SITA DEVI & ORS. ETC. ETC. A

v.

STATE OF HARYANA & ORS.

AUGUST 23, 1996

B

[B.P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.]

Constitution of India, Art. 14—Equal pay for equal work—Educational qualifications as basis for equal pay for equal work—State of Haryana Under-matriculate instructors in "Adult Literacy Programme"—Held, not similarly placed as matriculate instructors—Held, State Govt's. refusal to extend matriculate instructors' scale of pay to non-matriculate instructors, valid. C

Service Law—Equal pay for Equal work-Parity in employment—Educational qualifications—Basis and Extent of.

D

The writ petitioners were working as "under matriculate instructors in the Adult Literacy Programme" of Govt. of Haryana on a consolidated salary of Rs. 200 per month. They had been working as such for 5 to 6 years to the satisfaction of all concerned. They had in their writ petition, sought the following reliefs viz. (1) that the petitioners be treated to be in the service of the respondents from the date of their initial appointment irrespective of there being artificial breaks, (2) issuance of directions to the respondents to put the petitioners on regular pay scales applicable to the primary school teachers in the education department of Haryana with other consequential benefits, and (3) issuance of directions to the respondents to declare the petitioners as regular teachers in the department of Adult Education and non-formal Education. E F

Dismissing the writ petition, this Court

HELD : 1. The Doctrine of "Equal work for equal pay" is recognised by this court as a facet of the equality cause contained in Art. 14 of the Constitution and has been dealt with by this Court is several decisions. G

[176-D-E]

Randhir Singh **v.** *Union of India,* **[1982] 3 SCR 298;** *Dhirendra Chamoli* **v.** *State of U.P.,* **[1986] 1 SCC 637 and Surinder Singh v.** *Engineer in Chief, CPWD,* **[1986] 1 SCC 639, referred to.** H

A **2. Where the petitioners complain of unlawful discrimination offending Art. 14, it is for them to satisfy the Court that the distinction made is irrational and baseless and that it really amounts to unlawful discrimination prohibited by Art, 14. [177-A-B]**

3. The question is whether the Govt. of Haryana is guilty of unlawful
B **discrimination in refusing to extend to non-matriculate instructors the pay scale which has been extended to matriculate instructors pursuant to the judgment of this court in *Jaipal*. It is is not so. Classification on the basis of educational qualifications has always been upheld by this court as reasonable and permissible under Art. 14. [177-C-D]**

C *Jaipal & Ors.* **v.** *State of Haryana & Ors.,* **AIR (1988) SC 1504 = [1988] 3 SCC 354;** *State of J & K* **v.** *Triloki Nath Khosa,* **AIR (1974) S.C.I.;** *P. Murgesan & Ors.* **v.** *State of Tamil Nadu,* **[1993] 2 SCC 340 and** *The State of Mysore & Anr.* **v.** *P. Narasinga Rao,* **AIR (1968) SC 349, relied on.**

D **4. Apart from relying upon the decision of this court in *Jaipal* and claiming that the benefit given to matriculate teachers should also be given to them, no attempt has been made in the writ petition to alleged and establish that their qualifications, duties and functions are similar to those of squad teachers. Hence the claim is unacceptable. [178-B]**

E *Jaipal & Ors.* **v.** *State of Haryana & Ors.,* **AIR (1988) SC 1504 = [1988] 3 SCC 354, referred to.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 584 of 1989 Etc.

F Under Article 32 of the Constitution of India.

S.K. Dhaen, Ms. Rekha Pandey, Subhash Sharma and M.R. Vij for the Petitioners.

Prem Malhotra and Ms. A. Subhashini for the Respondents.

G

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. *Writ Petition (C) No. 584 OF 1989*

In this writ petition filed under Article 32 of the Constitution of
H India, three reliefs are asked for by as many as 748 petitioners. The reliefs

sought for are : A

"(a) Issue writ in the nature of mandamus or any appropriate writ, order or direction that the petitioners be treated to be in the service of the respondents from the date of their initial appointment irrespective of there being artificial break in their services during the period. B

(b) Issue an appropriate writ, order or direction to the respondents to put the petitioners on regular pay scale to that of primary school teachers in the Education Department of Haryana Plus other consequential benefits from the date of their initial appointment C and further direct the respondents to pay the petitioners the difference in arrears of salary accrued to them from the date of their initial appointment.

(c) Issue by appropriate writ, order or direction that the department of Audit Education and Non-formal Education is a permanent department of the State and the petitioners are regular teachers in the department appointed against sanctioned posts of Instructors." D

On the date of the filing of the writ petition (March 1989) the E petitioners were working as "under matriculate instructors in the Adult Literacy Programme" devised by the Government of Haryana. They were being paid a lump sum amount of Rs. 200 per month as salary. They had put in 5 to 6 years service and have been performing their duties to the satisfaction of all concerned. Their submission is that when matriculate F instructors approached this Court for similar reliefs, they were granted certain reliefs though not all the reliefs asked for by them. The reference is to the judgment of the Court in *Jaipal and Others* v. *State of Haryana and Others,* A.I.R. (1988) S.C. 1504 = [1988] 3 S.C.C. 354 wherein this Court directed, that the "matriculate instructors are entitled to the same pay scale as sanctioned to squad teachers." This court had also directed G that the salary of the said petitioners shall be fixed in the same scale as that of the squad teachers, having regard to the length of their service with effect from their dated of initial appointment by ignoring the break in service on account of six months fresh appointments. It was further directed by this Court that the said petitioners will be entitled to the said H

A pay scales in accordance with law notwithstanding the break in service that might have taken place. The said directions were made effective with effect from September 1, 1985. However, the claim for regularisation of their services put forward by the said petitioners was rejected, since the very project was likely to last only till 1990. The present petitioners' case is that
B though they are non-matriculates they too have been performing the very same duties as were being performed by matriculate teachers (petitioners in *Jaipal*). The petitioners invoke the principle of 'equal pay for equal work'. According to them, except the difference in the matter of educational qualifications their is no other distinction between the post held and
C the duties and functions performed by the petitioners in *Jaipal* and the petitioners herein. They have set out in the writ petition the several duties performed by them. Reliance is also placed upon certain other decisions of this Court viz., *Randhir Singh* v. *Union of India,* [1982] 3 S.C.R. 298; *Dhirendra Chamoli* v. *State of U.P.,* [1986] 1 S.C.C. 637 and *Surinder Singh* v. *Engineer-in-Chief, CPWD,* [1986] 1 S.C.C. 639.

D

The doctrine of 'equal work for equal pay' is recognised by this Court as a facet of the equality clause contained in Article 14 of the Constitution. The first of the several decisions on the subject is *Randhir Singh* v. *Union of India,* [1982] 1 S.C.C. 618. The said doctrine has been dealt with by this
E Court in several later decisions including *State of Madhya Pradesh and Another* v. *Pramod Bhartiya and Others,* [1993] 1 S.C.C. 539 decided by a three member Bench of which one of which one of us (B.P. Jeevan Reddy, J.) was a member. This decision dealt mainly with the manner in which the claim of equal work has to be Judged. It was held, after referring to the
F definition of "same work or work of a similar nature" in Section 2(h) of Equal Remuneration Act 1976, that :

> "the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out
G by Mukherji, J. (as he then was) in *Federation of All India Customs and Excise Stenographers,* [1988] 3 S.C.C. 91 : [1988] SCC (L&S) 673 : (1988) 7 ATC 591 the quality of work may vary from post to post. It may very from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. ..... It must be remembered that since the plea of equal
H pay for equal work has to be examined with reference to Article

14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be." A

It was observed in the said decision, on the basis of the earlier decisions of this Court, that where the petitioners complain of unlawful discrimination offending Article 14, it is for them to satisfy the Court that the distinction made is irrational and baseless and that it really amounts to unlawful discrimination prohibited by Article 14. Applying the principle of the said decision to this case, can it be said that the petitioners herein who are non-matriculate instructors are similarly placed to that of the matriculate instructors or that the distinction made between both the categories is irrational or baseless. In other words, the question is whether the Government of Haryana is guilty of unlawful discrimination in refusing to extend to non-matriculate instructors the pay-scale which has been extended to matriculate instructors pursuant to the judgment of this Court in *Jaipal*. We do not think so. Classification on the basis of educational qualifications has always been upheld by this Court as reasonable and permissible under Article 14. In *The State of Mysore and Another v. P. Narasinga Rao,* A.I.R. (1968) S.C. 349, the Government of Karnataka had prescribed two different scales for tracers - one for matriculate tracers with higher scale and another for non-matriculate tracers with lower pay scale. The non-matriculate tracers complained of discrimination. The said plea was negatived holding that prescribing two different scales for matriculates and non-matriculates is not violative of Article 14 and 16. It was held that distinction made on the basis of technical qualifications or for that matter even on the basis of general educational qualifications relevant to the suitability of the candidate for public service is permissible under the said articles Indeed, in that case both the matriculate and non-matriculate tracers formed one single category with one single pay scale earlier. It was only at a later stage that a distinction was made between matriculates and non-matriculates, which led to the said proceedings. This Court proceeded on the assumption that both matriculates and non-matriculate tracers "were doing the same kind of work"; yet the classification made was upheld as permissible under Articles 14 and 16 of the Constitution. Distinction on the basis of educational qualifications has been upheld as valid by this Court in a large number of cases since. By way of illustration, in *State of Jammu and Kashmir* v. *Triloki Nath Khosa,* A.I.R. (1974) S.C. 1 the classification of Assistant Engineers as diploma holders and degree holders and providing B C D E F G H

more promotional avenues to degree holders was upheld as reasonable. The later decision in *P. Murugesan & Others* v. *State of Tamil Nadu,* [1993] 2 S.C.C. 340 is also to the same effect. In this decision, all the decisions on the subject of classification on the basis of educational qualifications have been fully discussed.

We are, therefore, of the opinion that the grievance made by the petitioners is unacceptable. We may also mention that apart from relying upon the decision of this Court in *Jaipal* and claiming that the benefit given to matriculate teachers should also be given to them, no attempt has been made in the writ petition to allege and establish that their qualifications, duties and functions are similar to those of squad teachers.

For the above reasons, the writ petition fails and is accordingly dismissed. No costs.

W.P. (C) Nos. 1008/88, 815/88 and 545/93

No separate arguments are addressed in these writ petitioners. They too are accordingly dismissed for the very same reasons. No costs.

J.B. Petition dismissed.