

Before Jawahar Lal Gupta and N.C. Khichi, JJ

SHER SINGH AND OTHERS,—*Appellants*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

L.P.A. No. 548 of 1991

30th November, 1998

Letters Patent Appeal, 1909-Cl.X—Constitution of India, 1950—Arts. 14 and 16—Parity in pay scales between Technical Assistants and Deputy Superintendents—Pay Commission made recommendations for a higher pay scale to Technical Assistants—After consideration of the recommendation, Government still declined to increase pay—Government is entitled to consider various factors like academic qualifications, nature of duties and level of responsibilities while fixing pay scales—Unless complete equality is proved parity cannot follow—Post of Technical Assitant and Deputy Superintendent never equals.

Held, that the Technical Assistants and the Deputy Superintendents were never equals. Consequently, they cannot complain of any discrimination when they are treated unequally even after the appointed day viz. January 1, 1978. Secondly, the Government was entitled to consider various factors like academic qualifications, nature of duties and the level of responsibility while taking a decision with regard to the fixation of pay scales. It has not been shown that the decision was not based on a consideration of the relevant factors. Once the decision was taken by the Government and it is not shown to be contrary to the settled principle of law, we find no ground for interference in this Letters Patent Appeal.

(Para 8)

Further held, that different jobs have different requirements. The qualifications and the mode of appointment vary and so are the pay scales different. Unless complete equality is proved, parity cannot follow.

(Para 12)

P.S. Patwalia, Advocate, *for the appellants.*

M.C. Berry, DAG, Punjab, *for the respondents.*

JUDGMENT

Jawahar Lal Gupta J.

(1) Did the State Government act in violation of Articles 14 and 16 of the Constitution in not granting the appellants, who were working as Technical Assistants, the same scale of pay as had been granted to the Deputy Superintendents working in the Punjab Civil Secretariat? This is the short question that arises for consideration in this Letters Patent Appeal. The learned Single Judge has answered this question against the appellants. Hence this appeal.

(2) The appellants are working as Technical Assistants in the Economic and Statistical Organisation of the State of Punjab. They were initially in the pay scale of Rs. 300-600 per mensem. The Second Pay Commission recommended that they be placed in the scale of Rs. 750-1300 with the stipulation that those possessing the qualification of M.A. First Class, would get a start of Rs. 775 p.m. The Government, however, after consideration of the matter decided that the Technical Assistants should be placed in the scale of Rs. 700—1200. Resultantly, they were granted this scale with effect from 1st January, 1978.

(3) There was another category of employees viz. the Deputy Superintendents working in the Punjab Civil Secretariat. They were initially in the scale of Rs. 150-300 with a special pay of Rs. 50 per mensem. However, prior to 1st January, 1978, they were in the scale of Rs. 350—800 with a special pay of Rs. 50 per mensem. Though the Commission had recommended a lower scale for them, the Government had sanctioned the scale of Rs. 800—1400 with effect from 1st January, 1978. The appellants complain that the action of the Government in placing the Deputy Superintendents in a scale higher than that given to them is violative of Articles 14 and 16 of the Constitution. Is it so?

(4) Mr. Patwalia, counsel for the appellants has contended that the Second Pay Commission was appointed by the Government. Its recommendations had been duly accepted. The recommendations having been accepted, the Government was bound to place the appellants in the same scale of pay as the Deputy Superintendents. Still further, the learned counsel contended that the action of the Government is arbitrary as it is contrary to the recommendation made by the Commission. Learned counsel complains that equals having been treated unequally, there was gross violation of Articles 14 and 16 of the Constitution. Thus, the necessity for the intervention of this court.

The claim made on behalf of the appellants has been controverted by Mr. Berry who has appeared on behalf of the respondents.

(5) It is the admitted position that the Technical Assistants were placed in the scale of Rs. 300—600 prior to 1st January, 1978. At that time, the Deputy Superintendents were in the scale of Rs. 350—800. They were also entitled to a special pay of Rs. 50 per mensem. Thus, it is clear that the two categories of employees were not in the same scale of pay. This disparity was continued by the governmental action with effect from 1st January, 1978.

(6) It is undoubtedly correct that the Commission had recommended a higher scale of pay viz. Rs. 750—1300 for the Technical Assistants. However, it was only a recommendation. It was not a binding direction. This recommendation had to be considered by the competent authority. It is the admitted position that the recommendation was duly considered. In fact, an Implementation Committee had been appointed. It was after the receipt of the recommendations of the Implementation Committee that the Government had taken a conscious decision. The Government having considered the recommendation and taken a view, it cannot be said to have acted illegally in not accepting the view-point of the Commission.

(7) Mr. Patwalia contended that the Pay Commission considered of experts in the field and that the Government had acted arbitrarily in not following its recommendations.

(8) We cannot accept this contention. Firstly, as observed above, the Technical Assistants and the Deputy Superintendents were never equals. Consequently, they cannot complain of any discrimination when they are treated unequally even after the appointed day viz. 1st January, 1978. Secondly, the Government was entitled to consider various factors like academic qualifications, nature of duties and the level of responsibility while taking a decision with regard to the fixation of pay scales. It has not been shown that the decision was not based on a consideration of the relevant factors. Once the decision was taken by the Government and it is not shown to be contrary to the settled principle of law, we find no ground for interference in this Letters Patent Appeal.

(9) Mr. Patwalia relied upon the decision of their Lordships of the Supreme Court in *Purshottam Lal and others v. Union of India and another*, (1) This was a case where the recommendations of the Pay

Commission had been implemented with effect from the year 1959. In the case of the petitioners before their Lordships, the revised pay scale was granted with effect from the year 1962. They had gone to the court with the grievance that the action suffered from the vice of discrimination. This claim was sustained. It was held that once the matter had been referred to the Commission and the recommendations had been accepted, the Government could not treat equals unequally. Such is not the position in the present case. The appellants were never equal to the Deputy Superintendents. Thus, they cannot complain of having been treated unequally.

(10) Mr. Patwalia also referred to the decision in *Kirpal Jeet v. The State of Punjab and another* (2). In this case, persons who had been treated equally on earlier occasions and had been placed in identical scales of pay, were suddenly placed in different scales of pay. The learned Judge held the action to be violative of Articles 14 and 16 of the Constitution. The factual position was apparently different and, thus, the decision is of no assistance to the counsel.

(11) A faint attempt was also made to contend that persons who were initially in the scale of Rs. 300—600 had now been placed in a different scale of pay. On this basis, it was contended that the action of the Government was arbitrary.

(12) We are again unable to accept this contention. Learned counsel was unable to pinpoint and show that the nature of duties and the level of responsibility of persons holding different posts was equal. Different jobs have different requirements. The qualifications and the mode of appointment vary and so are the pay scales different. Unless complete equality is proved, parity cannot follow.

(13) No other point was raised.

(14) In view of the above, we find no merit in this appeal. It is, consequently, dismissed. However, in the circumstances of the case, we make no order as to costs.

J.S.T.