

Before : A. L. Bahri, J.

CHAMAN LAL,—Petitioner,

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 2972 of 1988.

17th July, 1989.

Constitution of India, 1950—Article 226—Principle of equal pay for equal work—Middle pass candidates termed as Laboratory Attendants—Matriculates termed as Senior Laboratory Attendants—Both doing same job—Seperate post of Senior Laboratory Attendants not created—Candidates with higher qualifications getting higher pay—Such disparity—Whether legal.

Held, that for performing the functions and duties of Laboratory Attendants, better educational qualifications are not required. Laboratory attendents posted all over the State would be performing such functions. Thus merely because some of the Laboratory Attendants were matriculates although basic qualification was middle pass, will not be a valid ground to place them in higher service or pay them higher wages. The principle of equal pay for equal work is fully attracted to the case in hand. Denying the same pay scales which have been given to Laboratory Attendants with matric qualification to other Laboratory Attendants who are non-matric is discriminatory and violates the provisions of Article 16 of the Constitution of India.

(Para 9)

Petition under Article 226 of the constitution of India praying that a writ in the nature of certiorari, Mandamus, or any other suitable writ, direction or order be issued:—

- (i) *Summoning the records of the case and its decision dated 5th January, 1981 granting the petitioner and other Laboratory Attendants the pay scale of Rs. 400—600 with a Selection Grade of Rs. 510—800;*
- (ii) *Directing the Respondent-State to give the petitioner the pay scale of Rs. 90—140 with effect from 1st January, 1968 and the pay scale of Rs. 400—600 with effect from 1st January, 1978 as is being given to other Laboratory Attendants performing the same duties, to give the petitioner a Selection Grade of Rs. 510—800, and to implement its own decision dated 5th January, 1981 granting the above reliefs;*

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- (iii) *Arrears of pay on account of (ii) above may also kindly be granted alongwith interest at the rate of 18 per cent per annum;*
- (iv) *Filing of certified copies of the Annexures, filed with this petition be dispensed with;*
- (v) *Costs of the writ petition may also kindly be awarded.*
- (vi) *Any other relief which this Hon'ble court may deem fit in the circumstances of the case.*

Rajiv Atma Ram, Advocate, for the Petitioner.

Gopi Chand, Advocate, for A.G. Punjab.

JUDGMENT

A. L. Bahri, J. (oral)

(1) Chaman Lal petitioner is working as Laboratory Attendant in Government College, Gurdaspur. In this petition filed under Article 226 of the Constitution of India, he seeks a writ in the nature of *certiorary*, *mandamus* or any other suitable direction or order directing the respondents to pay him the same pay scales as/ are being paid to the other Laboratory Attendants and also to allow selection grade of Rs. 510—800 in accordance with the State Government's decision dated January 5, 1981.

(2) As per the facts given in the petition, the petitioner joined as Laboratory Attendant in June 1956 and thereafter he was confirmed. He is still working as such. The minimum qualification for the post of Laboratory Attendant is middle pass. They were in the pay scales of Rs. 32-1-42. In the year 1968, the pay scales were revised to Rs. 75—105. This revision was made under the Punjab Civil Services (Revised Scales of pay) Rules, 1969,—*vide* order dated August 19, 1970, Copy Annexure P-1. The Laboratory Attendants, who were matriculates were treated as Senior Laboratory Attendants and given the pay scales of Rs. 90—140, whereas the others were given the pay scales of Rs. 75—105 as is shown from Annexure P-1. No separate posts of Senior Laboratory Attendants were created. From the posts of Laboratory Attendants, promotion to the higher posts i.e. Junior Lecture Assistant were to be made as

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would be clear from one of the copy of the order dated January 6, 1977, Annexure P-2. Thereafter, there was further revision of pay-scales for Senior Laboratory Attendants to Rs. 400—600 and for Laboratory Attendants Rs. 300—430 subsequently changed to Rs. 320—495, as is shown from the copy of the order dated June 24, 1980, Annexure P-3. In the State of Punjab, all Laboratory Attendants are performing the same functions and duties, i.e. dusting the laboratories, putting the various apparatus, materials and equipments in the College Laboratories and to clear and put back the same after its use in the Laboratory.

(3) The petitioner represented to the respondent State for removing this disparity and allowing him the pay scale of Rs. 400—600 which was allowed to the matriculates Laboratory Attendants and also to allow selection grade of Rs. 510—800 to the Laboratory Attendants. The Promotional avenues to the posts were less than 50 per cent of the total strength of Laboratory Attendants i.e. 119. Copy of such representation is Annexure P-4. The petitioner met the Governor in response to letter Annexure P-5. No relief having been given, the present writ petition has been filed.

(4) The stand of the State in the written statement is that on revision of the pay scales, matriculates Laboratory Attendants were placed in Class-III Service and thus there was no discrimination between the Laboratory Attendants matriculates and Laboratory Attendants non-matriculates. According to the State, Laboratory Attendants non-matriculates could not be promoted as Junior Lecture Assistant which is now a requisite qualification. No specific reply was given that the promotional posts were less than 50 per cent of the total strength of Laboratory Attendants, was not denied that as Laboratory Attendant all matriculates as well as non-matriculates were performing similar functions.

(5) The question to be considered in this writ petition is that on account of higher educational qualification, the State could allow higher pay scale to Laboratory Attendants having matriculation qualifications as against non-matriculate Laboratory Attendants while revising the pay scales. Similar question arose before the Mysore High Court in *S. N. Subba Rao v. State of Mysore etc.* (1), and Rajasthan High Court in *Mani Ram v. State of Rajasthan* (2),

(1) 1974 All India Services Law Journal 255.

(2) 1980 (1) SLR 230.

wherein it was held that there was no rational basis for splitting up the service into two classes for purpose of pay. The Rajasthan High Court case related to the case of fixation of pay of Blaster. Some of them were having certificate of proficiency awarded by Rajasthan Ground Water Board which was equivalent to diploma in Mechanical Engineering. Some were possessed such diploma. The court relied upon the previous decision in *F. C. Puri v. State of Rajasthan* (3), wherein it was held that while fixing the revised scale of pay under the Rules 1969, the State Government could not prescribed different pay scales on the basis of academic qualifications and directed the State Government to allow the same revised scale of pay under the 1969 Rules to all the Assistant Directors, who were employed in the Forensic Science Laboratory under the police Department. It was held that the division of Blaster into two categories for the purpose of revision of pay under the 1969 Rules was invalid. The petitioner in that case was held entitled to have his pay fixed in the pay scale equivalent to that fixed for the present having qualification of diploma in mechanical engineering.

(6) The matter was under consideration of the Supreme Court in *State of Mysore v. Basavalingappa* (4). The case related to revision of pay scales by Workshop Instructors. Some of them were having diploma and the others certificate. There was no material on the record that diploma was a better qualification than the certificate holders. There was discrimination in the grant of revised pay to diploma holders and denying the same grade to certificate holders. In para No. 6 of the judgment, it was observed as under :—

“There is also no material to indicate that when the pay scales were revised and subsequently when they were further revised it was done on the basis of some material indicating that the diploma became a better qualification than the certificate holder. In fact we have no further material to examine the question in the broader aspect. It appears that it was because of this that the learned Judges of the High Court accordingly disposed of the matter on the facts of this case alone and therefore did not go into the general question as to whether on the basis of educational qualifications different pay scales can or could be prescribed and in absence of any material it will not be possible for us to go into that question.”

(3) 1975 WIN (un-reported cases), 22.

(4) 1986 (4) S.L.R. 169.

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The Full Bench of the Madhya Pradesh High Court also considered such a question in *Om Parkash Sharma and others v. Secretary Government of M.P. and others* (5). The case related to pay scales of Amins. Higher Scale of pay was given to those possessing higher qualifications. Therein it was held as under :—

“According to this note, Amins with Higher Secondary with Patwari Training certificates pass will get the scale of pay of Rs. 515—800 while other Amins to get the corresponding scales of pay of Rs. 485—740 and 445—635 and the note is applicable only to the existing incumbents in actual service prior to 5th March, 1983. They have been divided in two classes on the basis of qualifications, those with higher qualifications were given higher scale of pay and those with lessor qualifications were to be placed in lessor scale of pay which has been held to be against the right of equality enshrined under Article 14 of the Constitution and there can be no discrimination and two scales of pay for the post in the same cadre cannot be allowed to stand particularly when earlier both the categories were drawing the same scale of pay.”

The matter was under consideration by this Court in *Hardial Singh v. The State of Punjab and another* (6). In this case, the petitioner joined service as Laboratory Technician and ultimately claimed selection grade after completing 15 years of service. A direction was given to the State Government to give selection grade to him.

(7) On the other hand, Shri Gopi Chand Bhalla learned counsel for the respondents, has argued that on the basis of higher qualification, higher pay scale could be awarded to the Laboratory Attendants and there would be no discrimination. In support of this contention, reliance has been placed on certain decisions.

(8) In *State of Gujarat v. Thakorbbhai Vallabhbhai Naik and ors.* (7), Gujarat High Court considered the case of pay scales of Assistant Lecturers. Diploma holders and degree holders out of them degree holders were given higher pay scales and it was held that Article 16 of the Constitution was not violative. The Supreme

(5) 1988 (4) S.L.R. 109.

(6) 1988 (5) S.L.R. 672.

(7) 1973 (2) S.L.R. 263.

Court in *Dr. C. Girijambal v. Government of Andhra Pradesh* (8), considered the case of the Medical Officers and held that the Medical officers with better educational qualifications could be placed in a higher pay scales. It is useful to reproduce certain observations from this judgment as the same are going to be the determining feature in deciding the case;

“The principle of equal pay for equal work cannot be invoked or applied invariably in every kind of service and certainly it cannot be invoked in the area of professional services when these are to be compensated. Dressing of any injury or wound is done both by a doctor as well as a compounder, but surely it cannot be suggested that for doing this job a doctor cannot be compensated more than the compounder. Similarly, a case in Court of law is argued both by a senior or junior lawyer, but it is difficult to accept that in matter of remuneration both should be treated equally. It is thus clear that in the field of rendering professional services at any rate the principle of equal pay for equal work would be in applicable. In the instant case, Medical Officers holding the qualification of GCIM or the qualification of LIM or the qualification of DAM though incharge of dispensaries run by Zila Parishads, cannot, therefore, be treated on par with each other and if the State Government or the Zila Parishads prescribe different scales of pay for each category of Medical Officers no fault could be found with such prescription.”

The matter was also considered by the Full Bench of this Court in *State of Punjab v. Gurcharan Singh* (9). The case related to the grant of pay scale to a Library Restorer. The Full Bench hold that reasonable classification could be made by allowing higher pay in the same service on the basis of qualification and that higher qualification was a valid basis for classification for purposes of allowing higher pay scales within the same service.

(9) In para 5 of the writ petition, it was stated that Laboratory Attendants were performing the functions and duties such as dusting the laboratories, putting various apparatus, materials and equipments in order in the College Laboratories and to clean and put

(8) 1981 (1) S.L.R. 364.

(9) 1983 (2) S.L.R. 142.

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back the same after its use. This para was admitted in the written statement. For performing such functions, better educational qualifications are not required. Laboratory attendants posted all over the State would be performing such functions. Thus merely because some of the Laboratory Attendants were matriculates although basic qualification was middle pass, will not be a valid ground to place them in higher service or pay them higher wages. The principle of equal pay for equal work is fully attracted to the case in hand. Denying the same pay scales which have been given to Laboratory Attendants with matric qualification to other Laboratory Attendants who are non-matric is discriminatory and violates the provisions of Article 16 of the Constitution of India.

(10) The Written statement filed on behalf of the respondents in this case is most confusing and is not clear with respect to the promotional avenues available for the Laboratory Attendants non-matriculates. At one stage it is mentioned that non-matriculates Laboratory Attendants can be promoted to the post of Junior Lecture Assistant but the posts of Junior Lecture Assistants are less than 50 per cent of the total strength of Laboratory Attendants which is 119 and thus in accordance with the State Government's instructions contained in Annexure P-6, 20 per cent of the total strength of the Laboratory Attendants could be placed in the selection grade. In the written statement filed by the respondents, the position has been most embarrassing firstly it is stated that the promotional avenues are available to the Laboratory Attendants and thus in view of the instructions contained in Annexure P-6, selection grade cannot be allowed. Secondly, it is stated that only matriculates Laboratory Attendants can be promoted to Class-III Service and thereafter as Junior Lecture Assistant for which post also matriculation is essential qualification. Although in view of the order, Annexure P-2, this position seems to be wholly incorrect as Laboratory Attendants were promoted as Junior Lecture Assistants in 1977. Assuming for the sake of argument that this stand of the respondents is correct that non-matriculates Laboratory Attendants have no promotional avenues, as per instructions contained in Annexure P-6, 20 per cent the total posts of Laboratory Attendants non-matriculates have to be in the selection grade and this benefit cannot be denied to the petitioner and the other laboratory attendants.

(11) For the reasons recorded above, this writ petition is allowed with costs. Counsel's fee is assessed at Rs. 1000. A direction is given to the respondents to give equal pay to the petitioner, who is a

non-matriculate Laboratory Attendant under the revision of pay scales, as has been paid to the Laboratory Attendants who are matriculates. A further direction is given to the respondents to create 20 per cent selection grade posts in the service of Laboratory Attendants and to give the same to eligible persons also considering the case of the petitioner. The arrears of pay would be given to the petitioner with 12 per cent interest. The respondents are directed to comply with the directions aforesaid within four months.

P.C.G.

Before : J. V. Gupta, J.

THE MORINDA CO-OPERATIVE SUGAR MILLS LIMITED,
MORINDA,—*Defendant/Appellant.*

versus

KHEM SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 210 of 1989.

11th August, 1989.

Punjab Co-operative Societies Act (Act 25 of 1961)—S. 30—Punjab Co-operative Societies Rules, 1963—Rule 8, By-law 21—Managing Director authorised under bye-laws to sue—Such Managing Director filing appeal—No such resolution for filing appeal by Society—Such appeal whether validly filed.

Held, that bye-law 21 provides that the Managing Director shall have the powers to sue or be sued on behalf of the Mills etc. Clause (1) of Rule 8 provides powers and duties of the committee and the officers of the co-operative society. Thus, taking into consideration the provisions of the Act and the rules framed therein and the bye-laws framed by the Society, it is quite evident that the Managing Director has the powers to sue or to be sued on behalf of the mill. The question of a separate resolution by the society as such did not arise. Moreover, it is a question of fact as to whether a separate resolution is required for filing the appeal or not. There cannot be a general proposition in this behalf.

(Para 5)

Regular Second Appeal from the decree of the Court of Sh. R. M. Gupta, Addl. District Judge, Rupnagar, dated the 11th day of October, 1988, affirming (dismissing the appeal as not maintainable) that of