

**SUPREME COURT OF INDIA**

S.H.Baig

Vs.

The State of Madhya Pradesh

C.A.No.9888-9899 of 2018

(S.A.Bobde and L.Nageswara Rao,JJ.,)

25.09.2018

**JUDGMENT**

**L.Nageswara Rao,J.,**

SLP (C) Nos.27288-27299 of 2011

(Application for substitution of deceased Petitioner No.4)

All the above Interlocutory Applications are allowed. Leave granted.

1. These Appeals have been filed against the judgment of the High Court of Madhya Pradesh at Jabalpur, by which the claim of parity of pay-scales made by the Ministerial employees of the Police Department in the State of Madhya Pradesh was not accepted.

2. Recruitment to the posts of Ministerial employees i.e. Head Clerk, Assistant Clerk, Accountant, Assistant Accountant, Record Keeper, Daftari, etc. was governed by the M.P. Police Regulations, which were framed under the Police Act, 1861. Inspectors, Sub-Inspectors, Subedars, Assistant Sub-Inspectors, etc. were appointed as per the provisions governed by Part III of M.P. Police Regulations. On 5th November, 1967, the State Government created new Police Ranks (Ministerial) in the State Police Force under Section 2 of the Police Act, 1861. The Ministerial employees who opted to be enrolled under the Police Act, 1861 would continue to draw emoluments in their existing pay-scales or as may be revised from time to time. They were given Uniform Grant and Uniform Maintenance Allowance in accordance with the scale prescribed for the corresponding regular posts (Executive). They would, however, not be entitled to House Rent or Rent Free Accommodation and Conveyance Allowance admissible to Officers of corresponding Ranks in the Executive branch. There was a difference in pay-scales between the Ministerial and Executive branches of the Police from the beginning, which can be seen from the M.P. Pay-Revision Rules, 1961, popularly known as "Tarachand Pay Scales". The difference between pay-scales was continued even as per the "Faquir Chand Pay-Scales" in 1973. On 14th

October, 1982, the Chaudhary Pay Commission submitted its Report in which it recommended as follows:

"We are unable to make recommendation of the pay scales equivalent to Police Executive Force to the ministerial employees of police department. They will have to satisfy with the pay scales received by the colleagues working in other departments."

3. The M.P. Revision of Pay Rules, 1983 (hereinafter referred to as "the 1983 Rules") were brought into force on the basis of the Chaudhary Commission w.e.f. 1st April, 1981. Rule 7 provides for fixation of initial pay of the Revised Scale which reads as under:

"Rule 7- Fixation of initial pay in the revised scale- (1).. .. (b).. ..

(iv)- Ad hoc increase sanctioned to certain categories of Government servants in Police, Home Guard, Jail and Excise Department, except the ad hoc increase allowed to Ministerial Staff of Police Department.

(2) An amount equal to 20% of the basic pay (inclusive of stagnation allowance, if any) shall first be calculated. In case this amount exceeds Rs.150 it should be reduced to Rs.150.

From such amount of interim relief, or in the case of certain categories of Government servants in the Engineering Department, the amount of the ad hoc increase sanctioned to them, shall be deducted and the balance be added to the emoluments arrived at as in sub-rule (1). if in any case, the balance is less than Rs.10/~ then Rs.10/~ shall be added to the emoluments. "

4. Mr. P.N. Tripathi who was initially appointed to a Ministerial post and was working as a Deputy Superintendant of Police (DSP) in the office of the Director General of Police (DGP), Madhya Pradesh filed O.A. No. 165 of 1994 in the Administrative Tribunal, Bhopal Bench seeking revised pay-fixation and the quashing of an order passed for recovery of excess amounts paid to him. The Tribunal held that P.N. Tripathi was entitled to get the ad hoc increase of pay of Rs.70/- for fixation of pay as per Rule 7(1)(b)(iv) of the M.P. Revision of Pay Rules, 1983. The Tribunal, however, observed that the special pay was not to be merged in the revised pay-scales. Mr. Krishna Gopal Duraphe filed O.A. No.45 of 1998 seeking ad hoc increase of Rs.70/- in the basic pay as per the M.P. Revised Pay Rules, 1983. Mr. Duraphe retired as a Deputy Superintendant of Police (DSP). He was denied the benefit of addition of ad hoc increase of Rs.70/- to his basic pay. Following the judgment in Tripathi's case, the Tribunal allowed O.A. No.45 of 1998 filed by Mr. Duraphe and directed the Respondents-therein to re-fix his pay in the revised pay- scale as per Table 31 of the M.P. Revision of Pay-Scales, 1983 by including Rs.70/- for calculation of initial pay as per Rule 7. After the judgment in Duraphe's case on 1st January, 2000, a decision was taken by the

Government of Madhya Pradesh to give the benefit of Rs.70/- as ad hoc increment in the Chaudhary Pay-Scales w.e.f. 1st April, 1981 to all the employees working in the Executive (Ministerial) Force.

5. Miscellaneous Application No.218 of 2001 was filed by the State of Madhya Pradesh seeking review of the Order dated 1st April, 2000 passed by the Tribunal in O.A. No.45 of 1998. The Government of Madhya Pradesh was aggrieved by the operative portion of the Order passed on 1st April, 2000 in O.A. No.45 of 1998 directing Duraphe's pay to be fixed in revised pay scale as per Table No.31 of the M.P. Revision of Pay Scales Rules, 1983. It was contended on behalf of the State that the Table No.31 is relatable to an Executive Post. According to the Government, the judgment of the Tribunal dated 1st January, 2000 needed to be reviewed because several persons of the Ministerial cadre at the lower levels i.e. Inspector (M)/ Peon, Head Constables (M), Daftari, ASI (M)/ LDC, Sub-Inspector (M)/ UDC, Subedar (M)/ Auditor Stenographer were seeking the same relief. According to the Government, the Ministerial employees though declared as police officers, continued to remain in the same cadre performing ministerial work with separate pay-scales which are lower than that of the Executive Force. The Government insisted that there was no intention of granting pay-scales to Ministerial employees on par with the Executive Force. The Tribunal held that it never intended or ordered a higher pay-scale to be given to the Ministerial employees, that too, from 1st April, 1981. The relief claimed by Mr. Duraphe was for an ad hoc increase of Rs.70/- to be added to his basic pay while fixing the pay in the revised scale of pay w.e.f. 1st April, 1981. The Tribunal made it clear that the question of grant of a scale higher than the corresponding revised scale which was given to the Executive Force was not a subject matter of the dispute either in Tripathi's case or the judgment in O.A. No.45 of 1998 dated 1st January, 2000. The only point that was adjudicated in both the above cases was grant of ad hoc increase of Rs.70/- for the purpose of initial pay-revision. The apparent error committed by the Tribunal while directing Mr. Duraphe to be given pay-scale in accordance with Table 31 which pertains to Inspector of the Executive Force, was corrected.

6. By a letter dated 22nd February, 2001, the Government of Madhya Pradesh informed the Director General of Police that the earlier order by which the benefit of Rs.50/-, Rs.60/- and Rs.70/- ad hoc increment in the Chaudhary Pay Scales given to the Executive (M) employees was deferred till further orders. On 25th March, 2006, the Government of Madhya Pradesh informed the Director General of Police that the members of the Ministerial employees shall be entitled for adding the ad hoc increment of Rs.50/-, Rs.60/- and Rs.70/- for pay-fixation. However, the pay-scale of such employees shall not be increased. In other words, they will not be entitled to claim the benefit of being placed in a higher pay scale which was given only to the Executive Force. Excess payment made due to the faulty fixation of higher pay-scale in favour of Ministerial employees was sought to be recovered by a proceeding dated 22nd July, 2006. The Orders dated 25th March, 2006 and 22nd July, 2006 were challenged by the Ministerial employees in the High Court of Madhya Pradesh.

7. The Writ Petitions were dismissed by the learned Single Judge of the Madhya Pradesh High Court on 18th July, 2007. It was held that the new Police Ranks (Ministerial) created

for the Ministerial staff of the Police Department by Memorandum dated 5th November, 1967 did not entitle the Ministerial employees to claim parity of pay with the members of the Executive Force in the Police Department. The High Court referred to a specific condition in the said Memorandum that even after enrolment under the Police Act, 1861, the Ministerial employees of the Police Department would continue to draw emoluments in the existing scale in which they were working prior to 1st April, 1981 or as may be revised from time to time. The High Court observed that the ministerial employees were entitled to the payment of ad hoc increase to be added to the basic pay but they cannot claim the higher pay-scale which was granted to the Executive Force. Reliance was placed by the High Court on the 1983 Rules according to which the claim of the Appellants for being placed in the next higher pay scale was not possible. The Order passed by the Tribunal in the Review Application filed by the State Government in Gopal Krishna Duraphe's case was relied upon by the High Court to reject the relief claimed by the Appellants. The High Court referred to several cases filed by the Ministerial employees in the State Administrative Tribunal seeking relief of parity of pay with the members of the Executive Force in the Police Department which were transferred to the High Court on abolition of the Tribunal. Finally, the High Court held that the Appellants were entitled for fitment in the corresponding pay-scale of their existing pay-scale as per Rule 7 of the 1983 Rules. According to the Rules, the members of the Executive Force in the Police Department were entitled to the next higher pay-scale of the corresponding revised pay-scale. The Ministerial employees were not entitled to the said benefit, according to the High Court. Recovery of excess amounts paid due to wrong fixation on the revision of pay scales was upheld by the High Court.

8. The Writ Appeals filed by the Appellants were dismissed. The point pertaining to the parity of pay scales was answered against the Appellants. However, recovery of emoluments made between 1st April, 2000 and 17th November, 2001 was held to be not justified. The Division Bench of the High Court of Madhya Pradesh reiterated that the Ministerial staff in the Police Department were given police ranks by the Memorandum dated 5th November, 1967. However, their emoluments continued to be different from that of the Executive Force in the Police Department. It was held that the request of the Appellants for equal pay could not be accepted as the recruitment process for the employees of the Executive and Ministerial staff is different, the qualifications for appointment to Executive and Ministerial posts are not the same, and the duties that are discharged by them are also not similar. The High Court observed that the duties discharged by the employees in the Executive Force are more rigorous in comparison to the employees of the Ministerial staff. On a detailed examination of the Rules, the Division Bench of the High Court was of the opinion that there is no doubt that the benefit of the higher pay-scale to the corresponding pay-scale in the Rules was not given to the Ministerial (E) employees. After deciding the point of parity of pay-scales against the Appellants, the High Court declared the recovery sought to be made from the Appellants for the period between 1st January, 2000 and 17th November, 2001 as not justified.

9. The main contention of the Appellants is that they have become members of the Police Force as per the Memorandum dated 5th November, 1967. It is contended that after their enrolment under the Police Act, 1861 they cannot be discriminated against in any manner.

The Appellants urge that there can be no difference between Ministerial employees and members of the Executive Force as they were also provided with facilities like Uniform Grant and Uniform Maintenance Allowance by the Memorandum dated 5th November, 1967 and there was re-designation of their posts. A Peon/ Farash was given the rank of Constable (M), Daftari/ Jamadar was given the rank of Head Constable (M). Likewise, Ministerial employees in the categories of LDC, UDC and Stenographer were re-designated as Assistant Sub-Inspector (M), Sub-Inspector (M) and Subedar (M). We do not agree with the Appellants. It is no doubt true that police ranks were given to the Ministerial staff in the departments with certain privileges. However, the emoluments of the Ministerial staff in the Police Departments were not revised. It was categorically mentioned in the Memorandum dated 5th November, 1967 that the Ministerial employees will continue to draw the same emoluments even after the enrolment under the Police Act, 1861. Therefore, merely because police ranks were given to Ministerial employees, they cannot claim parity of pay.

10. The controversy relating to the entitlement of parity of pay-scales started with the introduction of the M.P. Revision of Pay Rules, 1983 w.e.f. 1st April, 1981. It is relevant to mention that the State Government by an Order dated 26th / 28th June, 1979 allowed ad hoc increment to non-Gazetted employees of the Police Force w.e.f. 14th June, 1981. A Constable was given Rs.50/- per month, Head Constable Rs.60/- and the Assistant Sub-Inspectors, Sub-Inspectors and Inspectors were given Rs.70/- per month. The Executive as well as Ministerial employees were entitled for the ad hoc increment. While submitting its Report, the Chaudhary Pay Commission expressed its inability to recommend pay-scales of the Ministerial employees in the Police Department equivalent to those working in the Executive posts. It was mentioned in the recommendation of the Chaudhary Commission that the Ministerial employees in the Police Department will be entitled to get pay-scales received by their colleagues working in corresponding posts in the other departments. The revision of pay-scales in the State of Madhya Pradesh were made by the Rules and the revised scales of pay have been specified in the said Rules. Fixation of initial pay in the revised scale is dealt with in Rule 7 which includes the ad hoc increase sanctioned to certain categories of government servants in Police, Home Guard, Jail and Excise Departments excluding the ad hoc increase allowed to Ministerial staff in Police Department. It is clear that the ad hoc increase allowed to the Ministerial staff of the Police Department cannot be taken into account for the purpose of revision of pay in view of the express exclusion in Rule 7 (1)(b)(iv). The Executive employees were given the benefit of the next higher pay-scale to the corresponding revised pay-scale in the Rules which benefit was not given to the Ministerial (E) staff. Neither the Rules nor the pay fixation of the Appellants under the Rules was challenged. The interpretation of the Rules of 1983 sought to be placed by the Police does not appeal to us. The recommendation made by the Chaudhary Pay Commission which was reflected clearly in the Rules disentitles the Appellants from claiming the benefit of being given one scale higher than the corresponding revised pay-sale.

11. The Appellants relied upon the judgments of the Tribunal in the cases of Tripathi and Duraphe. The Order dated 17th November, 2001 in the Review Application filed by the Government in Duraphe's case makes it clear that there was no relief claimed by either Mr. Tripathi or Mr. Duraphe for being placed in the higher pay-scale. The relief sought by both

of them was to include the ad hoc increment to the basic pay. While reviewing its Order dated 1st January, 2000 in O.A. No.45 of 1998, the Tribunal observed that an unintended benefit flowed from an apparent error committed by the Tribunal. We are afraid that the Appellants cannot place any reliance on the judgments of the Tribunal in the cases of Tripathi and Duraphe.

12. Parity of pay-scales cannot be given to the Appellants even on the principle of equal pay for equal work. The Appellants contend that some of the Ministerial employees were assigned work in the Executive Police Force. Some persons in the Ministerial (E) branch have been appointed to the Police Force as Deputy Superintendent of Police also. The Ministerial (E) staff is also assigned duties of Executive Police Force during elections. The Government maintains that the members of the Ministerial (E) branch do not discharge executive functions. It is well settled law that even if persons are holding same rank/designation and having similar powers, duties and responsibilities they can be placed in different scales of pay and cannot claim the benefit of the principle of equal pay for equal work. [See: *Randhir Singh v. Union of India*<sup>1</sup> and *State of Punjab v. Jagjit Singh Ors*<sup>2</sup>.] In this case the qualifications for appointment, mode of recruitment, training, the duties and responsibilities not being similar, the Appellants are not entitled for the relief of equal pay.

13. We are in agreement with the High Court that the method of recruitment, qualifications for appointment, duties and responsibilities of the Ministerial and Executive staff being different, Ministerial employees are not entitled to claim parity of pay-scales with the Executive Force. We affirm the judgment of the High Court regarding the recoveries sought to be made between 01.01.2000 to 17.11.2001.

14. For the aforementioned reasons, these Appeals are dismissed.

Judgment Referred.

<sup>1</sup>(1982) 1 SCC 0618

<sup>2</sup>(2017) 1 SCC 0148