

CALCUTTA HIGH COURT

State of West Bengal

Vs.

Mouirujjaman Mullick & Ors

Matter No. 2294 of 1989

(Umesh Chandra Banerjee and N.N. Bhattacharjee, JJ.)

28.06.1993

JUDGMENT

Nikhil Nath Bhattacharjee, J.

1. The law is already established that as a sequel to the provisions of the Constitution of India as contained in Articles 14,16(1) and 39(d), read with the relevant Supreme Court decisions in the matter namely, *Randir Singh v. Union of India*¹ *Dhiren Chamoli v. State of U.P.*² *Surinder Singh v. Engineer-in-Chief, CPWD*³ *Bhagwan Dass v. State of Haryana*⁴ and *Jaipal v. State of Haryana*⁵ equal pay for equal work is a fundamental right and is very much enforceable in a Court of law like any other fundamental right enshrined in Part III of the Constitution.

2. On the factual aspects it appears that pursuant to the recommendations of the working group set up by the planning commission in 1977 to consider universalisation of education among the children of economically disadvantaged rural sections of the community who are not attracted towards whole day or the full time formal school due to the necessity of augmenting the family income and helping in house hold chores, a scheme for Non Formal Education was introduced by the Government of India in 1979-90 in some educationally backward States including West Bengal. Accordingly a massive programme for non-formal system of education among the children in the age group of 6 to 9 was adopted in these states. The programme was subsequently revised and administrative strategies strength end and management and supervision were decentralized. At the beginning each centre with one instructor and 25 learners had an annual budget of ₹ 1,250/- per instructor per annum which was later revised to ₹ 105/- per month per instructor for the primary level and ₹ 125/- per month per instructor at the upper primary level. Also contingent expenses for teaching and learning materials and equipments has been provided for. It was laid down that ₹ 105/- or ₹ 125/- per month payable to an instructor is not his salary but only an honorarium aiming to utilise persons motivated to serve the community. Each instructor attached to N.F.E. Centre is required to render voluntary service to motivate the children who never joined any school as also drop-outs of schools in addition to his or her other occupation. Regarding the fund

¹ AIR 1982 SC 879

³1986 I CLR 124

⁵1988 II CLR 83

required to implement the scheme, the centres are to run in the form of projects of about one hundred such centre in a compact and contiguous area, 50% of which is to be made available by the State Government and rest 50% by the Central Government in case of boys and 10% and 90% by the State and Central Government respectively in case of girls. A separate administrative machinery is to be set up at State Education, Directorate, District and Block levels for management of the project and supervisors are to be appointed for every 10-12 centres.

3. Following the direction of the Central Government the State of West Bengal also prepared elaborate scheme for opening part time normal education centres and issued guidelines regarding setting up and functioning of such centres. Duration of the course, the Guidelines indicate, is three years. During the first years the condensed syllabus of class I and class II of regular primary schools is to be followed and during the two subsequent years students are to be imparted education according to the syllabus of class III and class IV of regular primary schools. At the end of the 4 year period the students are expected to be made ready for admission to class V of a regular Junior High or High School. No fixed abode for situation of a centre is prescribed which should preferably be located in the building of existing primary, Junior Basic or Junior High School, Mahila Samiti premises and centres for social activities. The State Government guidelines also indicate that besides the honorarium for the instructors each centre will also get ₹ 10/- per month for contingent expenditure and to start with, a centre may be granted a nonrecurring expenditure towards furniture, equipment, goods etc. amounting to ₹ 60/-. Regarding administrative control, in rural areas the ad hoc committee or the District School Board shall have control over the non formal centres which is to draw necessary funds from the Government, give appointment to part time teachers and make payment to the teachers as admissible. The District Inspector of Schools, Primary Education shall discharge such functions in consultation with the urban advisory committee in respect of particular area.

4. Altogether 1810 persons claiming to be the instructors of the non-formal education centres of different places in West Bengal came up with the instant writ petition under Article 226 of the Constitution averring inter alia that though they are appointed by the State Government for educating illiterate persons in different villages and they perform the work and/or duty as the primary school teachers perform, they are paid only a sum of ₹ 105/- per month as fixed remuneration and they are not paid salary in the scale in which the primary teachers are paid. The petitioners, therefore, claim status, position and service benefits of Assistant teachers of primary schools in West Bengal. They allege that while formal education is covering populace getting formal education, the non-formal education scheme is covering rest of the populace. According to them the entire wing of the non-formal education is engaged in creating interest in education of children, both boys and girls of economically weak and prejudicially encumbered or backward families including drop out children of primary school having no interest in education, requiring engagement of the major part of the day for generating interest and imparting education. The petitioners allege that they are to exert efforts to maintain the spirit of general interest in education throughout the area and this process continues in the next year and year after next. Their claim is that their duties, functions and responsibilities are exactly same, if not more as those of the Assistant teachers of regular primary schools and whereas the regular primary teachers are getting a definite pay scale, they are getting only a pittance of ₹ 105/- per month.

Their contention is that although the stream to which they belong is in fact carrying the maximum burden in the policy implementation of the State in regard to educating children of the country, their services are not being recognised in their proper perspective with proper remuneration. They claim that the task of teachers/instructors of non-formal education centres is much heavier than that of the teachers of the primary education in as much as regular primary teachers are to deal with only willing boys whereas they are to impart education to those who never have visited any school and to drop-out children after creating interest in education amongst them. The aim of formal and non-formal education, they contend is also the same, that is to say to equip the children for admission to class V. Again whereas regular primary teachers got four full years to perform their duty the teachers of N.F.C. get only 3 years to do so. In both the cases the employer is the State Government. And that being so, there is no reason to deny them the regular pay scale of primary teachers, in paragraph E(a) of the writ petition it has been averred that instructors and supervisors of the similar Schemes in the State of Haryana being aggrieved by the denial of the said State Government to grant them regular pay scale, as also for the unequal pay for equal work filed writ petitions no. 12311 of 1985 and numbers 453, 597, 633, 636, 777, 1986, 5468, 1315, 1536 of 1971 and number 77, 78 and 395, of 1988 directly before the Supreme Court and the Supreme Court granted the benefit of equal pay for equal work to them. By filing the present writ petition the petitioners, therefore, prayed for a writ or writs in the nature of mandamus and/or direction and/or order of like nature commanding the respondent State of West Bengal and Union of India to put the petitioners in regular pay scales of the primary school teachers and other consequential benefits from the date of their initial appointment.

5. Both the Union of India and State of West Bengal contested the writ petition by filing affidavits in opposition alleging that no legal and/or constitutional rights of the petitioners were infringed in any way or manner and that the petitioners' allegations are mostly unfounded, speculative and misconceived. The main thrust in the opposition of the State Government is that as the non-formal education centres are part time by nature, the instructors in the said centres are being paid merely an honorarium and not a salary and as such they can never be equated by any stretch of imagination to the primary school teachers. In fact persons interested in social welfare activities are being encouraged to take up the job of instructing the uneducated children in the non-formal education centre against an honorarium and that being so, there would be no question of granting regular pay scale as applicable to the primary school teachers under the Education Directorate.

6. The learned Trial Judge after carefully considering the cases of both sides and in the light of the Supreme Court decisions as quoted before him, came to the conclusion that there is no reason to deny the reliefs prayed for on the principle of 'equal pay for equal work' and that appropriate writs be issued "commanding the respondents to give effect to the circular no. 667/ENO date 22.10.86 and circular no. 175-MP/EMP-LD-108/88 dated 1st April 1987 for regularizing the teachers who have been appointed against sanctioned posts of teachers/instructors and to give benefits of regular pay scales to the petitioners to that of primary school teachers in Education Department of the Government of West Bengal. The benefit has to be given from the date of absorption and/or regularization within 3 (Three) months from the date of communication of the order. The petitioners, however, will not be entitled to ask for any benefit retrospectively or for any arrear prior to the date of regularization.

7. Being aggrieved and dissatisfied with the said order and direction, the respondent State of West Bengal has preferred this appeal.

	Formal	Non-formal
1. Employer	Education directorate/D.I. Primary Education	Same
2. Expenditure	Non-plan	Plan.
3. Place of imparting education	School building	No specific site. Teachers may use any primary school building or the premises of any social organisation etc.
4. Duration of study	4 years	3 years.
5. Course & Syllabus	As may be prescribed by the Government	For the first year a condensed course covering first two years of study of a primary school and for the next years the same course as in the regular primary school.
6. Purpose	To equip boys and girls for admission to class V in a Junior High or High School.	Same
7. Mode of appointment of teachers	Managing committee of the schools appoint subject to approval by the District Inspector of Schools Primary Education.	Setting up of the centres and appointment approved by the ad hoc committee of the District School Board and by the District inspector of School Primary education.
8. Minimum Educational Qualification of teachers	Matriculation or school final and its equivalent	Same
9. Training	Required	Required
10. Duty hours	4 hours	2 hours though

		obviously to create motivation and to collect children from the field and households
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8. For facility of under-standing, the salient features of the formal and non-formal streams are jotted down in a tabular form as herein below :

9. From the booklet published and distributed by the Primary Education Directorate regarding formal (Prathamik Siksha) and non-formal (Binnimukta Siksha), it appears that the purpose of both the streams being to help attain human values through practical literacy in language, elementary arithmetic, awareness for maintaining personal and public health and good environment, social awareness, scientific outlook to get rid of prejudices etc., the syllabus and the books prescribed for formal and non formal education are almost same with the ultimate aim of equipping the boys and girls for entry into class V in regular High or Junior High School.

10. It is thus clear and we are also of considered opinion that neither stream is inferior to the other and that the duties, functions and responsibilities of the teachers of the formal and non-formal education are alike, if not heavier on the side of the non-formal stream.

11. In the writ application a number of writ cases on identical matters disposed of by the Supreme Court have been referred to. These were covered by one decision which is reported in (*Jaipal v. State of Haryana*⁶). These writ cases were filed under Article 32 of the Constitution of India by the Instructors to the adult and non-formal education centres in the State of Haryana with the grievance that although their duties and responsibilities were similar to that of the squad teachers under the Education Directorate of the State Government, they were being discriminated against in the matter of pay scale and increments as enjoyed by the squad teachers. In paragraph 6 as appears at page 87 of the aforesaid reported decision their Lordships observed :

"The doctrine of equal work for equal pay would apply on the premise of similar work but it does not mean that there should be complete identity in all respects. If the two classes of persons do work under the same employer, with similar responsibility, under similar working conditions the doctrine of 'equal work equal pay' would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work."

12. In the aforesaid decision, as also in an earlier decision in the case of *Bhagwan Das and others v. State of Haryana*⁷ the Supreme Court laid down preemptorily that where equal work equal pay is concerned, the nature of employment i.e. whether permanent or temporary or casual with breaks in service or mode of recruitment i.e. whether inducted through competition or locally without adherence to any norm, would not be any ground

⁶1988 II CLR 83

⁷1987 II CLR 229

for discrimination between two classes of persons working under the same employer.

13. Mr. Jayanta Mitra, learned advocate for the State appellant has, however, drawn our attention to four Supreme Court decisions reported in (*Federation of all India Customs and Central Excise Stenographers and Others v. Union of India and Others*⁸), (*State of Rajasthan v. Gopikrishan Sen*⁹) and (*State of Madhya Pradesh and another v. Pramod Bhartia and others*¹⁰) with a view to highlighting that the fundamental right of equal pay for equal work admits of exception where there is qualitative difference between the service rendered by two classes of persons doing almost identical works. In the first case cited by him, the Stenographers in Customs and Central Excise Department claimed the same scale or pay as is being enjoyed by their counterparts in the Central Secretariat on the ground of equal pay for equal work, but the Court held that not the mere volume of work but qualitative difference as regards confidentiality, reliability and responsibility may give rise to differentiation and discrimination. In the second case, it was laid down that though in the matter of application of the doctrine of equal pay for equal work mathematical accuracy is not needed. It was, however found in the case that the employment in Griha Kalyan Kendra was unique in character being not comparable with any other case. In the third case (1992 S.C. 1754), rules making distinction in the pay scales of trained and untrained teachers performing identical duties on the basis of their educational qualification were held not discriminatory. In the fourth case (1993 Supreme Court 286), on the question whether lecturers in the M.P. Higher Secondary School would get the same scale of pay as the nontechnical lecturers in technical schools, the Court held that although the prescribed qualification and service condition of both the categories of lecturers were same and the status of the schools was also same yet in the absence of any definite material showing that qualitatively their functions and responsibilities were similar, no discrimination in the matter of pay scales on the doctrine of equal pay for equal work can be attributed.

14. In our view the above citations are of little consequence in the facts of the present case as the two classes of persons, namely, the teachers attached to the formal education and those attached to the non-formal education do the same type of work which does not admit of any qualitative difference or any difference as to the sense of responsibility with which to perform their respective duty. Also there cannot be any question of differentiation between them on the basis of confidentiality, reliability or uniqueness in character of one class, either. That being so, there, would be no justification for denying one class from enjoying the benefit of the pay scale given to the other.

15. In that view of the matter, therefore, the writ petition was liable to be allowed. The learned trial Judge while allowing the petition directed regularization of the non-formal teachers who have been appointed against sanctioned posts and granted the benefits of regular pay scales as admissible to the primary schools teachers from the date of absorption and/or regularization which is to be made within 3 months from the date of communication of the -order. No retrospective benefit or any arrear pay prior to the date of regularization was given. In *Jaipal v. State of Haryana* the concluding portion of the judgment runs as follows :

⁸1988 II CLR 109

¹⁰ AIR 1993 SC 286

⁹ AIR 1991 SC 1173, AIR 1992 SC 1764

"In view of the above discussion, we hold that the instructors are entitled to the same pay scales sanctioned to teachers. We accordingly, direct that the petitioners' salary shall be fixed in the same pay scales that of squad teachers, the pay of each of the petitioners shall be fixed having regard to the length of service with effect from the date of his initial appointment by ignoring the break in service on account of six month from appointments.

The petitioner will be entitled to increments in the pay scale in accordance with law notwithstanding the break in service that might have taken place. We further direct that these directions shall be implemented with effect from September 1, 1985 as directed by this Court in the case of Bhagwan Dass 1987 II CLR 229. The petitioners' claim for regularising their services in the department cannot be accepted as admittedly the project of Adult and Non Formal Education is temporary which is likely to last till 1990. We accordingly allow the writ petitions partly with costs which we quantify at ₹ 5000/-".

16. As in our view the decision in Jaipal's case is applicable in its entirety to the facts of the present case, we dispose of the appeal in the manner following :

The writ petitioners who are not in regular employment elsewhere and who have the minimum qualification prescribed for the primary school teachers are entitled to the same scale of pay and allowances as admissible to the primary school teachers from the date of their initial appointment and further that they are also entitled to annual increment in the pay scale in accordance with law; but their claim for absorption in the department as regular primary school teachers cannot be sustained and therefore stands rejected. It is made clear that the services of such non-formal teachers will be liable to stand automatically terminated as and when the non formal education scheme is discontinued in this State. Persons similarly placed should also be given the same benefit to avoid further litigation in regard to the self same issue. The order of the learned trial Judge, therefore, stands modified to the extent indicated above. There shall be no order as to costs. Certified copy to be issued expeditiously when applied for.

Umesh Chandra Banerjee, J

17. I agree.