

National Federation of State NFC (Physical Education) Teachers' Associations

Vs

Union of India

Writ Petn. (Civil) No. 861 of 1990

(M.H. Kania, S. Mohan, JJ)

16.11.1992

JUDGEMENT

MOHAN, J.:-

1. The writ petition under Art. 32 of the Constitution of India has been preferred by the National Federation of State NFC (Physical Education) Teachers' Associations.
2. Petitioner No. 1 (Federation) has a membership of 7,000 Physical Education Teachers working in the various schools other than primary schools in the country.
3. A scheme known as 'National Discipline Scheme' (for short NDS) was started in 1954 for inculcating discipline and imparting training in mass drill among the younger generation in the refugee camps and colonies. In 1958 the scheme was transferred to the Ministry of Education and was enlarged to cover a number of high schools. In 1963, the new integrated programme known as "National Fitness Corps" (for short NFC) was approved for adoption in schools. It was decided that the instructors working under N.D.S. were to function in the schools under the administrative control of the State Governments. They should be transferred to States and merged with the cadre of Physical Education Teachers of the States.
4. The pay scale of N.F.C. instructor previously known as N.D.S. instructor Junior Grade I was Rs. 110-200 on 31-12-66. This was revised from time to time. As on 1-1-73 it was Rs. 330-560. This was revised to Rs. 118-225 with effect from 1-1-67. The petitioner would contend that the pay scales were those which were applicable to teachers in primary schools. The fixation of the said pay scale of the primary school teacher instead of the pay scale of secondary school teacher was given to the N.F.C. instructors by mistake. Though there were subsequent revisions, the pay scale applicable to a secondary teacher was denied.
5. Representations were made in this behalf but were of no avail.
6. Some of the teachers approached the High Court of Karnataka by means of a writ petition. A writ of mandamus was ultimately issued directing the Central Government to extend the revision of pay. That appeal was dismissed and the judgment is reported in Union of India v. R. G. Kashikar, AIR 1986 SC 431.
7. After the judgment a representation was filed that N.D.S. instructors were at par with Physical Education Teachers discharging duties in middle, high and higher secondary schools. Therefore, they were entitled to be treated and be given a scale of pay of secondary school teachers.

8. Though several circulars were issued in this regard there had not been a proper fixation of scale of pay. In fact, they are entitled to be given the scale of pay that is applicable to the Physical Education Teachers in middle, high and higher secondary schools and not that of primary school teachers. It is under these circumstances, a writ for mandamus for a direction to the respondent to grant the scale of pay applicable to the physical Education Teachers in secondary schools, is prayed for.

9. In the counter affidavit filed on behalf of Union of India it is averred that the contention of the petitioners that the pay scale of Junior Grade I N.D.S. instructors was revised to Rs. 330-560 as on 1-1-73 was done by mistake, is not correct. The N.D.S. Junior Grade I instructors were recruited for a specific purpose in the pay scale of Rs. 110-200. Their essential qualification was matriculation. A diploma from a recognised physical training institute was a desirable qualification and not an essential one. Almost all the NDS Instructors were not having this desirable qualification of diploma in physical education. Therefore, though they were assigned the job of physical education teacher, they could not be given the scale of a physical education teacher of Central Schools etc. Between 1963-65, on the recommendation of a Committee chaired by Dr. Kunzuru, it was decided in consultation with State Education Authorities to transfer the services of these NDS Instructors to the State Governments, in whose schools these Instructors were already working. In 1973, the third Central Pay Commission could not recommend revised scales for these Instructors because they were either temporary or quasi-permanent and were in the process of transfer to the States services. In 1986 and 1988, however, the scales of these Ex-Instructors were revised, keeping in view the recommendations of the IIIrd Central Pay Commission. Therefore, it is not correct that their scale was revised by mistake and that they were denied the benefits of IIIrd Pay Commission. There is no such categorisation of pay scales of school teachers as secondary school teachers' scales, primary school teachers' scales, etc. Instead, the scales are based on the qualification of the teachers, viz. PGT, TGT, PET, etc. In view of this fact, the scale of pay given to the petitioners is correct on the basis of their qualification and as per their recruitment rules. There were five non-gazetted categories of NDS Employees whose services were transferred to the States :-

- (i) Supervisor,
- (ii) NDS Instructor, Senior Grade 1,
- (iii) NDS Instructor, Senior Grade 11,
- (iv) NDS Instructor, Junior Grade 1, and
- (v) NDS Instructors, Junior Grade 11 (merged with that of Junior Grade I w.e.f. 1-3-71).

Their respective scales are as follows:-

Sl.	Category	Old Scale as on 1-1-67	New Scale as on 1-1-73
1.	Supervisor	Rs. 325-75	Rs. 1100-1600
2.	NDS Instructor Sr. Gd. I	Rs. 210-320	Rs. 550-900

3.	NDS Instructor Sr. Gd. II	Rs. 150-240	Rs. 440-750
4.	NDS Instructor Sr. Gd. I	Rs. 110-200	Rs. 330-560
5	NDS Instructor Sr. Gd. II	Rs. 95-155	Rs. 330-560

These scales were based on the respective qualifications and experience as per the recruitment rules. Accordingly, the Sr. Grade II Instructors were given the scale of Rs. 150-240 (Rs. 440-750 revised as on 1-1-73), the Junior Grade I Instructors Rs. 110-200 (Rs. 330-560, revised as on 1-1-73), and Junior Grade II Rs. 95-155 (Rs. 330-560, revised as on 1-1-73). Therefore, the contention of the petitioners is not correct. The relevance of the Kendriya Vidyalayas' pay scales, here, is due to the fact that they have the pay scale of Rs. 330-560 for their primary teachers in their pay structure and the States were cited the example of pay fixation as done by the Kendriya Vidyalaya Sangathan. It was a mere coincidence that the revised scales of Jr. Gd. I Instructors was equivalent to that of primary teachers of KVS. Also, since they were not having the essential qualification for Central Schools PETs, they could not be given their scales irrespective of the fact that they were doing the duties of physical education teachers. The category of Sr. Gd.II, NDS Instructors have been given these scales on the basis of their qualifications and experience. However, the equivalence of scales is mere coincidence as the cadre of service of NDS Instructors was a separate one under the National Discipline Scheme/ National Fitness Corps Organisation which was created, temporarily, for inculcating discipline and imparting training in mass drill among the children of refugee camps/ colonies, originally in the Ministry of Rehabilitation in 1954 and later transferred to the Ministry of Education in 1958. Thus it is submitted that there is no violation of the principle of equal pay for equal work.

10. Mr. M. K. Ramamurthy, learned counsel for the petitioners would urge that the principle of equal pay for equal work is an accepted principle of law as on today. Therefore, in as much as if the petitioners are not working in primary schools, they cannot be fixed on the pay scale as applicable to primary school teachers. On the contrary, they would be entitled to the scale of pay as applicable to secondary school teachers and the revision thereof.

11. When clear instructions have been issued by the Government of India for upgradation, the same cannot be ignored.

12. While the Kendriya Vidyalaya teachers have been fixed on the pay scale of Rs. 330-560 for primary teachers there is no justification whatever to treat the teachers of the petitioner-Federation as belonging to that Grade of primary school teachers when in fact, not one teacher belonging to the petitioner-Federation is working in primary school. Thus, it is clear case of a denial of equal pay for equal work.

13. In opposition to this, Mr. V.C. Mahajan, learned counsel for the Union of India would urge that the rule of equal pay for equal work does not come into play at all in this case. It is incorrect to urge on the part- of the petitioners as if there are two grades one for primary school teacher and another for secondary school teacher. The grades are based on the qualifications. Where such is the position the petitioners cannot have any complaint. In fact this Court in *Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 1 SCR 957 : (AIR 1989 SC 1256) has upheld such gradation based on qualification. That is precisely the position here.

14. It is also not correct to contend on the part of the petitioners that the work is equal. The

responsibilities are entirely different. In such a case the principle of equal pay for equal work cannot apply as laid down by this Court in State of U.P. v. J. P. Chaurasia, (1989) 1 SCC 12 1: (AIR 1989 SC 19). The relevance of Kendriya Vidyalaya pay scale is due to the fact that they have the pay scale of Rs. 330-560 for the primary teachers in their pay structure. This was cited as an example of pay fixation as was done by Kendriya Vidyalaya Sangathan. Beyond this, this has no application. In short, it is submitted that where gradation is based purely on the qualification the petitioners cannot have a valid complaint.

15. The short question that arises for consideration is whether the teachers belonging to the petitioner-Federation are entitled to a pay scale of Rs. 440-750 as is applicable to the secondary school teachers with effect from 1-1-73.

16. National Discipline Scheme was started by the Ministry of Rehabilitation in the year 1954. This programme was launched under the scheme for instituting discipline and imparting training in mass drill among the younger generation in the refugee camps and colonies. In the year 1958, the scheme was transferred to the Ministry of Education. It was enlarged to cover a number of high Schools. Based on the recommendations of Kunzuru Committee, the scheme was integrated. By such integration a new programme known as National Fitness Corps was formed.

17. In February 1965, a meeting of State Education Secretaries and the State Directors of the Public Instruction of the various places took place. It was decided that the N.D.S. instructors could function in the schools under the administrative control of the State Governments. They would be transferred to the States and merged with the cadre of Physical Education Teachers of the respective States. Pursuant to this, the Central Government informed the States to take over the administrative control of the N.F.C. teachers and absorb them in the State Service into equivalent cadre. Any expenditure on the staff would be reimbursed by the Government. It was made clear by the Central Government that the pay and allowances of N. F. C. instructors/ teachers will be protected. Since the scheme was introduced in the middle school classes, namely, Classes V to XI and not in the primary classes, the petitioners would urge that they cannot be fixed on the pay scale as applicable to primary school teachers.

18. The pay scale of N.F.C. instructor earlier known as N.D.S. instructor Junior Grade I as on 31-12-66 was Rs. 110-200. This was revised to Rs. 118-225 with effect from 1-1-67. Again, on 1-1-73 this was revised to Rs. 330-560. Since these pay scales according to the petitioners were applicable to primary school teachers in so far as the scheme was made applicable to middle school the fixation of this scale was wrong. Therefore, they should be fixed on the revised scale of pay as applicable to secondary grade teachers at Rs. 440-750 with effect from 1-1-73.

19. From a perusal of the record it is seen that there are no scales one for primary school teacher and another for secondary school teacher. Once this aspect of the matter becomes clear it will follow that the assumption on the part of the petitioners that they have been fixed on the pay scale of primary school teachers is without foundation. The records also reveal that the N.D.S. instructors Junior Grade I were recruited for a specific purpose. Their pay scale of Rs. 110-200, was deliberately fixed. There was no mistake about it. That is evident from G.S.R. 336 dated 24th February, 1961 issued by Ministry of Education, Govt. of India. In as much as N.D.S. instructors did not have desirable qualification of diploma from a recognised Physical Training Institute as listed out in the Schedule to the said G.S.R. Notwithstanding the fact that they were assigned the job of Physical Education Teacher, they could not be given the pay scale of Physical Education Teacher of Central Schools because of what is stated above. The Third Pay Commission also did not recommend the

revised pay scales for two reasons : (1) They were either temporary or quasi-permanent or (2) were in the process of transfer to the State service. Therefore, the mistake in fixing the scale of pay as alleged by the petitioners is not tenable.

20. As rightly submitted by the learned counsel for the respondent, 5 non-gazetted categories of N.D.S. employees namely, (1) Supervisor (2) N.D.S. Instructor Senior Grade I (3) N.D. S. Instructor Senior Grade II (4) N.D.S. Instructor Junior Grade I and (5) N. D.S. Instructor Junior Grade II which later on came to be merged with Junior Grade I with effect from 1-3-71, came to be fixed on different pay scales. Such fixation of pay scale was based on the respective qualifications and experience as per the Recruitment Rules. Where, therefore, such is the position, we are unable to hold that principle of equal pay for equal work would apply. This Court had occasion to point out in *Mewa Ram Kanojia v. All India Institute of Medical Sciences* (1989) 1 SCR 957 at p. 962 : (AIR 1989 SC 1256 -at p. 1259) that:

"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 posts 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."

21. Then the question arises as to what is the relevance of Kendriya Vidyalaya's pay scales. By the Office Memorandum dated 30th of September, 1975 dealing with the revision of pay scales of Principal and teachers of Kendriya Vidyalaya Sangathan, it was stated that the Government approved the introduction of revised scales of pay for Principals and some categories of teaching staff of Kendriya Vidyalaya Sangathan as shown in the attached statement with effect from 1-1-73. Item 8 of the Statement reads:

Present Scale    Revised Scale

Primary Teacher (Ordinary Grade)	165-10-215-15-275-EB-15-350 (for higher secondary/ Matric trained)
	330-10-350-EB-380-15-500-EB-15-560(for higher secondary/ Matric trained)

22. Merely because Item 8 talks of primary teacher it does not mean primary school grade. The relevance is that the pay scale of primary teachers of Kendriya Vidyalaya is Rs. 330-560 in their pay structure. This was cited as an example to the States for pay fixation. It was a mere coincidence that the revised pay scale of Junior Grade I instructors was equivalent to that of primary teachers of Kendriya Vidyalaya Sangathan. It should be remembered that they. did not have the essential qualification to be taken in service in Central Schools as Physical Education Teachers. Therefore, they could not be given their pay scales regardless of the fact that they were doing the duties of Physical Education Teachers. This Court had occasion to consider parity in employment and the pay fixation thereof, in *State of U. P. v. .1. P. Chaurasia* (1989) 1 SCC 121. at page 136 : (AIR 1989 SC 19 at pp. 28-29) It was thus held:

"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 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 11. When Bench Secretaries Grade 11 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 de under the Rules, therefore, cannot be said to be violative of the right to have equal pay for equal work."

23. Therefore, where the responsibilities are different and the nature of work is also different the petitioners cannot be heard to contend that they will be entitled to the scale of pay as is applicable to secondary school teachers.

24. In the result, we find no merit in the writ petition and accordingly the writ petition is dismissed with no orders as to costs. Petition dismissed.

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