

Ajit Kumar Jain v. The State of Punjab and another (A. L. Bahri, J.)

generally, it is the graduates alone who are entitled to be promoted/appointed as Excise/Taxation Inspectors from amongst the clerical cadre. The minimum qualifications prescribed is graduation. Those in the department are also entitled to compete for direct recruitment if they are graduates and also fulfil other qualifications. A concession, however, has been extended to those serving the department and presumably in view of some experience in the department, 10 per cent posts have also been reserved for Matriculates and Under-graduates. In our opinion, such a classification in the circumstances, cannot be held as discriminatory. We are of the opinion that the petitioners have not been able to discharge the burden so resting on them to establish the unconstitutionality of the rules instructions in question, by placing on the record sufficient data or proof. The second contention also must therefore be rejected.

(9) No other point was pressed into service. The writ petition fails and is dismissed without any order as to costs.

J.S.T.

Before : A. L. Bahri & H. S. Bedi, JJ.

AJIT KUMAR JAIN,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 10624 of 1991.

7th November, 1991.

Constitution of India, 1950—Art. 226—Regular service—Meaning of—Period prescribed for person to be eligible for regularisation—Completion thereof without any break—Sufficient for purposes of regularisation—Senior pay-scales of regular employees—Entitlement to—Person cannot be denied financial benefits accruing to him—Principle of 'equal pay for equal work' should be followed.

Held. that since the benefit of the principle of 'equal pay for equal work' has already been extended to even *ad hoc* employees, casual labour, temporary employees, there is no scope for holding that a person who has worked on the post for a period of 8 years without any break should be denied the benefit of this principle. For all intents and purposes such a person who has put in more than

8 years of service would be deemed to be a regular employee entitled to the benefit of Senior Scale of pay. Sometimes the authorities take more time to pass necessary orders of regularisation of the services, as has been done in the present case that no such order had been passed with respect to regularisation of the petitioner on the post of Assistant Engineer but that *per se* would not be a ground to deny the financial benefits accruing to the petitioner or other employees working on such posts whereas other permanent employees would be getting such benefits.

(Para 10)

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus, or any other suitable writ directions or orders be issued directing the respondents:—

- (i) to produce the complete record of the case;
- (ii) a writ of certiorari be issued quashing the orders of Respondent No. 2 (Annexure P-4) by which the petitioner has been denied the senior scale (3,000—4,500) of Assistant Engineer and consideration for promotion as Divisional Engineer;
- (iii) a writ of Mandamus be issued directing the respondent No. 2:
 - (a) to place the petitioner in senior scale (3,000—4,500) of Assistant Engineer from the date he has completed 8 years of service in the junior scale without any interruption or break.
 - (b) to consider the petitioner in due course of time for promotion as Divisional Engineer when any vacancy occurs or any deputationist is sent back to parent department on completion of his present term;
- (iv) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;
- (v) the petitioner be exempted from filing the originals of Annexures P-1 to P-4;
- (vi) the petitioner be exempted from filing copies of writ petition for service on the respondents in advance and giving notice to them;
- (vii) the cost of this writ petition may also be awarded to the petitioner.

H. B. Singh Arora, Advocate, for the petitioner.

K. K. Jagia, Advocate, for the respondents.

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JUDGMENT

A. L. Bahri, J.

(1) Ajit Kumar Jain, an Assistant Engineer working with the Punjab State Tubewell Corporation Limited, Chandigarh, prays for *mandamus* in this writ petition directing the respondents—State of Punjab and the Corporation to allow senior scale of pay of Rs. 3,000—4,500 to the petitioner who had completed 8 years of service without interruption and break in the junior scale and also to consider the petitioner for promotion as Divisional Engineer as soon as vacancy occurs.

(2) The Petitioner joined the Corporation as Junior Engineer,—*vide* order dated April 11, 1983 (Annexure P.1) he was ordered to look after the work of Assistant Engineer. Since then he has been doing the job of Assistant Engineer. The petitioner filed CWP No. 4733 of 1985 which was disposed of on February 6, 1987 by S. S. Kang, J. while allowing the writ petition a direction was given to allow the salary and allowances of the post of Assistant Engineer to the petitioner since he was ordered to do the work of Assistant Engineer. Annexure P.2 is the extract of the aforesaid judgment. The respondents complied with the directions given in the aforesaid writ petition. On completion of 8 years of service without any interruption or break he claimed pay of the senior scale of Rs. 3,000—4,500. The junior scale of pay was Rs. 2,200—4,000.

(3) The petitioner also claimed to be eligible for promotion to the post of Divisional Engineer. The relevant rules were quoted in the writ petition in order to show that he was eligible for the same.

(4) The respondents contested the petition *inter alia* alleging that the petitioner was not to be paid the senior scale of pay as he was not appointed regularly as Assistant Engineer. On the same ground he was not eligible for promotion as Divisional Engineer. Further it was asserted that no vacancy of Divisional Engineer was available to be filled up. The Corporation was in the process of closure and its staff was shrinking. A policy decision was taken not to make fresh appointments directly.

(5) As far as the question of promotion is concerned, in view of the written statement filed that no vacancy of Divisional Engineer exists to be filled up by promotion, this question does not need any further consideration.

(6) The Corporation is following the pay-scales of Punjab Government. The pay-scales were revised. For Sub-Divisional Engineer/Assistant Engineer for the old pay-scale of Rs. 940—1,850, the revised scale was Rs. 2,200—4,000 for Junior Scale. The Selection Grade was Rs. 1,700—2,000 which was revised to Rs. 3,000—4,500, Senior Scale after 8 years of regular service as Sub-Divisional Engineer or Assistant Engineer. After 18 years the scale of pay was to be Rs. 3,700—5,300. In this case we are concerned with the Senior Scale payable after 8 years of regular service.

(7) The principle of 'equal pay for equal work' is well recognised as laid down in several judicial pronouncements of the Apex Court. Following the aforesaid principle the previous writ petition filed by the petitioner was allowed by S. S. Kang, J. giving directions to the respondents to pay the pay-scale of Assistant Engineer to the petitioner as he was ordered to do the work of an Assistant Engineer. A brief reference to the aforesaid principle is necessary as the petitioner claims that persons like him in the service doing the work of Assistant Engineer were entitled to be paid Senior Scale of pay after 8 years of service. Since the petitioner has been doing the job of Assistant Engineer he is also entitled to be paid the Senior Scale of pay as he had completed 8 years of service. In *Surinder Singh and another v. The Engineer-in-Chief, C.P.W.D. and others* (1), relying upon the earlier decision of the Supreme Court filed by *employees of the Nehru Yuvak Kendras* (2), and (*Dhirendra Chameli and another v. State of U.P.*) (3), it was observed as under:—

“The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of 'equal pay for equal work' is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouths of the State and State Undertakings.”

In *Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India and others* (4), the Supreme Court, applying the principle of 'equal pay

(1) A.I.R. 1986 S.C. 584.

(2) C.W.P. No. 4821 of 1983 (S.C.)

(3) C.W.P. No. 4817 of 1983 (S.C.)

(4) A.I.R. 1987 S.C. 2342.

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for equal work' gave directions to pay minimum of the pay scale without increments of regular employees workmen to the casual labourers in Posts and Telegraph Department. Likewise in *Delhi Municipal Karamchahi Ekta Union (Regd.) v. P. L. Singh and others* (5), the Apex Court allowed minimum of the higher pay scale to daily wagers without future increments, Learned counsel for the respondents, relying upon these decisions, has argued that in case the petitioner is to be allowed the higher pay-scale, referred to above, he was to be fixed at the minimum of the time-scale and future increments are not to be allowed. This contention cannot be accepted. These cases are distinguishable. What the Supreme Court allowed was the minimum of the time-scale from a particular date in the case of casual labour and daily wagers observing that after payment of the minimum scale of pay subsequently the persons were not to be allowed increments. The petitioner is not a casual or daily wage earner. He has been getting usual increments on his appointment to the post. If the interpretation of these judgments is accepted, as has been argued by the Government Advocate, it would nullify the principle of 'equal pay for equal work' as the regular employees would continue getting higher pay and in the similar circumstances other persons like the petitioner who are not casual or daily wagers doing the same job would be deprived of the higher pay and increments. In the latest decision of the Apex Court in *A. K. Chatterjee and another v. Union of India and others* (6), persons who were promoted on *ad hoc* basis but continued to work for a period of four years were allowed the senior time-scale with effect from the date of completion of required service of four years.

(8) Relying upon the decision of the Supreme Court in the cases of *Surinder Singh and Dharendra Chameli*, referred to above, this Court in *Krishan Lal and others v. General Manager, Haryana Roadways, Karnal* (7), allowed equal pay and allowances to the *ad hoc* sweepers in Haryana Roadways as was being paid to the regular and permanent employees.

(9) The petitioner who was ordered to do the job of an Assistant Engineer was entitled to the pay and allowances of the post of Assistant Engineer and it was so ordered by this Court in the previous writ petition. Since the petitioner has completed 8 years of

(5) A.I.R. 1988 S.C. 517.

(6) A.I.R. 1991 S.C. 996.

(7) 1989 (1) S.L.R. 813.

service uninterrupted and without any break he is also entitled to be fixed in the senior scale of Rs. 3,000—4,500 like permanent employees who are entitled to be fixed in the Senior Scale after completion of 8 years of service.

(10) It has been argued on behalf of the respondents that service of the petitioner cannot be treated as regular to entitle him to the Senior Pay Scale as regular service would be posting in the permanent capacity. This contention is devoid of merit. The ordinary meaning of the word 'regular' in the context would be continuous or consistent. Such phraseology was accepted by the Supreme Court in *Mrs. Raj Kanta v. The Financial Commissioner, Punjab and another* (8), in para 7 of the judgment. It was observed that the word 'regular' meant a consistent course of conduct without any break or breach. Since the benefit of the principle of 'equal pay for equal work' has already been extended to even *ad hoc* employees, casual labour, temporary employees, there is no scope for holding that a person who has worked on the post for a period of 8 years without any break should be denied the benefit of this principle. For all intents and purposes such a person who has put in more than 8 years of service would be deemed to be a regular employee entitled to the benefit of Senior Scale of pay. Sometimes the authorities take more time to pass necessary orders of regularisation of the services, as has been done in the present case that no such order had been passed with respect to regularisation of the petitioner on the post of Assistant Engineer but that *per se* would not be a ground to deny the financial benefits accruing to the petitioner or other employees working on such posts whereas other permanent employees would be getting such benefits.

(11) For the reasons recorded above, this writ petition is partly allowed with the direction to the respondents to pay Senior Scale of pay of Rs. 3,700—5,300 from the date he completed 8 years of service and increments thereafter. The petitioner will get cost which are quantified at Rs. 1,000.

(8) A.I.R. 1980 S.C. 1464.
