule having been stated as a directive principle of State policy is not enforceable in a Court of Law is to indulge in sophistry. Parts IV and HI of the Constitution are not supposed to be exclusionary of each other. They are complementary to each other. The rule is as much a part of Article 14 as it is of Clause (1) of Article 16. Equality of opportunity guaranteed by Article 16(1) necessarily means and involves equal pay for equal work. It means equally that it is neither a mechanical rule nor does it mean geometrical equality. The concept of reasonable classification and all other Rules evolved with respect to Articles 14 and 16(1) come into play wherever, complaint of infraction of this Rule falls for consideration. This is the principle affirmed in Randhir Singh v. Union of India and Ors. as well as in the subsequent decisions of this Court. It would be instructive to notice a few of them.

2. In Randhir Singh, Chinnappa Reddy, J. Speaking for the Bench of three learned Judges said:

> We concede that equation of posts and equation of pay are matters primarily for the

> Executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that, where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the power, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same... Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to case of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

3. The above principle was followed and applied in P.K. Ramachandra Iyer, , Savita [1985] Suppl. S.C.C. 94, Dhirendra Chamoli , Surinder Singh , Jaipal [1988] 3 S.C.C. 3S4 and in Federation of All India Customs and Excise Stenographers v. Union of India . While it is not necessary to refer to all the decisions, a brief reference to the decisions last-mentioned may be in order. Section Mukherji, J. speaking for himself and R.S. Pathak, C.J. had this to say about the content of the rule:

> In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. The same amount of physical work may differentially quality of work, some more sensitive, some requiring more fact, 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 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 mala fide either in law or in fact. In the light of the averments made in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved.

4. The very same principle was reiterated by K. Jaganatha Shetty. J. in State of U.P. and Ors. v. J.P. Chaurasia and Ors. :

> In the matter of employment the government of socialist State must protect the weaker sections. It must be ensured that there is no exploitation of poor and ignorant. It is the duty of the State to see that the underprivileged or weaker sections get their due. Even if they have voluntarily accepted the employment of unequal terms, the State should not deny their basic rights of equal treatment. It is against this background that the principle of "equal pay for equal work" has to be construed in the first place. Second, this principle has no mechanical application in every case of similar work. It has to be read into Article 14 of the Constitution. Article 14 permits

> reasonable classification founded on different bases. It is now well established that the classification can be based on some qualities or characteristics of person grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of newcomers.

5. We must, however, refer to the decision of a Division Bench of this Court comprising M.M. Dutt and T.K. Thommen, JJ. In Supreme Court Employees Welfare Association v. Union of India which, on first impression appears to strike a different note, though on deeper scrutiny it does not. In paragraph 38 of the judgment, MM. Dutt. J. says this after a review of the earlier decisions of this Court dealing with 'equal pay for equal work'.

It follows from the above decisions that although the doctrine of 'equal pay for equal work' does not come within Art 14 of the Constitution as an abstract doctrine, but if any classification is made relating to the pay scales and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of 'equal pay for equal work', as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of 'equal pay for equal work' will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of 'equal pay for equal work', as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. Dhirendra Chamoli v. Stale of U.P. is a case of 'equal pay for equal work' as envisaged by Article 14, and not of the abstract doctrine of 'equal pay for equal work'.

6. Though the paragraph open with the words "the doctrine of equal pay for equal work does not come within Article 14 of the Constitution as an abstract doctrine" the entire paragraph, if read as a whole, clearly brings out the fact that the rule is nothing but a facet of Article 14. Indeed, it may not be possible to say, logically or otherwise, that Article 14 does not imply equal pay for equal work. In this view of the matter, we must say that the distinction sought to be drawn in this decision between "equal pay for equal work as envisaged by Article 14" and "the abstract doctrine of equal pay for equal work" is somewhat nebulous and in our respectful opinion appears to be mere semantics.

7. Let us now examine the facts of this case in the light of the principles flowing from the aforesaid decisions.

8. The Respondents are lecturers working in Higher Secondary Schools in the State of Madhya Pradesh. Conditions of their service are governed by Madhya Pradesh Non-gazetted Class-Ill Educational Service (Non-Collegiate Branch Service) Recruitment and Promotion Rules, 1973

(hereinafter referred to as "1973 Rules"). In the State of Madhya Pradesh there is another set of schools called 'Technical Schools'. The conditions of service of the lecturers working in these schools are governed by M.P. Education Department (Technical) Class-in (Non-Ministerial) Recruitment Rules, 1980. In Technical schools, lecturers are categorised as technical lecturers and non-technical lecturers. Technical schools too are Higher Secondary Schools.

9. The Respondents say that in the year 1981, the scale of pay admissible to non-technical lecturers in technical schools and lecturers in Government Higher Secondary Schools was identical viz., Rs. 925-1500. Subsequently, it is complained, a distinction came to be made between them to the prejudice of the lecturers in Higher Secondary Schools. They say that qualifications prescribed for both the posts are identical and so are conditions of service though both them are governed by different sets of Rules. Indeed, their case is that they teach more number of hours every week than the non-technical lecturers in technical schools. They say that, as a result of the judgment of the Madhya Pradesh High Court, the non-technical lecturers in technical schools have been given the same pay scale as is admissible to the technical lecturers in those schools, with the result that they (non-technical lecturers in technical schools) are now placed in the pay scale of Rs. 2,000-3500 with effect from 1.1.1986, whereas the Lecturers in Higher Secondary Schools continue in the Scale of Rs. 1640-2900. Since the qualifications, service conditions and status of the non-technical lecturers in technical schools and the lecturers in Government High Secondary Schools are the same, say the petitioners, they too are entitled to the scale of Rs. 2,000-3500 with effect from 1.1.1986. The reliefs sought by the respondents are:

> (1). The Hon'ble Tribunal may kindly be pleased to direct the Respondents to produce all service details, Service conditions and other data in respect of non-technical lecturers of Technical Schools and the applicants for comparing the service conditions.
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> (2). Issue a Writ of mandamus directing the Respondents to remove the disparity in the pay scales of non technical lecturers of Technical Schools and the lecturers of Higher Secondary Schools i.e., the applicants and being them on par w.e.f. 1.4.1981. The date of implementation of Choudhary Pay Commission Report and consequent revision of pay from time to time.
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> (3) That this Hon'ble Tribunal, after removing disparity in the pay scales as prayed above, direct re-fixation of the pay of the applicants in the matter aforesaid & pay them, consequently,.all the arrears of salary and other benefits, attached to the pay scales.

10. The State opposed the Respondents' claim before the Administrative Tribunal. According to the counter-affidavit (filed in O.A. 853 of 1989 and adopted in this matter) following is their case: The Government of Madhya Pradesh had appointed a Pay Commission under the Chairmanship of Sri M.S. Choudhary for examining the various aspects of the pay, structure of pay scales, service facilities etc., The Commission submitted its report in the year 1981. Government accepted its recommendations. The distinction between the lecturers in Government Higher Secondary Schools

and the non-technical lecturers in the Government Technical Schools is based upon the report of the Pay Commission which merely continues a pre-existing distinction. While considering the scales of pay of lecturers in Higher Secondary Schools, one has to keep in mind the pay scales of teachers working in Higher Secondary Schools. The gap between the pay scales of lecturers and teachers should not be widened. The Choudhary Commission had maintained a distinction between the pay scales of technical lecturers and non-technical lecturers working in technical schools and had kept the non-technical lecturers in technical schools on par with the lecturers in Government Higher Secondary Schools but as a result of the decision of the High Court of Madhya Pradesh in M.P. No. 2277 of 1985 disposed of on 29.7.1988 the non-technical lecturers in the technical schools had to be placed in the same scale of pay as the technical lecturers. From the said fact it does not follow that the lecturers in Higher Secondary Schools should also be placed in the same pay scale. Merely because the educational qualifications for both the posts are same it does not follow that they should carry equal pay. "There are number of posts in different departments carrying different pay scales where educational qualification of post-graduates is prescribed. Not only their duties and factions are deferent but there is a difference also in degree". Though the qualifications for both the posts are the same, the service conditions and their mode of recruitment is different.

11. The learned Counsel for the respondent Sri K. Madhava Reddy placed strong reliance upon certain statements made by the Government of Madhya Pradesh in their counter-affidavit filed in the aforementioned M.P. 2277/85. The statements relied upon are to the following effect:

> The status of the schools (technical schools) is equal to that of the Higher Secondary Schools.... There is no difference in the prescribed qualifications of non-technical lecturers of Higher Secondary Schools under the control of Directorate of Technical Educational and that of lecturers of Higher Secondary Schools which are under the control of Directorate of Public instruction.... It is a fact that the service conditions of the lecturers (non-technical) in the Government Higher Secondary Schools and those of lecturers of the other Government Higher Secondary Schools are practically the same.

12. The material above mentioned goes to show that (a) the qualifications prescribed for the lecturers in the Higher Secondary Schools and the non-technical lecturers in Technical Schools are the same; (b) service conditions of both the categories of lecturers are same and (c) that the status of the schools is also the same. There is, however, a conspicuous absence of any clear allegation and/or material suggesting that functions and responsibilities of both the categories of lecturers is similar. Much less is there any allegation or proof that qualitatively speaking, they perform similar factions. It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities. On this score there is a noticeable absence of material. Whether we look at the averments in, and the material produced along with, the Original Petition or to the averments in the counter-affidavit or even to the averments in the counter-affidavit filed by the Government in M.P. 2277/85 (upon which the counsel for the respondents has placed strong reliance), we do not find any clear material to show that the duties, functions and responsibilities of both the categories of lecturers are identical

or similar. In this context, it would be appropriate to refer to the definition of the expressions "same work or work of similar nature" contained in Clause (h) of Section 2 of the Equal Remuneration Act, 1976. The said Act was enacted by Parliament (as pointed out by this Court in Mackinnon Mackenzie v. Andrey D'Costa to implement Article 39(d) of the Constitution and the obligation created by "The Convention Concerning Equal Remuneration for Men and Women Workers' for work of equal value (generally referred to as 'Equal Remuneration Convention, 1951') adopted on June 29, 1951, to which India is a signatory. Article 2 of the Convention obliged the signatory States to effectuate the said rule by all means including the machinery of law. The said Act is applicable to such establishments and employments as may be notified by the Central Government under Section 1(3) of the Act. Though the said Act is mainly directed against discrimination against women and is also not applicable to the employments or establishments to which the Respondents herein belong, yet the relevance of the said definition cannot be denied, occurs as it does in an enactment made to give statutory shape to the rule of "equal pay for equal work both for men and women". The definition in Section 2(h) reads:

> 2(h). 'same work or work of a similar nature' means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the difference, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

13. It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukherji, J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may very from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (Original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact (see the approach adopted in Federation case). It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the Original Petitioners (Respondents herein) have failed to discharge.

14. For the above reasons, the appeal is allowed and the order of the Administrative Tribunal is set aside. No order as to costs.