Prabhat Kiran Maithani and Others

Vs

Union of India and Another

Writ Petition No. 43 of 1976

(CJI M.H. Beg, P.S. Kailasam JJ)

03.02.1977

JUDGMENT

BEG, C.J. –

1. The Petitioners before us are employees of the Forest Research Institute and Colleges Dehra Dun in the posts designated as Computors. Their grievance is that they should be treated as Research Assistances 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 opposite parties, on certain classifications of Computors in the past, prior to the recommendations of the Third Pay Commission 1973 as sell as on the last mentioned report of the Central Pay Commission. Furthermore, learned counsel has invited our attention to the case of Purshottam Lal v. Union of India ([1973] 1 SCC 651 : 1973 SCC (L & S) 337) where, upon a Writ Petition by Computors, they were shown as having been given identical scales of pay with the Research Assistances 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 Computors 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 Computors amongst Research Assistant 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 satisfactorily decide such disputed questions on the slender 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 Computors not only belong to a separate class of their own but received less pay than Research Assistants of Grade II.

2. Learned Counsel for the petitioners tried to get out of the report of the Third Pay Commission contained in Chapter XVII relating to the Economists and Statisticians, wherein, Computors 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" (specifically 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

Computors in Chapter XV, which deals with specified "Scientific Services" where Computors are not mentioned, or in Chapter XXI, which also does not mention Computors at all. Learned Counsel for the petitioners tried to take advantage of the fact that paragraph dealing with the Forest Research Institute in Chapter XXI do not mention Computors. It does not follow from this that Computors necessarily belong to the class into which the petitioners what to get in without showing what the criteria and functions of persons entitled to be treated as Research Assistant of Grade II are as compared with the Computors who, prima facie, belong to another class of workers dealing with statistics even though they may be in some way assisting in research or there 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 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 of facts relating to the functions and qualifications for each class. The Pay Commission had done this elaborately.

3. The learned Solicitor General has invited our attention to the case of Union of India v. G. R. Prabhavalkar ([1973] 3 SCR 714 : (1973) 4 SCC 183 : 1973 SCC (L & S) 374), 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 think that we have wider powers or that we can do with greater facility what a High Court cannot when exercising its writ issuing jurisdiction.

4. The learned Counsel for the petitioners has tried to take us at some length into the material on which he assails 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 material 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.

5. Finally, learned Counsel for the petitioners pleaded that we may permit him to raise this matter before an Administrative or Service Tribunal if and when one is constituted. 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 discrimination, which involves the invocation of Article 14, is not necessarily 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 Computors 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 classification 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.

6. The result is that we dismiss the Writ Petition, but make no order as to costs.

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