Supreme Court of India
Prabhat Kiran Maithani & Ors vs Union Of India & Anr on 3 February, 1977
Equivalent citations: 1977 AIR 1553, 1977 SCR (2) 911
Author: M H Beg
Bench: Beg, M. Hameedullah (Cj)

PETITIONER:
PRABHAT KIRAN MAITHANI & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT03/02/1977

BENCH:
BEG, M. HAMEEDULLAH (CJ)
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BEG, M. HAMEEDULLAH (CJ)
KAILASAM, P.S.

CITATION:
1977 AIR 1553 1977 SCR (2) 911
1977 SCC (2) 365
CITATOR INFO :
RF 1992 SC1203 (11)

ACT:

Pay Scales and revised pay scales of computers shown as identical in the Second Pay Commission Report--Right to be equated as Research Assistants Grade 11 both in status and in pay is entirely within the sphere of the function of the Pay Commission--Effect of the Report of the Third Pay Commission.

Constitution of India, 1950-Art. 32 can be resorted to only for the enforcement of Fundamental Rights--Equation of posts is not a duty which the court under Art. 32 or the High Court under Art. 226 was competent to carry out.

HEADNOTE:

In the 1959 Second Pay Commission Report, the pay scales and the revised pay scales of the Computers were shown as identical with that of the Research Assistants Grade II, even though the 'two posts were shown as separate classes. The Third Pay Commission Report, however, showed that the Computers not only belonged to a separate class of their own but received less pay than Research Assistants' Grade II. The petitioners assailed this view under Art. 32 of the Constitution as violative of Articles 14 and 16 of the

Constitution on the ground that they had a Fundamental Right to be equated both in status as well as in Day to that of Research Assistants, Grade II.

Dismissing the petition the Court.

HELD: (1) Equation of posts and equation of pay are matters entirely within the sphere of the function of the Pay Commission. These are questions entirely unfit for determination upon a petition for a writ for the enforcement of Fundamental Rights. It requires, firstly, formulation of correct criteria for each classification. and, secondly. the application of these criteria to facts relating to the functions and the qualifications for each class. The Pay Commission had done this in the instant case elaborately,. [912 F, 913 B-C]

(2) The Court, under Art. 32, neither has wider powers nor can do it with greater facility than a High Court cannot, when exercising its writ issuing jurisdiction. This Court had already laid down that equation of posts is not a duty which the High Court was competent to carry out in proceedings under Art. 226. [913 D]

Union of India v. G.R. Prabhavalkar [1973] (3) SCR 714, referred

(3) The question, whether there is or there is not enough material on record in a particular case to establish the basis of a particular discrimination is one of fact for the determination of which no hard and fast rules can be laid down. A discrimination which involves the invocation of Art. 14 is not necessarily covered by Art. 16. In the instant case, even the material relied upon by the petitioners shows the Computers and Research Assistants Grade II are classified separately, and, therefore, the validity of that classification cannot be displaced by the kind of evidence relied on. Until that classification is shown to be unjustified, no question of violating Article 16 can arise. [913 GH, 914

Purshottam Lal and Ors. v. Union of India & Anr. [1973] (1) SCC 651 held inapplicable.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 43 of 1976. S.C. Agarwal for the Petitioners.

L.N. Sinha, Sol Genl. and B. Datta for Respondents. The Judgment of the Court was delivered by BEG, C.J.--The petitioners before us are employees of the Forest Research Institute and Colleges Dehra Dun in the posts designated as Computers. Their grievance is that they should be treated as Research Assistants Grade II and given the same scale of pay and other conditions of service as are applicable to Research Assistants Grade II. The respondents, Union of India and the President of the Forest Research Institute deny that the petitioners are entitled to be treated as Research Assistants Grade II. The petitioners rely upon certain alleged admissions on behalf of the oppo- site parties, on

certain classifications of Computers in the past, prior to the recommendations the Third Pay Commission 1973 as well as on the last mentioned report of the Central Pay Commission. Furthermore, learned counsel has invited our attention to the case of Purshottam Lal and Ors. Vs. Union of India and another [1973 (1) S.C.C. 651] whereupon a Writ Petition by Computers, they were shown as having been given identical scales of pay with the Research Assistants Grade II. This decision however, does not deal with any controversy as to the correct classification of computers in comparison with Research Assistants Grade II. All we need say is that this case deals with the position under the Report of 1959 of' the Second Pay Commission which has no bearing on the position which follows from the Report of the Third Pay Commission of 1973. Moreover, it is evident that even at that time Research Assistants Grade II and Computer were shown as separate classes even though their pay scales and the revised pay scales were shown as identical. Thus the claim of the petitioners is that this Court should not only include the Computers amongst Research Assistants Grade II, which is not borne out even from the Report of the Second Pay Commission, but go further and equate their pays, so that. even though they belong to different classes, their scales of pay may be identical. We are afraid this is a matter which lay entirely within the sphere of the functions of the Pay Commission. This Court cannot satisfactori- ly decide such disputed questions on the salender material on which the learned counsel for the petitioner relies in order to displace what appears to us to be, prima facie, the effect of the Report of the Third Pay Commission of 1973. This report shows that Computers not only belong to a separate class of their own but received less pay than Research Assistants of Grade II.

Learned Counsel for the petitioner's tried to get out of the report of the Third Pay Commission contained in Chapter XVII relating to the Economists and Statisticians, wherein Computers are mentioned and dealt with in paragraphs 32 to 34, by asserting that their case should be covered by either Chapter XV, which deals with "Scientific Services" (specifi- cally mentioned therein) or Chapter XXI, concerned with Ministry of Agriculture, where the Forest Research Institute and Colleges are mentioned in paragraphs 58 onwards. It seems to us to be erroneous to attempt to place Computers in Chapter XV, which deals with specified "Scientific Services" where Computers are not mentioned, or in Chapter XXI, which also does not mention Corn-

puters at all. Learned Counsel for the petitioners tried to take advantage of the fact that paragraphs dealing with the Forest Research Institute in Chapter XXI do not mention Computers. It does not follow from this that Computers necessarily belong to the class into which the petitioners want to get in without showing what the criteria and func- tions of persons entitled to be treated as Research Assist- ants of Grade II are as compared with the Computers who, prima facie belong to another class of workers dealing with statistics even though they may be in some way assisting in research or three may be some common functions. Indeed, everyone working in a research institute could, in some way, be said to be assisting in research. We think that these are questions entirely unfit for determination upon a peti- tion for a Writ for the enforcement of fundamental rights. It requires: firstly, formulation of correct criteria for each classification; and, secondly, the application of these criteria to facts relating to the functions and qualifica- tions for each class. The Pay Commission had done this elaborately.

The learned Solicitor General has invited our attention to the case of Union of India v. G.R. Prabhavalkar & Ors. reported in 1973 (3) S.C.R. 714, where this Court held that equation of posts is not a duty which the High Court was competent to carry out in proceedings under Article 226. We do not think that we have wider powers or that we can do with greater facility what a High Court cannot when exercis- ing its writ issuing jurisdiction.

The learned counsel for the petitioners has tried to take us at some length into the material on which he as- sails the view taken by the opposite parties. We are unable to agree that, on the material placed before us, we can accept the petitioners' interpretation of facts to which our attention was drawn. We are unable to consider other mate- rial also to which our attention was attempted to be drawn because, on the basis of the materials shown to us, we are satisfied that such matters are not fit for determination by us on the kind of material sought to be placed before us. Finally, learned counsel for the petitioners pleaded that we may permit him to raise this matter before an Admin- istrative or Service Tribunal if and when one is constitut- ed. It is not necessary for us to give him any permission to do that. We may however observe that the petitioners are at liberty to pursue other remedies, including those which may be available to them if any such Tribunal is set up in future. We want to make it clear that the question whether there is or there is not enough material on record in a particular case to establish the basis of a particular discrimination is one of fact for the determination of which no hard and fast rules can, be laid down. Moreover, a dis- crimination, which involves the invocation of Article 14, is not necessary covered by Article 16. We do not propose to discuss here the differences between Articles 14 and 16, because we think that, even the material relied upon on behalf of the petitioners before us shows that Computers and Research Assistants Grade II are classified separately. The validity of that classification cannot, we think, be displaced by the kind of evidence relied upon on behalf of the petitioners. And, until that classifica- tion is shown to be unjustified, no question of violating Article 16 can arise. We, therefore, leave the petitioners to other means of redress if they still feel aggrieved. The result is that we dismiss the Writ Petition, but make no order as to costs.

S.R. Petition dis- missed.