M.P. Rural Agriculture Extension ... vs State Of M.P. And Anr on 5 April, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2020, 2004 (4) SCC 646, 2004 AIR SCW 2180, 2004 LAB. I. C. 1727, (2004) 2 LAB LN 729, (2004) 4 SCALE 260, (2005) 1 SERVLJ 12, (2005) 1 JAB LJ 36, (2004) 3 MAD LJ 139, 2004 SCC (L&S) 667, (2004) 3 JCR 16 (SC), (2004) 17 INDLD 372, (2004) 2 CURLR 538, (2004) 101 FACLR 691, (2004) 2 KER LT 265, (2004) 2 SCT 431, 2004 UJ(SC) 2 1283, (2004) 19 ALLINDCAS 836 (SC), (2004) 5 ALL WC 4232, (2004) 105 FJR 549, (2004) 2 LABLJ 1114, (2004) 3 SUPREME 110, (2004) 4 JT 446 (SC)

Author: S.B. Sinha

Bench: Chief Justice, S.B. Sinha, S.H. Kapadia

CASE NO.:
Appeal (civil) 3134 of 1999

PETITIONER:
M.P. Rural Agriculture Extension Officers Association

RESPONDENT:
State of M.P. and Anr.

DATE OF JUDGMENT: 05/04/2004

BENCH:
CJI, S.B. Sinha & S.H. Kapadia.

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

Applicability of doctrine of 'equal pay for equal work' is involved in this appeal which arises out of a judgment and order dated 13.4.1998 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No.1550 of 1998.

BACKGROUND FACTS:

The appellant herein is an Association of Rural Agriculture Extension Officers (hereinafter referred to as 'the Extension Officers'). They were originally appointed as Village Level Workers. They are matriculates. The services of the Village Level Workers were transferred to the agriculture department of the State. It framed rules

in the year 1972. On or about 9.4.1981, the designation of the Village Level Workers was changed to the Rural Agriculture Extension Officer by the State Government. The State of Madhya Pradesh in exercise of the power conferred upon it under the Proviso appended to Article 309 of the Constitution of India made rules known as 'Madhya Pradesh Revision of Pay Rules, 1983'. Rule 3 of the said Rules reads as under :

"3. Revised Scale of Pay.- The revised scale of pay applicable to any post carrying existing scale shown in columns

2 and 3 of Annexures I and II respectively shall be the corresponding pay-scale shown in column 4 thereof respect of that post."

By reason of the provisions of the said Rules, two different scales of pay were prescribed, namely, Rs.575- 880/- for non-graduates (Dying scale) and Rs.635-950/- for fresh recruitment and for existing B.Sc./B.Sc. Agriculture. By reason of an executive instruction dated 2/5.3.1984, the decision of the State Government was communicated to the Director, Agriculture, the relevant portion whereof is to the following effect:

"Essential educational qualification for the post of Rural Agricultural Extension Officer being graduation (for all departments) be fixed and all the graduates so employed be paid by the pay-scale of Rs.635-950/-. All those graduate employees who were working to the posts in all departments prior to 1.4.81 should be paid given a salary at the rate of Rs.635-950/-.

2. * * * * * * *

3. * * * * * * * This sanction endorsement vide notification No.5/385/84/Dept.1/Four dated 3.3.84 had been endorsed in the records of the Accountant General's Office."

Yet again by an amendment to the rule by a notification dated 5.9.1984 in sub-clause (2) in Part B of the said Rules the words "for new recruitments and for the qualification B.Sc./B.Sc. (Agri.) pass" were replaced by the words "for new recruitments and for graduates holding the degree". The appellant herein filed a writ petition before the High Court of Madhya Pradesh at Jabalpur praying, inter alia, for the following reliefs :

"b) That the pay scale of Rural Agriculture Extension Officers be given in accordance with the ratio given in AIR 1984 Supreme Court 1221 and it should be enhanced with the cadres stated in the above paras by giving them maximum pay scale, as has been given to any one of those cadres."

On constitution of the Madhya Pradesh State Administrative Tribunal in the year 1988, however, the said writ petition was transferred thereto. The Tribunal gave several opportunities to the respondents herein to file a return but despite its failure to do so and despite holding that a clear case of hostile discrimination has been made out in view of the decision of this Court in Union of

India and Another vs. P.V. Hariharan and Another [(1997) 3 SCC 568] = [JT 1997 SC 569] held that the grievances of the applicant regarding pay scale had to be dealt with by the Pay Commission. A writ petition filed thereagainst before the Division Bench of the Madhya Pradesh High Court by the appellant was also dismissed in view of the judgment of this Court in Hariharan (supra) observing :

> "...Moreso, there can always be a classification on the basis of graduation and non-graduation in the pay scale. Thus, we are satisfied that there is no ground to interfere with the order. Hence, this petition is dismissed."

SUBMISSIONS :

Dr. Rajeev Dhavan, learned Senior Counsel appearing on behalf of the appellant, would submit that the Tribunal as also the High Court went wrong in passing the impugned judgments and orders insofar as they failed to take into consideration that as by reason of the impugned rule no new post or cadre was created, sanction of different pay scale to the employees belonging to the same cadre was impermissible. The purported classification between the two sets of employees whose posts are interchangeable and who are carrying out the same work and have undergone the same training could not have been placed in two different classes only on the basis of educational qualification, the learned Counsel submitted. Dr. Dhavan would contend that as despite having been given several opportunities, the respondents herein failed to file return, they must be deemed to have admitted the contentions raised by the appellant herein before the Tribunal as correct and, thus, the Tribunal misdirected itself in refusing to grant any relief to the appellant despite arriving at a finding that the State has committed a hostile discrimination against the appellant. Educational qualification, Dr. Dhavan would urge, can be a valid criteria only where new cadre is created and where no minimum qualification was fixed at the time of initial appointment, but in a situation where the employees irrespective of their qualification had been performing the same functions in the same grade, the doctrine of equal pay for equal work would be applicable.

Drawing our attention to the report of the Pay Revision Commissions made on or about 13.10.1982 as also in the year 1999, the learned counsel would submit that the State should have accepted the recommendations contained therein for grant of scale of pay to all Extension Officers irrespective of their educational qualification. The learned counsel in support of his aforementioned contention has placed strong reliance on State of Mysore vs. B. Basavalingappa [(1986) Supp. SCC 661], State of Madhya Pradesh and Another vs. Pramod Bhartiya and Others [(1993) 1 SCC 539] and Shyam Babu Verma and Others vs. Union of India and Others [(1994) 2 SCC 521].

The learned counsel would contend that the doctrine of classification should not be stretched too far and the same cannot be a basis for justifying an arbitrary action on the part of the State. In support of the said contention, reliance has been placed on

Col. A.S. Iyer and Other vs. V. Balasubramanyam and Others [(1980) 1 SCC 634].

Ms. Geetanjali Mohar, learned counsel appearing on behalf of the State of Chhattisgarh, on the other hand, would urge that the possession of a higher educational qualification has all along been held by this Court to be a valid classification for the purpose of fixing the scale of pay. Although the concerned employees had been performing similar duties and functions, the same would not mean, it was urged, that the employees cannot be granted different scale of pay on the basis of their educational qualification. Article 14 of the Constitution of India. Ms. Mohan would argue, will have application only when a discrimination is made between the persons who are absolutely similarly situated and not otherwise. Strong reliance in this behalf has been placed on The State of Mysore and Another vs. P. Narasinga Rao [AIR 1968 SC 349] = [1968 (1) SCR 467], Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Others [(1989) 2 SCC 235], V. Markendeya and Others vs. State of Andhra Pradesh and Others [(1989) 3 SCC 191] and a recent decision of this Court in Government of West Bengal vs. Tarun K. Roy and Others [JT 2003 (9) SC 130].

ANALYSIS:

Applicability of doctrine of equal pay for equal work on the touchstone of Article 39(d) read with Article 14 of the Constitution of India will have to be considered for the purpose of the present case on the premise that save and except disparity in educational qualification, the nature of work performed by Extension Officers is identical and they had undergone a similar training. It is trite that the Pay Commission on or about 13.10.1982 and in the year 1999 desired and recommended that the same scale of pay be given to the Extension Officers irrespective of their educational qualification, but it is not in dispute that the recommendations of the Pay Commission were not accepted by the State. The relevant portion of the recommendations of the Pay Commission and the Order of the State Government thereupon respectively are as under :

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No. Report of Pay Commission Chapter/Para Recommendations of Pay Commission Order of the State Government

5.

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Twelve    17
& 18

(One) The present pay
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scale of Gram Sewak Rs.169-300 the said pay scale was recommended to be revised at S. No. five and this suggestion was proposed that all the Gram Sewak who passed the 6th months training course should be upgraded to pay scale of Rs.195-330 as being revised grade.
According to the amendment in the recruitment rules of this department the minimum qualification being graduation with Science or Agriculture and in future the Gram Sewak be placed on pay scale Rs.635-950. This pay scale will be given to Gram Sewaks who were only Agriculture graduate or Science graduate but other gram sewaks will be given the revised pay scale Rs. 575-880 as accepted pay scale.

We have noticed hereinbefore that the State issued an executive instruction directing that not only the fresh recruits shall be entitled to the pay scale of Rs.635-950/-, but also the graduate officers working even prior to 1.4.1981 would be eligible therefor. We have furthermore noticed that by reason of an amendment in the rules made in terms of notification dated 5.9.1984, the employees holding a degree as also the new recruits were to be placed in the said scale of pay.

ISSUE :

The primal question which arises for consideration is whether the aforementioned order of the State Government is discriminatory in nature.

FINDINGS :

The Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-`-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate rules. The State in terms of the said provision is also entitled to give a retrospective effect thereto. A policy decision had been adopted by the State that the post of Extension Officers shall be filled up only by graduates. Such a policy decision ex facie cannot be termed to be arbitrary or irrational attracting the wrath of Article 14 of the Constitution of India. A dying scale was provided by the State for the non-graduates. Fresh recruitments were to be made only from amongst the persons who held the requisite educational qualification. With a view to avoid any discrimination between the new recruits and the serving employees who possessed the same qualification, the State cannot be said to have acted illegally in granting a higher scale of pay also for the existing degree holders.

Article 14, it is trite, does not forbid a reasonable classification.

Article 14 forbids class legislation but permits reasonable classification subject to the conditions that it is based on an intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved. [See Saurabh Chaudri and Ors. Vs. Union of India and Ors. [2003 (9) SCALE 272] Constitutional interpretation is a difficult task. Its concept varies from statute to statute, fact to fact, situation to situation and subject matter to subject matter. A classification based on educational qualification has been applied by a Constitution Bench of this Court as far back as in 1968 in P. Narasinga Rao (supra), wherein it was observed:

"It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied.

The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the

statute or the rule. As we have already stated.

Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Art. 16 is only an instance of the application of the general rule of equality laid down in Art. 14 and it should be construed as such. Hence there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16 (1) does not bar a reasonable classification of employees or reasonable tests for their selection."

The said dicta was applied by this Court in Mewa Ram Kanojia (supra), stating :

> "5. While considering the question of application of principle of 'Equal pay for equal work' it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality."

The principle was reiterated in V. Markendeya (supra), observing :

> "13. In view of the above discussion we are of the opinion that where two classes of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualification, they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the court will strike down the discrimination and grant relief to the aggrieved employees. But before such relief is granted the court must consider and analyse the rationale behind the State action in prescribing two different scale of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the court finds that the classification made by the State in giving different treatment to the two classes of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal pay for equal work is applicable among equals, it cannot be applied to unequals. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the court that invidious discrimination is practised by the State in prescribing two different scales for the two classes of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by court in abstract. The question what scale should be provided to a particular class of service must be left to the executive and only when discrimination

> is practised amongst the equals, the court should intervene to undo the wrong, and to ensure equality among the similarly placed employees. The court however cannot prescribe equal scales of pay for different class of employees."

A Bench of three Judges in which two of us were parties reiterated the same principle in Tarun K. Roy and Ors. (supra).

The aforementioned decisions are authorities for the proposition that despite the fact that the employees have been performing similar duties and functions and their posts are interchangeable, a valid classification can be made on the basis of their educational qualification. The observation of Krishna Iyer, J. in V. Balasubramanyam (supra) although is interesting but it appears that the fact of the matter involved therein did not warrant application of the said principle.

The view of Subba Rao, J. in Lachhman Dass vs. State of Punjab and Others [AIR 1963 SC 222] was a minority view. Venkatarama Aiyar, J. therein speaking for the majority held :

> "...The law is now well settled that while Art. 14 prohibits discriminatory legislation directed against one individual or class of individuals, it does not forbid reasonable classification, and that for this purpose even one person or group of persons can be a class. Professor Willis says in his Constitutional Law p.580 "a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it". This statement of the law was approved by this Court in Chiranjit Lal Chowdhury vs. Union of India, 1950 SCR 869 : (AIR 1951 SC 41). There the question was whether a law providing for the management and control by the Government, of a named company, the Sholapur Spinning & Weaving Company Ltd. was bad as offending Art. 14. It was held that even a single Company might, having regard to its features, be a category in itself and that unless it was shown that there were other Companies similarly circumstanced, the legislation must be presumed to be constitutional and the attack under Art. 14 must fail. In Ram Krishna Dalmia v. S.R. Tendolkar, 1959 SCR 279 at p. 297 :
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> (AIR 1958 SC 538 at p. 547) this Court again examined in great detail the scope of Art. 14, and in enunciating the principles applicable in deciding whether a law is in contravention of that Article observed :
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> "that a law may be constitutional even though it relates to a single individual if on account of some special circumstances pr reasons applicable to him and not applicable to others that single individual may be treated as a class by himself."

Furthermore, as noticed hereinbefore, a valid classification based on educational qualification for the purpose of grant of pay has been upheld by the Constitution Bench of this Court in P. Narasinga Rao (supra).

In B. Basavalingappa (supra), a two-Judge Bench of this Court did not notice the earlier binding precedents of this Court. In fact one of them, K.N. Singh, J., as the learned Chief Justice then was, was a party to the subsequent decision in Mewa Ram Kanojia (supra). In that case no material was brought on records on the basis of which it could be contended that there was any substantial difference at that time between the two classifications although they were described differently. It was in that situation observed :

> "...It was argued that a diploma is a higher qualification than a certificate. But neither there is any curriculum on record nor any other material to draw that inference. On the contrary this circumstance that at the time when respondent was recruited a diploma holder or a certificate holder both were entitled to be recruited as an Instructor on the same pay scale indicates that in those days the two were considered to be alike."

In Pramod Bhartiya (supra), Jeevan Reddy, J. categorically held that burden to prove that a discrimination has been committed is upon the petitioners. In that case petitioners failed to discharge their burden.

Yet again in Shyam Babu Verma (supra), N.P. Singh, J. speaking for a three-Judge Bench observed :

> "...The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them..."

True it may be that when recommendations are made by a Pay Commission, evaluation of job must be held to have been made but the same by itself may not be a ground to enforce the recommendations by issuing a writ of or in the nature of mandamus although the State did not accept the same in toto and made rules to the contrary by evolving a policy decision which cannot be said to arbitrary or discriminatory.

For the reasons aforementioned, we are of the opinion that no case has been made for our interference with the impugned judgment. The appeal is dismissed accordingly. No costs.