

State of U. P. and Others

Vs

J. P. Chaurasia and Others

Civil Appeal No. 56 of 1987

(G. L. Oza, K. Jagannatha Shetty JJ)

27.09.1988

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This appeal by special leave is from a judgment of the High Court of Allahabad dated November 6, 1985 passed in Civil Misc. Writ Petition No. 4211 of 1983. The appeal raises a question of considerable importance. The question is whether it is permissible to have two pay scales in the same cadre for persons having same duties and having same responsibilities. The High Court has answered the question in the negative. It is said that it would be violative of the constitutional right of "equal pay for equal work".

2. The facts are not in dispute. They will be found correctly stated in the judgment under appeal and may briefly be stated thus :

Prior to 1965, in the High Court of Allahabad, Bench Secretaries were on a higher pay scale than that of Section Officers. They were in the pay scale of Rs. 160-320 as against the pay scale of Rs. 120-300 to Section Officers. In 1965 the State Government appointed a Pay Rationalisation Committee with wide-ranging reference. The Committee was asked to consider the duties and responsibilities of different categories of posts. It was required to consider and recommend changes to reduce the number of then existing pay scales. It was also asked to recommend as far as possible equal emoluments for identical duties and responsibilities. The Committee submitted a detailed report, in which Bench Secretaries became casualties. The Committee recommended for them a pay scale slightly lower than that of Section Officers. Rs. 150-350 was recommended for Bench Secretaries as against Rs. 200-400 for Section Officers. The State Government accepted the recommendations. Subsequently, these pay scales were raised to Rs. 200-450 and Rs. 515-715 respectively.

3. Being dissatisfied with the downgrading, the Bench Secretaries made representation to the government. They demanded that they should at least be put at par with Section Officers if not on higher scale. The High Court supported their case but half-heartedly. The High Court suggested "that in view of financial exigencies the government may grant for the time being pay scale to 10 Bench Secretaries as admissible to Section Officers". When the matter was pending consideration, the government appointed the Pay Commission (1971-72) headed by Shri Ali Zahir. On February 1, 1973, the Pay Commission submitted its report. The report did not accept the claim of Bench Secretaries for giving them pay scale equal to Section Officers or Private Secretaries. The report

was in fact very much against them. The following remarks of the Pay Commission would be pertinent :

9. Bench Secretaries (Sakha Sachiv). - A memorandum from the Bench Secretaries given to us states that the post which are at present in the scale of Rs. 200-450 are of great responsibility for which experience and special qualifications are required. They have claimed that their duties are equivalent to Private Secretaries of Hon'ble Judges and have demanded the same pay scale which is given to Private Secretaries and the Section Officers. The Registrar of the High Court while forwarding the memorandum has suggested that they should also be given the same pay scale which is given to Superintendents i.e. Rs. 515-40-715 or to the Section Officers i.e. Rs. 350-750. It is not necessary to emphasise that in comparison to Bench Secretaries, the Section Officers of the Secretariat have to bear more responsibilities in their section and have control over their subordinates. Section Officer have to prepare lengthy and original note sin complicated and important matters. Therefore, the responsibilities of the two posts cannot be said to be equal. Keeping in view the present scale of pay, the pay scale recommended by the Pay Rationalisation Committee, the nature of duties and responsibilities and the fact that every Hon'ble Judge will have one Private Secretary in the scale of Rs. 500-1000, we feel that the Bench Secretaries cannot be given the same scale of pay which is being given to Superintendents or the Section Officers. Since the Bench Secretaries are promoted from Upper Division Assistants, they should feel satisfied if they are placed in a scale of pay a little above the Upper Division Assistants. Therefore, we have recommended for them a pay scale of Rs. 400-15-475-20-575-25-750.

4. It will be seen that the Pay Commission refused to equate Bench Secretaries with Section Officers in view of their differential duties. It was found that the nature of work of Section Officers was quite different and more onerous then that of Bench Secretaries. Section Officers have to bear more responsibilities in their sections. They have to exercise control over their subordinates. They have to prepare lengthy original notes in complicated matters. The Commission, therefore, recommended Rs. 400-750 for Bench Secretaries and Rs. 500-1000 to Section Officers.

5. The Bench Secretaries again moved the government reiterating their demand. The government appears to have received several such representations against the report of Ali Zahir Commission. To consider all such grievances, a Committee called the "Anomalies Committee" was constituted. As the name itself suggests, the Committee was required to examine and remove anomalies in the recommendations of Pay Commission. The Committee appears to have made some patchwork. So far as Bench Secretaries are concerned, the Committee suggested :

(1) For this post the recommendations made by the Pay Commission need not have any amendments.

(2) It should be appropriate for the Bench Secretaries to accept 10 promotional posts in the pay scale of Rs. 500-1000 as recommended by the Pay Commission.

6. The Anomalies Committee also thus rejected the claim of Bench Secretaries for placing them at par with Section Officers. It however, suggested that ten posts of Bench Secretaries should be upgraded and placed in the pay scale of Rs. 500-1000. The government accepted that recommendation and issued an order July 2, 1976. The order inter alia states :



to be conducted by appointing authority. Permanent Upper Division Assistants and permanent Lower Division Assistants having not less than ten years service are made eligible for selection. Preference shall however, be given to candidates possessing a law degree. Rule 16 provides that the posts of Bench Secretaries Grade I shall be filled up by promotion from amongst permanent Bench Secretaries Grade II. Rule 18 deals with method of selection for all promotional posts. It shall be made by selection committee appointed by the Chief Justice. The criterion of selection shall be merit with due regard to seniority. The entitlement to higher pay scale of Grade I Bench Secretary was therefore, not on the basis of seniority alone, but on the basis of selection by merit-cum-seniority.

9. In 1979, the State Government appointed another Pay Commission. That Pay Commission also did not disturb the categorisation of Bench Secretaries into Grade I and Grade II. It however, gave marginal benefits by increasing the number of posts of Grade I from 10 per cent to 30 per cent of the total cadre strength. The reason given by the Pay Commission is as follows :

Bench Secretary

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Fifty-two posts of Bench Secretaries are in the pay scale of Rs. 400-750 and ten posts in the scale of Rs. 500-1000. For appointment on these posts a limited competitive examination is held from amongst Upper Division Assistants, Lower Division Assistants with ten years of service preferably Law Graduates. We have received a representation stating that the Bench Secretaries play a very important role in smooth running of the proceedings of the court. The minimum pay scales of the Bench Secretaries is comparatively higher than the pay scale of Upper Division Assistants though they are appointed through a competitive examination. It is limited to only Upper Division/Lower Division Assistants of the High Court. Keeping in view the fact that vacancies in Upper Division/Lower Division Assistants are filled up by promotion from Routine Grade Assistants, it is clear that this is a second promotion for those who come directly from Lower Division Assistants and a third promotion for those who are promoted first to Upper Division Assistant and then a Bench Secretary. Even then we given importance to the fact that only best from Upper Division/Lower Division Assistants are preferred for the post. The work of the Bench Secretary is of a great importance. We, therefore, recommend :

(1) 30 per cent of the total posts of Bench Secretaries in the pay scale of Rs. 770-1000; and

(2) Two posts in the scale of Rs. 1420-1900 as is admissible to Assistant Secretaries in the Secretariat.

10. Finally the Bench Secretaries Grade II moved the High Court on judicial side with an application under Article 226 of the Constitution. They challenged the validity of bifurcation of one cadre into Grade I and Grade II. The sheet-anchor of their case was that in the same category of posts with similar duties and responsibilities there cannot be two grades with different pay scales. It would be violative of principles of equal pay for equal work. It was also contended that Bench Secretaries was a well recognised class that existed over the years and indeed superior to Section Officers. Rejection of their demand for equating at least with Section Officers would be ignoring

that historical fact. The High Court accepted all these contentions and granted the relief prayed for.

11. As to the Pay Commission recommendations the High Court observed :

Rejection of petitioner's demand for equating them at least with Section Officers by comparing them with absence of administrative control exercised by Section Officer in the Secretariat was ignoring history of Bench Secretaries being a different class both before and after independence and the nature of duties performed by them.

12. As to the decision of the Anomalies Committee the High Court remarked :

Curiously enough when Anomalies Committee redressed the wrong by granting pay scale equivalent to Section Officers, it created an artificial division by drawing a line between first ten and others. A Bench Secretary or for that matter any officer who puts in longer years of service gets more salary than his juniors but if a senior performing the same duty as his juniors is put in different higher scale then it results in invidious classification in the same group. And that violates the concept of equality which visualises that whatever conditions are guaranteed and secured by law to one shall be guaranteed to others who are of the same group or class. It only denies enactment of a rule or law which attempts to deal differently with persons situated similarly. The government order by which the classification was done itself provided that duty and responsibility of Bench Secretary of Grade II be the same as of Grade I (sic) shall be seniority. No other basis or qualification or test or be it was laid down. The effect of the order was that those who are senior entered into an altogether different grade. That is senior Bench Secretaries although doing the same work as his junior became entitled to higher grade. And that clearly violated the principle of equal pay for equal work.

13. In support of these conclusions the High Court relied upon two decisions of this Court : (i) *Randhir Singh v. Union of India* ((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : (1982) 3 SCR 298) and (ii) *P. Savita v. Union of India* (1985 Supp SCC 94 : 1985 SCC (L&S) 826 : 1985 Supp 1 SCR 101).

14. With regard to rules framed by the Chief Justice for the purpose of promotion to Bench Secretary Grade I, the High Court said :

Rules were made not because the court agreed with the classification of Bench Secretaries in Group I and Group II but because of the Government Order dated July 2, 1976. The vice is not in the method of selection but in creation of two different groups without any intelligible differentia. If Bench Secretaries of Group I would have been required to do any work different that Bench Secretaries Grade II, it could be described as promotional avenue. Promotion from one post to another is associated with advancing to a higher office, climbing one more ladder in service career. But the different grade for persons of same (sic) even on seniority-cum-merit with same work and responsibility cannot amount to promotion.

15. With these conclusions, the High Court quashed a part of the notification dated July 2, 1976 which created Bench Secretaries Grade I. The High Court did not quash the Rules relating to promotion to that cadre. The High Court directed that all Bench Secretaries irrespective of their

grades should be given the pay scale admissible to Bench Secretaries Grade I with effect from October 1, 1975.

16. The State of U.P. being aggrieved by the decision has appealed to this Court.

17. On the submissions made by counsel on both sides, two questions arise for our consideration :

(i) Whether Bench Secretaries in the High Court of Allahabad are entitled to pay scale admissible to Section Officers ?; and

(ii) Whether the creation of two grades with different pay scales in the cadre of Bench Secretaries who are doing the same or similar work is violative of the right to have "equal pay for equal work"?

18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They should be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

19. In the present case, it is true that at one time, Bench Secretaries were paid more emoluments than Section Officers. But it is not known on what basis they were paid in the higher pay scale and treated as a superior class to Section Officers. The successive Pay Commissions and even Pay Rationalisation Committee, however, found no support to their superior claim. The Commissions and Committee have evaluated the respective duties and responsibilities of the two posts. It was found that the Section Officers perform onerous duties and bear greater responsibilities than Bench Secretaries. We cannot go against that opinion and indeed, we must accept that opinion. The Bench Secretaries, therefore, cannot claim as of right the pay scale admissible to Section Officers.

20. The second question formulated earlier needs careful examination. The question is not particular to the present case. It is pertinent to all such cases. It is a matter affecting the civil services in general. The question is whether there could be two scales of pay in the same cadre of persons performing the same or similar work or duties. All Bench Secretaries in the High Court of Allahabad are undisputedly having same duties. But they have been bifurcated into two grades with different pay scales. The Bench Secretaries Grade I are in a higher pay scale than Bench Secretaries Grade II. The entitlement to higher pay scale depends upon selection based on merit-cum-seniority. Can it be said that it would be violative of the right to equality guaranteed under the Constitution ?

21. It was argued for the respondents that it offends the constitutional principle of "equal pay for equal work". Several decisions of this Court were relied upon in support of the proposition.

22. "Equal pay for equal work for both men and women" has been accepted as a "constitutional goal" capable of being achieved through constitutional remedies. In *Randhir Singh v. Union of India*

((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : (1982) 3 SCR 298) Chinnappa Reddy, J. said : (SCC p. 622, para 8 : SCR p. 304)

It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. 'Equal pay for equal work for both and women' means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clause of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.

23. The learned Judge however, observed that a differential treatment in appropriate cases can be justified when there are two grades based on reasonable grounds : (SCC p. 622, para 7)

It is well known that there can be and there are different grades in a service, with varying qualifications 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.

24. In *Randhir Singh* ((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : (1982) 3 SCR 298), the petitioner was a driver-constable in the Delhi Police Force under the Delhi Administration. It was found that the petitioner and the other drivers in the Delhi Police Force performed the same functions and duties as other drivers in the service of the Delhi Administration and the Central Government. Indeed, by reason of their investiture with the 'powers, functions and privileges of a police officer', their duties and responsibilities were found to be more arduous. It was also admitted by the Delhi Administration in that case that the duties of driver-constable of the Delhi Police Force were onerous. Therefore, learned Judge said that there was no reason for giving them lower scale of pay than other drivers. It was directed that the driver-constables of Delhi Police Force should be given the scale of pay at least on par with that of drivers of the Railway Protection Force. The principle enunciated in *Randhir Singh* ((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : (1982) 3 SCR 298) was followed in *P. K. Ramachandra Iyer v. Union of India* ((1984) 2 SCC 141 : 1984 SCC (L&S) 214) and *P. Savita v. Union of India* (1985 Supp SCC 94 : 1985 SCC (L&S) 826 : 1985 Supp 1 SCR 101). In the former, the arbitrary differential treatment in the pay scale accorded to some professors was struck down. The petitioners therein were holding the posts of Professors in the Indian Veterinary Research Institute under the Indian Council of Medical Research. The pay scale of professors underwent revision. The new recruits got the benefit of revision of scales, but not the petitioner. He was allowed to continue in the old scale. He challenged that discrimination in this Court as being violative of the right to have equal pay for equal work. This Court accepted the contention and observed : (SCC pp. 163-64, para 17)

The case in hand is a glaring example of discriminatory treatment accorded to old, experienced and highly qualified hands with an an evil eye and unequal hand and the guarantee of equality in all its pervasive character must enable this Court to remove discrimination and to restore fair play in action. No attempt was made to sustain the scales of pay for the post of Professor on the doctrine of classification because the classification of existing incumbents as being distinct and separate from newly recruited hand with flimsy change in essential qualification would be wholly irrational and arbitrary. The case of the petitioners for being put in the revised scale of Rs. 1100-1600 from the date on which newly created posts of Professors in sister disciplines in IVRI and other institutes were created and filled in revised scale is unanswerable and must be conceded.

25. In *P. Savita v. Union of India* (1985 Supp SCC 94 : 1985 SCC (L&S) 826 : 1985 Supp 1 SCR 101), the artificial division of senior draftsmen in the Ministry of Defence Production with unequal scales of pay for the same work was struck down.

26. In *Dhirendra Chamoli v. State of U. P.* ((1986) 1 SCC 637), this Court found fault with the Central Government for not giving the casual workers engaged in Nehru Yuvak Kendra the same salary and conditions of service as enjoyed by class IV employees regularly appointed against sanctioned posts. It was observed : (SCC pp. 638-39, para 2)

It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as class IV employees, must therefore get the same salary and conditions of service as class IV employees, must therefore get the same salary and conditions of service as class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as class IV employees.

27. In *Surinder Singh v. Engineer-in-Chief, C. P. W. D.* ((1986) 1 SCC 639), the case of poor daily wage workers employed for several years by the Central Public Works Department (CPWD) came up for consideration before this Court. They demanded parity in their wages, salary and allowances with those of regular and permanent employees of the department on the basis of performing similar work. This Court while granting relief to the workmen observed : (SCC p. 642, para 1)

The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and State Undertakings.

28. The right to have equal pay for equal work was also accepted by this Court in *R. D. Gupta v. Lt.-Governor of Delhi* ((1987) 4 SCC 505 : 1987 SCC (L&S) 470 : (1987) 5 ATC 65); *Bhagwan Dass v. State of Haryana* ((1987) 4 SCC 634 : 1988 SCC (L&S) 24 : (1987) 5 ATC 136); *National*

Museum Non-Gazetted Employees Association v. UOI (1988 Supp SCC 673); Jaipal v. State of Haryana ((1988) 3 SCC 354 : 1988 SCC (L&S) 785 : (1988) 7 ATC 771) and Y. K. Mehta v. UOI (1988 Supp SCC 750).

29. Article 39(d) of the Constitution proclaims "equal pay for equal work". This article and other like provisions in the Directive Principles are "conscience of our Constitution". They are rooted in social justice. They were intended to bring about a socio-economic transformation in our society. As observed by Hegde and Mukherjea, JJ. in *Kesavananda Bharati v. State of Kerala* ((1973) 4 SCC 225) (SCC p. 502, para 712) : " (T)he Constitution seeks to fulfil the basic needs of the common man and to change the structure of our society." In the words of Shelat and Grover, JJ. (SCC p. 458, para 596) : "The dominant objective in view was to ameliorate and improve the lot of the common man and to bring about a socio-economic justice." In matter of employment the government of socialist State must protect the weaker sections. It must be ensured that there is no exploitation of poor and ignorant. It is the duty of the State to see that the underprivileged or weaker sections get their dues. Even if they have voluntarily accepted the employment on unequal terms, the State should not deny their basic rights of equal treatment. It is against this background that the principle of "equal pay for equal work" has to be construed in the first place. Second, this principle has no mechanical application in every case of similar work. It has to be read into Article 14 of the Constitution. Article 14 permits reasonable classification founded on different bases. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of newcomers.

Even in *Randhir Singh Case* ((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : (1982) 3 SCR 298), this principle has been recognised. O. Chinnappa Reddy, J. observed that the classification of officers into two grades with different scales of pay based either on academic qualification or experience or (sic or) length of service is sustainable. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judges. There is senior time scale in Indian Administrative Service. There is super time scale in other like services. The entitlement to these higher pay scales depends upon seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself.

30. In *All India Customs and Central Excise Stenographers (Recognised) v. Union of India* ((1988) 3 SCC 91 : 1988 SCC (L&S) 673 : (1988) 7 ATC 591), Sabyasachi Mukharji, J. said : (SCC p. 100, para 7)

There may be qualitative differences as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it

follows naturally that equal pay for unequal work will be a negation of that right.

And said : (SCC pp. 104-05, para 11)

The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact.

31. In the present case, all Bench Secretaries may do the same work, but their quality of work may differ. Under the rules framed by the Chief Justice of the High Court, Bench Secretaries Grade I are selected by a Selection Committee. The selection is based on merit with due regards to seniority. They are selected among the lot of Bench Secretaries Grade II. When Bench Secretaries Grade II acquire experience and also display more merit, they are appointed as Bench Secretaries Grade I. The rules thus make a proper classification for the purpose of entitlement to higher pay scale. The High Court has completely overlooked the criterion provided under the Rules. The merit governs the grant of higher pay scale and that merit will be evaluated by a competent authority. The classification made under the Rules, therefore, cannot be said to be violative of the right to have equal pay for equal work.

32. After the argument was concluded in this appeal, counsel on both sides brought to our attention that the State Government has granted uniform pay scale of Rs. 1600-2950 to both the grades of Bench Secretaries with effect from January 1, 1986. We may make it clear that this decision of ours shall not affect the Bench Secretaries to get that pay scale accordingly with effect from January 1, 1986.

33. In the result, we allow the appeal and set aside the judgment of the High Court.

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