

ITEM NO.17

Court No.3

SECTION IVA

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).25682/2008

(From the judgement and order dated 04/01/2008 in WA No. 201/2006
of The HIGH COURT OF M.P. BENCH AT INDORE)

STATE OF M.P.& ORS.

Petitioner(s)

VERSUS

RAMESH CHANDRA BAJPAI
(With prayer for interim relief)

Respondent(s)

Date: 28/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE DEEPAK VERMA

For Petitioner(s)

Mr. S.K. Dubey, Sr. Adv.
Mr. Vikrant Singh Bais, Adv.
Mr. B.S. Banthia, Adv.
Mr. Yogesh Tiwari, Adv.

For Respondent(s)

Mr. Nitin S. Tambwekar, Adv.
Mr. B.S. Sai, Adv.
Mr. K. Rajeev, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

For the reasons recorded in the signed reportable judgment
the appeal is allowed and the impugned judgment is set aside. No costs.

(KALYANI GUPTA)
SR. P.A.

(PUSHAP LATA
BHARDWAJ)
COURT MASTER

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE.]

2

CA NO. @ SLP (C) 25682 OF 2008

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5058 OF 2009
(Arising out of S.L.P.(C) No. 25682 of 2008)

State of Madhya Pradesh & others

... Appellants

Versus

Ramesh Chandra Bajpai

... Respondents

JUDGMENT

S.B. SINHA, J.

Leave granted.

1. The State of Madhya Pradesh is before us aggrieved by and dissatisfied with the judgment and order dated 4.1.2008 passed by a Division Bench of the High Court of Madhya Pradesh, Indore Bench at Indore in Writ Appeal No.201 of 2006 whereby and whereunder the appeal preferred by the appellant herein from a judgment and order dated 3.11.2004 passed by a learned Single Judge of the said High Court in Writ Petition No.4005/2003, was dismissed.

2. The core question which arises for consideration before us is as to whether the respondent herein who is working as Physical Training Instructor in Government Ayurvedic College is entitled to claim parity of pay with the teachers who have been granted UGC scale of pay.

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3. The respondent was appointed as Physical Training Instructor in Government Ayurvedic College, Ujjain by an offer of appointment dated 18.1.1973. He filed O.A. No. 907 of 1998 before the Madhya Pradesh Administrative Tribunal, Indore Bench (for short, "the Tribunal") with the prayer that the non-applicants in the O.A. (the petitioners herein) be directed to treat him as teacher and fix his pay in the pay scale prescribed for that post along with the benefit of senior scale and also give him the UGC pay scale (Rs.3,700-5,700) w.e.f.1.1.1986.

In the counter affidavit filed on behalf of the non-applicants, it was pleaded that UGC scales have not been made applicable so far as the staff of Ayurvedic Colleges are concerned and that there was no sanctioned post of Sports Officer in the college for which the pay scale of Rs.3,700-5,700 was recommended and in that view of the matter the applicant could not have been treated at par with the teachers who are employed in the School Education Department.

4. The Tribunal dismissed the application of the respondent observing that the applicant having not been holding the post of Sports Officer and having not been working in the Government College administered by the Department of Higher Education, he was not entitled to any relief. The Tribunal also held that Physical Training Instructors cannot be treated at par with the teachers because the Government has not issued any order equating the said two posts.

Soon thereafter, the respondent filed an application (M.A. No.277/1998) for review of the order dated 16.9.1998 vide which the Tribunal has dismissed the O.A.

5. During the pendency of that application, the Tribunal was abolished and all the pending matters were transferred to the High Court. The respondent's case was then registered as Writ Petition No.4005/2003.

6. A learned single judge of the High Court allowed the writ petition relying upon the judgment of this Court in P.S. Ramamohana Rao v. A.P. Agricultural University and another [1997 (8) SCC 350] and the order passed in Writ Petition No. 5438 of 2000 directing that the pay of the writ petitioner be fixed in the scale prescribed for the post of teacher.

The Division Bench dismissed the writ appeal preferred by the petitioners primarily on the ground that a large number of Physical Training Instructors have already been granted U.G.C. scale and an order declining relief to the respondent would result in discrimination. The Division Bench

6

also referred to the judgment in P.S. Ramamohana Rao (supra) and held that the respondent cannot be deprived of the benefit of pay scale which has already been extended to other similarly situated Physical Training Instructors employed in the Ayurvedic Colleges.

7. Learned counsel for the appellants referred to the provisions contained in the Madhya Pradesh (Indian Systems of Medicine and Homeopathy)

Class III Ministerial Services Recruitment Rules, 1987 (hereinafter referred to as "the 1987 Rules") and the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 (hereinafter referred to as "the 1990 Rules") to contend that recruitment to the posts of Physical Training Instructors and Sports Officers are regulated by different sets of rules. It was argued that holders of the two posts cannot be treated at par for the purpose of fixation of pay in the UGC scale. The learned counsel submitted that the High Court committed serious error by relying upon the ratio of the judgment in P.S. Ramamohana Rao (supra) for the purpose of granting relief to the respondent because the only question considered therein was whether having regard to the nature of duties performed by the appellant therein, a person holding the post of Physical Director in Andhra Pradesh Agricultural University was entitled to be treated as teacher within the meaning of Section 2(n) of the A.P. Agricultural University Act, 1963 (for short 'the 1963 Act') and was, thus, entitled to continue in service till the age of 60 years. Learned counsel stated that benefit of the UGC scales of pay have not been extended to the employees of Ayurvedic Colleges including the members of teaching staff and those governed by the 1987 Rules. On the issue of grant of UGC scale of pay to other Physical Training Instructors, learned counsel invited our attention to para 3(iii) of the rejoinder affidavit, which reads as under:-

"In reply it is submitted that it is correct that on the basis of the orders passed by the High Court some of the Physical Training Instructors have been given UGC pay scales but this has been done in compliance of the orders passed by the High Court and the same could not be challenged on the ground that the appeal had become time barred and orders could not be challenged because of the advise received at the relevant time. Subsequently, it has been found that erroneously Physical Training Instructors of Engineering, Medical and Ayurvedic Colleges have been given UGC Pay Scales even though the Administrators, Lecturers, Professors and Principal of Engineering, Medical and Ayurvedic Colleges are not getting the UGC pay scales."

8. Learned counsel for the respondent argued that after having accepted and implemented the orders passed by the Tribunal and the High Court in the cases of other Physical Training Instructors for grant of UGC scale of pay, it is not open to the appellants to discriminate the respondent by relying

upon the provisions of the 1987 Rules. He invited the court's attention to an order dated 24.5.2004 to show that the Physical Training Instructors

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appointed in Medical Colleges of the State have been granted the benefit of UGC scale of pay and submitted that the High Court did not commit any error by directing the petitioners to fix the respondent's pay in the UGC scale. Learned counsel pointed out that as late as on 24.4.2004, the State Government has extended the benefit of UGC scale of pay to Physical Training Instructors of other colleges and submitted that there is no rationality or reason for denying the same benefit to the respondent.

9. It is not in dispute that Ayurvedic Colleges situated in the State of Madhya Pradesh are under the control of the Department of Medical Education. It is also not in dispute that at present recruitment to the post of Physical Training Instructor is regulated by the 1987 Rules. In terms of rules 5, 6 and 8 read with the relevant entries of Schedules I, II and III of the 1987 Rules, the post of Physical Training Instructor is categorized as Class III Non-Ministerial under the heading 'Establishment of Divisional Organization' and the same is required to be filled 100 per cent by direct recruitment from amongst the persons possessing the requisite educational qualification of Diploma in Physical Training.

The post of Sports Officer finds mention in the four Schedules appended to the 1990 Rules. By virtue of Rule 8 read with the relevant entries of Schedules II and III of the 1990 Rules, the post of Sports Officer is required to be filled as under:

90% by direct recruitment; and 10% by promotion from amongst the Assistant Sports Officers.

10. The educational qualification prescribed for direct recruitment to the post of Sports Officer is a Post Graduate Degree in physical education with at least 55% marks and at the degree level of physical education, the percentage of total marks obtained should not be less than 50.

11. A comparison of the provisions of the 1987 Rules and 1990 Rules clearly establish that they not only deal with different classes of employees

but the educational qualifications and scales of pay prescribed for the posts enumerated in Schedules of two sets of Rules are entirely different. While the 1987 Rules regulate recruitment to Class III Ministerial and Non-Ministerial posts in various colleges imparting education in Indian System of Medicine including Ayurveda, the 1990 rules regulate recruitment to different posts in the Educational Service (Collegiate Branch) including that of Sports Officer.

12. The post of 'teacher' does not find place either in the 1987 Rules or in the 1990 Rules. We have made a mention of this fact only because the respondent has claimed parity in the matter of pay scale with teachers.

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13. In paragraph 6 of the impugned order, the Division Bench of the High Court observed that the rules governing and regulating the service of respondent make a distinction between Physical Training Instructor and teacher in the matter of status and pay scale, but proceeded to sustain the direction given by the learned single judge mainly on the premise that the orders passed in the cases of other Physical Training Instructors have not been assailed.

The Division Bench also relied upon the ratio of judgment of this Court in Ramamohana Rao (supra) case and observed that the nature and duties of the Physical Training Instructors are at par with those of teachers.

14. In our view, the approach adopted by the learned Single Judge and Division Bench is clearly erroneous.

It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity

between the holders of two posts.

15. In Government of West Bengal vs. Tarun Kumar Roy [2004 (1) SCC 347], a three-Judge Bench of this Court held as under:

"14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently."

16. The Court further opined that in a case where the employees do not hold essential educational qualifications, they cannot claim parity in the scale of pay on the ground of equality stating:

"30. The respondents are merely graduates in Science. They do not have the requisite technical qualification. Only because they are graduates, they cannot, in our opinion, claim equality with the holders of diploma in Engineering. If any relief is granted by this court to the respondents on the aforementioned, ground, the same will be in contravention of the statutory rules. It is trite that this court even in exercise of its jurisdiction under Article 142 of the Constitution of India would not ordinarily grant such a relief which would be in violation of a statutory provision."

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17. It is also well settled that Article 14 of the Constitution carries with it a positive concept of equality. That Article cannot be invoked for perpetuating illegality. To put it differently, an illegal or wrong order passed in one case cannot be made the basis for compelling a public authority to pass similar order in other cases. Even if the State implements an erroneous order passed by the court, it cannot be precluded from challenging similar order passed in another case, simply because appeal was not preferred in the earlier case. In Government of West Bengal (supra), the Court upon noticing a large number of decisions, observed:-

"25. In a case of this nature, the courts are required to determine the issue having regard to larger public interest. It is one thing to say that in a given case the High Court or this Court may not

exercise an equitable jurisdiction under Article 226 or Article 136 of the Constitution of India, but it is another thing to say that the courts shall grant a relief to a party only on the ground that a contention which is otherwise valid would not be raised on the ground that the same was not done in earlier proceedings.

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28. In the aforementioned situation, the Division Bench of the Calcutta High Court manifestly erred in refusing to consider the contentions of the appellants on their own merit, particularly, when the question as regards difference in the grant of scale of pay on the ground of different educational qualification stands concluded by a judgment of this Court in *Debdas Kumar*. If the judgment of *Debdas Kumar* is to be followed a finding of fact was required to be arrived at that they are similarly situated to the case of *Debdas Kumar* which in turn would mean that they are also holders of diploma in Engineering. They admittedly being not, the contention of the appellants could not be rejected. Non-filing of an appeal, in any event, would not be a ground for refusing to consider a matter on its own merits (See *State of Maharashtra v. Digambar*)."

18. In *State of Jharkhand and others v. Manshu Kumbhkar* [2007 (8) SCC 249], this Court held:-

"11. Reliance by the High Court on the order passed in *Sanjay Kumar* case was thoroughly misconceived. It is to be noted that LPA was dismissed on the ground of delay. Even otherwise, merely because mistake had been committed in one case, there is no rational for perpetuating that mistake, even when the same is legally impermissible."

19. In *Vice-Chancellor, M.D. University, Rohtak v. Jahan Singh* [2007 (5) SCC 77], this Court observed:-

"Even assuming the respondent and the said Shri Taneja were similarly situated, we may observe that Article 14 of the Constitution of India carried with it a positive concept. Article 14 of the Constitution cannot be invoked, for perpetuating illegality." (See *Kuldeep Singh v. Govt. of NCT of Delhi* [2006 (5) SCC 702]."

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[See also *Bihar Public Service Commission and others v. Kamini and others* [2007 (8) SCC 519].

20. In view of the aforementioned pronouncements, it must be held that

the respondent cannot derive any benefit from the fact that in compliance of the orders passed by the Tribunal and High Court, the State Government extended the benefit of UGC scale of pay to some of the Physical Training Instructors of Ayurvedic and other colleges. We may assume that what the learned counsel has stated with reference to order dated 24.4.2009 is correct, but as noticed hereinabove the illegality cannot be allowed to be perpetrated by invoking the doctrine of equal pay for equal work.

21. We may now notice the ratio of the decision in P.S. Ramamohana Rao (supra). In that case, this Court was called upon to decide whether Physical Training Instructor in Andhra Pradesh Agricultural University was a teacher within the meaning of Section 2 (n) and was entitled to continue in service up to the age of 60 years. The appellant in that case was employed as a Physical Director in Bapatla Agricultural College, which was later on transferred to Andhra Pradesh Agricultural University. The University sought to retire the appellant on completion of 58 years. The writ petition filed by him questioning the decision of the University was dismissed by the Division Bench of the High Court on the premise that Physical Director does not fall within the ambit of definition of 'teacher'. This Court referred to the relevant provisions of the Act and regulations framed thereunder including Section 2(n), which reads as under:-

"2(n) 'teacher' includes a professor, reader, lecturer or other person appointed or recognized by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes, and any person declared by the statutes to be a teacher;"

The Court then noted that duties of the Physical Director in the University were, (a) to arrange games and sports daily in the evening for the students; (b) to look after the procurement of sports materials and maintenance of the sports ground; (c) to arrange inter-class and inter-collegiate tournaments; (d) to accompany the student teams for the inter-university tournaments and (e) to guide the students about the rules of the various games and sports and held:-

"9. From the aforesaid affidavit, it is clear that a Physical Director has multifarious duties. He not only arranges games and sports for the students every evening and looks after the procurement of

sports material and the maintenance of the grounds but also arranges inter-class and inter-college tournaments and accompanies the students' team when they go for the inter-university tournaments. For that purpose it is one of his important duties to guide them about the rules of the various games and sports. It is well known that different games and sports have different rules and practices and

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unless the students are guided about the said rules and practices they will not be able to play the games and participate in the sports in a proper manner. Further, in our view, it is inherent in the duties of Physical Director that he imparts to the students various skills and techniques of these games and sports. There are a large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and techniques of these games apart from the rules applicable to these games.

10. Having regard to the abovesaid material before us, we are clearly of the view that the appellant comes within the definition of a teacher in sub-clause (n) of Section 2 of the Act."

22. We may observe that definition of 'teacher' contained in Section 2(n) of the Andhra Act was an expansive one to include those persons who were not only been imparting instructions but also were conducting and carrying on research for extension programmes. It also included those who had been declared to be a teacher within the purview of the definition thereof in terms of any Statutes framed by such State.

23. In our view, the aforementioned decision has been misapplied and misconstrued by the High court.

It is now well settled principles of law that a decision is an authority for what it decides and not what can logically be deduced therefrom. In Ramamohana Rao (supra), this Court, having regard to the nature of duties and functions of Physical Director, held that that post comes within the definition of teacher as contained in Section 2(n). The proposition laid down in that case should not have been automatically extended to other case like the present one, where employees are governed by different sets of rules.

24. For the aforementioned reasons, the appeal is allowed and the

impugned judgment is set aside. No costs.

.....J
[S. B. SINHA]

.....J
[G.S. SINGHVI]

.....J
[DEEPAK VERMA]

New Delhi
July 28, 2009