

V. Markendeya and Others

Vs

State of Andhra Pradesh and Others

Civil Appeal No. 764 of 1978

(K. N. Singh, Kuldip Singh JJ)

06.04.1989

JUDGMENT

K. N. SINGH, J. –

1. This appeal is directed against the judgment and order a Division Bench of the High Court of Andhra Pradesh setting aside the order of a learned Single Judge, dismissing the appellants' writ petition made under Article 226 of the Constitution.
2. The appellants are members of the Andhra Pradesh Engineering Subordinate Service as supervisors in category 1 of the Engineering Branch. The Engineering Branch category 1 includes officers, namely, Supervisors, Overseers, Head Draftsmen, Civil Draftsmen, Artists Draftsmen, Tracers, Blue-Print Operators and Building Mistries. Supervisors are recruited by direct recruitment as well as by promotion from amongst the Overseers. The cadre of supervisors include degree holders in engineering and diploma or licence holders. Both perform the same duties and functions in the engineering branch. Promotion to the post of Assistant Engineer, the next higher post is made from amongst the post of supervisors, in accordance with the Andhra Pradesh Engineering Service Rules, 1967. Graduate overseers are given preference in the ratio of promotion to the post of Assistant Engineer inasmuch as the quota of promotion is four to one from amongst the graduate supervisors and non-graduate supervisors. In addition to the disparity in the matter of promotion, graduate supervisors and non-graduate supervisors are granted different pay. On recruitment to the service of supervisors a graduate supervisor is granted higher starting salary than non-graduate supervisors. Subsequently, a lower pay scale was prescribed for the non-graduate supervisors. Aggrieved the non-graduate supervisors filed two writ petitions in the High Court of Andhra Pradesh under Article 226 of the Constitution challenging validity of discrimination in prescribing two different scales of pay. The appellants contended that diploma holder supervisors were entitled to the same scale of pay as prescribed for the graduate supervisors on the principle of equal pay for equal work as they constituted the same service and performed the same duties and functions as those performed by graduate supervisors. The State Government contested their case on the pleading that graduate supervisors and diploma supervisors always remained separate and they were never fused into one service. The two class of employees discharged the same functions and carried out similar duties, but the State was justified in prescribing different pay scales for historical reasons, and also on the basis of difference in the educational qualifications. Plea of discrimination against non-graduate supervisors was denied. A learned Single Judge of the High Court Justice O. Chinnappa Reddy (as he then was) by his judgment and order dated February 26, 1974 held that the State practised invidious discrimination without there being valid justification between the two categories of supervisors graduates and non-graduates. The learned Judge allowed both the writ petitions and issued mandamus to the State Government to accord the same scale of pay to the non-

graduate supervisors as prescribed for the graduate supervisors under the government order dated June 13, 1969. On appeals preferred by the State of Andhra Pradesh a Division Bench of the High Court set aside the judgment of the learned Single Judge and dismissed the writ petitions on the finding that the State practised no discrimination and the appellants were not entitled to relief on the principle of equal pay for equal work. Hence this appeal by special leave.

3. This is the second round of litigation by the diploma holder supervisors. Earlier they had challenged the grant of higher quota of promotion for graduate supervisors on the ground that when graduate and non-graduate supervisors, belong to the same cadre, and are eligible for promotion, then giving preferential treatment to graduates amounts to denial of equal opportunity to the non-graduate supervisors. This Court in *Mohd. Shujat Ali v. Union of India* ((1975) 3 SCC 76 : 1974 SCC (L & S) 454 : (1975) 1 SCR 449), rejected the challenge holding that two categories of supervisors were never fused into one class and have throughout remained distinct and apart. The non-graduate supervisors have again challenged the disparity in the pay scale prescribed for the two class of supervisors.

4. Since controversy in the present appeals centres round the pay of the supervisors it is necessary to refer to the history of pay scales prescribed for the supervisors. Prior to 1958 the scale of pay prescribed for supervisors was Rs. 100-5-1-250 but directly recruited graduate supervisors were granted initial starting salary at Rs. 150 on the date of their initial appointment while a diploma holder supervisor was paid starting salary of Rs. 100 only, though the same pay scale was prescribed for both the degree holders and diploma holders. On his appointment a graduate supervisor was designated as Junior Engineer while a non-graduate continued to be designated as supervisor. In 1958 the scale of pay of supervisors was revised to Rs. 100-5-150-7.1/2-200-10-300 but graduate supervisors were continued to be granted higher starting salary at Rs. 180 on the date of their initial appointment. Later, the starting salary of graduate supervisors was raised to Rs. 200 and their pay was fixed in the pay scale of Rs. 200-10-300. In 1961 the scale of pay of supervisors was again revised according to which non-graduate supervisors were granted pay scale of Rs. 180-7.1/2-210-10-280-15-400, while Junior Engineers (graduate supervisors) were granted the scale of Rs. 250-15-400. Though different pay scales were provided for non-graduate supervisors and graduate supervisors but the maximum pay for both the categories was maintained at the same level, irrespective of the supervisor being a graduate or a non-graduate. The State Government further revised the pay scale of both the categories of supervisors by the Government Order No. 173 dated June 13, 1969 according to which the scale of pay of non-graduate supervisors was revised to Rs. 200-12-320-16-400 while the scale for Junior Engineers (graduate supervisors) was revised to Rs. 300-20-600. The revised pay scales made substantial difference in the matter of pay between the graduate supervisors and non-graduate supervisors, which gave rise to the disputes before the High Court.

5. Mr. H. S. Gururaja Rao, learned counsel for the appellants urged that non-graduate supervisors and graduate supervisors constitute the same class as they belong to the same service and both the class of officers are fused into one, as the two posts are interchangeable. The graduate supervisors are not doubt designated as Junior Engineers but the work and duties of both are the same, and both sets of officers are treated at part for every other purpose. Since the two categories of officers were fused into one, the State denied equality by prescribing different scales of pay for the non-graduate supervisors. Learned counsel further urged that even if the graduate supervisors (Junior Engineers) and non-graduate supervisors constitute two different categories, but since they have been carrying out the same work and performing the same duties carrying the same responsibility, without any distinction the doctrine of equal pay for equal work is fully applicable and on that basis the non-

graduate supervisors are also entitled to the same pay scales as prescribed for the graduate supervisors (Junior Engineers). Learned counsel emphasised that for application of the principle of equal pay for equal work it is not necessary that the two classes of officers must belong to one integrated service instead if the nature of duties and functions of the two posts are identical or similar, the principle would apply. He referred to a number of decisions, reference to which will be made at the appropriate stage. Shri P. A. Chaudhary learned counsel appearing for the respondent State seriously contested the correctness of the submissions made on behalf of the appellants and urged that in view of the Constitution Bench decision of this Court in Mohammad Shujat Ali case ((1975) 3 SCC 76 : 1974 SCC (L & S) 454 : (1975) 1 SCR 449) the appellants are not entitled to any relief.

6. Since the Division Bench of the High Court rejected the appellants' claim for equal pay in view of the findings of a Constitution Bench of this Court in Mohammad Shujat Ali case ((1975) 3 SCC 76 : 1974 SCC (L & S) 454 : (1975) 1 SCR 449) it is necessary to refer to that case in some detail. In Shujat Ali case ((1975) 3 SCC 76 : 1974 SCC (L & S) 454 : (1975) 1 SCR 449) non-graduate supervisors of Andhra Pradesh had challenged validity of the rule which gave preferential treatment to graduate supervisors (Junior Engineers) for promotion to the post of Assistant Engineer on the ground that it violated the equality clause enshrined under Articles 14 and 16 of the Constitution. In that context, the question arose whether the preferential treatment given to graduate supervisors was justified on any reasonable classification or it was arbitrary and irrational. Bhagwati, J. speaking for the Constitution Bench after considering various decisions of this Court observed as under : (SCC p. 106, para 28)

But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate supervisors, a non-graduate supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate supervisors. That would clearly amount to denial of equal opportunity to him.

The above observation would show that the Constitution Bench held that fixation of quota giving preference to graduate supervisors amounted to denial of equal opportunity to the non-graduate supervisors. But after making the aforesaid observations the Constitution Bench considered the history of the graduate supervisors and non-graduate supervisors under the Andhra Pradesh Rules and thereupon, it recorded findings that the graduate supervisors have always been treated as a distinct and separate class from non-graduate supervisors both under the Hyderabad Rules as well as under the Andhra Pradesh Rules and they were treated as equals. The bench observed as under : (SCC p. 107, para 28)

The pay scale of Junior Engineers was always different from that of non-graduate supervisors and for the purpose of promotion, the two categories of supervisors were kept distinct and apart under the Andhra Rules even after the appointed day. The common gradation list of supervisors finally approved by the Government of India also consisted of two parts, one part relating to Junior Engineers and the other part relating to non-graduate supervisors. The two categories of supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise

by reason of differential treatment being given to them.

In view of the aforesaid findings of the Constitution Bench which relate to this very cadre of supervisors, it is difficult to accept the appellants' contention that the graduate supervisors and non-graduate supervisors were integrated into one class of service and that no differential treatment is permissible to the non-graduate supervisors. The Constitution Bench on elaborate discussion held that the equality clause under Articles 14 and 16 of the Constitution was not violated in the matter of promotion of graduate supervisors and non-graduate supervisors, as the graduate supervisors and non-graduate supervisors constituted two different classes. The necessary consequence of the Constitution Bench findings are that the classification of supervisors into two classes on the basis of historical reasons is valid and it does not offend Articles 14 or 16 of the Constitution. Once the classification is upheld it is difficult to hold that non-graduate supervisors are entitled to the same pay scale as prescribed for graduate supervisors as equality in pay is permissible with equals and not with unequals. There is basic difference between the two classes of supervisors as graduate supervisors hold degree in Engineering while non-graduate supervisors are only diploma and licence holders and they have all along been treated differently on the basis of difference in educational qualifications.

7. In *State of Mysore v. P. Narasing Rao* ((1968) 1 SCR 407 : AIR 1968 SC 349 : (1968) 2 LLJ 120) the question arose whether two different pay scales could be prescribed for the employees working in the same service on the basis of educational qualification. In the State of Mysore tracers included matriculates and non-matriculates. The government prescribed higher pay scale to matriculate tracers although the non-matriculates and matriculates tracers both were performing the same duties and functions. The non-matriculate tracers challenged the validity of different pay scales on the ground that it violated the guarantee of equality under Articles 14 and 16 of the Constitution as there was no valid reason for making distinction. The High Court accepted their contention and allowed their petition holding that there was no valid reason for making distinction as both matriculate and non-matriculate tracers were doing the same kind of work and the denial of different scale of pay was in violation of Articles 14 and 16 of the Constitution. On appeal by the State Government this Court set aside the order of the High Court on the finding that higher educational qualification is a relevant consideration for fixing different pay scales and the classification of two grades of tracers did not violate Article 14 or 16 of the Constitution. The Constitution Bench observed as under : (SCR pp. 411-12)

The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the government ought to have taken into account only the technical proficiency of the candidate in the particular craft. It is open to the government to consider also the general educational attainments of the candidates and to give preference to candidates who have a better educational qualification besides technical proficiency of a tracer.

Classification in service founded on the basis of educational and academic qualifications is now well recognised. It is open to the administration to give preference to a class of employees on the basis of educational qualifications having regard to the nature of duties attached to the post for the purpose of achieving efficiency in public services. It is permissible to give preference to degree holders as was held by this Court in *Union of India v. Dr. (Mrs.) S. B. Kohli* (1973) 3 SCC 592 : 1973 SCC (L & S) 136) and *State of Jammu and Kashmir v. Triloki Nath Khosa* ((1974) 1 SCC 19 : 1974 SCC (L

& S) 49). Since classification on the basis of educational qualification is a valid consideration for discriminating in matters pertaining to promotion to the higher post, there is no reason as to why the same principle is not applicable for prescribing scales of pay. Having regard to the findings recorded by the Constitution Bench in Mohammad Shujat Ali case ((1975) 3 SCC 76 : 1974 SCC (L & S) 454 : (1975) 1 SCR 449) that graduate supervisors and non-graduate supervisors constitute two distinct classes, the non-graduate supervisors cannot validly claim parity with the graduate supervisors regarding pay scales. The appellants' grievance that they have been denied equality in violation of Article 14 of 16 of the Constitution is not sustainable.

8. Learned counsel for the appellants urged that even if the appellants' grievances regarding violation of Articles 14 and 16 of the Constitution is not sustainable, the appellants are entitled to the same scale of pay as granted to the graduate supervisors on the principle of 'equal pay for equal work' enshrined in Article 39(d) of the Constitution. He placed reliance on the decision of this Court in Randhir Singh v. Union of India ((1982) 1 SCC 618 : 1982 SCC (L & S) 119 : (1982) 3 SCR 298), P. Savita v. Union of India ((1985) Supp SCC 94 : 1985 SCC (L & S) 826 : 1985 Supp SCR 101), Dhirendra Chamoli v. State of U.P. ((1986) 1 SCC 637 : 1986 SCC (L & S) 187), Surinder Singh v. Engineer-in-Chief, CPWD ((1986) 1 SCC 639 : 1986 SCC (L & S) 189), Bhagwan Dass v. State of Haryana and Jaipal v. State of Haryana ((1988) 3 SCC 354 : 1988 SCC (L & S) 785). In view of these authorities the learned counsel contended, there is no justification to disregard the doctrine of 'equal pay for equal work' as graduate supervisors and the non-graduate supervisors both have been doing the same work with the same responsibilities without there being any difference in the duties and functions of the two categories of officers.

9. Article 39(d) contained in Part IV of the Constitution, ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Provisions contained in the chapter on Directive Principles of State Policy cannot be enforced by courts although the principles contained therein are fundamental in nature for the governance of our country. The court has no power to direct the legislature to frame laws to give effect to the Directive Principles as contained in Part IV of the Constitution or to injunct the legislature from making any such law. But while considering the question of enforcement of fundamental rights of a citizen it is open to the court to be guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained. The purpose of Article 39(d) is to fix certain social and economic goals for avoiding any discrimination amongst the citizens doing similar work in matters relating to pay. If the court finds that discrimination is practised amongst two sets of employees similarly situated in matters relating to pay, the court must strike down discrimination, and direct the State to adhere to the doctrine of "equal pay for equal work" as enshrined in Article 39(d) of the Constitution. Fundamental rights, and the directive principles constitute "conscience of the Constitution". The Constitution aims at bringing about a synthesis between 'Fundamental Rights' and 'Directive Principles of State Policy' by giving to the former a place of pride and to the latter a place of permanence, together they form core of the Constitution. They constitute its true conscience and without faithfully implementing the Directive Principles it is not possible to achieve the welfare State contemplated by the Constitution, see Kesavananda Bharati v. State of Kerala ((1973) 4 SCC 225).

10. In Randhir Singh case and later in Dhirendra Chamoli case ((1986) 1 SCC 637 : 1986 SCC (L & S) 187), Surinder Singh case ((1986) 1 SCC 639 : 1986 SCC (L & S) 189), Bhagwan Dass case ((1987) 4 SCC 634 : 1988 SCC (L & S) 24 : (1987) 5 ATC 136), Jaipal case ((1988) 3 SCC 354 : 1988 SCC (L & S) 785) and P. Savita case (1985) Supp SCC 94 : 1985 SCC (L & S) 826 : 1985 Supp SCR 101), this Court implemented the principle of 'equal pay for equal work'. The court

granted relief on the principle of equal pay on the basis of same or similar work performed by two classes of employees under the same employer even though the two classes of employees did not constitute the same service. But in all the aforesaid cases relief was granted only after it was found that discrimination was practised in giving different scales of pay in violation of the equality clause enshrined in Articles 14 and 16 of the Constitution. The principle of equal pay for equal work was enforced on the premise that discrimination was practised between the two sets of employees performing the same duties and functions, without there being any rational classification. The principle of 'equal pay for equal work' is not an abstract one, it is open to the State to prescribe different scales of pay for different cadres having regard to nature, duties, responsibilities and educational qualifications. Different grades are laid down in service with varying qualifications for entry into particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scales for different cadres. The application of doctrine arises where employees are equal in every respect, in educational qualifications, duties, functions and measure of responsibilities and yet they are denied equality in pay. If the classification for prescribing different scales of pay is founded on reasonable nexus the principle will not apply. But if the classification is founded on unreal and unreasonable basis it would violate Articles 14 and 16 of the Constitution and the principle of equal pay for equal work must have its way. In the decisions reference to which have been made by the learned counsel for the appellants, this Court granted relief, after recording findings that the aggrieved employees were discriminated in violation of the equality clause under Articles 14 and 16 of the Constitution, without there being any rationale for the classification.

11. In a number of decisions of this Court the claim for equal pay for equal work has been negated on the ground that the different pay scales prescribed for persons doing similar or same work is permissible on the basis of classification founded on the measure of responsibilities, educational qualification, experience and other allied matters. In *Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India* ((1988) 3 SCC 91 : 1988 SCC (L & S) 673), Justice Sabyasachi Mukharji said : (SCC p. 100, para 7)

..... 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 criterion 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.

The learned Judge further observed : (SCC pp. 104-105, 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 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.

12. In *State of U.P. v. J. P. Chaurasia* ((1989) 1 SCC 121 : 1989 SCC (L & S) 71 : (1988) 8 ATC

929), this Court negated the claim of Bench Secretaries for equal pay for equal work on the basis of reasonable classification based on merit, experience and seniority though both sets of employees were performing the similar duties and having similar responsibilities. In *Mewa Ram Kanojia v. All India Institute of Medical Sciences* (1989) 2 SCC 235 : JT (1989) 1 SC 512), this Court refused to grant relief to the petitioner for parity in pay on the application of the principle of 'equal pay for equal work' on the ground of reasonable classification on the basis of educational qualifications.

13. In view of the above discussion we are of the opinion that where two classes of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualification, they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the court will strike down the discrimination and grant relief to the aggrieved employees. But before such relief is granted the court must consider the analyse the rationale behind the State action in prescribing two different scale of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the court finds that the classification made by the State in giving different treatment to the two classes of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal pay for equal work is applicable among equals, it cannot be applied to unequals. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the court that invidious discrimination is practised by the State in prescribing two different scales for the two classes of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by court in abstract. The question what scale should be provided to a particular class of service must be left to the executive and only when discrimination is practised amongst the equals, the court should intervene to undo the wrong, and to ensure equality among the similarly placed employees. The court however cannot prescribe equal scales of pay for different class of employees.

14. In the instant case the graduate overseers have all along been treated as separate entity from the non-graduate supervisors and they have been drawing different pay since long. The Constitution Bench has already recorded findings that two sets of officers, namely, graduate supervisors and non-graduate supervisors do not belong to the same class of service and unequal treatment relating to promotion is justified on the basis of educational qualification. Therefore the classification made between the graduate supervisors and non-graduate supervisors is reasonable and the State Government did not violate Article 14 or 16 of the Constitution in prescribing different scales of pay for them. In result, the appeal fails and is accordingly dismissed. There will be no order as to costs.

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