

State of U. P.

Vs

Ministerial Karamchari Sangh

(K. Venkataswami, V. N. Khare JJ)

15.10.1997

JUDGMENT

K.VENKATASWAMI, J.

1.The members of the respondent-Association who were appointed in the Directorate of Information after 1.4.1965 moved the Allahabad High Court (Lucknow Bench) for the issue of writ of mandamus directing the appellant to give them pay scale of Lower Division and Upper Division Assistants at par with employees working in the Secretariat U.P.

2.The High Court accepting their prayer issued a writ of mandamus directing the appellants to give the pay scale as prayed for in writ petition. Aggrieved by that, the present appeal is filed by special leave.

3.Before 1.4.1965, the ministerial employees of the Directorate of Information and U.P.Secretariat were in the same pay-scales because there was a joint set up of the Directorate of Information and U.P.Secretariat. The Government of U.P.appointed a committee on 13.7.1964 for rationalization of pay-scales and other conditions of service of various grades of State Government employees. One of the recommendations of the said committee was that the pay scales for the employees of the Directorate of Information should be like the pay scales of the employees working under other heads of Department. This recommendation was accepted and given effect to by the Government w.e.f.1.4.1965. Consequently those who were appointed subsequent to 1.4,1965 in the Directorate of Information were paid in the revised pay scale which was not the same as given before but something less than what it was before 1.4.1965. At the same time, the employees who were already there in the Directorate and appointed before 1.4.1965, their pay scale was protected.

4.In the circumstances, the employees of the Association moved the High Court on earlier occasion by filing W.P.5203/85 pointing out the discrimination in the pay scales on the basis of date of appointment, namely those who were appointed prior to and after 1.4.1965. The High Court while disposing of the writ petition directed the State Government to consider the cases of lower Division and Upper Division Assistants for the same pay scale as that of employees of the Secretariat.

5.Pursuant to the judgment of the High Court, the Government carefully considered the case of the Lower and Upper Division Assistants working in the Department of Directorate of Information. By Office Memorandum dated 21.6.1990, the Government by a considered and reasoned order declined to concede the demand of the members of the respondent Association. Aggrieved by that, the respondent-Association again moved the High Court and the result was the order under appeal.

6. After going through the order impugned before the High Court, namely, the Office Memorandum dated 21.6.1990 and after perusing the pleadings and hearing counsel on both sides entertained a feeling that if only the High Court had taken the trouble of going through the order impugned before it carefully, it would not have issued the mandamus as prayed for by the respondent-Association.

7. The reasons given by the High Court for issuing the writ of mandamus accepting the case of the respondent-Association were mainly (a) that the academic qualifications for appointment to most of the Lower/upper Division Assistants in the Secretariat and the Information Department are similar, that (b) in the same Directorate of Information those who were appointed prior to 1.4.1965 were paid on a higher scale than those appointed after 1.4.1965 and such discrimination has not been properly explained and (c) that the unequal scales of pay is actually based on no classification or irrational classification.

8. None of the above reasoning can stand the scrutiny in view of the detailed convincing reasons given in the Office Memorandum dated 21.6.1990 and also in the counter affidavit filed before the High Court. We prefer to extract portions from Office Memorandum dated 21.6.1996 to justify the above statement. The Office Memorandum, inter alia, stated as follows:-

"Before 1.4.1965, the Information Directorate and information Secretary branch both were joint offices. In the Pay Rationalization Committee constituted in the year 1964 recommended the pay scales for the employees of the Directorate of Information like the pay scales of the employees working under other Heads of departments and this recommendation was accepted by the Government w.e.f. 1.4.1965. The Committee was of the view that system of working at the level of post of Lower Division Assistant and high post of U.P. Secretariat and of the U.P. Public Service Commission is different from those of the offices of the heads of Departments. Their qualification are higher and generally the recruitments in the U.P. Secretariat and the Public Service Commission are made through the U.P. Public Service Commission on the basis of a competitive examination. Therefore, like other offices of the heads of departments the pay scales for Lower and Upper Division Assistants of the Directorate of Information were also recommended. The option was open for the employees appointed before 1.4.1965 to choose their respective old pay scales or new pay scales. But after 1.4.1965 the Lower Division Assistants and Upper Division Assistants were appointed as in the offices of other heads of departments in the pay scales of clerical cadre. The terms and conditions of their service were also the same as those of the employees of clerical cadre of the offices of other heads of departments. The essential qualifications and the mode of recruitment were also the same as of the employees of other heads of departments. Whereas the mode of recruitment and essential qualifications fixed for the Secretariat employees are entirely different."

9. In the counter affidavit filed before High Court, the appellants have stated as follows:-

"That the contents of paragraph 5 of the writ petition are admitted with the submission that the qualification of the Lower Division and Upper Division Assistants of the Secretariat and Information Directorate are altogether different. The

essential qualifications for the appointment on the Post of Lower Division Assistant and Upper Division Assistants in the Secretariat is graduation while in the Directorate of Information, the essential qualification for the appointment on the post of Lower Division Assistant was high school and now it is Intermediate and post of Upper Division Assistants in the information Directorate. Therefore, the members of the petitioner are not entitled for the same pay scales as admissible to the Lower Division Assistants and Upper Divisions Assistants in the Secretariat as their qualification and mode of recruitment is different."

10. Again we refer to the Office Memorandum which reads as follows:-

"On the basis of the recommendations of the Second Pay Commission, the designations of the Lower Division and Upper Division Assistants were changed to the Lower Division Clerk and Upper Division Clerks respectively. But those changed designations have not been indicated in the writ petition. In this connection, it is also noteworthy that employees working on the pay scales similar to those of secretariat may be treated as those of dying cadre. On retirement of such employees or in the circumstances when these posts vacant, the appointments on such posts will be made in the general pay scales admissible for Directorate of Information."

11. In this context, it is stated in the Memorandum of Grounds in the SLP "that there is no Lower Division assistants at present recruited before 1.4.1965. There are few ministerial employees in the Directorate of information who are getting personal pay scales equivalent to the pay scales of Upper Division Assistants of U.P. Civil Secretariat". In other words this cadre, namely, those recruited before 1.4.1965 is almost on the verge of extinct. This position is not controverted by the respondent by filing any counter.

12. Justifying the retention of the pay scales to those who were appointed prior to 1.4.1965, the Memorandum states as follows:-

"Generally to decrease the pay scale of any employee appointed in any special pay scale is not proper with the point of view of justice. But in case if the employee appointed on any post with certain service conditions demands more, then it is in the jurisdiction of the State Government to accept or discord his request on the basis of its merit. It is also worth mentioning that the service condition of the clerical cadre employees appointed before 1.4.1965 in Information Department in the pay scales of the Secretariat were different i.e. higher than that of those appointed after 1.4.1965."

13. Again the Memorandum states the reason for constituting a separate cadre after 1.4.1965 in the following manners:-

"The Pay Rationalization Committee constituted in the year 1964 recommended to separate the pay scales of the Lower Division & Upper Division Assistants of the Information Directorate from those of the Lower Division and Upper Division Assistants of the Secretariat as was done in case of the clerical cadre employees of other offices of the heads of Department. This recommendation was made on the ground that the working system of the Secretariat is different from that of the offices of other heads of departments. These recommendations were implemented w.e.f. 1.4.1965. Like the other offices of heads of departments when the working

system of the Information Directorate was distinguished from that of the Secretariat the Pay Rationalization Committee then recommended reduced pay scales for the employees of the Information Directorate and this recommendation was proper. After 1.4.1965, the employees were appointed in lower pay scales. Their service conditions contained lower pay scales. Therefore, there is no justification of accepting the higher pay scales to them like the pay scales of the upper Division and Lower Division Assistants appointed before 1.4.1965. In this way the recommendations of the Pay Rationalization Committee were accepted."

14. The Memorandum also points out that it is not the only department in which such bifurcation was made but there are other departments in which also similar bifurcation was made and separate cadre was effected and in that connection, the Memorandum states as follows:-

"The position of the clerical cadre employees of the Directorate of Information was similar to the position of those clerical care employees who were working in the offices of some other heads of departments. Earlier the Directorate of Economics & Statistics was also a part of the Secretariat and the pay scales of the Secretariat were admissible to the employees of that Directorate. The Pay Rationalization Committee recommended lower pay scales also for the employees of the Directorate of Economics & Statistics. But the higher personal pay scales were recommended by the First Pay Commission for those employees who were appointed in the pay scales of the Secretariat as were recommended for the Information Department. In connection with the clerical cadre employees of the Directorate of Economics & Statistics the Second Pay Commission recommended as follows:-

"A Section of employees is setting the pay scales of the Secretariat. We have recommended replacement pay scales for them which they would continue to get as their personal pay scales similar to the scales they are getting at presents".

The position of the clerical cadre employees of the Research Development Institute was the same as that of the Information Directorate. There also the clerical cadre employees appointed after 1.4.1965 were given the same pay scales as were given to the clerical cadre employees of the offices of the heads of Departments.

15. Having regard to the above position brought out clearly in the impugned office Memorandum and in the light of long line of decisions of this Court to the effect that the principle of 'equal pay for equal work' is not always easy to apply; that there may be any educational or technical qualification which may have a bearing on the scales which the holders bring to their job although the designation of the job may be the same, we do not think that the High Court was justified in issuing the mandamus.

16. It is also settled proposition that the evaluation of such jobs for the purpose of pay scales must be left to expert body and unless there are any mala fides, its evaluation should be accepted. In *Federation of All India Customs and Central Excise Stenographers (Recognized) & Ors. Vs. Union of India & Ors* (1988 (3) SCC 91), this Court observed as follows:-

"Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work, 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 different 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 emphasize 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."

17. The same view was reiterated in a recent judgment *State of Haryana & Ors. Vs. Jasmer Singh & Ors.* (1996 (11) SCC 77). This Court in that case held as follows:

"The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations, or even in the same organization. The principle was originally enunciated as a part of the Directive Principles of State Policy in Article 39(d) of the Constitution. In the case of *Randhir Singh Vs. Union of India*, however, this Court said that this was a constitutional goal capable of being achieved through constitutional remedies and held that the principle had to be read into Articles 14 and 16 of the Constitution. In that case a Driver-constable in the Delhi Police Force under the Delhi Administration claimed equal salary as other Drivers and this prayer was granted. The same principle was subsequently followed for the purpose of granting relief in *Dhirendra Chamoli Vs. State of U.P.* and *Jaipal Vs. State of Haryana*. In the case of *Fegerat on of All India Customs and Central Excise Stenographers (Recognized) & Ors. Vs. Union of India*, however this Court explained the principle of "equal pay for equal work" by holding that differentiation in pay scales among government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. In that case different pay scales fixed for Stenographers (Grade 1) working in the Central Secretariat and those attached to the heads of subordinate offices on the basis of a recommendation of the Pay Commission was held as not violating Article 14 and as not being contrary to the principle of "equal pay for equal work". This Court also said that the judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court."

18. On facts, we have seen that the mode of recruitment, qualification, promotion are totally different in the case of appointments of Lower Division & Upper Division Assistants in the Secretariat and in the case of Lower Division & Upper Division Assistants (Clerical Cadre) in the Directorate of Information. This ground is sufficient for fixing different scales. The impugned Office Memorandum gives convincing and acceptable reasons for retaining the pay scales of those Lower & Upper Division Assistants appointed in the Directorate of Information prior to 1.4.1965. In the circumstances, we are of the view that none of the reasons given by the High Court to issue writ of mandamus as prayed for by the respondent-Association can be sustained in law. Accordingly, the appeal is allowed. No, costs.