

STATE OF U.P. AND OTHERS

A

v.

RAMASH-YRAYA YADAV AND ANOTHER

FEBRUARY 15, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

B

Service Law :

Employment—Equality in—Equal pay for equal work—Principle of—Applicability—Temporary appointees—Essential qualification, mode of recruitment and duties—Different from those of regular appointees—Held : principle applicable only when two sets of employees similarly situated and discharging similar functions get different scales of pay—Hence, the former not entitled to parity in pay with latter—Constitution of India—Art. 39(d).

C

Constitution of India, 1950 : Article 226.

D

Non-disclosure of material facts—Temporary appointees—Cancellation of appointment—Continuing in service under interim order passed by High Court—Without disclosing this fact, filing another writ petition seeking parity in pay with regular appointees—Held : such non-disclosure disentitled them to any equitable relief in subsequent writ petition.

E

The respondents had been appointed as Investigators-cum- Computer on a fixed remuneration, such posts having been created under the temporary scheme only in 15 districts of the State. While selecting persons for filling those purely temporary posts apart from considering the cases of names which were sponsored by the employment exchange, the appropriate authority of the Directorate received many applications directly and finally selected the respondents. The Government having come to know of the irregularity, cancelled the appointments and called upon the authorities to select persons in accordance with the procedure prescribed.

F

G

The respondents-appointees moved the High Court against the aforesaid order of cancellation alleging that they having joined, the order was bad in law. The High Court passed an interim order allowing continuance of the respondents. Though the State appeared in the said proceedings and filed application for vacation of stay, the stay order was

H

A not vacated and the respondents continued as such. In the meanwhile the respondents filed another writ petition claiming that they were entitled to the same salary as the Investigators-cum-Computer were getting in the Directorate particularly when they were discharging the similar duties as those of the regular employees, invoking the principle of 'equal pay for equal work'. Though the State Government was noticed in that proceeding, B no counter affidavit was filed.

On behalf of the appellants it was contended that the respondents having been allowed to continue by virtue of an interim order of the High Court notwithstanding their appointment having been cancelled and even C though the scheme under which they had been appointed not being in force, the High Court committed an error in directing the State to pay the respondents same salary as those in the regular cadre; and that the post of Investigator-cum-Computer to which the respondents had been appointed being of a purely temporary nature with a fixed salary the essential D qualification for the same being much less than qualification for a regular Investigator-cum-Computer, the mode of selection being different than mode of selection for the regular posts and duties being different, the High Court was in error in directing the State to pay the respondents the same scale of pay as is available to the regular Investigator-cum- Computer.

E On behalf of the respondents it was contended that since the appellants did not file counter affidavit in the High Court it had no other option than to accept the averments made in the writ petition; that this Court would not be justified in interfering with the same under Article 136 of the Constitution; that their nature of work was similar to the work done by regular Investigator-cum-Computer; and that the High Court was justified F to follow the principle of 'equal pay for equal work'.

Allowing the appeal, this Court

G HELD : 1.1. The principle of equal pay for equal work is attracted only when two sets of employees are similarly situated and are discharging similar functions but yet are getting different scales of pay. In the instant case the posts of Investigators-cum-Computer had been created purely on a temporary basis. The essential qualification for the said post was Intermediate whereas the essential qualification for regular Investigator-cum-Computer is Bachelor's degree with Statistics or Mathematical statistics H or Mathematics. The knowledge of Hindi written in Devnagrik Script was

essential qualification for regular Investigator-cum-Computer, which was not prescribed for the post held by respondents. The mode of recruitment to the posts held by the respondents was through Departmental Selection Committee whereas the mode of recruitment for regular Investigator-cum-Computer is through State Public Service Commission or State Subordinate Services Selection Board. The nature of duties for the respondents was to collect the data for livestock number and livestock products from 15 Districts of the State only whereas the duties of the regular Investigator-cum-Computer was (1) to collect data from Districts, Livestock farms and other Livestock Institutions (2) to complete, tabulate, to assist in the scrutiny and analysis of the tabulated data and (3) to supervise the statistical work of the other departmental field staff. In the aforesaid premises it is difficult to hold that the principle of 'equal pay for equal work' can be attracted. The High Court was wholly in error in directing the appellants to pay the respondents the same scale of pay as is paid to the regular Investigator-cum-Computer. [711-H, 712-A-E]

1.2. It is no doubt true that the appellants did not file any counter-affidavit in the High Court in the present proceedings though an application for vacating the interim order in the earlier proceedings had been filed. The earlier proceedings were in relation to the order of cancellation of appointment to the post of Investigator-cum-Computer by the State Government and it is because of the interim order in that proceeding the respondents are continuing. The respondents did not disclose this fact in the subsequent proceedings when they claimed equal pay as the regular Investigator-cum-Computer. Such non-disclosure in the subsequent proceedings disentitled them to get any equitable relief from the Court.

[711-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3366 of 1996.

From the Judgment and Order dated 2.2.95 of the Allahabad High Court in S.A. No. 534 of 1994.

A.K. Srivastava for the Appellants.

Vijay Bahuguna, Goodwill Indeevar and S.P. Singh for the Respondents.

The Judgment of the Court was delivered by

A **G.B. PATTANAİK, J.** Leave granted.

This appeal by special leave is directed against the judgment of the Division Bench of the Allahabad High Court dated 2.2.1995 dismissing the petitioners' appeal and affirming the decision of the learned Single Judge in Civil Misc. Writ Petition No. 32001 of 1992. This is a glaring instance of abuse of judicial process which is partly due to inaction on the part of the State authorities.

The respondents had been appointed as Investigators-cum-Computer on a fixed remuneration of Rs. 400 per month by order dated 17.9.1986, such posts having been created under the temporary scheme only upto 28th of February, 1987 in 15 districts of Uttar Pradesh. While selecting persons for filling up those purely temporary posts apart from considering the cases of names which were sponsored by the employment exchange, the appropriate authority of the Animal Husbandary Directorate received about 208 applications directly and finally selected 44 persons among them. The Government having come to know of the irregularity as stated above cancelled the appointments by order dated 6.3.1987 and called upon the authorities to select persons in accordance with the procedure prescribed. The appointees - respondents moved the Allahabad High Court against the order of cancellation alleging that they having joined, the order is bad in law. The High Court passed an interim order on 14.8.1987 allowed continuance of the respondents. Though the State appeared in said proceedings and filed application for vacation of stay, stay order has not been vacated and the respondents are continuing as such. In the meanwhile the respondent filed another writ petition claiming that they are entitled to the same salary as the Investigators-cum-Computer are getting in the Animal Husbandary Department particularly when they are discharging the similar duties as those of the regular employees, obviously invoking the principle of 'equal pay for equal post'. Though the State Government was noticed in that proceeding but no counter affidavit was filed. Therefore the learned Single Judge allowed the writ petition by order dated 3.3.1994 granting the regular pay scale of Rs. 1200-2040 to the respondents. The State filed a special appeal before the Division Bench, and by the impugned judgment the special appeal having been dismissed, the present appeal by special leave has been filed in this Court.

H Learned counsel for the appellants contended that the respondents

having been allowed to continue by virtue of an interim order of the High Court notwithstanding their appointment having been cancelled and even though the scheme under which they had been appointed not being in force, the High Court committed an error in directing the State to pay the respondents same salary as those in the regular cadre. It was further contended that the post of Investigator-cum-Computer to which the respondents had been appointed being of a purely temporary nature with a fixed salary of Rs. 500 per month, the essential qualification for the same being much less than qualification for a regular Investigator-cum-Computer, the mode of selection being different than mode of selection for the regular posts and duties being different, the High Court was in error in directing the State to pay the respondents the same scale of pay as is available to the regular Investigator-cum-Computer. A counter affidavit has been filed on behalf of respondents. It has been stated in the said counter-affidavit that since the State did not file any return before the learned Single Judge the High Court had no other option than to accept the averments made in that application. Therefore this court would not be justified in interfering with the same under Article 136 of the Constitution. It has further been averred that the nature of work of the respondents is similar to the work done by regular Investigator-cum-Computer and therefore the High Court was fully justified to follow the principle of 'equal pay for equal work'.

It is no doubt true that the State did not file any counter-affidavit in the High Court in the present proceedings though an application for vacating the interim order in the earlier proceedings had been filed. The earlier proceedings was in relation to the order of cancellation of appointment to the post of Investigator-cum-Computer by the State Government and it is because of the interim order in that proceedings the respondents are continuing. The respondents did not disclose this fact in the subsequent proceedings when they claimed equal pay as the regular Investigator-cum-Computer. Such non-disclosure in the subsequent proceedings disentitled them to get any equitable relief from the Court. Since the original proceeding is still pending we are not expressing any opinion on the legality of the order of cancellation though there is some force in the contention raised by the learned counsel for the appellant - State. But on the materials on record the conclusion is irresistible that the respondents are not entitled to claim the same scale of pay as those of regular Investigator-cum-Computer. The principle of equal pay for equal work is attracted only when two

- A** sets of employees are similarly situated and are discharging similar functions but yet are getting different scales of pay. In the case in hand as has been stated earlier the posts of Investigators-cum-Computer had been created purely on a temporary basis. The essential qualification for the said post was Intermediate whereas the essential qualification for regular Investigator-cum-Computer is Bachelor's decree with Statistics or Mathematical statistics or Mathematics. The knowledge of Hindi written in Devnagrik Script was essential qualification for regular Investigator-cum-Computer, was not prescribed for the post held by respondents. The mode of recruitment to the posts held by the respondents was through Departmental Selection Committee whereas the mode of recruitment for regular Investigator-cum-Computer is through Public Service Commission Uttar Pradesh, Allahabad/U.P. or U.P. Subordinate Services Selection Board, Lucknow. The nature of duties for the respondents was to collect the data for livestock number and livestock products from 15 Districts of the State only whereas the duties of the regular Investigator-cum-Computer was (1) To collect data from Districts, Livestock farms and other Livestock Institutions (2) to complete, tabulate, to assist in the scrutiny and analysis of the tabulated data and (3) to supervise the statistical work of the other departmental field staff. In the aforesaid premises it is difficult for us to hold that the principle of 'equal pay for equal work' can be attracted. In our considered opinion the High Court was wholly in error in directing the State to pay the respondents the same scale of pay as is paid to the regular Investigator-cum-Computer. In the aforesaid premises the impugned judgment of the Division Bench of the High Court in Special Appeal No. 534 of 1994 as well as the Judgment of the learned Single Judge in Writ Petition No. 32001 of 1992 are set aside. It is further held that the respondents are not entitled to scale of pay which is available to the regular Investigator-cum-Computer. The appeal is allowed but in the circumstances without any order as to costs.

V.S.S.

Appeal allowed.