

State of T.N. and Another

Vs

M.R. Alagappan and Others

Civil Appeals Nos. 4684-4685 of 1994

(S. B. Majmudar, M. Jagannadha Rao JJ)

08.04.1997

JUDGMENT

S. B. MAJMUDAR, J. –

1. The State of Tamil Nadu and Director of Agriculture, Madras as common appellants have brought in challenge a common judgment rendered by the Tamil Nadu Administrative Tribunal in two original applications filed by the contesting respondents who are working as Deputy Agricultural Officers in the Tamil Nadu Agricultural Extension Subordinate Service under the Agriculture Department of the said State. The Tribunal by its impugned common judgment in these two original applications has taken the view that the contesting respondents are entitled to get the same pay scale as available to Agricultural Officers working in Tamil Nadu Agricultural Extension Service as according to the Tribunal both these categories of employees perform the same type of work and carry out the same type of duties. Consequently on the principle of equal pay for equal work the appellant State must maintain parity of pay scales between these two groups of employees working in its Agriculture Department. The Tribunal has also directed that the contesting respondents be paid all arrears with effect from 1-6-1988.

2. On grant of special leave to appeal under Article 136 of the Constitution of India the appellants have preferred these appeals. During the pendency of these appeals by an interim order of this Court the impugned judgment and order of the Tribunal have remained stayed. In order to appreciate the grievance of the respondents which appealed to the Tribunal, it is necessary to note a few introductory facts leading to these proceedings.

3. The respondents herein were originally appointed in the Agriculture Department of the State as Fieldman. They belonged to Tamil Nadu Agricultural Subordinate Service. They were subsequently promoted to the posts of Deputy Agricultural Officers. These posts could be filled in by promoting Assistant Agricultural Officers. There is no higher avenue of promotion for the respondents beyond the promotional post of Deputy Agricultural Officers.

4. On the other hand Agricultural Officers are being directly recruited from open market and they belong to Tamil Nadu Agricultural Extension Service. The minimum educational qualification for being directly recruited as Agricultural Officer is Bachelor of Science (Agriculture) while so far as Deputy Agricultural Officers are concerned the minimum qualification for being considered for promotion to the said post is passing of SSLC examination equivalent to 10th standard examination. The respondents contended before the Tribunal that though they were discharging the same type of duties as Agricultural Officers the pay scale available to them was Rs. 1600-60-2300-60-2660 while the pay scale of Agricultural Officers which was originally Rs. 1640-60-2600-75-2900 was further

revised upward to Rs. 1820-60-2300-75-3200 and no such upward revisions and parity of revised pay scales were offered to the Deputy Agricultural Officers like the respondents. As noted earlier the said contention of the respondents appealed to the Tribunal and on applying the principle of equal pay for equal work the impugned order was passed in favour of the respondents.

5. In support of these appeals learned counsel for the appellants submitted, relying on a series of decisions of this Court to which we will make a reference hereafter, that difference in educational qualifications can furnish a rational criterion for classifying different categories of employees and for offering them different pay scales. It was submitted that Agricultural Officers are directly recruited as gazetted officers in Tamil Nadu Agricultural Extension Service while the respondents who were promotee Deputy Agricultural Officers were non-gazetted officers belonging to Tamil Nadu Agricultural Extension Subordinate Service. That the methods of recruitment to both these services were different. Agricultural Officers were directly recruited while Deputy Agricultural Officers were promotees. Their educational qualifications were also different. Before a direct recruit can be considered for appointment as Agricultural Officer from the open market he has to possess the degree of Bachelor of Science (Agriculture) in addition to other requisite qualifications as laid down by the statutory rules while so far as the Deputy Agricultural Officer is concerned all that was required was passing of SSLC examination with the requisite experience as laid down in the Rules. That though they may be discharging the same type of duties, the quality of work which they were required to carry out was entirely different. That out of 2390 posts of Agricultural Officers there were 1372 posts to which Deputy Agricultural Officers could not be posted as they were of specialised type while only for the rest of 1018 posts Deputy Agricultural Officers could also be posted to work and in that sense for these 1018 posts there was interchangeability of assignment between these two groups of employees. It was further contended that even though the duty charts of both these groups of employees were almost identical there were certain special duties assigned to Agricultural Officers which could not be entrusted to Deputy Agricultural Officers. It was, therefore, submitted that these two classes of employees though working in the Agriculture Department of the State form two distinct and separate classes and there was no comparison between the two to enable them to earn the same pay scale and consequently the Tribunal had committed a patent error of law in passing the impugned order in their favour.

6. The learned counsel for the respondents on the other hand submitted that once it is held that the respondents were doing same type of work as their counterpart Agricultural Officers the source of recruitment of officers would become irrelevant and it is the nature of the work which was almost similar that would entitle the respondents to claim equal pay for equal work which they were doing. That even though some of the work could not have been assigned to them as mentioned in para (5) of the additional affidavit filed by Shri V. Srinivasan, Deputy Secretary to Government, Agriculture Department, there was material to point out that even the work of drawing samples could be entrusted to the Deputy Agricultural Officers and consequently on the principle of equal pay for equal work the Tribunal was justified in passing the impugned order in their favour especially in the light of Articles 14 and 16 read with Article 39(6) of the Constitution of India. In support of this contention he placed reliance on some of the decisions of this Court to which we will make a reference hereafter.

7. Before dealing with the various decisions of this Court to which our attention was invited by learned counsel for the respective contesting parties we may mention that by IAs Nos. 5, 6, 7, 8 and 9 certain interested applicants representing Agricultural Officers seek to be impleaded in the present proceedings as according to them they have direct interest in these proceedings for justifying the separate pay scale available to them as compared to the pay scale which was made available to the

contesting respondents by the State of Tamil Nadu. As these applicants represent the rival group of employees in the same Department we deem it fit to grant these IAs and permit joinder of these respondents who stated before us that they are supporting the appellants and adopt arguments of the learned counsel for the appellants. We may also state that certain IAs have been filed by the contesting respondents for vacating the interim stay granted by this Court against the implementation of the Tribunal's order pending these appeals. As the appeals are being disposed of finally by the present judgment these IAs for vacating the interim stay would naturally not survive and will stand disposed of accordingly.

8. So far as the merits of the contentions canvassed by the contesting parties for our consideration go, it will be necessary to note certain well-established facts on record of these cases in the light of which the controversy posed for our consideration will have to be resolved. In the Agriculture Department of the appellant State two types of services manned by different employees are in vogue. The history of these services shows that up to 1961 the posts of Assistant Agricultural Officers were borne on Tamil Nadu Agricultural Subordinate Service. These Assistant Agricultural Officers could be promoted to the posts of Deputy Agricultural Officers who were earlier known as Agricultural Demonstrators. These posts could be filled up by direct recruitment as well as by promotion from the posts of Assistant Agricultural Officers. This practice was in vogue up to 1966. Out of the total cadre strength of Deputy Agricultural Officers 20 per cent was reserved for promotees from Assistant Agricultural Officers and the remaining 80 per cent could be filled up by direct recruitment. Only B.Sc. (Agriculture) graduates were directly recruited as Deputy Agricultural Officers. Up to 1961 there was no disparity in the scale of pay for graduate or non-graduate Deputy Agricultural Officers. It was also a well-established position in the Department that the promotee Deputy Agricultural Officers had no further chances of promotion while for directly recruited Deputy Agricultural Officers there were further chances of promotion. It is also not in dispute between the parties that after 1962 the pay scales of promotee Deputy Agricultural Officers left company of the pay scales of directly recruited Deputy Agricultural Officers which were made higher. That apart, from 12-12-1980 the graduate Deputy Agricultural Officers were designated as Agricultural Officers and non-graduates continued to be called Deputy Agricultural Officers. Thus from 1962 onwards all throughout the pay scales of directly recruited Agricultural Officers remained higher as compared to the pay scales of promotee Deputy Agricultural Officers, though both these categories of employees substantially carried out same type of work and discharged same type of duties subject to the difference in the nature of specialised work which could be assigned only to directly recruited Agricultural Officers as highlighted by the learned counsel for the appellants and noted earlier. Subsequently by statutory rules framed under Article 309 of the Constitution of India the Tamil Nadu Agricultural Extension Service was constituted with effect from the year 1981. Category IV of the said Service consisted of Agricultural Officers (Extension). Method of recruitment and qualification for the posts of Agricultural Officers (Extension) were laid down as under :

#-----Class and Post Method of  
Qualifications Recruitment-----  
Class TV Direct (i) A Bachelor's degree inAgricultural Recruitment Agriculture;  
andOfficer (ii) Must possess adequate knowledge of Tamil as defined in the  
Explanation to sub-rule (a) of Rule 12(A) of the General Rules in Part II of the Tamil  
Nadu State and Subordinate Service Rules.-----  
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In the year 1988 the State Government framed special rules for Tamil Nadu Agricultural Extension

Subordinate Service. In the said Subordinate Service Category I consisted of Deputy Agricultural Officers to which the contesting respondents belong. Rule 2 of the said Subordinate Service laid down the method of recruitment to the posts of Deputy Agricultural Officers as under :

#-----Category Post Method of  
appointment-----Category I  
Deputy By promotion from among the holders of the Agricultural post of the  
Assistant Agricultural Officers Officer in Category 3 including the Assistant Seed  
Officers, in Category 2 who is promoted from the post of Assistant Agricultural  
Officer in Category 3 : Provided that the total number of Deputy Agricultural  
Officers shall not exceed 10 per cent of the total strength of the Agricultural Officers  
borne in Class IV of the Tamil Nadu Agricultural Extension Service.-----  
-----The qualifications prescribed for the post of  
Deputy Agricultural Officer under the Rules read as under :-----  
----- Post Qualification-----  
-----Deputy Agricultural Officer 1. Must have passed SSLC  
Examination. 2. At least ten years of service as Assistant Agricultural Officer  
including services rendered in the post of Assistant Seed Officer.-----  
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It is true as pointed out by learned counsel for the contesting respondents that as per the rules of recruitment for promotion to the post of Deputy Agricultural Officer the incumbent concerned must have at least 10 years of service as Assistant Agricultural Officer including the service rendered in the post of Assistant Seed Officer and for being an Assistant Seed Officer he must have not only passed SSLC examination but must also have put in not less than five years of service as Assistant Agricultural Officer in Category 3. It is also true that under the same set of rules it is provided that an Assistant Agricultural Officer can be recruited by direct recruitment and for that purpose the candidate must have passed SSLC examination and must have passed either two years' diploma course or two years' Agricultural Science Certificate course conducted by Shri Rama Krishna Vidyalaya and other institutions mentioned in the rules of recruitment concerned. Therefore, it is obvious that before a promotee can reach the post of Deputy Agricultural Officer he must be equipped not only with the passing certificate of SSLC examination but must have also obtained the requisite diploma as laid down in the rules of recruitment concerning Assistant Agricultural Officer's post. But still the fact remains that a Deputy Agricultural Officer is not required to have a degree of graduation in Agricultural Science which is the basic requirement for a directly recruited candidate from open market to the post of Agricultural Officer. It is no doubt true that most of the duties carried out by the Deputy Agricultural Officers run parallel to those assigned to and carried out by Agricultural Officers. It is also true that Deputy Agricultural Officers can be asked to perform the duties of Agricultural Officers when they are assigned that work and to that extent their assignment of duty can be held to be interchangeable. Still the fact remains that Deputy Agricultural Officers belong to Subordinate Service which is non-gazetted service and the mode of recruitment is promotion. Educational qualifications for them are also lower while Agricultural Officers belong to gazetted service and are directly recruited from open market and their minimum educational qualification is B.Sc. (Agriculture), if not more. The question is with this basic difference in the two types of services whether the abstract doctrine of equal pay for equal work can be pressed in service by the respondents concerned.

9. In the light of the aforesaid service structure data of these two warring groups we may now look at the relevant decisions of this Court on the point.

10. A Constitution Bench of this Court in the case of *State of Mysore v. P. Narasing Rao* [(1968) 1 SCR 407 : AIR 1968 SC 349 : (1968) 2 LLJ 120] speaking through Ramaswami, J. clearly ruled that higher educational qualifications furnish a relevant consideration for fixing higher pay scales and consequently the classification of two grades of tracers in two different pay scales by the new Mysore State was not violative of Article 14 or 16 of the Constitution of India. In the said case the respondent Narasing Rao was employed as a tracer in the Engineering Department of the ex-Hyderabad State on the pay scale of Rs. 65-90. In the common cadre of tracers there were matriculates as well as non-matriculates. The said situation continued till reorganisation of States in 1956. After reorganisation a part of the area of Hyderabad State became part of new Mysore State. After transfer of respondent to the new State, the cadre of tracers into which tracers from Bombay State had also been absorbed, was reorganised into two grades, one consisting of matriculate tracers whose scale of pay was fixed at Rs. 50-120 and the other of non-matriculates at Rs. 40-80. It was this creation of two scales of tracers in the new Mysore State that was tried to be challenged on the anvil of Articles 14 and 16 of the Constitution of India. The non-matriculate tracers like Narasing Rao were able to convince the High Court of Mysore that the said difference of pay scale was discriminatory and violative of Article 14. The said decision of the High Court was set aside by the Constitution Bench in the aforesaid case and it was held that despite same type of work being carried out by the tracers there was nothing wrong in awarding a higher pay scale to matriculate tracers as compared to non-matriculates like the respondent Narasing Rao. On the question whether there could be differential treatment in the matter of promotion another Constitution Bench of this Court in the case of *Mohd. Shujat Ali v. Union of India* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] speaking through Bhagwati, J. held that the Andhra Pradesh Rules insofar as they made differentiation between graduate and non-graduate supervisors in the matter of promotion could not be held to be invalid. Historical background in which these rules operated was also kept in view and it was observed that this differentiation is not something brought about for the first time by the Andhra Pradesh Rules. It had always been there in the Engineering Services of the Hyderabad and the Andhra States. The graduate supervisors had always been treated as a distinct and separate class from non-graduate supervisors both under the Hyderabad Rules as well as under the Andhra Rules and they had never been integrated into one class.

11. The aforesaid two Constitution Bench judgments of this Court clearly laid down that any differentiation made in the matter of pay scales or even for that matter with reference to further chances of promotion between graduate and non-graduate employees would not fall foul on the touchstone of Articles 14 and 16 of the Constitution of India. We may also in this connection refer to a latter decision of this Court in the case of *K. Markendeya v. State of A.P.* [(1989) 3 SCC 191 : 1989 SCC (L&S) 454 : (1989) 11 ATC 3]. In that case the Court had to consider the difference in pay scales made available to two classes of employees, namely, graduate supervisors holding degree in Engineering and the other class of non-graduate supervisors being diploma and licence-holders. It was held that on the basis of difference in educational qualifications such difference in pay scales was justified and could not offend Articles 14 and 16 of the Constitution of India. In this connection Article 39 sub-article (d) was also considered and it was observed by K.N. Singh, J. speaking for the Court as under : (SCC headnote p. 192)

"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. 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 of duties, responsibilities and educational qualifications. Where two classes of employees perform identical or similar duties and carry out the same functions with

the same measure of responsibility having same academic qualifications, 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, 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 and analyse the rationale behind the State action in prescribing two different scales 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."

"On the same lines runs a latter decision of this Court in the case of Sita Devi v. State of Haryana [(1996) 10 SCC 1 : 1996 SCC (L&S) 1321] wherein a Bench of two learned Judges speaking through B.P. Jeevan Reddy, J. laid down that undermatriculate instructors in Adult Literacy Programme in the Government of Haryana could not justifiably demand same pay scales as were available to matriculate instructors and that a person claiming parity in pay on the principle of equal pay for equal work must show that his qualification, duties and functions are similar to the person with whom he claims parity. The learned counsel for the contesting respondents however submitted that in the case of Sita Devi [(1996) 10 SCC 1 : 1996 SCC (L&S) 1321] there was no evidence regarding similar nature of work as clearly indicated in para (5) of the judgment. That may be so. However the principle remains well established in the light of the aforesaid series of decisions of this Court that before the abstract doctrine of equal pay for equal work is pressed in service it must be shown that the incumbents concerned have parity of qualifications, duties and functions and then only they can be treated at par for the purpose of pay scales and the Court can interfere after reaching a clear finding of fact that both the sets of employees stand completely at par on the basis of equality of work both qualitatively and quantitatively and, therefore, denial of equal pay scales to them would offend Articles 14 and 16 of the Constitution of India.

12. The learned counsel for the respondents in support of his contention invited our attention to two decisions of this Court. Firstly he referred to the case of Bhagwan Dass v. State of Haryana [(1987) 4 SCC 634 : 1988 SCC (L&S) 24 : (1987) 5 ATC 136]. In that decision Thakkar, J. speaking for the Bench of two learned Judges observed that if duties and functions of temporary appointees and employees of regular cadre in the same government department are similar, there cannot be discrimination in pay between them merely on the ground of difference in mode of their selection or that the appointment or scheme under which appointments were made was temporary. So far as the aforesaid decision is concerned it has to be kept in view that difference in pay scales was sought to be supplanted by the State of Haryana before this Court only on four grounds as enumerated in para 9 of the Report. They were as under : (SCC pp. 640-41)

"(i) that the petitioners are not full-time employees;

(ii) the mode of recruitment of the petitioners is different from the mode of recruitment of Respondents 2 to 6;

(iii) the nature of the functions discharged by the petitioners are not similar to the functions discharged by Respondents 2 to 6; and

(iv) appointments are made on six-monthly basis and there is a break in service having regard to the fact that the posts are sanctioned on year-to-year basis in view of the temporary nature of the scheme."

It becomes at once clear that in that case this Court was not concerned with a situation wherein there was dissimilarity of educational qualifications amongst the groups of employees concerned who were not offered the same pay scale. On the contrary in para 12 of the Report it has been clearly observed that the petitioners before this Court possessed the same qualifications, namely, B.A., B.Ed. as were possessed by the employees in the regular cadre and some of the petitioners before this Court were having even higher degrees like M.A., M.Ed. Under these circumstances when the State failed to establish different types of duties being discharged by these employees parity of pay scales was ordered to be granted to the petitioners. However the fact-situation in the present case is entirely different. Hence no assistance can be rendered by the aforesaid decision to the contesting respondents. Our attention was then invited by the learned counsel for the respondents to a decision of this Court in the case of Jaipal v. State of Haryana [(1988) 3 SCC 354 : 1988 SCC (L&S) 785 : (1988) 7 ATC 771 : 1988 Supp (1) SCR 411]. In this decision another Division Bench of this Court speaking through K.N. Singh, J. had to consider two identical schemes floated by the State of Haryana with the object of imparting literacy (functional and awareness) to adult illiterates and to provide literacy to children keeping away from schools. Even though the petitioners were discharging the same type of duties as instructors they were being paid a fixed salary of Rs. 200 per month while under the second scheme, employees discharging similar duties were offered a running pay scale of Rs. 420-700. On facts it was found that there was no difference in the nature of duties of the instructors and squad teachers. Both of them carried out similar work under the same employer and only on the ground that the instructors were part-time employees they could not be offered a fixed salary of Rs. 200 per month. It becomes at once clear that there was no difference of educational qualifications amongst these twin sets of employees and the only ground on which difference of payment could be justified by the State was that they were employed under a different scheme and were working part-time only for four hours. On these peculiar facts of the case, therefore, it was held that instructors were entitled to same pay scale as sanctioned to squad teachers on the principle of equal pay for equal work. As the said decision also is rendered in the light of its peculiar facts it is not possible to agree with the learned counsel for the contesting respondents that the ratio of the said decision also gets squarely attracted to the facts of the present case. It is now time for us to take stock of the situation.

13. Keeping in view the aforesaid settled legal position, therefore, it has to be seen whether the Deputy Agricultural Officers and the Agricultural Officers can be said to form an identical class of employees who must be given the same pay scales and denial of which can be said to offend Articles 14 and 16 of the Constitution of India. In the light of the well-established facts on the record of these cases, to which we have made a reference earlier, it is impossible to hold that the Deputy Agricultural Officers like the contesting respondents are required to be given the same pay scale as Agricultural Officers. Reasons are obvious. They do not form a similar class of employees even though they may be substantially discharging the same type of duties and their place of work may be interchangeable. A glaring difference which results into making them fall in a distinct and

separate category of employees deserves to be kept in view. In the first place the contesting respondents are recruited by promotion from the lower category of Assistant Agricultural Officers. On promotion as Deputy Agricultural Officers they remain non-gazetted employees in the subordinate service in the Tamil Nadu Agricultural Extension Subordinate Service while the Agricultural Officers are directly recruited to a gazetted service called Tamil Nadu Agricultural Extension Service. The contesting respondents are promoted departmentally while the Agricultural Officers are directly selected through the Tamil Nadu Public Service Commission. The minimum educational qualification for being an Agricultural Officer (direct recruit) is B.Sc. (Agriculture) while for a promotee Deputy Agricultural Officer the minimum educational qualification is SSLC with suitable diploma as laid down by the Rules. Though substantially they carry out the same type of work and duties, important assignments are exclusively entrusted to Agricultural Officers as seen from para 5 of the additional affidavit filed by Shri V. Srinivasan, Deputy Secretary to Government at p. 193 of the paperbook, as noted earlier. The special duties which can be entrusted only to Agricultural Officers are listed as under :

- "(a) draw samples of insecticides,
- (b) draw samples of fertilizers,
- (c) draw seed samples,
- (d) analyse the soil water samples,
- (e) work in the Regional Research Station,
- (f) work in the State Seed Farm,
- (g) work in the Laboratories,
- (h) do soil survey work,
- (i) can be appointed in delta areas."

Of course learned counsel for the contesting respondents submitted that in certain circumstances even the task of drawing samples is also being entrusted to Deputy Agricultural Officers. That may be so. But the special quality of work which the directly recruited Agricultural Officers have to put in substantially differs from the quality of work which can be entrusted to Deputy Agricultural Officers like the contesting respondents. As noted earlier out of the total posts of Agricultural Officers under the Agriculture Department of the appellant State only 1018 posts can be made available for Deputy Agricultural Officers on interchangeable basis. 1372 posts are exclusively meant to be manned by directly recruited Agricultural Officers. In view of these distinguishing features between the two groups of employees and especially in the light of the further fact that they form two separate cadres of gazetted and non-gazetted officers governed by different sets of service rules which in turn required maintenance of separate seniority lists, and on which aspect also there was no dispute between the parties, it is not possible to agree with the contention of learned counsel for the contesting respondents that only on the doctrine of equal pay for equal work the pay scale available to gazetted employees like Agricultural Officers must of necessity be made available to non-gazetted employees like Deputy Agricultural Officers on the pain of Articles 14 and 16 of the Constitution of India. In our view the Tribunal had patently erred in applying the said doctrine to the facts of the present cases. The decision of the Tribunal amounts to giving equal treatment to totally

distinct and unequal categories of employees. The common judgment of the Tribunal, therefore, cannot be sustained.

14. In the result, the appeals succeed and are allowed. The impugned common judgment of the Tamil Nadu Administrative Tribunal is quashed and set aside. The Original Applications Nos. 1488 of 1989 and 3662 of 1990 are dismissed. In the facts and circumstances of the case there will be no order as to costs all throughout.