

State of Punjab and Another

Vs

Dharam Paul and Others

Civil Appeals Nos. 2206-09 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

22.01.1996

JUDGMENT

G. B. PATTANAİK, J. –

1. Leave granted.

2. These appeals by the State of Punjab are directed against the judgment of the Division Bench of the Punjab High Court which dismissed the letters patent appeal in limine and confirmed the order of the learned Single Judge. The question that arises for consideration is whether the respondents are entitled to the relief of getting their pay stepped up and made equal to the pay drawn by other instructors irrespective of the trade in which they are working. The respondents filed writ petitions in the High Court of Punjab and Haryana alleging that even though they possess the same qualification and were appointed as instructors and were continuing as such, but with effect from 4-1-1961, pay scales of instructors in respect of 8 trades were changed whereas the respondents' pay scales have not been changed. In the subsequent pay revision even though there has been no distinction but yet those group of persons who were drawing a higher scale of pay on the basis of their trades continue to get the same higher pay even though they are juniors to respondents and, therefore, the respondents should be entitled to get their pay by way of stepping up. The stand of the State, on the other hand, was that it is no doubt true that prior to 1961 all the instructors in Grade II irrespective of their trade were getting same scale of pay but subsequently, in respect of instructors of 8 trades, the pay scales were changed and the respondents were not covered by those 8 trades. Some of the employees similarly situated as the respondents challenged the said classification by filling a writ petition which was ultimately dismissed and letters patent appeal against the same was also dismissed and as such the matter become final. In 1970 the State Government revised the staffing pattern for instructors of Industrial Training Institutions/Centres and placed all the instructors in the pay scale of Rs 160-400. While doing so, in respect of those instructors who were getting higher scale of pay numbering 181 were allowed to enjoy their earlier pay scale as personal to them and all the instructors were designated as instructors and not junior or senior. In the year 1976 the pay scale was further revised to Rs 225-500 and the pay of individual instructor was fixed in the scale depending upon the salary he was drawing in the pre-existing scale. It is only in the year 1989 the respondents-instructors filed the writ petition claiming the relief of step up on the allegation that their juniors are getting a higher amount. According to the stand of the State Government in view of the failure on the part of the respondents to assail the correctness of the classification providing different scale of pay made on the basis of their trade, inasmuch as the writ petition as well as the letters patent appeal against the same having been dismissed, it is not open for them to reopen the matter. The further stand is that even when one pay scale was fixed by way of revision for all the instructors but those who were getting a higher scale of pay in pursuance to

earlier order were allowed to continue in the said higher scale of pay as personal to them and necessarily in fixing their pay in the revised scale the amount they were drawing prior to revision has to be taken into account and thus question of stepping up of the respondents' pay does not arise. The learned Single Judge allowed the Writ Petition No. 10506 of 1989 which judgment was upheld in letters patent appeal out of which Special Leave Petition No. 4855 of 1955 arises. In the two other cases the earlier judgment of the said Court has merely been followed.

3. The learned counsel for the appellant submitted that the so-called division amongst the instructors giving a higher scale in respect of 8 trades and a lower scale in respect of the rest by virtue of Government Order dated 23-2-1962, has become final and notwithstanding the fixation of one scale of pay for all instructors in 1970, instructors of the 8 trades who were getting a higher scale of pay have been allowed to enjoy the same as personal to them and, therefore, the High Court was in error in directing the appellant to step up the pay of the respondents. Mr Rao, learned Senior Counsel appearing for the respondents, on the other hand, contended that the so-called bifurcation of the instructors as junior and senior is nothing but a misnomer as educational qualification of all instructors is the same and they had been recruited through the same process. The learned counsel further urged that since on their representation the Government ultimately abolished the distinction and brought all of them in one scale in the year 1976, there would be no justification for fixing the pay of the junior people at a higher slab than the respondents and, therefore, the High Court rightly directed stepping up of the pay.

4. Having heard learned counsel for the parties and on examining the materials on record we are of the considered opinion that the High Court committed an error by directing stepping up of the pay of the respondents on the assumption that the juniors are getting a higher amount. It is undisputed that the instructors originally were getting one scale of pay, namely, 80-200 prior to 1961, but by virtue of the Government Order dated 23-2-1962 the said pay scale of Rs 80-200 was revised to Rs 160-330 only in respect of the instructors in the 8 trades. The aforesaid pay revision in respect of the instructors belonging to the 8 trades was challenged unsuccessfully by the rest of the instructors belonging to other trades and the Writ Petition (Civil) No. 3038 of 1969 was dismissed as well as the Letters Patent Appeal No. 654 of 1970 against the same was dismissed by judgment dated 24-1-1972. While the State Government in September 1970 put all the instructors in one pay scale of Rs 160-400 but so far as 181 instructors who had got a higher scale of pay in pursuance to the Government Order dated 23-2-1962 were allowed to enjoy their scale as personal to them. This being the admitted position, in 1976 the pay scale was further revised to Rs 225-500 in respect of all the instructors but while fixing the pay in the revised scale necessarily the higher pay drawn by those 181 instructors belonging to the 8 trades was taken into account and they got a higher sum. In these circumstances the question of stepping up of the pay of respondents does not arise. Those 181 instructors originally may have been junior to these respondents but by virtue of the Government Order dated 23-2-1962 they having been given higher scale of pay than the respondents and the same benefit having been continued as a personal pay to them, in the subsequent revision of the pay scale and the persons similarly placed like respondents having challenged and lost in the earlier writ petitions, it is not open to them to reopen the matter. In this view of the matter we have no hesitation to come to the conclusion that the learned Single Judge without advert to the relevant facts granted the relief of stepping up on the ground that the qualification to the post of instructors being the same and they being governed by same service conditions, a junior person cannot get a higher sum. The Division Bench committed error in limine dismissing the letters patent appeal. We accordingly set aside the judgments of the learned Single Judge as well as the judgment of the Division Bench and allow these appeals and consequently the writ petitions filed by the respondents stand dismissed. But in the circumstances, there will be no order as to costs.