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STATE OF U.P. AND ORS.

v.

MINISTERIAL KARAMCHARI SANGH

OCTOBER 15, 1997

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[K. VENKATASWAMI AND V.N. KHARE, JJ.]

Service Law :

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Parity in pay scale of employees appointed after a cut off date—Prior to cut off date there were parity in the pay scales and other conditions of service—Employees of Department of Information & Secretariat separated on the basis of mode of recruitment, qualification and promotion from a cut off date—Those appointed prior to cut off date used to get the earlier pay which was higher than the one appointed after the cut off date—Held, this ground is sufficient for fixing different scales—Equal pay for equal work—Not always easy to apply—Constitution of India—Article 39(d)—Equal pay for equal work.

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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 these two departments. A committee was appointed in 1964 by the Government for rationalization of the pay scales and other conditions of various grades of the State Government employees. One of the recommendations of the Committee was that the pay scales of 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 was given effect to w.e.f. 1.4.1965 (cut off date). Those appointed after cut off date in the Directorate of Information were paid in the revised pay scale something less than what it was before the cut off date. At the same time, the pay scale of the employees who were already there prior to the cut off date were protected.

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A Writ Petition was filed by the respondent on earlier occasion pointing out the discrimination in the pay scale on the basis of date of appointment. High Court directed the State to consider the cases of Upper Division and Lower Division Assistants for the same pay scale as that of the employees of the Secretariat. By an Office Memorandum, the State, by a considered and

reasoned order, rejected the demand of the respondent. A

Hence the respondent-Association again moved the High Court for the issue of writ of mandamus directing the appellant to give them the pay scale of Lower Division and Upper Division Assistants at par with employees working in Secretariat. The writ was allowed by the High Court. The reasons given by the High Court for issuing the writ were mainly (i) that the academic qualifications for most of the Lower/Upper Division Assistants were similar; B
(ii) that the employees appointed prior to the cut-off date were paid on a higher scale than those appointed after the cut off date and such discrimination was not properly explained, and (iii) that the unequal scales of pay was based on no classification or irrational qualifications. Hence this Appeal by the State. C

Allowing the Appeal, the Court

HELD : 1. In the light of long line of decisions of this Court the principle of 'equal pay for equal work' is not always easy to apply. 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. The High Court was not justified in issuing the mandamus. D

[491-C]

2. It is settled proposition that the evaluation of such jobs for the purpose of pay scales must be left to expert body and unless there is any *mala fide*, its evaluation should be accepted. [491-D] E

Federation of All India Customs and Central Excise Stenographers (recognized) & Ors. v. Union of India & Ors., [1988] 3 SCC 91 and *State of Haryana & Ors. v. Jasmer Singh & Ors.*, [1996] 11 SCC 77, relied on. F

3. In the instant case, 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 to fix different scales. The impugned Office Memorandum gives convincing and acceptable reasons for retaining the pay scales of those Lower Division & Upper Division Assistants appointed in the Directorate of Information prior to the cut off date. In the circumstances, none of the reasons given by the High Court to issue writ of mandamus as prayed for by the respondent-Association could be sustained in law. [492-H; 493-A] G
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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5516 of 1993.

From the Judgment and Order dated 21.4.93 of the Allahabad High Court in W.P. No. 1696 of 1991.

B G.K Mathur, Irshad Ahmad and Arvind Kumar Agrawal for the Appellants.

R. Mohan and D.K. Garg for the Respondent.

The Judgment of the Court was delivered by

C **K. VENKATASWAMI, J.** The members of the respondent-Association who were appointed in the Directorate of Information after 1.4.1965 moved 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.

D 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.

E 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.

H 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.

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.

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, we 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.

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.

None of the above reasonings 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 21.6.1990 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

A 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 higher 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.”

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

F “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 of 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

Division Assistants in the Secretariat as their qualification and mode of recruitment is different.” A

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 in 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.” B C

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. D E

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 merits. It is also worth mentioning that the service conditions 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.” F G

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

“The. Pay Rationalization Committee, constituted in the year 1964 recommended to, separate the pay scales of the Lower Division, & H

A 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
B 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
C 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
D accepted.”

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 bifurcations was made and separate cadre was effected and in that
E 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 cadre 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
F 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
G 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:-

H “A section of employees is getting 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 present”.

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.”

Having regard to the above position brought out clearly in the impugned Office Memorandum and in the light of the 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.

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. v. 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 difference 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.”

The same view was reiterated in a recent judgment *State of Haryana &*

A *Ors. v. Jasmer Singh & Ors.*, [1996] 11 SCC 77. This Court in that case held as follows :-

B “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 v. 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 v. State of U.P.* and *Jaipal v. State of Haryana*. In the case of *Federation of All India Customs Central Excise Stenographers Recognized & Ors.*, v. *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.”

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On facts we have seen that the mode of recruitment qualification, promotion are totally different in the case of appointment 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

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Office Memorandum gives convincing and acceptable reasons for retaining A
the pay scales of those Lower Division & 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. B

R.K.S.

Appeal allowed.