

State of Rajasthan

Vs

Gopi Kishan Sen

Civil Appeal No. 1849 of 1992

(L. M. Sharma, Dr. A. S. Anand JJ)

07.04.1992

JUDGMENT

1. The delay is condoned and special leave is granted.
2. The respondent was appointed as a teacher in 1972. He has claimed his salary in the pay scale of Rs. 160-360/-per month which was refused by the appellant State. He made an application under Art.226 of the Constitution of India in the High Court of Rajasthan which was allowed by the impugned judgment.
3. Admittedly, the aforesaid pay scale of Rs. 160-360/ - per month is allowed to trained teachers. Since the petitioner was not trained, he was appointed at the fixed rate of Rs. 130/ per month until he became trained.
4. The matter is admittedly governed by the provisions of Rajasthan Civil Services (New Pay Scales) Rules 1969 read with Education Subordinate Service Rules, 1971. It may, however, be stated that the scales have been revised subsequently. The amount of Rs. 130/ - per month was fixed as the salary of the respondent in accordance with the provisions in the Schedule which reads as follows:-

"Freshly recruited untrained graduates in this scale will receive fixed pay of Rs. 130/- until he gets trained."

The above provision has been struck down by the High Court in part on the ground of illegal discrimination and the appellant has been directed to pay the respondent his salary at the higher rate for the period 1972 to 1982 also during which period he was an untrained teacher. This view has been challenged on behalf of the appellant as untenable.

5. Learned counsel for the respondent, has, in reply, contended that both the trained and untrained teachers have been performing identical duties and there should, therefore, be parity in their salary in accordance with the well established doctrine of equal pay for equal work. We are not in a position to subscribe to this view. The question as to whether different pay scales can be legitimately prescribed for persons employed in the same service depending on their educational qualifications has been considered by this Court in several cases and answered in the affirmative. In the State of Mysore v. P. Narasinga Rao(1968) 1 SCR 407: (AIR 1968 SC 349), the High Court, agreeing with the respondent Narasing Rao held that there was no valid reason for making a distinction in the pay

of two groups of Teachers as both matriculate and non-matriculate Teachers were doing the same kind of work. On appeal this Court reversed the judgment and held that higher educational qualifications are relevant considerations for fixing a higher pay scale and the classification of two grades of Teachers was not violative of the constitutional provisions. This view has been reiterated in *V. Markendeya v. State of Andhra Pradesh* (1989) 3 SCC 191 : (AIR 1989 SC 1308) and other cases. The efficiency of a person having a higher qualification is likely to be better than a less qualified person, provided, of course, the qualification is of a nature likely to enable him to perform his duty better, and for this reason, there cannot be any legitimate objection to the grant of a better scale of pay. In the present case, the additional qualification of being trained is of such a nature as to enable the teacher to do his duty better and for that reason the distinction made in the Rules must be upheld as valid.

6. Another argument which has been advanced on behalf of the respondent is on the basis of Rule 29 of the Rajasthan Services Rules 1951 declaring that "an increment shall ordinarily be drawn as a matter of course". It is argued that since this Rule does not allow the impugned revisions fixing a fixed rate of pay for the untrained teachers as an exception, the latter cannot be given effect to. There is no merit in this argument either. The rule of harmonious construction of apparently conflicting statutory provisions is well established for upholding and giving effect to all the provisions as far as it may be possible, and for avoiding the interpretation which may render any of them ineffective or otiose. In the present case Rule 29 dealing with payment of increment is in general terms while the Schedule in the 1969 Rules makes a special provision governing the untrained teachers, attracting the maxim "generalibus specialia derogant", i.e., if a special provision is made on a certain subject, that subject is excluded from the general provision. The Schedule in the 1969 Rules, therefore, must be held to prevail over the general provisions of 1951 Rules.

7. In the result, we do not find any merit in any of the contentions of the learned counsel for the respondent and the impugned judgment cannot be sustained. The appeal is accordingly allowed, the judgment under appeal is set aside and the writ petition of the respondent filed in the High Court is dismissed. There shall, however, be no order as to costs.

Appeal allowed.

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