

P. Savita and Others

Vs

Union of Indian, Ministry of Defence

Civil Appeal No. 3121 of 1981

(A. P. Sen, V. Khalid JJ)

01.05.1985

JUDGMENT

KHALID, J. -

1. The question involved in this appeal brings to fore how the equality doctrine embodied in the Constitution of India is attempted to be flouted by some authorities under cover of artificial divisions, dividing persons doing the same work into two groups without any justification and denying to one group by way of pay and emoluments what the other group gets. We do not propose to examine the width of the equality provisions contained in Article 39(d) in all its manifold aspects but would like to restrict it in its application to the facts of this case, in our attempt to see whether the High Court was justified or not, in declining relief to the petitioners. Now the facts :

2. This appeal by special leave is directed against the Judgment of a Division Bench of the High Court of Madhya Pradesh at Jabalpur in Miscellaneous Petition 408 of 1978, dismissing the petition challenging the Order of the Government of India accepting the recommendations of the Third Pay Commission dividing Senior Draughtsmen into two groups with different pay scales, which according to the appellants violated Articles 14 and 16 of the Constitution. The appellants 1 to 8 are Senior Draughtsmen in the Ordnance Factories under the Ministry of Defence, Department of Defence Production and the Director-General of Ordnance Factories. Appellants 1 to 5 were promoted on different dates to the post of Senior Draughtsman when they were working as Draughtsman. Appellants 6, 7 and 8 were directly recruited as Senior Draughtsmen in the Vehicle Factory, Jabalpur on different dates. Appellant 9 is a registered association of the employees working in the Design/ Drawing Office of the Defence Establishments under the Ministry of Defence etc.

3. There are 33 establishments under the Ministry of Defence, Department of Defence Production and Director-General of Ordnance Factories, Calcutta. In these establishments, there are two categories of Drawing Office Staff : (1) Senior Draughtsman and (2) Draughtsman. Senior Draughtsmen are either directly recruited or promoted from the post of Draughtsmen. At all relevant times, all the Senior Draughtsmen throughout the above establishments, were drawing the same pay-scale. The First and the Second Pay Commissions set up by the Government of India, recommended same scales of pay for all the Senior Draughtsmen.

4. A Third Pay Commission was set up by the Government of India under the Chairmanship of Shri Raghubar Dayal, a retired Judge of the Supreme Court of India and consisting of three other members. One of the recommendations of this Pay Commission, related to the scales of pay of Draughtsmen and Senior Draughtsmen. Draughtsmen were to be in scale of Rs. 330-560 while the

Senior Draughtsmen were divided into two groups with two scales of pay, Rs. 330-560 and Rs. 425-700. It is this division of Senior Draughtsmen that was under challenge before the High Court.

5. Representations were made by the petitioners against this grouping by the Third Pay Commission, and they pleaded that there should not be any discrimination in the pay-scales of Senior Draughtsmen as was recommended by the Third Pay Commission. Similar representations were made by others also like Senior Rate Estimator, Senior Rate Fixer, Senior Planner and Supervisor etc. Some representations were accepted by the Government but not the representations made by the appellants' Association. Aggrieved by this unhelpful attitude of the Government in not accepting their representation, the appellants moved the High Court under Article 226 of the Constitution. Their case before the High Court was that Senior Draughtsmen discharged identical duties and performed similar work. That being so there was little or no justification in putting 50% of them in a higher scale of pay and 50% others in a lower scale of pay. This grouping was without any intelligible differentia.

6. The High Court referred to a decision of this Court in *Kishori Mohanlal Bakshi v. Union of India* [AIR 1962 SC 1139 : (1962) 44 ITR 532] and sought support from it to deny relief to the petitioners. That was a case where the grouping of Income-tax Officers as Class I and Class II with different scales of pay and different channel of promotion was questioned. This Court observed in that Judgment as follows :

It might very well be that "matters relating to employment or appointment to any office" in Article 16(1) are wide enough to include the matter of promotion. Inequality of opportunity for promotion as between citizens holding different posts in the same grade may, therefore, be an infringement of Article 16.

Thus, if, of the Income-tax Officers of the same grade, some are eligible for promotion to a superior grade, and others are not, the question of contravention of Article 16(1) may well arise. But no such question can arise at all when the rules make Income-tax Officers of Class I, eligible for appointment as Assistant Commissioner, but make Income-tax Officers of Class II eligible for promotion as Income-tax Officers of Class I but not for promotion to the post of Assistant Commissioners. There is no denial in such a case of equality of opportunity as among citizens holding posts of the same grade. As between citizens holding posts in different grades in Government service there can be no question of equality of opportunity. Article 16 does not forbid the creation of different grades in the Government service.

The abstract doctrine of equal pay for equal work has nothing to do with Article 14. Article 14, therefore, cannot be said to be violated where the pay scale of Class I and Class II Income-tax Officers are different though they do the same kind of work. Incremental scales of pay can be validly fixed dependent on the duration of an officer's service.

7. The High Court also referred to the decisions of the Court in *State of Punjab v. Joginder Singh* [AIR 1963 SC 913 : 1963 Supp 2 SCR 169], *Unikat Sankunni Menon v. State of Rajasthan* [AIR 1968 SC 81 : (1967) 3 SCR 430 : (1968) 2 LLJ 129] and *State of Mysore v. P. Narsingha Rao* [AIR 1968 SC 349 : (1968) 1 SCR 407 : (1968) 2 LLJ 120] in which cases also certain grouping of employees were challenged as violative of Articles 14 and 16, which challenge was repelled by the Supreme Court. The High Court relied upon these decisions and held that "It is therefore evident that it was open to the Government to fix two different pay-scales for Senior Draughtsmen" and that "It was for the Government to decide what pay-scale should be provided to the different classes of

employees and simply because they have been provided different pay-scales that would not amount to discrimination".

8. The High Court was told that all the Senior Draughtsmen did the same kind of work and discharged same or similar duties and that therefore there was no justification for a distinction being made between the two classes of Senior Draughtsmen, providing two different pay-scales on the basis of seniority. Denial of the higher scale of pay to one class of Senior Draughtsmen, only on the ground of length of service was, according to the appellants, wrong. The Government brought in this classification, by its Order dated July 1, 1978, directing that only Senior Draughtsmen, holding that post on December 31 1972, would be given the Senior scale and not those who did not hold that post on December 31, 1972. This basis, the appellants contended, was unsupportable. These contentions did not appeal to the High Court. While repelling the arguments of the petitioners, the High Court observed that "The petitioners are unable to show a single authority in support of their contention that all the persons doing the same work are entitled to same scale of pay". It is the correctness of this decision that falls to be decided in this appeal.

9. Before discussing the factual matrix of the case, we will refer to the Order passed by the Government of India on January 27, 1987, which brought into effect this difference in the pay-scale. The said Order reads as follows :

The undersigned is directed to refer to Sl. No. 32 of Part-D, Section I, in the First Schedule to the Civilians in Defence Services (Revised Pay) Rules, 1973 and to say that the President is pleased to decide that, as recommended by the Third Pay Commission in para 81, Chapter 14, of their report, half the number of posts of Draughtsmen in the DGOF Organisation on the present pay scale of Rs. 205-7-240-8-280 will be placed in the revised scale of Rs. 425-15-500-EB-15-560-20-700 and the remaining half in the revised scale of Rs. 330-10-380-EB-12-500-EB-15-560. On their allocation to the revised scale of Rs. 425-700 and Rs. 330-560, the existing Draughtsmen in the present pay-scale of Rs. 205-280 who are brought on the revised scale of Rs. 330-560 would continue to retain their present designation as a personal to them. The placement of existing Draughtsmen in the higher revised pay scale of Rs. 425-700 will be on the basis of seniority, subject to the rejection of the unfit.

Any administrative instruction that may be considered necessary may be issued by you.

These orders will take effect from January 1, 1973.

10. It is pursuant to this Order that the change in the emoluments of the petitioners' group of Draughtsmen was effected.

11. It has to be borne in mind that this differentiation is not based on any intelligible ground. The group of Draughtsmen entitled to the higher scale of pay, is not selected by any process nor is it based on any merit-cum-seniority basis, but is based only on seniority-cum-fitness. There is no denial anywhere that both these types of Draughtsmen do the same work and discharge the same functions and duties. According to the recommendations of the Third Pay Commission, a Draughtsman has to get Rs. 330-10-380-EB-12-500-EB-15-560, while Senior Draughtsmen, like the appellants, who have become so on promotion, will continue to get the same scale of pay and not the higher scale of pay. In other words, the promoted persons like the appellants, are without any

monetary benefit to them. The pay that they would get as Senior Draughtsmen, would be the same as a Draughtsman would get under the Third Pay Commission. That is, for the same work and same functions, the appellants would get less pay than the other group of Senior Draughtsmen. The explanation is that this division is based on seniority. This cannot be accepted as sufficient to meet the requirements of the law. By seniority, a Senior Draughtsman will get higher pay with the increments that he earns proportionate to the number of years he is in service. Here that is not the case. It is the classification of the Senior Draughtsmen into two groups, that is responsible for the higher pay. For this classification, the Government must be able to satisfy the Court of certain other tests which are non-existent, in this case, since it is not in dispute that Senior Draughtsmen, belonging to the two Divisions, do equal and same work. In view of the total absence of any plea on the side of the respondents, that the Senior Draughtsmen who are placed in the advantageous group, do not perform work and duties more onerous or different from the work performed by the appellants' group, it will have to be held that this grouping violates Article 14 of the Constitution.

12. The High Court did not have the advantage of a decision of this Court in *Randhir Singh v. Union of India* [(1982) 3 SCR 298 : (1982) 1 SCC 618 : 1982 SCC (L&S) 119], to which one of us was a party, which evolved the equality doctrine embodied in Article 39(d) and read Article 14 into it; while considering the complaint of a driver who was originally in the Army but later employed as a driver constable in Delhi Police Force under the Delhi Administration and who was denied the same pay as was available to the other drivers in the service of the Delhi Administration. This Court allowed the writ petition and directed the concerned authorities to pay the petitioners in that case, salary at least equal to the drivers of the Railway Protection Force. Disagreeing with the plea, put forward by the Union of India this Court observed as follows : (SCC pp. 621-22, para 6)

The counter-affidavit does not explain how the case of the drivers in the Police Force is different from that of the drivers in other departments and what special factors weighed in fixing a lower scale of pay for them. Apparently in the view of the respondents, the circumstance that persons belong to different departments of the Government is itself a sufficient circumstance to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. We cannot accept this view. If this view is to be stretched to its logical conclusion, the scales of pay of officers of the same rank in the government of India may vary from department to department notwithstanding that their powers, duties and responsibilities are identical. We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

13. This Court however observed that a differential treatment in appropriate cases can be justified, when there are two grades based on reasonable grounds, and stated as follows : (SCC p. 622, para 7)

It is well known that there can be and there are different grades in a service, with varying qualification for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the

higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of 'equal pay for equal work' would be an abstract doctrine not attracting Article 14 if sought to be applied to them.

14. With respect we agree with the conclusion arrived at in the above Judgment, that where all the relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently.

15. The case on hand is much stronger than the facts of the Randhir Singh Case [(1982) 3 SCR 298 : (1982) 1 SCC 618 : 1982 SCC (L&S) 119]. In that case, the drivers belonged to two different departments. In this case, the Senior Draughtsmen, divided into two groups are in the same department doing identical and same work. It is not a case of different grades created on the ground of higher qualification either academic or otherwise or an entitlement by any other criteria laid down. The justification for this classification is by the mere accident of an early entry into service. This cannot be justified.

16. The above decision of this Court has enlarged the doctrine of equal pay for equal work, envisaged in Article 39(d) of the Constitution of India and has exalted it into the position of a fundamental right by reading it along with Article 14. This exposition of law had given rise to some whispering dissent in that the doctrine had been extended beyond permissible limits. The observations that the abstract doctrine of equal pay for equal work has nothing to do with Article 14, in the Judgment in Kishori Mohanlal Bakshi v. Union of India [AIR 1962 SC 1139 : (1962) 44 ITR 532], rendered by a Constitution Bench of this Court it is contended, may perhaps run counter to the observations in the decision referred above. We do not think it necessary on the facts of this case to dwell at length upon the effect of this observation on a wider campus of service jurisprudence in the context of equal pay for equal work which will have to be attempted in an appropriate case.

17. For the purposes of the case on hand, it is sufficient to note that the classification between two groups of Senior Draughtsmen is without any basis. They do the same work, they perform the same duties, and as such the ratio of the decision in Randhir Singh case [(1982) 3 SCR 298 : (1982) 1 SCC 618 : 1982 SCC (L&S) 119] applies to this case with greater force. The Order passed by the Government of India on January 27, 1978, implementing this classification violates Article 14 of the Constitution and has to be struck down and we do so. In our opinion, it would be a great injustice to continue the appellants on the scales of pay of Draughtsmen even after promotion as Senior Draughtsmen, which is destructive of all incentive and initiative in the service. In our judgment, the High Court was in error in declining relief to the appellants. We accordingly, set aside the Judgment of the High Court and allow this appeal and direct the Union of India to fix the scale of pay of appellants at Rs. 425-15-500-EB-15-560-20-640-EB-20-700. The appellants will be entitled to costs from respondent 1.

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