CASE NO.:
Appeal (civil) 6588 of 2003

PETITIONER:
U.P. State Sugar Corporation Ltd. & Anr.

RESPONDENT:
Sant Raj Singh & Ors.

DATE OF JUDGMENT: 12/05/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

WITH CIVIL APPEAL NO. 8237-8238 of 2003 &
CIVIL APPEAL NO\005\0052656 \005\005.OF 2006
[@ S.L.P. (C) No. 18327 of 2004]

S.B. Sinha, J :

Leave granted in S.L.P.

Whether educational qualification can be considered to be a relevant criteria for the purpose of payment of wages is the question involved in these appeals which arise out of a judgment and order dated 11.12.2002 passed by a Division Bench of the High Court of Uttaranchal at Nainital in C.M.W.P. No. 235(M/S) of 2001allowing the writ petition filed by the Respondent herein and an order dated 13.5.2003 refusing to review the said order.

Doiwala Sugar Company Limited (Company) was having a sugar mill at Maholi. There exists a post of Assistant Laboratory Incharge in all the sugar mills. The post carried certain grades. The wages of the employees in the sugar factory in the State of Uttar Pradesh used to be governed by the terms of awards of the Wage Board appointed by the Government of India from time to time. An award was made by U.P. Sugar Wage Board in the year 1970 prescribing different scales of pay for different categories of employees working in all the Vaccum Pan Sugar Factories in the State of Uttar Pradesh. Educational qualifications were laid down as criteria for classifying the employees in different grades, which are as under:

(a) for the post of Laboratory Incharge Supervisory A1, - Degree in Science with Physics and Chemistry and Mathematics as subjects and Associate Membership of National Sugar Institute, Kanpur or any other equivalent qualification.
(b) for the post of Laboratory Incharge, Supervisory A-II, \026 Degree in Science with Physics and Chemistry as subjects and at least two years practical experience in the sugar industry.

However, it was prescribed that in the event the laboratory Incharge, i.e., Supervisory Grade A-II were having the educational qualification of less than a Degree, he would be placed in Supervisory B Grade.

The Legislature of the State of U.P. enacted the Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 to provide, in the interest of the general public, for the acquisition and transfer of certain sugar undertakings and for matters connected therewith or incidental thereto.

"Appointed Day" in the said Act was defined to be 3rd July, 1971. In terms of Section 3 of the said Act, on the appointed day, every scheduled

undertaking shall, by reason thereof, stand and be deemed to have stood transferred to and vest and be deemed to have vested absolutely in the U.P. State Sugar Corporation Limited (for short "the Corporation"). Section 16 of the said Act provided that every person working in any of such sugar mills which stood vested under the said Act shall on and from the date of such acquisition become an employee of the Corporation and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day if the undertaking had not been transferred to and vested in the Corporation and shall continue to do so until his employment in the Corporation is terminated or until his remuneration or other terms and conditions of services or revised or altered by the Corporation under or in pursuance of any law or in accordance with any provision which for the time being governs his service.

The provisions of the said Act, however, were implemented in phases

On or about 3.2.1984, an order was issued by the Corporation in terms whereof certain categories of employees like Assistant Engineers, Manufacturing Chemists and Laboratory Incharges posted in various units of the Corporation who had been drawing salary in Supervisory Grade A-I and A-II Grade of the Wage Board of the Sugar Industry were placed in the Corporation scale of pay with effect from 1.2.1984. The scale of pay for such Laboratory Incharge was fixed at Rs. 550-1200 for those who had earlier been working on the initial pay scale of Rs. 375-1000 in terms of the recommendations of the Wage Board. However, those who have been working in the pay scale of Rs. 355-755 were put in the scale of Rs. 500-1000. A revision of pay was effected by the Corporation by a notification dated 23.10.1984 in terms whereof those laboratory incharges who had earlier been put in the pay scale of Rs. 550-1200 were put in the pay scale of Rs. 900-1770 and those who had been placed in the pay scale of Rs. 500-1000 were placed in the pay scale of Rs. 770-1600. It had, however, been clarified that pay scale of Rs. 900-1770 would be admissible only to those laboratory incharges who possessed B.Sc. Degree with Post Graduate Diploma of Sugar Technology from National Sugar Institute and all other laboratory incharges under Supervisory A-I or A-II would be entitled for the Corporation revised pay scale of Rs. 770-1600.

Maholi Sugar Mill belonging to the Company vested in the Corporation with effect from 28.10.1984. The First Respondent herein was appointed in the Sugar Mill on 1.3.1981. He was not possessed of the qualification of Degree in Science. His services were taken over in terms of the provisions of the Act with effect from the date of nationalisation of the sugar mill. It is not in dispute that his scale of pay stood protected in terms of Section 16 of the Act.

The First Respondent being in Supervisory Grade-B at the time of acquisition of the factory was, thus, not entitled to be placed in the Corporation pay scale. He was, therefore, continued to be paid in the pay scale prescribed by the Sugar Wage Board even after 28.10.1984.

One B.P. Srivastava, working in another mill which also vested in the Corporation, had been getting A-II Grade before nationalisation thereof. His pay was protected.

With a view to remove certain anomalies allegedly a Selection Committee was constituted by the Corporation on or about 28.3.1985. The Committee for the said purpose called seven candidates for interview. It is stated that the basis for calling the said candidates for interview is not known. Shri Shyam Sunder Shukla was also one of the candidates called for interview. By reason of recommendations made by the said Committee, four employees out of the seven called for interview including Shri Shukla were placed in the revised pay scale of Rs. 770-1600 meant for laboratory incharge in the Corporation. Shri Shukla was placed in the Corporation

scale in Bijnore unit of the Corporation. The First Respondent herein thereafter was transferred to a unit of the Corporation at Rohana Kalan. He continued to be placed in the Supervisory B-Grade and had been drawing salary in the prescribed scale of pay therefor. The Third Sugar Wage Board was constituted. It made its recommendations on 31.1.1991. The said recommendations were given retrospective effect and retroactive operation from 29.12.1989. In terms of the said recommendations, category B-Grade was not prescribed. The First Respondent was also placed in Supervisory A-Grade. He was, however, not placed in the Corporation Scale of Pay. He was transferred from the said Rohana Kalan Unit to Maholi Unit again.

In the year 1996, he filed a writ petition before the High Court of Allahabad inter alia praying therein for grant of scale of pay which was being paid to Shri B.P. Srivastava and Shri Shukla. The State of Uttaranchal having been created, the said writ petition was transferred to the High Court of Uttaranchal. By reason of the impugned order, the High Court directed the Appellants to pay similar pay scale of Rs. 2000-3500 from the date from which Shri B.P. Srivastava and Shri Shyam Sunder Shukla were being paid. Civil Appeal Nos. 6588 and 8237 of 2003 have been filed against the said order. An application for review was filed which was rejected by an order dated 13.5.2003. Civil Appeal No. 8238 and Civil Appeal arising out of SLP (C) No. 18327 of 2004 have been filed against the said order.

The learned counsel appearing on behalf of the Appellant submitted that the High Court committed a manifest error insofar as it failed to take into consideration that the cases of both Shri B.P. Srivastava and Shri Shyam Sunder Shukla stood absolutely on different footings. It was contended so far as the case of Shri B.P. Srivastava is concerned, he having already been drawing a higher scale of pay, the same was required to be protected in terms of Section 16 of the Act and insofar as the case of the said Shri Shyam Sunder Shukla is concerned, he was placed on a higher scale of pay by a Committee. It was submitted that as the First Respondent was not possessing the requisite qualification, he could not have been placed on a higher scale of pay.

Mr. Dinesh Dwivedi, learned senior counsel appearing on behalf of the First Respondent, urged that when the First Respondent entered into service, no such qualification was prescribed. The laboratory incharges performed the same nature of duty and in that view of the matter the educational qualification prescribed for the said post was wholly immaterial. The learned counsel urged that the Wage Board having made a distinction in the scales of pay based on educational qualification and the same having been withdrawn by the same authority which came into force with effect from 29.12.1989, at least from the said date the First Respondent should have been placed in the Corporation Scale of Pay.

Our attention was also drawn to the fact that the Committee purported to have been appointed by the Corporation for reasons best known to it called only seven candidates for interview. The Corporation has not disclosed as to why the case of the First Respondent had not been considered by the said Committee. The case of Shri Shyam Sunder Shukla, thus, could not have been considered by the said Committee and in that view of the matter as he although is not possessed of a Degree, he having been placed in the Corporation Scale of Pay, there was absolutely no reason as to why he should be discriminated.

The doctrine of equal pay for equal work, as adumbrated under Article 39(d) of the Constitution of India read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated by this Court to be a valid basis for classification of two categories of employees.

In The State of Jammu and Kashmir v. Shri Triloki Nath Khosa and

Others [(1974) 1 SCC 19], the validity of such a classification came to be considered before this Court. Chandrachud, J., (as the learned Chief Justice then was), opined:

"\005Formal education may not always produce excellence but a classification founded on variant educational qualifications is, for purposes of promotion to the post of an Executive Engineer, to say the least, not unjust on the face of it and the onus therefore cannot shift from where it originally lay."

Krishna Iyer, J. supplemented stating:

"\005The social meaning of Articles 14 to 16 is neither dull uniformity nor specious "talentism". It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly medicority for activist and intelligent \027 but not snobbish and uncommitted \027 cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for Articles 14 to 16 and the Court's jurisdiction awakens to deaden such manoeuvres. The soul of Article 16 is the promotion of the common man's capabilities, over-powering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Articles 14 and 16 by the theory of classified equality which at its worst degenerates into class domination."

In State of Madhya Pradesh and Another v. Pramod Bhartiya and Others [(1993) 1 SCC 539] referring to the provisions of Section 2(h) of the Equal Remuneration Act, 1976, this Court stated:

"13. It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukharji, J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact (see the approach adopted in Federation case)\005"

Yet again in Shyam Babu Verma and Others v. Union of India and Others [(1994) 2 SCC 521] a 3-Judge Bench of this Court opined:

"\005The nature of work may be more or less the same but scale of pay may vary based on academic

qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them\005."

In Government of W.B. v. Tarun K. Roy [(2004) 1 SCC 347], it was clearly laid down that the holders of a higher qualification can be treated to be a separate class, holding :

"20. Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia\005."

The said decision has been noticed by another Bench of this Court in M.P. Rural Agriculture Extension Officers Association v. State of M.P. and Another [(2004) 4 SCC 646] stating:

"22. Furthermore, as noticed hereinbefore, a valid classification based on educational qualification for the purpose of grant of pay has been upheld by the Constitution Bench of this Court in P. Narasinga Rao.

The First Respondent admittedly did not possess the requisite qualification. He merely claimed a higher scale of pay only because Shri B.P. Srivastava and Shri Shyam Sunder Shukla had been paid. It has not been disputed before us that the case of Shri Srivastava stood on different footing and his scale of pay had to be protected in terms of Section 16 of the Act. So far as Shri Shyam Sunder Shukla is concerned, we may proceed on the basis that the Corporation took a wrong decision. The said decision, however, was not questioned by the First Respondent before the High Court. No foundational facts had been placed before the High Court in relation thereto. We would not like to enter into the controversy as to whether his case could have been considered by the Committee or on what basis the Committee considered the cases of seven candidates and granted higher scales of pay to four candidates as the validity thereof is not in question. Assuming that the Corporation was wrong, the same by itself would not clothe the First Respondent even legal right to claim a higher scale of pay. On what basis the Selection Committee selected four employees out of the seven is not known. Three persons admittedly were not selected. If the plea put forward by the Respondent is accepted, these employees also would be entitled to the same scale of pay as given to the said Shri Shukla, although they have been found to be not fit therefor. Educational qualification was made the basis for a valid classification in the matter of payment of salary in a particular scale of pay by the Wage Board itself. Only in the year 1989, such a classification was obliterated. The First Respondent had been granted the benefit of the recommendations of the Third Wage Board also. It was a matter of policy decision for the Corporation to consider as to whether a particular category of employees should be taken outside the purview of the pay scales recommended by the Wage Board and place them in a higher scale of pay. We, therefore, cannot accept the contention of Shri Dwivedi that only because no such qualification was prescribed at the time of recruitment, the classification made on that basis would be bad in law. Even otherwise the said contention is not correct as scale of pay was determined by the award of the Wage Board.

Yet again the validity or otherwise of the said policy decision is not in question. The said policy decision has been taken as far back in 1984. It cannot be assumed that the First Respondent was not aware of the same.

Despite knowledge, he did not question the validity of such a policy decision. The matter relating to grant of scale of pay may be based upon a policy decision of the State.

In State of Orissa and Others v. Balaram Sahu and Others [(2003) 1 SCC 250], this Court opined:

"\005Though "equal pay for equal work" is considered to be a concomitant of Article 14 as much as "equal pay for unequal work" will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference."

Yet again in Union of India and Another v. International Trading Co. and Another[(2003) 5 SCC 437], this Court opined:

"\005A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case\005"

Moreover, Article 14 has a positive concept. Nobody can claim equality in illegality.

For the foregoing reasons, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. If any amount has been paid to the First Respondent, pursuant to or in furtherance of the judgment of the High Court, the same may be recovered from his salary in twelve equal monthly instalments.

These appeals are allowed accordingly. The parties shall pay and bear their own costs of the appeals.