SUPREME COURT OF INDIA

U.P. Land Development Corporation

Vs.

Mohd. Khursheed Anwar

C.A.No.685 of 2005

(G.S.Singhvi and C.K.Prasad JJ.)

05.07.2010

JUDGEMENT

G.S.Singhvi, J.

1. This is an appeal for setting aside the order passed by the Division Bench of the Allahabad High Court which allowed the writ petition filed by the respondents and directed the appellants to pay salary to the respondents in the pay-scale of Rs.2200-4000 prescribed for the post of Assistant Engineer, as revised up to date.

2. Appellant No.1 - U.P. Land Development Corporation (hereinafter described as the Corporation) was established for helping the farmers of the State in reclaiming their land. The Corporation executed several schemes, most of which were sponsored and/or funded by the World Bank by engaging staff on contract basis. Ordinarily, such engagement was continued till the completion of the particular scheme but, at times, the services of the same staff were utilized for execution of other scheme(s).

3. The respondents, who are graduates in engineering applied for being employed under the Corporation as Assistant Engineers. They were interviewed by the Selection Committee along with other eligible persons and were adjudged suitable for employment on contract basis for completion of `Million Wells Scheme'. This is evident from the contents of the document titled `notes and order' (Annexure P-1 with the memo of appeal), which reads thus:- "Notes and Order At 4 districts, the work is being carried out by this Corporation under the Million Wells Scheme. At present this work is going at full speed. At present, there is only one engineer who is looking after the work and considering the nature of the work, one engineer is not sufficient and because of lack of engineers, it is not being possible to complete the work within stipulated time, because of this, works at Aligarh and Raibareilly are suffering from time to time. In the headquarters of the Corporation, there is no engineer and we have to remained depend on the said one engineer only. Keeping in mind the need of the work, the applications received in this office have been examined and degree holder (civil) engineers were called for interview on 15.2.1991. Two posts of Asstt. Engineer and

one post of Jr. Engineer are sanctioned in the Corporation but the work is to be completed under time bound Million Wells Scheme. Therefore, the services of two engineers may be obtained on a consolidated salary of Rs.2,000/- per month for a period of 3 months. The salary of both these engineers would be less than the salary of the regular appointed engineers. The engineers would be appointed on contract basis and the original certificate of their educational qualification will remain deposited here.

> "On the basis of the interview dated 15.2.91, Md. Khursheed Anwar and Shri Ashok Kumar were found suitable. It is being forwarded for necessary approval and signature in this regard.
>
> Sd/- Illegible 16.2.91.
>
> Sd/- Managing Director."

4. As a sequel to the approval accorded by the Managing Director of the Corporation, two separate orders dated 18.2.1991 were issued engaging the respondents on contract basis for a period of three months on a consolidated salary of Rs.2000/- per month with a stipulation that their claim for regular appointment will not be entertained. At that time, pay scale of the post of Assistant Engineer was Rs.2200-4000 and that of Junior Engineer was Rs.1600-2660. The tenure of engagement of the respondents was extended by the Managing Director of the Corporation from time to time for short periods of three months each. However, after one year and three months of their initial engagement, the concerned authority passed an order dated 12.5.1992 and extended the services of the respondents till further orders.

5. After completing three years' service, the respondents jointly filed Writ Petition No.161 (S/B) of 1994 for issue of a mandamus to the appellants herein to pay them salary in the regular pay scale prescribed for the post of Assistant Engineer and also regularize their services on that post by asserting that they fulfil the qualification prescribed for the post; that they were appointed as Assistant Engineers after due selection and that right from the date of joining, they were continuously discharging the duties of the post of Assistant Engineer. They pleaded that action of the opposite parties in not paying them salary in the prescribed pay scale and not to regularize their services was wholly arbitrary and unjustified.

6. The appellants contested the writ petition. The thrust of their case was that at the time of engagement of the respondents, no sanctioned post of Assistant Engineer was available and they were appointed on consolidated salary for a fixed period. The appellants denied the assertions contained in the writ petition that the respondents were discharging the duties of the posts of Assistant Engineer. According to the appellants, the respondents were engaged on purely contractual basis for a fixed period and they have no right to be regularized on the post of Assistant Engineer.

7. In the rejoinder affidavit filed by him, Mohd. Khursheed Anwar not only reiterated the averments contained in the writ petition but also placed on record documents marked as

Annexures R/1 to R/7 to show that at the time of their engagement, sanctioned posts of Assistant Engineer were available.

8. During the pendency of the writ petition, the Division Bench of the High Court directed the Managing Director of the Corporation to file his own affidavit. Thereupon, Shri D.K. Mittal, the then Managing Director of the Corporation filed affidavit dated 6.12.1994 stating therein that the post of Assistant Engineer (Civil) never existed in the Corporation and the respondents were not appointed as Assistant Engineer or against the post of Assistant Engineer. He, however, admitted that the respondents were employed on a consolidated salary of Rs.2000/- per month after being subjected to interview.

9. The Division Bench of the High Court negatived the respondents' claim for regularization of service by observing that they had not made specific prayer to that effect but accepted their plea for issue of a mandamus to the appellants herein to pay them salary in the pay scale prescribed for the post of Assistant Engineer. The Division Bench opined that the writ petitioners were qualified to be appointed as Assistant Engineer and there was enough material on record to show that they were appointed as such on ad hoc basis. The Division Bench then referred to letter dated 22.2.1993 and observed:

> "If there are posts of Assistant Engineers or equivalent thereto, payment of their wages should be equal to the said post on the ground of the principle of pay parity. The reasoning that while creating new posts, the Government did not sanction any post of Assistant Engineer will not help the opposite parties as by the letter dated 22.2.1993 (Annexure A-3), by virtue of which, new posts were created, the old post numbering 260 in total lying vacant were not abolished, although, they were kept in abeyance. As the petitioners have been appointed long before issuance of the said letter dated 22.2.1993, it would be deemed that the two posts of Assistant Engineers had been filed up with the ad hoc appointment of the petitioners. It was, however, different rather meaningless if the said two posts were not shown to have been occupied by the petitioners on account of some implications. One of such implications is obvious that if the two posts had been indicated to be occupied by the petitioners, their salary in the prescribed scale was required to be paid to them. The Management of the Corporation some how did not wish to keep the things clean and clear and it is a matter of common experience that very often a motivated ambiguity is left with a view to leave scope for suitable interpretation. If there was no post of an Engineer in the Corporation, why in the initial appointment letters of the petitioners, they were referred to as simply Engineers. The opposite parties have not proved from any document that there was no post of engineer existing in the Corporation. As is evident from the list of 260 sanctioned posts, there were posts of either Assistant Engineers or Junior Engineers. If the Corporation had in mind to appoint the two petitioners on any terms and conditions, their designation should have been clearly indicated. In the absence of clarity coupled with subsequent reference to their designation as Assistant Engineers, it would be presumed that they were appointed as

Assistant Engineers and therefore, they would be entitled to get their salary in the pay-scale of Rs.2200-4000 as revised up to date."

10. Shri M.S. Ganesh, learned senior counsel appearing for the appellants took us through the documents produced by his clients to show that at the time of engagement of the respondents, sanctioned posts of Assistant Engineer (Civil) were not available in the services of the Corporation and argued that the High Court committed serious error in directing the appellants to pay salary to the respondents in the regular pay scale of the post of Assistant Engineer ignoring that they were engaged for a fixed period on a consolidated salary. Learned senior counsel emphasized that the Corporation is primarily engaged in execution of schemes sponsored and funded by the World Bank and argued that in the absence of availability of sanctioned posts of Assistant Engineer, the appellants cannot be compelled to pay to the respondents salary in the pay scale of that post by applying the principle of equal pay for equal work.

11. Shri Anil Kumar Sangal, learned counsel for the respondents fairly stated that his clients were not appointed after following the procedure prescribed for regular appointment but argued that the direction given by the High Court for payment of salary to them in the regular pay scale prescribed for the post of Assistant Engineer cannot be faulted because they were employed against the existing posts of Assistant Engineer and discharged the duties and functions of that post. Learned counsel submitted that the respondents had continuously discharged the duties of the post of Assistant Engineers and as such their entitlement to get salary in the scale prescribed for that post cannot be questioned.

12. The question whether the principle of `equal pay for equal work' can be read as part of the doctrine of equality has been considered by this Court in large number of cases. In *Kishori Mohanlal Bakshi v. Union of India*[1], this Court observed that the principle of `equal pay for equal work' as an abstract doctrine had nothing to do with Article 14. This view has not been followed in most of the subsequent judgments. In *Randhir Singh v. Union of India*[2] the Court distinguished the three earlier judgments including Kishori Mohanlal Bakshi v. Union of India (supra) and observed:

"Our attention was drawn to *Binoy Kumar Mukerjee v. Union of India and Makhan Singh v. Union of India*, where reference was made to the observations of this Court in *Kishori Mohanlal Bakshi v. Union of India* describing the principle of "equal pay for equal work" as an abstract doctrine which had nothing to do with Article 14. We shall presently point out how the principle, "equal pay for equal work", is not an abstract doctrine but one of substance. Kishori Mohanlal Bakshi v. Union of lndia is not itself of any real assistance to us since what was decided there was that there could be different scales of pay for different grades of a service. It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably

sustain the classification of the officers into two grades with different scales of pay. The principle of "equal pay for equal work" would be an abstract doctrine not attracting Article 14 if sought to be applied to them.

It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive principle of State Policy.

"Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone.

To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word "socialist" must mean something. Even if it does not mean `to each according to his need', it must at least mean "equal pay for equal work". "The principle of "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide International Labour Law by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour

> Organisation recognises the principle of `equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

13. The ratio of the judgment in Randhir Singh's case was invoked and applied in *Dhirendra Chamoli v. State of U.P.*[3] ,*Surinder Singh v. Engineer-in-Chief, CPWD*[4] and other cases for extending the benefit of the principle of `equal pay for equal work' to different types of employees including daily wagers but the same was distinguished in *Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India*[5], *State of U.P. v. J.P. Chaurasia*[6], *Mewa Ram Kanojia v. All India Institute of Medical Sciences*[7], *Ghaziabad Development Authority v. Vikram Chaudhry*[8], *State of Haryana v. Jasmer Singh*[9], *Orissa University of Agriculture and Technology v. Manoj K. Mohanty*[10], *State of Haryana v. Tilak Raj*[11], *Government of West Bengal v. Tarun K. Roy*[12], *S.C. Chandra v. State of Jharkhand*[13], *State of Haryana v. Charanjit*[14], *Official Liquidator v. Dayanand and others*[15] and very recently in *State of Punjab v. Surjit Singh*[16].

14. In *Jawaharlal Nehru Technological University v. T. Sumalatha*[17]a two-Judge Bench set aside the direction given by the High Court to the appellant to absorb the respondents in accordance with the policy contained in G.O. No.212 dated 22.4.1994, but made some significant observations on the issue of payment of higher salary to them. The same are extracted below:

> "Though the plea of regularisation in respect of any of the fifth respondents cannot be countenanced, the respondent employees should have a fair deal consistent with the guarantee enshrined in Articles 21 and 14 of the Constitution. They should not be made to work on a meagre salary for years together. It would be unfair and unreasonable to extract work from the employees who have been associated with the nodal centre almost from its inception by paying them remuneration which, by any objective standards, is grossly low. The Central Government itself has rightly realised the need to revise the consolidated salary and accordingly enhanced the grant on that account on two occasions. That revision was made more than six years back. It is high time that another revision is made. It is therefore imperative that the Ministry concerned of the Union of India should take expeditious steps to increase the salary of the investigators viz. Respondents 1 to 4 working in the nodal centre in Hyderabad. In the absence of details regarding the nature of work done by the said respondents and the equivalence of the job done by them to the other posts prevailing in the University or the Central Government institutions, we are not in a position to give any direction based on the principle of `equal pay for equal work'. However, we consider it just and

expedient to direct Respondent 7 or 8, as the case may be, to take an expeditious decision to increase the consolidated salary that is being paid to Respondents 1 to 4 to a reasonable level commensurate with the work done by them and keeping in view the minimum salary that is being paid to the personnel doing a more or less similar job. As far as the fifth respondent is concerned, though we refrain from giving similar directions in view of the fact that the post is not specifically sanctioned under the Scheme, we would like to observe that the Central Government may consider increasing the quantum of office expenditure suitably so that the University will be able to disburse higher salary to the fifth respondent."

15. In Dayanand's case, the Court observed that the ratio of Randhir Singh's case has not been followed in later judgments and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc.

16. In Surjit Singh's case, the Court reviewed large number of judicial precedents and observed:

"Undoubtedly, the doctrine of `equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value.

The principle of `equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work

which is produced may be different and even the nature of work assigned may be different.

It is not just a comparison of physical activity. The application of the principle of `equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. 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. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

17. In the light of the above stated legal position, we shall now consider whether the direction given by the Division Bench of the High Court to the appellants to pay salary to the respondents in the regular pay scale prescribed for the post of Assistant Engineer is legally correct. Here it is apposite to note that the High Court granted relief to the respondents by presuming that two posts of Assistant Engineer were utilized for appointing them. This assumption is ex facie fallacious because the documents produced before the High Court and this Court show that the respondents were engaged for a fixed period on a consolidated salary. There is nothing in the language of orders dated 18.2.1991 from which it can be inferred that the respondents were appointed against the sanctioned posts of Assistant Engineer (Civil). The correspondence exchanged between the State Government and the Corporation after 18.2.1991 cannot be relied upon for recording a finding that the respondents were appointed against the sanctioned posts of Assistant Engineer. Therefore, the direction given by the High Court for payment of salary to the respondents in the regular pay scale prescribed for the post of Assistant Engineer cannot be sustained. But, at the same time, we are convinced that the appellants were not justified in continuing the respondents on a consolidated salary of Rs.2000/- per month despite the fact that at the time of their selection, two sanctioned posts of Assistant Engineer and one post of Junior Engineer were lying vacant and proposal for appointing the respondents without any nomenclature was made with the sole object of taking work of the particular post from them without paying salary in the regular pay-scale of any post. To say the least, the decision of the Corporation to effect economy by depriving the respondents' even minimum of the pay-scale was totally arbitrary and unjustified. The very fact that the respondents were engaged on a consolidated salary of Rs.2,000/- per month and the prescribed pay-scale of the post of Assistant Engineer

in other branches was Rs.2200-4000/- and that of the Junior Engineer was Rs.1,600 - 2,660/- gives a clear indication that they were engaged to do the work of Assistant Engineer. The appellants had neither pleaded before the High Court nor it has been shown to this Court that the respondents were not qualified for the post of Assistant Engineer. It is also not the case of the appellants that the respondents suffered from any other disability which could impede their appointment on the post of Assistant Engineer. In the written statement filed before the High Court, the appellants did make a statement that the respondents were not discharging the duties of Assistant Engineer but no material was produced either before the High Court or before this Court to show any difference in the nature of duties being performed by the respondents and those which were required to be performed by an Assistant Engineer. It is, therefore, reasonable to take the view that the respondents had been arbitrarily deprived of their legitimate right to get minimum of the pay-scale prescribed for the post of Assistant Engineer.

18. In the result, the appeal is partly allowed. The impugned order is set aside. However, the appellants are directed to pay to the respondents minimum of the pay-scale prescribed for the post of Assistant Engineer (as revised from time to time) from the date of their appointment till they continued in the employment of the Corporation.

19. During the course of hearing, we were informed by the learned counsel for the parties that the respondents' engagement was discontinued in 2007 and they were offered fresh employment on the post of Junior Engineer. On this issue we do not want to make any observation and leave it to the respondents to accept or decline the offer made by the appellants.

[1]*AIR 1962 SC 1139*
[2]*(1982) 1 SCC 618*
[3]*(1986) 1 SCC 637*
[4]*(1986) 1 SCC 639*
[5]*(1988) 3 SCC 91*
[6]*(1989) 1 SCC 121*
[7]*(1989) 2 SCC 235*
[8]*(1995) 5 SCC 210*
[9]*(1996) 11 SCC 77*
[10]*(2003) 5 SCC 188*
[11]*(2003) 6 SCC 123*
[12]*(2004) 1 SCC 347*
[13]*(2006) 9 SCC 32*
[14]*(2007) 8 SCC 279*
[15]*(2008) 10 SCC 1*
[16]*(2009) 9 SCC 514*
[17]*(2003) 10 SCC 405*