

Bhagwan Dass And Others

Vs

State of Haryana and Others

Writ Petition No. 12311 of 1985

(M. P. Thakkar, K. N. Singh JJ)

31.07.1987

JUDGMENT

THAKKAR, J. -

1. The alleged violation of "equal work equal pay" doctrine is the principal grievance of the petitioners.

2. The petitioners 102 (Originally there were 91 petitioners. Subsequently 11 more were added as per the order of the court dated September 18, 1986 in Civil Miscellaneous Petition Nos. 23014 and 25722 of 1986) in number holding the degrees of B.A., B. Ed. and M.A., B.Ed. were appointed as Supervisors by a competent selection committee constituted by the Education Department Haryana from time to time since October 2, 1978.

3. They have instituted the present petition under Article 32 of the Constitution of India seeking appropriate reliefs in the context of the two grievances, one that the petitioners are given a deliberate break of one day after the lapse of every six months and have thus been treated as temporary government servants notwithstanding the fact that they have been continuously working ever since the dates of their respective appointment subject to the aforesaid break of one day at intervals of six months instead of absorbing them as regular employees in regular pay scales. And secondly, though the petitioners perform their duties as Supervisors in the Education Department and do the same work as is being done by their counterparts, respondents 2 to 6 who are discharging similar duties as Supervisors in the Education Department who are absorbed as regular government servants they are paid less. The relief claimed by the petitioners is in the following terms :

(1) to declare by appropriate writ that the petitioners continue to be in the service of the respondents from the date of appointment irrespective of there being a deliberate break in service after every six months by the respondents in violation of Articles 14 and 16 of the Constitution of India;

(2) to declare by appropriate writ or direction that the petitioners are in continuous service since their respective dates of appointment since the National Adult Education Program was introduced and further issue a writ in the nature of mandamus to the respondent that the petitioners are entitled to the benefit of notification dated September 15, 1982 issued by respondent State of Haryana and accordingly the petitioners be put on similar pay scales and service conditions as that of Masters (B.A., B.Ed.) in the State of Haryana; and

(3) to issue a writ in the nature of mandamus or any appropriate writ, order or direction to respondents 2 and 4 to put the petitioners on regular pay scales along with other consequential benefits of a permanent employee from the date of initial appointment.

4. Before dealing with the grievances made by the petitioners, it would be appropriate to portray the factual background. The Education Department of State of Haryana has constituted an Adult Education Scheme under the overall control of Joint Director, Adult and Non-formal Education Department, respondent 3 herein in the context of the National Adult Education Scheme sponsored by the Government of India on the birth anniversary of Mahatma Gandhi in 1978 (October 2, 1978). The aim of adult education under this scheme is to provide functional literacy to the illiterates in the age group of 15-35. The State Government has also framed another scheme for the non-formal education under the overall control of the same official. The objective of this scheme is to impart learning by special contact courses to the students in the age group of 6-15, who are drop-outs from schools. The petitioners are appointed as Supervisors. There are hundreds of such Adult Education Centers and Non-formal Education Centers. One supervisor is provided for a group of 30 centers. Thus each of the petitioners is in charge of 30 centers under one scheme or the other. He is paid remuneration at the rate of Rs. 500 p.m. as fixed salary. Each one of them was, prior to March 1984, also paid a sum of Rs. 60 as fixed travelling allowance which allowance has been increased to Rs. 150 per month from March 7, 1984 onwards.

5. The Adult Education Centers are run under the Rural Functional Literacy Programem/Project (RFLP) of the Central Government. The project is however administered by the respondent, the State of Haryana. According to the respondent the expenditure in respect of remuneration payable to the petitioners under RFLP is borne by the Central Government. With regard to the centers functioning under the State Adult Education Programme/Project (SAEP) those of the petitioners who are employed under the scheme are paid remuneration on the same pattern by the State Government as and by way of honorarium.

6. The functions and duties discharged by the petitioners in their capacity as Supervisors under the Adult Education Scheme as per the communication dated April 8, 1985 (Annexure R-2) addressed by respondent 3 to the District Officers and Project Officers and Project Officers, are as under :

The supervisors of the adult education have been given the status equivalent to masters of formal schools and their functions are also like the Block Education Officers of the formal schools. Thus the functions of supervisors working under Adult Educational Scheme are inspection and to impart knowledge. The general duties of the supervisors will be : to make educational survey of his own village and nearby villages under the Rural Functional Literacy Programme for starting adult education and non-formal education centers, to locate and recommend for appointment suitable instructors for these centers from these very villages, to give active co-operation in their training, to give guidance in their reading and writing material, to give proper direction to instructors in his cluster the latest techniques of adult education, to give guidance continuously in latest technique of teaching methods, inspection of centers and making arrangements for their reading, writing material, to give mode lessons, to hold discussions in the mohallas/houses of the community cultivating friendship and personal relationship with the community, create awareness and awakening in them in the matter of literacy, functionality and awareness.

7. The controversy as to whether the Supervisors were full-time Supervisors like respondents 2 to 6 or whether they were part-time Supervisors as has been contended by the state of Haryana in its affidavit in reply has to be resolved in favour of the petitioners inasmuch as the documentary evidence placed on record establishes that the petitioners were full-time (and not part-time) Supervisors. At Annexure 'C' has been produced a document entitled "Revised financial pattern of the Project with 100 Educational centres ". The cadre of Supervisors has been described as full-time cadre in this document, as evidenced by the following extract :

C. Supervision

#(a) Full-time Supervisors - one supervisor for a cluster of 30 centres (3 supervisors for 100 centres each in the rank of Assistant Inspector of Schools with an average salary of Rs. 500 per month) Rs. 18,000.00 (b) TA cost on supervision (Rs. 150 per month per supervisor) Rs. 5400.00 ----- Total Rs. 23,400.00 -----##

What is more, the matter has been placed beyond the pale of controversy by a circular issued by the State Government to all Adult Education Officers as per Annexure 'D' dated April 9, 1985. The relevant extract from the Circular deserves to be quoted :

1. Headquarter of the supervisor :

(a) The headquarter of each supervisor shall be established in the middle of the village.

(b) Each supervisor will be present at his headquarter on a fix day once in a week between 9.30 a.m. to 4.00 p.m. The information of the fix day will be given to all the instructors and adult education officers.

(c) The monthly tour programme of each Supervisor will be got sanctioned by the Assistant Project Education Officers and made his tour according to this plan as far as possible.

(d) The Supervisor will stay whole day in the village and will inspect informal education centres in the day and adult education centre in the night.

(e) He will call the meeting of respected persons of the village on the date of meeting and discuss about the progress of the centre. This meeting can be called before or after the time of the centre.

(f) If any supervisor leaves the headquarter without permission or does not perform his duties properly the necessary action may be taken against him.

8. It is therefore futile to contend that the petitioners in their capacity as Supervisors were required only to perform part-time work. As per clause (d) of the aforesaid extract, the supervisors were required to stay for the whole day in the village and were required to visit the Informal Education Centre and the Adult Education Centre in the night. They were also required to go on tour and to remain at the headquarter once a week from 9.30 a.m. to 4.00 p.m. The conclusion is therefore inevitable that the petitioners were not part-time functionaries but were whole-time functionaries.

9. The matter may now be examined in this background. The respondent-State has resisted the claim of petitioners for granting them pay in accordance with the pay scales applicable to respondents 2 to 6, who are Supervisors in the regular cadre discharging similar functions, on four grounds viz. :

(i) that the petitioners are not full-time employees;

(ii) the mode of recruitment of the petitioners is different from the mode of recruitment of respondents 2 to 6;

(iii) the nature of the functions discharged by the petitioners are not similar to the functions discharged by respondents 2 to 6; and

(iv) appointments are made on six monthly basis and there is a break in service having regard to the fact that the posts are sanctioned on year to year basis in view of the temporary nature of the scheme.

10. With regard to the first ground for not granting salary on the same basis as of respondents 2 to 6, viz. that they are part-time employees whereas respondents 2 to 6 are full-time employees, having examined the aforesaid records placed before the court, we are of the opinion that there is no substance in this contention.

11. With regard to the next contention viz. that the mode of recruitment of the petitioners is different from the mode of recruitment of respondents 2 to 6, we are afraid it is altogether without substance. The contention has been raised in the following terms [paragraph 4(d) of the counter-affidavit dated January 6, 1986 filed on behalf of respondents 1 to 13] :

It is absolutely incorrect that the petitioners are similarly placed as the employees under the Social Education Scheme, as alleged. The latter are whole-time employees selected by the Subordinate Services Selection Board after competing with candidates from any part of the country. In the case of petitioners, normally the selection at best is limited to the candidates from the cluster of a few villages only. The contention made by the petitioners has no justifiable basis.

We need not enter into the merits of the respective modes of selection. Assuming that the selection of the petitioners has been limited to the cluster of a few villages, whereas respondents 2 to 6 were selected by another mode wherein they had faced competition from candidates from all over the country, we need not examine the merits of these modes for the very good reason that once the nature and functions and the work are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine. It was open to the State to resort to a selection process whereat candidates from all over the country might have competed if they so desired. If however they deliberately chose to limit the selection of the candidates from a cluster of a few villages it will not absolve the State for treating such candidates in a discriminatory manner to the disadvantage of the selectees once they are appointed, provided the work done by the candidates so selected is similar in nature. It was perhaps considered advantageous to make recruitment from the cluster of a few villages for the purposes of the Adult Education Scheme because the Supervisors appointed from that area would know the people of that area more intimately and

would be in better position to persuade them to take advantage of the Adult Education Scheme in order to make it a success. So also it was perhaps considered desirable to make recourse to this mode of recruitment of candidates because candidates from other parts of the country would have found it inconvenient and onerous to seek employment in such a scheme where they would have to work amongst total strangers and it would have made it difficult for them to discharge their functions of persuading the villagers to avail of the Adult Education Scheme on account of that factor. So also they might not have been tempted to compete for these posts in view of the fact that the scheme itself was for an uncertain duration and could have been discontinued at any time. Be that as it may, so long as the petitioners are doing work which is similar to the work performed by respondents 2 to 6 from the standpoint of 'equal work for equal pay' doctrine, the petitioners cannot be discriminated against in regard to pay scales. Where equal work is put in by candidates, whether they are selected by a process whereat candidates from all parts of the country could have competed or whether they are selected by a process where candidates from only a cluster of a few villages could have competed is altogether irrelevant and immaterial, for the purposes of the applicability of 'equal work for equal pay' doctrine. A typist doing similar work as another typist cannot be denied equal pay on the ground that the process of selection was different inasmuch as ultimately the work done is similar and there is no rational ground to refuse equal pay for equal work. It is quite possible that if he had to compete with candidates from all over the country, he might or might not have been selected. It would be easier for him to be selected when the selection is limited to a cluster of a few villages. That however is altogether a different matter. It is possible that he might not have been selected at all if he had to compete against candidates from all over the country. But once he is selected, whether he is selected by one process or the other, he cannot be denied equal pay for equal work without violating the said doctrine. This plea raised by the respondent-State must also fail.

12. Turning new to the contention that the nature of the duties are different, the respondent-State has failed to establish its plea. In the regular cadre, the essential qualification for appointment is B.A., B.Ed. Petitioners also possess the same qualifications viz. B.A., B.Ed. In fact many of them even possess higher degrees such as M.A., M.Ed. In what manner and in what respect are the duties and functions discharged by those who are in the regular cadre different? The petitioners having discharged the initial burden showing similarity in this regard, the burden is shifted on the respondent-State to establish that these are dissimilar in essence and in substance. We are unable to uphold the bare assertion made in this behalf by the State of Haryana (in paragraph 21 of the counter-affidavit dated November 23, 1985). In fact the communication dated April 8, 1985 (Annexure R-2) addressed by the respondent-State of Haryana to the District Officers which has been quoted in the earlier part of the judgment supports the contentions of the petitioners and belies the plea raised by the respondent-State.

13. Lastly we have to deal with the contention that the scheme is a temporary scheme and the posts are sanctioned on an year to year basis having regard to the temporary nature of the scheme. We are unable to comprehend how this factor can be invoked for violating 'equal pay for equal work' doctrine. Whether appointments are for temporary periods and the schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of 'equal pay for equal work' is attracted. As regards the effect of the breaks given at the end of every six months, we will deal with this aspect shortly hereafter. That

however is no ground for refusing to respect the 'equal pay for equal work' doctrine. Be it realized that we are concerned with the 'equal work equal pay' doctrine only within the parameters of the four grounds and the fact situation discussed hereinabove. We are not called upon, and we have no need or occasion to consider the applicability or otherwise of the said doctrine outside these parameters. For instance we are not required to express any opinion in the context of employment of similar nature under different employers, or in different cadres under the same of different employers. Nor are we concerned with questions required to be dealt with by authorities like the Pay Commissions such as equation of cadres or determination of parity-differential between different cadres or making assessment of workloads or qualitative differential based on relevant considerations and such other matters. We are concerned in the present matter with employees of the same employer doing same work of same nature discharged in the same department but appointed on a temporary basis instead of in a regular cadre on a regular basis. We have therefore decided the questions raised before us in the backdrop of facts of the present case. On the other dimensions of the doctrine we remain silent as there is no need or occasion to speak.

14. In the result we are of the opinion that the petitioners are entitled to be paid on the same basis of same pay scale as per which respondents 2 to 6 who are discharging similar duties as Supervisors just like the petitioners, are being paid.

15. We are now faced with the problem arising in the context of the fact that appointments of the petitioners were initially made for six months and after giving a break of a day or two they were reappointed to the same posts by fresh order. The counter-affidavit filed on November 23, 1985 by the State of Haryana and the documents placed on record go to show that the petitioners' contention that this is done deliberately with a view to deny to them the benefits enjoyed by the employees similarly situated and discharging similar duties and functions as Supervisors in the regular cadres. We find it difficult to accept the contention of the petitioners that this is being done deliberately and with mala fides attributed to the respondent-State. The petitioners have been appointed in the context of a scheme which is by the very nature of things transient and temporary. Annexure R-1 to the aforesaid counter-affidavit shows that the scheme was expected to function for ten months. No doubt it has been extended from year to year. But by the very nature and scope of the scheme, once the objective of Adult Education is accomplished in the sense that the illiterate adults of the cluster of villages become literate pursuant to the education imparted at the centre, the need for adult education would diminish progressively and ultimately cease. As disclosed in paragraphs 16 and 17 of the aforesaid counter-affidavit the targets were expected to be achieved latest by 1990. It was in this background that the posts were sanctioned on year to year basis (paragraph 11 of the counter-affidavit). Having regard to these facts and circumstances we do not think that the respondent-State can be accused of making appointments on a temporary six months basis with any ulterior or oblique motive. In our opinion, therefore, the prayer of the petitioners to absorb them as regular employees on a permanent basis from the date of their initial appointment has no justification. That however does not mean that the petitioner should be deprived of the legitimate benefits of being fixed in a pay scale corresponding to the one applicable to respondents 2 to 6 by treating them as employees who have continued from the date of initial appointment by disregarding the breaks which have been given on account of the peculiar nature of the scheme. While, therefore, the petitioners cannot claim as a matter of right to be absorbed as permanent and regular employees from the inception, they would be justified in claiming pay on the basis of the length of service computed from the date of their appointment depending on the length of service by disregarding the breaks which have been given for a limited purpose. If this is not being done the anomaly such as the one highlighted by the petitioners in their rejoinder affidavit dated December 13, 1985 will arise. As stated by the petitioners in paragraph 4(c) of the aforesaid rejoinder affidavit, while a peon

in the regular service would be drawing Rs. 650 the petitioners would be getting only Rs. 500 as fixed salary notwithstanding the nature and important of the functions discharged by them and the role played by them in the important field of advancement of literacy in the State. And finally we must deal with the question of date with effect from which the petitioners should be paid the difference in salary. In our opinion having regard to the facts and circumstances of the present case ends of justice would be met if the petitioners are paid the difference in salaries with effect from the date of the institution of the writ petition viz. September 18, 1985. But it will be convenient to direct the implementation with effect from September 1, 1985. We accordingly allow the writ petition partly and direct as under :

I

The petitioners shall be fixed in the same pay scale as that of respondents 2 to 6.

II

The pay of each of the petitioner shall be fixed having regard to the length of service with effect from the date of his initial appointment by ignoring the break in service arising in the context of the fact that the initial appointment orders were for 6 months and fresh appointment orders were issued after giving a break of a day or two.

III

The fixation shall be made as per the general principles adopted whenever pay revisions are made. In case upward revision has been effected in respect of the Supervisors in the regular cadre such revision should be taken into account in refixing the pay of the petitioners.

IV

The amount representing the difference in pay of the petitioners computed as per the present order shall be paid to each petitioner preferably latest by Mahatma Gandhiji's birthday which falls on October 2, 1987 or latest by November 1, 1987. The petitioners will be entitled to increments in the pay scale in accordance with law notwithstanding the break in service that might have been given.

V

We hope and trust that the State of Haryana will not show displeasure at the petitioners who have approached this Court in order to vindicate their right to claim equal pay and that service of no petitioner would be terminated except on reaching the age of superannuation or by way of appropriate disciplinary action, or on abandonment of the scheme. For the sake of abundant caution we direct accordingly.

VI

Fresh appointment orders will have to be issued reappointing the petitioners who have continued in service on the expiry of the six months period from time to time in order to give effect to the direction contained in Clause V hereinabove.

VII

In case the amounts of difference in pay cannot be computed within the time limit granted by this order, provisional and approximate calculations should be made and payment should be made on such basis subject to final adjustment within the time granted.

16. The petitioners shall be paid the cost of the writ petition quantified at Rs. 5000. Ordered accordingly.

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