

Mewa Ram Kanojia

Vs

All India Institute of Medical Sciences and Others

Writ Petition (Civil) No. 4611 of 1983

(K. N. Singh, K. Jagannatha Shetty JJ)

09.03.1989

JUDGMENT

SINGH, J. –

1. By means of this petition under Article 32 of the Constitution the petitioner has raised a grievance that the respondent-authorities have practised discrimination in violation of Articles 14 and 16 of the Constitution in refusing to pay him salary in the scale of pay prescribed for similarly placed employees. He has invoked the doctrine of "Equal pay for equal work" as enshrined under Article 39(d) of the Constitution.

2. In order to appreciate petitioner's grievance it is necessary to refer to relevant facts giving rise to this petition. The petitioner was initially appointed in 1967 to the post of Teacher Coordinator in the pay scale of Rs. 210-425 in the Research Project "Rehabilitation Unit in Audiology and Speech Pathology" a project funded by the Indian Council of Medical Research under PL-480 research scheme with the special assistance of the Social Rehabilitation Services (formerly Vocational Rehabilitation Administration). The aforesaid unit was taken over by the All India Institute of Medical Sciences on July 1, 1970 along with the staff attached to the said unit. The petitioner's services stood transferred to the All India Institute of Medical Sciences (hereinafter referred to as the Institute) and the petitioner continued to hold the post of Teacher Coordinator in the Institute. On the recommendation of the Head of the Department of Rehabilitation Unit the petitioner's post was redesignated as 'Hearing Therapist' with effect from August 3, 1972 but he continued to draw the salary in the same scale of pay of Rs. 210-425. In pursuance to the recommendations of the Third Pay Commission as adopted by the Institute the pay scale of Hearing Therapist was revised to Rs. 425-700 with effect from January 1, 1973. Since then the petitioner has continued to draw salary in the pay scale of Rs. 425-700. The petitioner made several representations to the respondent-authorities to revise his pay scale and to place him in the pay scale prescribed for the "Speech Pathologist" and "Audiologist" in the pay scale of Rs. 650-1200. Since no relief was granted to him he invoked the jurisdiction of this Court by means of this petition under Article 32 of the Constitution.

3. The petitioner's main grievance is that 'Hearing Therapist' performs the same duties and functions as 'Senior Speech Pathologist', 'Senior Physiotherapist', 'Senior Occupational Therapist', 'Audiologist', and 'Speech Pathologist', yet the respondents have practised discrimination in paying salary to the petitioner in a lower scale of pay. The petitioner has asserted that the qualification prescribed for the aforesaid posts are almost similar and they are working in the same institution under the same employer but the respondent-authorities have practised discrimination in refusing to accept the petitioner's claim for equal pay. The petitioner has further raised a grievance that the

Third Pay Commission ignored the claim of 'Hearing Therapist' although it has granted higher scale of pay for similar posts of 'Speech Therapist', 'Senior Speech Pathologist' and 'Audiologist'. He has asserted that Speech Therapists performing similar kind of duties as performed by the petitioner have been granted higher pay scale in other organisations like Safdarjang Hospital, P.G.I. Chandigarh, Medical College Rohtak and Ali Yaver Jung National Institute for the Hearing Handicapped, Hyderabad. The petitioner contends that the respondents failed to implement the Directive Principle of 'Equal pay for equal work' as contained in Article 39(d) of the Constitution in violation of Articles 14 and 16 of the Constitution. He has claimed relief for the issuance of writ of mandamus directing the respondents which include All India Institute of Medical Sciences and Union of India for fixing the petitioner's pay in the scale of Rs. 400-950 with effect from January 1, 1970 and thereafter in the scale of Rs. 650-1200 with effect from January 1, 1973. In defence the respondents assert that the petitioner cannot compare himself with Senior Speech Therapist, Senior Physio-therapist, Senior Occupational Therapist, Audiologist or Speech Therapist as qualifications, duties and functions of those posts are altogether different and distinct from those prescribed for Hearing Therapist. There is no equality between the petitioner and persons holding the aforesaid posts. The Institute has created different posts with different pay scales having regard to the qualifications, duties, functions and responsibilities of the posts. The petitioner is not entitled to equate himself with the incumbents holding the posts of Senior Speech Therapist, Senior Physiotherapist, Senior Occupational Therapist, Audiologist and Speech Therapist. The petitioner's plea of discrimination is emphatically denied.

4. The doctrine of "Equal pay for equal work" is not expressly declared a fundamental right under the Constitution. But Article 39(d) read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution enjoins the State that where all things are equal, persons holding identical posts, performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. The doctrine of 'Equal pay for equal work' is not abstract one, it is open to the State to prescribe different scales of pay for different post having regard to educational qualifications, duties and responsibilities of the post. The principle of 'Equal pay for equal work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay. The principle of "Equal pay for equal work" has been enforced by this Court in *Randhir Singh v. Union of India* ((1982) 1 SCC 618 : 1982 SCC (L&S) 119), *Dhirendra Chamoli v. State of U. P.* ((1986) 1 SCC 637 : 1986 SCC (L&S) 187), *V. J. Thomas v. Union of India* (1985 Supp SCC 7 : 1985 SCC (L&S) 516), *P. Savita v. Union of India* (1985 Supp SCC 94 : 1985 SCC (L&S) 826 : 1985 Supp 1 SCR 101), *Bhagwan Dass v. State of Haryana* ((1987) 4 SCC 634 : 1988 SCC (L&S) 24 : (1987) 5 ATC 136) and *Jaipal v. State of Haryana* ((1988) 3 SCC 354 : 1988 SCC (L&S) 785 : (1988) 7 ATC 771). In all these cases this Court granted relief on the application of the doctrine of 'Equal pay for equal work'.

5. While considering the question of application of principle of 'Equal pay for equal work' it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.

6. In the writ petition, the petitioner claimed parity with the pay scale prescribed for Senior Speech Therapist, Senior Physiotherapist, Senior Occupational Therapist, Audiologist and Speech Pathologist but during the course of hearing Sri Gobind Mukhoty, learned counsel for the petitioner confined the petitioner's case for parity with 'Audiologist' only. He urged that the educational qualifications, duties and functions of 'Hearing Therapist', and 'Audiologist' are similar, if not the same, and there is no reasonable justification for prescribing lower scale of pay to Hearing Therapist. A Hearing Therapist is required to treat the deaf and other patients suffering from hearing defects. His function is to help in rehabilitation of those whose hearing capacity is impaired. The Hearing Therapist's main function is to train the patient to facilitate maximum expressive and respective communication skill. An Audiologist's work, pertains to the science of hearing. His work is designed to coordinate the separate professional skills which contribute to study, treatment and rehabilitation of persons with impaired hearing. A person holding the post of Audiologist is a specialist in the non-medical evaluation, habilitation and rehabilitation of these who suffer from language and speech disorders. Generally, Hearing Therapist and Audiologist both perform duties and functions in helping rehabilitation of patients suffering from hearing disorders, their duties and functions appears to be similar, but the petitioner has not placed material before the court to demonstrate that the duties and functions performed by Hearing Therapist is same or similar as that performed by an Audiologist. The petitioner has placed reliance on a certificate issued by the Head of Department of Otorhinolaryngology which enumerates duties, functions which the petitioner has been performing while working as Hearing Therapist. According to this certificate the petitioner has been carrying out the following functions :

1. Diagnosis of the impairment of hearing cases. (Detailed diagnosis.)
2. Audiological evaluation i.e. hearing and evaluation, hearing and prescription and auditory training.
3. Parent counselling and guidance.
4. Referring to different experts for their opinion such as Physiotherapist, Occupational Therapist, Clinical Psychologist, Ear Mould Technician, Paediatrician, Paediatric Neurologist and Ophthalmologist, Audiometry Technical and to ENT Specialist.
5. Speech and language therapy.
6. Integration of hearing handicapped with normal persons.
7. Integration of hearing loss children with normal hearing children.
8. Guidance to the teachers of normal schools where there is any hard of hearing case studying.
9. Writing of papers and books on the basis of personal experiences and research.
10. Speech therapy to normal hearing persons as and when referred to them.
11. Referring the hearing handicapped children to special schools for the deaf and when a child is unable to study in a normal school.

12. Educational rehabilitation of any age group of hearing loss cases.

The petitioner has, however, failed to place material before the court showing the corresponding duties and functions of an Audiologist in the Institute. In the absence of duties and functions of an Audiologist it is not possible for the court to record findings that the duties and functions performed by Hearing Therapist is similar to those performed by an Audiologist more so when the respondents have denied the petitioner's claim in the counter-affidavit. The petitioner's claim that he performs the same duties and functions as those performed by an Audiologist under the same employer cannot therefore be accepted.

7. Even assuming that the petitioner performs similar duties and functions as those performed by an Audiologist, it is not sufficient to uphold his claim for equal pay. As already observed, in judging the equality of work for the purposes of equal pay, regard must be had not only to the duties and functions but also to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of 'Equal pay for equal work' would not apply. Under the relevant Rules framed by the Institute qualifications for the two class of posts, namely, Audiologist and Hearing Therapist are as under :

#----- Audiologist Qualifications	Hearing Therapist Qualifications
----- 1 -----	----- 2 -----
1. A graduate in Science/Arts or a recognised University in India or abroad.	1. A graduate in Science or Medicines, from a recognised University in India or abroad.
2. Master's degree in Audiology	2. Master's degree in Otolaryngology or Audiology
3. Trained teacher for the deaf, such as Certified Teacher for Deaf (C.T.D. University. ... Dip) 3. Three years teaching/	3. Trained teacher for the deaf, such as Certified Teacher for Deaf (C.T.D. University. ... Dip) 3. Three years teaching/
3. Teaching experience at a recognised school for the field of Audiology.	3. Teaching experience at a recognised school for the field of Audiology.
Desirable 1. Ph.D. in Audiology from a recognised University. 2. Practical experience of working in a Speech and Hearing Rehabilitation Centre. 3. Journalistic or literary activity in relation to Audiology.	Desirable 1. Ph.D. in Audiology from a recognised University. 2. Practical experience of working in a Speech and Hearing Rehabilitation Centre. 3. Journalistic or literary activity in relation to Audiology.
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A perusal of the above chart would show that different educational qualifications are prescribed for the two posts. For an Audiologist a Master's Degree in Otolaryngology or Audiology is an essential qualification but no such Master's Degree is prescribed for Hearing Therapist instead a diploma as Certified Teacher for Deaf is the essential qualification for the said post. A comparison of the qualifications prescribed for the two posts clearly indicates that higher qualification is prescribed for the post of Audiologist. There appears to be qualitative difference in the responsibilities of the two posts as an Audiologist possesses higher qualifications. It is therefore manifest that on the basis of educational qualifications two posts cannot be equated. Even if the functions and duties of two posts are similar it is open to the State to prescribe different scales of pay on the basis of difference in educational qualifications. Different treatment to persons belonging to the same class is a permissible classification on the basis of educational qualifications.

8. There are several decisions of this Court where educational qualifications have been recognised as a valid basis for classification. In State of Mysore v. P. Narasingh Rao ((1968) 1 SCR 407 : AIR

1968 SC 349 : (1968) 2 LLJ 120), this Court held that higher educational qualifications such as success in SSLC examination are relevant considerations for fixation of higher pay scale for tracers who had passed the SSLC examination and the classification of two grades of tracers in Mysore State, one for matriculate tracers with higher pay scale and the other for non-matriculate tracers with lower pay scale, was held valid. It is pertinent to note that matriculate and non-matriculate tracers both constituted the same service performing the same duties and functions, yet the court held that higher pay scale prescribed for the matriculate tracers on the basis of higher educational qualification was not violative of Articles 14 and 16 of the Constitution. In *Union of India v. Dr. (Mrs.) S. B. Kohli* ((1973) 3 SCC 592 : 1973 SCC (L&S) 136), classification made on the basis of educational qualification for purposes of promotion was upheld by this Court on the ground that the classification made on the basis of such a requirement was not without reference to the objectives sought to be achieved and there could be no question of discrimination. In *State of Jammu and Kashmir v. Triloki Nath Khosa* ((1974) 1 SCC 19 : 1974 SCC (L&S) 49) cadre of Assistant Engineers included of degree holders and diploma holders, they constituted one class of service but for promotion to the post of Executive Engineers only those Assistant Engineers were eligible for promotion who possessed Bachelor's Degree in Engineering and the diploma holders were eligible only if they had put in 7 years minimum service no such restriction was prescribed for degree holders. The diploma holder Assistant Engineers challenged the validity of the rule on the ground that it denied them equal opportunity of promotion, in violation of Articles 14 and 16 of the Constitution. On a detailed consideration a Constitution Bench of this Court upheld the classification on the ground of difference in educational qualification. The court held that classification founded on the basis of educational qualification had a reasonable nexus to achieve administrative efficiency in Engineering Services. The court approvingly referred to the decisions of the court in *State of Mysore v. Narasingh Rao* ((1968) 1 SCR 407 : AIR 1968 SC 349 : (1968) 2 LLJ 120), *Ganga Ram v. Union of India* ((1970) 1 SCC 377 : (1970) 3 SCR 481) and *Union of India v. Dr. (Mrs.) S. B. Kohli* ((1973) 3 SCC 592 : 1973 SCC (L&S) 136). The court upheld the classification and refused to grant any relief to diploma holders Engineers. In *Mohammad Shujat Ali v. Union of India* ((1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449) another Constitution Bench of this Court upheld the classification of Supervisors into two classes, graduates and non-graduates for the purpose of promotion to the post of Assistant Engineers on the ground of educational qualification although both the class of supervisors constituted the same service. In *Federation of All India Customs & Central Excise Stenographers (Recognised) v. Union of India* ((1988) 3 SCC 91 : 1988 SCC (L&S) 673 : (1988) 7 ATC 591) claim of Personal Assistants and Stenographers attached to the Heads of Departments in the Customs and Central Excise Department of the Ministry of Finance for equal pay in parity with the Personal Assistants and Stenographers attached to the Joint Secretaries and officers above them in the Ministry of Finance was rejected by this Court on the ground of the functional requirement of the work done, training and responsibility prescribed for the two posts. In *State of U. P. v. J. P. Chaurasia* ((1989) 1 SCC 121 : 1989 SCC (L&S) 71 : (1988) 8 ATC 929) the question arose whether it was permissible to have two different pay scales in the cadre of Bench Secretaries, for persons performing the same duties and having the same responsibilities. In the light of the various decision of this Court it was held that the principle of "equal pay for equal work" has no mechanical application in every case of similar work. Articles 14 and 16 permit reasonable classification founded on rational basis, it is, therefore, permissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. The court held that in such a situation the principle of equal pay for equal work did not apply.

9. We would like to emphasise that the principle of equal pay for equal work cannot be invoked

invariably in every kind of service, particularly, in the area of professional services. In *Dr. C. Girijambal v. Government of Andhra Pradesh* ((1981) 2 SCC 155 : (1981) 2 SCR 782), it was contended before the court that medical officers holding the degree of Graduate from the College of Integrated Medicine (GCIM) and holders of Licentiate in Indigenous Medicine (LIM) performed the same functions and discharged the same duties in dispensaries and therefore on the principle of "equal pay for equal work" both class of persons were entitled to the same scale of pay. Medical officers holding the qualifications of GCIM or the qualification of LIM or the qualification of Diploma in Ayurvedic Medicine (DAM), being in charge of dispensaries run by Zila Parishads were not treated alike as the State Government had prescribed different scales of pay for medical officers. On behalf of the aggrieved doctors it was contended that the functions and duties discharged by the three class of doctors in the dispensaries run by Zila Parishads were the same and their qualifications were also similar and yet the State Government practised discrimination in prescribing different scale of pay for them. This Court held that the principle of equal pay for equal work could not be invoked or applied in the area of professional services like medical practitioners. The court observed as under : (SCC p. 158, para 6)

Dealing with the first contention we would like to observe at the outset that the principle of equal pay for equal work cannot be invoked or applied invariably in every kind of service and certainly it cannot be invoked in the area of professional services when these are to be compensated. Dressing of any injury or would is done both by a doctor as well as a compounder, but surely it cannot be suggested that for doing this job a doctor cannot be compensated more than the compounder. Similarly, a case in court of law is argued both by a senior and a junior lawyer, but it is difficult to accept that in matter of remuneration both should be treated equally. It is thus clear that in the field of rendering professional services at any rate the principle of equal pay for equal work would inapplicable. In the instant case medical officers holding the qualification of GCIM, or the qualification of LIM or the qualification of DAM, though in charge of dispensaries run by Zila Parishads, cannot, therefore, be treated on par with each other and if the State Government or the Zila Parishads prescribe different scales of pay for each category of medical officers no fault could be found with such prescription.

10. We fully agree with the above observations and accordingly we hold that in the instant case since the Hearing Therapist and Audiologist both render professional services and there is qualitative difference between the two on the basis of educational qualification the principle of equal pay for equal work cannot be invoked or applied. The Pay Commission considered the case of Hearing Therapists and it did not accept their claim for higher scale of pay. The Pay Commission was in a better position to judge the volume of work, qualitative difference and reliability and responsibility required for the two posts. The Pay Commission made recommendations for pay scales on the basis of value judgment which has an intelligible criteria on the basis of educational qualifications. The scant material placed before the court by the petitioner, is not sufficient to hold that the recommendations of Pay Commissions are without any rational basis or that it permits discrimination.

11. The petitioner's contention that Speech Therapists have been granted higher scale of pay in other institutions, namely, Rohtak Medical College, National Institute for Hearing Handicapped, Hyderabad, Safdarjang Hospital, and P.G.I., Chandigarh cannot be taken into consideration as the petitioner has failed to place any material showing the duties and functions performed by the Speech Therapist in the aforesaid institutions or the qualifications prescribed for the same. Merely because Speech Therapists performing similar duties and functions in other institutions are paid higher pay scale is no good ground to accept the petitioner's claim for equal pay. There may be difference in

educational qualifications, quality and volume of work required to be performed by the Hearing Therapists in other institutions. In the absence of any material placed before the court it is not possible to record findings that the petitioner is denied equality before law. Moreover, if the employer is not the same the principle of 'Equal pay for equal work' would not be applicable. We do not consider it necessary to discuss the matter further as the petitioner has not placed requisite material before the court for the application of the principle of 'Equal pay for equal work'.

12. In view of the above discussion we are of the opinion that the petitioner has failed to demonstrate that any discrimination has been practised against him in the matter relating to pay, therefore the question of application of the principle of 'Equal pay for equal work' does not arise and the petitioner is not entitled to any relief. The petition fails and is accordingly dismissed but there will be no order as to costs.

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