State Of Punjab & Ors. v Sainderjit Kaur
Supreme Court of India

18 March 2004
Appeal (civil) 1382 of 1999 WITH CIVIL APPEAL NO.3693 OF 2000
The Judgment was delivered by : S. B. Sinha, J.
1. These two appeals involving identical question of law and fact were taken up for hearing together and are being disposed of by this common judgment.
2. The factual matrix is, however, being noticed from Civil Appeal No.13 82 of 1999.
3. On or about 6.8.1981, the respondent was appointed as Sewing Teacher on regular basis in the pay sc ale of Rs.480- 880/- by the District Education Officer, Ferozepur. She claimed same scale of pay payable to Classical and Vernacular Teachers. The said representation of the respondent was, however, rejected.
4. Aggrieved by and dissatisfied with the said order, a writ petition was filed by her before the Punjab and Haryana High Court which by reason of the impugned judgment was allowed relying on or on the basis of the earlier decisions of the said court in Amarjit Kaur vs. State of Punjab [1988 (4) SLR 199] and Prabjot Kaur vs. State of Punjab [1994 (3) SCT 262].
5. The learned counsel appearing on behalf of the appellants would submit that the High Court committe d a manifest error in passing the impugned judgment insofar it failed to take into consideration that the Ed ucation Department of the Government of Punjab had made rules in terms of the proviso appended to Arti cle 309 of the Constitution of India known as 'Punjab State Education Class-III (School Cadre) Service Ru les, 1978, in terms whereof the Sewing Teachers and Master(s) or Mistress(es) were placed in different c ategories.
6. In terms of the said rules, the learned counsel would urge, whereas a master or mistress must posses s a degree of a recognised university with B.Ed.; the requisite educational qualification of a Tailoring Mistr ess is only matric or middle or equivalent with three years' Teachers' Training Diploma from the Industries Department of State or Industrial Training.
7. It was urged that the method of recruitment in the category of Master or Mistress and Tailoring Mistres s is also different. It was pointed out that on or about 17.2.1989 the scales of pay of the teaching staff of t he Education Department had been revised; in terms whereof different scales of pay had been granted to different categories of teachers and in that view of the matter, the impugned judgment cannot be sustaine d.
8. The learned counsel appearing on behalf of the respondents, on the other hand, would contend that va rious other similarly situated teachers had been granted scales of pay applicable to Classical and Vernac ular Teachers. It was further pointed out that the respondent is a handicapped person.
9. Having considered the rival submissions, we are of the opinion that although the High Court proceeded on a wrong premise in passing the impugned judgment.
10. In Amarjit Kaur (supra), the writ petitioner therein had been granted a revised scale of pay and the sa me was wrongly withdrawn on the ground that she was confirmed with effect from 22.5.1974 by mistake. The High Court rejected the said contention of the respondent but proceeded further to hold that the Educ ation Department had classified and recognized the Tailing Mistress and Classical and Vernacular Teach ers in the same category and, thus, when the scale of pay of the Classical and Vernacular Teachers had been revised, there was no reason as to why the pay scale of the Tailoring Mistress should not be accordi ngly revised.
11. In Prabjot Kaur (supra), the High Court followed Amarjit Kaur (supra) although the fact of the matter w as quite different.
12. The High Court, in the above referred decisions, had no occasion to consider the effect of the notifica tion revising scales of pay of different categories of the teachers.
13. In a case of this nature, even the doctrine of equal pay for equal work would not apply when it has not been established that duties and functions of two categories of employees are at par. Furthermore, a clas sification based on different educational qualifications is permissible. Yet again it may not matter as to wh ether the judgment of the Punjab and Haryana High Court in Amarjit Kaur (supra) and Prabjot Kaur (supra ) had been appealed against or not. [See Government of West Bengal vs. Tarun K. Roy and Ors. 2003 (9) SCALE 671 2003 Indlaw SC 1039].
14. The High Court while passing the impugned judgment did not address itself as regard applicability of t he Rules as also the scales of pay granted to different categories of teachers by the Government of Punja

b in terms of its notification dated 17.2.1989. By reason of the said notification, the Government of Punjab adopted the notification issued by the President of India in relation to the revised scales of pay to the teaching staff of the Education Department, the relevant portion whereof is to the following effect:-

15. From a perusal of the said notification dated 17.2.1989, it is evident that the Classical and Vernacular Teacher had been placed on a higher scale of pay, namely, Rs.570-1080/-; whereas the Tailoring Mistress had been placed in the scale of pay of Rs.480-800/-. Similar scale of pay had been granted to the Trained Sewing Teachers. However, different scales of pay in the categories of Tailoring Mistress and Sewing Teacher had been made in senior scale after eight years and 18 years of service respectively.

16. The validity of Notification dated 17.2.1989 has not been questioned. In that view of the matter, the impugned judgment of the High Court cannot be sustained. However, having regard to the fact that the respondents herein had been granted the same scale of pay and keeping in view of the fact that she is a handicapped teacher, we are of the opinion that it is not a fit case where this Court should exercise its jurisdiction under Article 136 of the Constitution of India.

17. In Chandra Singh and Others Vs. State of Rajasthan and Another [(2003) 6 SCC 545 2003 Indlaw SC 541], this Court held:-

"In any event, even assuming that there is some force in the contention of the appellants, this Court will be justified in following Taherakhatoon v. Salambin Mohammad (1999) 2 SCC 635 1999 Indlaw SC 983 wherein this Court declared that even if the appellants' contention is right in law having regard to the overall circumstances of the case, this Court would be justified in declining to grant relief under Article 136 while declaring the law in favour of the appellants. Issuance of a writ of certiorari is a discretionary remedy. (See Champalal Binani v. CIT, (1971) 3 SCC 20 : AIR 1970 SC 645 1969 Indlaw SC 330). The High Court and consequently this Court while exercising their extraordinary jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so.

In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. (See S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd. (2003 (4) Supreme 44 2003 Indlaw SC 436). Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one.

This Court also in exercise of its jurisdiction under Article 142 of the Constitution of India is entitled to pass such order which will be complete justice to the parties."

18. These appeals are dismissed with the aforementioned observations; but in the facts and circumstances of the case, there shall be no order as to costs.

Appeal dismissed