

Purshottam Lal and Others

Vs

Union of India and Another

Writ Petition No. 81 of 1969]

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar, S. N. Dwivedi, A.K. Mukherjea JJ)

21.02.1973

JUDGMENT

Sikri, C.J. -

1. In this petition under Article 32 of the Constitution 17 petitioners complained that they had been discriminated against by the Government in violation of their fundamental rights under Articles 14 and 16 of the Constitution. The relevant facts are these.

2. The petitioners are employed with the Forest Research Institute and Colleges, Dehra Dun. This Institute is a department of the Government of India, Ministry of Food and Agriculture. The petitioners are Research Assistants and fall within Class III of the Non-Gazetted Technical Posts. It is alleged that the qualifications prescribed for recruitment to the post of Research Assistant Grade II are Bachelor's Degree in Science (B.Sc.) and B.A. or B.Sc., with Mathematics and knowledge of statistics for computers.

3. On August 21, 1957, the Government of India set up a Commission of Enquiry, hereinafter referred to as the Second Pay Commission, to enquire into the emoluments and conditions of service of the Central Government employees. The terms of reference of the Commission were -

(i) examine the principles which should govern the structure of emoluments and conditions of service of the Central Government employees;

(ii) consider and recommend what changes in the structure of emoluments and conditions of service of different classes of Central Government employees are desirable and feasible .....

(iii) recommend, in particular, the extent to which benefits to Central Government employees can be given in the shape of amenities and facilities;

4. In Chapter II of the report, in Para 1 it is stated :

"For the purposes of our enquiry we have taken all persons in the civil services of the Central Government or holding civil posts under that Government, and paid out of the Consolidated Fund of India, to be Central Government employees. Those in the service of public corporations and other semi-autonomous bodies under the Central Government are thus excluded; and employees of the Union Territories are included. In view, however, of certain practical difficulties to which we refer in a later chapter, and in consultation with the Government we have examined only the principles on

which the emoluments of the employees of the Union Territories should be determined, and have not gone into details of pay-scales."

5. The Second Pay Commission submitted its report on August 24, 1959. In Chapter XV the report deals with Scientific Staff. In part II of the Chapter dealing with Class III employees in the Scientific Branch, the Commission compiled Table V which deals with 4329 posts. Fifty-nine persons having the scale from Rs. 80 - 220 were referred to in Para 36. The Commission summed up its recommendations as follows :

#-----	Existing scale	Proposed scale (Rs.)
(Rs.)-----	(i) 250-10-300-15-450-25/2-500	
(i) 325-15-475-EB-20-575	(ii) 160-10-330	(ii) 210-10-290-15-320-EB-15-425
(iii) 100-5-120-8-200-10/2-220	(iii) 150-5-160-8-240-EB-8-280-10-300	80-5-120-8-200-10/2-220- (if 4 grades are retained)
100-5-120-8-200	or 160-8-256-EB-8-280-10-300	(if 3 grades are retained)
(iv) 60-4-120-5-150	(iv) 110-4-150-EB-4-170-5-180-EB-5-200	60-3-80-4-125-5-130-----
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6. In Para 39 the Commission dealt with the remaining 441 posts as follows :

"It should not be difficult to fit in the remaining 441 posts, which are on typical scales, on the scales recommended by us. Generally speaking, scales carrying a maximum of Rs. 500 may be replaced by scale (i), those with a maximum of Rs. 300 and above (except in the Department of Atomic Energy) by scale (ii), unless in the case of posts with a maximum of Rs. 400 or Rs. 450 (30 posts in all according to our information) the qualification for recruitment and the nature of duties are such that they can be more appropriately placed on scale (i); scales with a maximum of Rs. 200 or Rs. 250 by scale (iii); and those with a maximum of Rs. 150 and Rs. 130 by scale (iv). As regards the posts on the scale of Rs. 100-300 for which a university degree is not required, a suitable remuneration may be fixed in the light of our recommendations - after re-examining the question of qualifications for recruitment."

7. It is the contention of the petitioners that their case was also covered by the recommendations of the Commission.

8. On August 2, 1960, the Government issued a notification giving effect to the recommendations of the Pay Commission. On June 21, 1962, the Government of India revised the pay-scales of the petitioners in the Forest Research Institute and Colleges, Dehra Dun, giving them the revised scales as follows :

#-----	SI No.	Designation	Pay-scale fixed under Revised pay-scale of the post. CCS (Revised Pay) sanctioned Rules, 1960-----
-----	1.	Research	130-5-160-8-200-EB-8- 150-5-160-8-240-EB-8- Assistant 256-EB-8-280-10-300 EB-8-280-10-300.
-----	2.	Computer	130-5-160-8-200-EB-8- 150-5-160-8-240-EB-8- 256-EB-8-280-10-300. 280-10-300.-----
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But it was stated in the order, dated June 21, 1962, that the revision of the pay-scales mentioned in column 4 above will take effect from the date of issue of these orders, and that re-fixation of the pay of the incumbents of these posts will be done under the provisions of the Fundamental Rules only.

9. The Research staff protested by letter, dated October 18, 1962. They stated therein that "the revised pay-scales of similar posts in other similar sister institutions (except F.R.I.) of this Institute under this very Ministry as well as other ministries have been implemented from July 1, 1959, according to the 2nd Pay Commission recommendations accepted by the Government of India". They requested that the benefit of the retrospective date, i.e., July 1, 1959, be given to them in accordance with the recommendations of the Pay Commission.

10. The Government replied on January 30, 1963, that "the revision of pay-scales in respect of Research Assistants and Computers at this Institute has been done on the basis of the duties attached to these posts and not on the basis of the recommendations of the Pay Commission. In view of this the pay-scale of Rs. 150 - 300 now given would have effect from the date of issue of the orders and pay fixation in this case has to be done under F.R. only".

11. Representation was also made to the President of India. Again in their representation to the President of the Forest Research Institute and Colleges, it was requested that the reasons on the basis of which revision with retrospective effect is said to be not possible may be made known to them. In his reply, dated March 23, 1967, the President replied that "the points are being examined and if necessary Ministry will be consulted".

12. In his letter, dated May 16, 1967, the President of the Forest Research Institutes and Colleges stated as follows :

"The Government of India to whom a reference on the subject was made again by this office have informed that the posts of Research Assistants Grade II and Computers at Forest Research Institute and Colleges were not specifically included in the list of Scientific Posts mentioned in Para 28 of Chapter XV of the 2nd Pay Commission's Report, hence the revised pay-scales for these posts could not have retrospective effect from July 1, 1959."

13. In the affidavit, in reply, the same stand is reiterated. It is submitted that the posts held by the petitioners were not covered by Para 36 of Chapter XV and para 8 of Chapter XVIII of the Report of the Second Pay Commission. Reference is only made to Para 36 and no reference is made to Para 39 of the Report.

14. Mr. Dhebar on behalf of the Government maintains the same position and he says that the Pay Commission Report did not deal with the case of the petitioners. We are unable to accept this contention. The terms of reference are wide, and if any category of Government servants was excluded material should have been placed before this Court. The Pay Commission has clearly stated that for the purposes of their enquiry they had taken all persons in the civil services of the Central Government or holding civil posts under that Government and paid out of the Consolidated Fund of India, to be Central Government employees. It is not denied by Mr. Dhebar that the petitioners are paid out of the Consolidated Fund of India.

15. Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government had made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not

implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned.

16. The learned counsel next contends that there has been great delay in bringing this petition and we should not exercise our discretion. There has been some delay but on the facts of this case we are of the opinion that there has not been undue delay, especially as in his letter dated March 23, 1967, the President, Forest Research Institute and Colleges said that the points were being examined and if necessary the Ministry would be consulted.

17. In the result the petition is allowed and it is directed that the revised pay-scales of the petitioners will have effect from July 1, 1959, in accordance with the recommendations of the Pay Commission. We further direct that the petitioners should be paid the amount payable to them as a consequence of the revision of the pay-scales with effect from July, 1959. The petitioners will have the costs of this petition.

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