

State of Andhra Pradesh and Others

Vs

G. Sreenivasa Rao and Others

Civil Appeals Nos. 307-316 of 1988 etc.

(K. N. Singh, Kuldeep Singh JJ)

13.03.1989

JUDGMENT

KULDIP SINGH, J. -

1. The question for decision in these appeals is whether payment of less salary to a senior than his junior in the same cadre having the same pay scale is violative of the principle of "equal pay for equal work" enshrined in Article 39(d) read with Articles 14 and 16 of the Constitution of India.
2. Though the respondents belong to different departments and service but since, the question of law is same, we are disposing these appeals by common order. Necessary facts relating to each batch of appeals for appreciating the controversy are as under :

Civil Appeals Nos. 317-30/87, 2998/87, 294-298/88, 307 to 315/88, 305/88 and 316/88

3. The first batch in this bunch of appeals is concerning the employees of the High Court of Andhra Pradesh. The main judgment under appeal relates to the cadre of Assistant Section Officers working in the High Court. Copyists and assistants are the two feeder cadres to the post of Assistant Section Officer. Prior to 1974 copyists were in the pay scale of Rs. 70-130 and were entitled to additional payment at Rs. 7.50 p. per every 100 words they copy in excess of 42,000 words. As a result of pay revision they were given the pay scale of Rs. 250-430 w.e.f. January 1, 1974 without entitlement of remuneration in addition to pay. The copyists represented that in the revised pay scale, the additional emoluments which were being earned by them had not been taken into account. On the recommendation of the High Court the State Government agreed to fix the pay of copyists in the revised pay scale by adding into their basic pay the average remuneration of Rs. 83.34 and the dearness allowance admissible thereon. The amount of Rs. 83.34 was taken as average remuneration which each of the copyist was earning prior to January 1, 1974 in addition to the pay. The pre-revised pay scale of the Assistants was Rs. 90-192 which was revised to Rs. 250-430 from January 1, 1974. Although the revised pay scale of copyists and assistants was identical but because of addition of Rs. 83.34 in the pay fixation, the copyists started drawing more salary than the assistants. Promotion to the cadre of Assistant Section Officers in the pay scale of Rs. 340-640 is from the two cadres of copyists and assistants. One Janikirama Rao, a copyist, was promoted to the said post in the year 1984. On the basis of his last pay drawn as copyists his basic pay fixed as Assistant Section Officer, was higher than those who were promoted to the said post from the cadre of assistants during the period 1982-84. The pay fixation was done under Fundamental Rule 22(a)(i) of Andhra Pradesh Fundamental Rules (hereinafter called 'Fundamental Rules'). Though junior, Shri Janikirama Rao was thus drawing more salary than his seniors in the same cadre. Those seniors filed

Writ Petition No. 2135 of 1983 in the High Court of Andhra Pradesh praying that the grant of higher salary to a junior person is violative of the principle of "equal pay for equal work". The learned Single Judge allowed the writ petition and directed that the Assistant Section Officers senior to Shri Janikirama Rao be paid the same salary as he was drawing. Writ appeal filed by the State of Andhra Pradesh against the judgment was dismissed by the Division Bench holding that grant of higher pay packet to a junior person than the senior under any circumstance is discriminatory. Connected writ petitions were allowed by the High Court being covered by the judgments in Writ Petition No. 2135 of 1983 and writ appeal. No counter was filed by State of Andhra Pradesh in these writ petitions and on the basis of the averment in the petitions that juniors were getting higher salary than the seniors, the writ petitions were allowed. Civil appeals are directed against the orders of the High Court.

Civil Appeal Nos. 1071-73/87, 1149-1150/86

4. In this batch of civil appeals Tirumala Tirupathi Devasthanam is the appellant and these appeals are directed against the High Court order. B. V. Krishnamurthy and 62 others working as Upper Division Clerks in the Devasthanam filed a Writ Petition No. 12337 of 1984 before the High Court of Andhra Pradesh praying that the Devasthanam be directed to pay salary to them at par with one D. Gopaliah, Upper Division Clerk who was junior to them. Service particulars of Gopaliah and one of the petitioners Krishnamurthy only need mention. Gopaliah joined as Lower Division Clerk in 1967 and was given Selection Grade in 1974. Family Planning Incentive Increment of Rs. 11 was added to his pay in 1977. He was promoted to Upper Division Clerk in 1979 but was reverted in 1981 as he could not pass the accounts test. He was given further increase in pay as a result of government order which provided higher pay to those Lower Division Clerks who completed 15 years service as such. In June 1983 Gopaliah was drawing Rs. 811 as his basic pay in the cadre of Lower Division Clerks. He was again promoted as Upper Division Clerk in pay scale Rs. 575-950 on July 1, 1983 and in that cadre his basic pay was fixed at Rs. 861. On the other hand, Krishnamurthy joined as Lower Division Clerk in 1970. He was promoted as Upper Division Clerk on November 3, 1981 and Rs. 615 was fixed as his basic pay in this cadre. On July 1, 1983 Krishnamurthy was drawing Rs. 635 as his basic pay. It is under these circumstances that Gopaliah though junior to Krishnamurthy started drawing higher pay as Upper Division Clerk. The writ petition was allowed by the learned Single Judge by one line order following his decision in another writ petition concerning the employees of the Andhra Pradesh State Electricity Board. Neither the facts nor the distinctive features of the present case were noticed. Writ Appeal No. 504 of 1985 was dismissed in limine by the Division Bench of the Andhra Pradesh High Court. In three connected petitions pay parity was sought with the same junior Gopaliah. In the fourth petition one Gangiah was the named junior for claiming pay hike. All these petitions were allowed following the earlier decision. Hence these appeals.

Civil Appeal Nos. 299/88 and 300 to 301/88

5. These appeals are directed against the judgment of the Andhra Pradesh Administrative Tribunal in Petition No. 1531 of 1985 and connected petitions. The petitioners before the Tribunal were junior assistants working in different departments. They were promoted as senior assistants on various dates between 1976 and 1978. They opted to be absorbed as auditors in the Pay and Accounts Office, Hyderabad, where they were finally absorbed with effect from July 12, 1978. One Swaminathan who was recruited as typist, was promoted as senior assistant on January 11, 1978. He also opted to work as auditor in the Pay and Accounts Office, Hyderabad. He was finally absorbed in the said department with effect from September 4, 1978. The writ petitioners and Swaminathan

came to the Pay and Accounts Office, Hyderabad from different departments. Since Swaminathan was absorbed as auditor in the Pay and Accounts department later in time than the petitioners, he ranked junior to them. But in view of his length of service and grant of selection grade, he had been drawing higher pay in his parent department. On his joining the Pay and Accounts Office his pay was fixed on a higher basic pay as compared to the petitioners as the last pay drawn by him had to be protected under the Fundamental Rules. Thus though he was junior to the petitioners, he started drawing higher pay than them. The seniors raised contention before the Tribunal that on the basis of "equal pay for equal work" they were entitled to the same pay as given to their junior. The Tribunal allowed the petitions holding that for whatever reasons a junior is paid higher pay packet than his senior the principle of "equal pay for equal work" is violated and the senior is entitled to the same pay. Following its judgment the Tribunal allowed two connected petitions. Hence these appeals by the State of Andhra Pradesh.

Civil Appeal No. 317 of 1988

6. This appeal also relates Pay and Accounts Office. In this case the petitioners before the Tribunal were Lower Division Clerks senior to one P. Arunachala Prasad who was initially a typist but was promoted as Lower Division Clerk subsequently to the petitioners. Since he was drawing more pay as typist, on his promotion to the post of Lower Division Clerk his pay fixed was higher than the petitioners. The claim of the petitioners for same pay as paid to Arunachala Prasad was allowed.

Civil Appeal Nos. 200 to 203 of 1988

7. These appeals relate to Animal Husbandry Department of the Andhra Pradesh Government. Some livestock assistants filed a petition before the Andhra Pradesh Administrative Tribunal claiming higher pay which was being drawn by their respective juniors in the same cadre. In the reply filed on behalf of State before the Tribunal it was explained that junior livestock assistants were senior in the lower cadre but could not be promoted earlier due to their failure to undergo the prescribed training and they had earned selection grade on the basis of length of service. On promotion their basic pay was fixed under Fundamental Rules which came to be higher than their seniors. Without considering the reasons for the disparity in pay the Tribunal allowed the petitioners holding that the senior must be paid the same salary as his junior, in the cadre, was drawing.

Civil Appeal Nos. 2453, 2454 and 2476 to 2479 of 1988

8. These appeals concern the office of Registrar Co-operative Societies Andhra Pradesh. Respondents inspectors filed a petition before the Andhra Pradesh Administrative Tribunal saying that one Jagmohan was junior to them but was drawing higher salary. The Tribunal allowed the petition in the following words :

It may be true that in certain circumstances within the frame-work of the rule, Shri Jagmohan came to receive higher pay than his seniors ... what will be done in such a case is to bring the pay of the senior on par with the junior. It is how the 'principle of equity' in pay is to be met.

9. Five connected petitions were also allowed by the Tribunal.

10. Mr. Shanti Bhushan appearing for the appellants in the first batch has argued that so long as there is rational basis for giving higher pay to a junior in the same cadre, the seniors can have no grievance. According to him copyists and assistants being two feeder cadres to the post of Assistant

Section Officer, the last pay drawn in the lower cadre has to be the basis under the Fundamental Rules for fixation of pay in the cadre of Assistant Section Officers. Since the copyists were drawing higher pay than the assistants, they were rightly fixed at a higher pay than the assistants who were promoted earlier. He says pay earned by the copyists before joining as Assistant Section Officer is a legitimate incident of service which entitles them higher pay than their seniors.

11. Mr. P. A. Choudhary appearing for some of the appellants contended that if all the considerations, factors and incidents of service are identical then only the principle of 'equal pay for equal work' is attracted. But if there is a justification under the rules or otherwise for giving a higher pay to the junior then the principle in the abstract sense is not attracted.

12. Mr. T. S. Krishnamoorthy, Mr. A. S. Nambiar and Mr. Kanta Rao appearing for the respondents supported the judgments under appeal and contended that grant of higher pay to a junior in the same cadre, doing same work and shouldering same responsibilities, is per se discriminatory and violative of the principle of equal pay for equal work. Our attention was invited to Rule 27 of the Fundamental Rules which permits the competent authority to grant premature increment to a government servant on a time scale of pay. They further contended that juniors getting higher pay than a senior in the same cadre is an anomaly causing heartburn which can be removed by directing the authorities to fix the seniors at par with the juniors by exercising power under Rule 27 of the Fundamental Rules.

13. The factual basis in all these appeals is identical. The facts clearly show that in every case the pay fixation of the junior was done under the Fundamental Rules and there were justifiable reasons for fixing the junior at a higher pay than his seniors in the cadre. It was not disputed that the said pay fixation was in conformity with Fundamental Rules. Neither before us nor before the courts below the validity of Fundamental Rules were challenged by any of the parties. Without considering the scope of these Rules and without adverting to the reasons for fixing the juniors at a higher pay, the High Court and the Tribunal have in an omnibus manner come to the conclusion that whenever and for whatever reasons a junior is given higher pay the doctrine of 'equal pay for equal work' is violated and the seniors are entitled to the same pay.

14. We do not agree with the High Court/Tribunal. Doctrine of 'equal pay for equal work' cannot be put in a strait-jacket. Although the doctrine finds its place in the Directive Principles but this Court, in various judgments, has authoritatively pronounced that right to 'equal pay for equal work' is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution of India. Nevertheless the abstract doctrine of 'equal pay for equal work' cannot be read in Article 14. Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved, is permissible.

15. "Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or incentive for efficiency; are some of the eventualities when a

junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal.

16. In *Federation of All India Customs & Central Excise Stenographers v. Union of India* ((1988) 3 SCC 91 : 1988 SCC (L&S) 673 : (1988) 7 ATC 591) Sabyasachi Mukharji, J. considered earlier judgments of this Court on the point and observed : (SCC p. 100, para 7)

Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative difference 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 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.

17. In *State of U. P. v. J. P. Chaurasia* ((1989) 1 SCC 121 : 1989 SCC (L&S) 71 : (1988) 8 ATC 929) the question for consideration was as to whether it is permissible to have two pay scales in the same cadre for persons having same duties and having same responsibilities. Jagannatha Shetty, J. speaking for this Court observed : (SCC pp. 134-35, para 29)

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 basis. 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* (*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119), 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 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 supertime 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.

18. The argument based on Rule 27 was never raised before the High Court/Tribunal. There is neither any material on the record nor any justification before us to direct the appellant authorities to act under Rule 27 of the Fundamental Rules. The respondents may if so advised approach the

appropriate authorities for any such relief.

19. The appeals are accepted. Judgments of the Andhra Pradesh High Court and the Andhra Pradesh Tribunal are set aside and the writ petitions/petitions/applications of the respondents before the High Court/Tribunal are dismissed. There will be no order as to costs.

20. The respondents are white-collared salaried persons and it may be too harsh for them to refund the salary already paid to them. Therefore, in the interest of justice, we direct that the additional salary paid to them as a result of High Court/Tribunal judgments up to March 31, 1989 shall not be recovered from them.

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