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GURPAL TULI AND ORS., ETC.

v.

STATE OF PUNJAB AND ORS.

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September 28, 1984

[R.S. PATHAK AND R.B. MISRA, JJ.]

C *Constitution of India 1950—Article 14—'equal pay for equal work'—Principle—Applicability of—State Government circular stipulating different grades of pay—Entitlement to a grade when arises.*

D *Civil Services : Punjab Education Service—State Government circular—different grades of pay for different categories—Entitlement to a grade when arises.*

E *D* The appellants who were employed as Masters and Mistresses in High and Higher Secondary Schools run by the State Government and possessed an M.A. or M.Sc. or B.T. or B.Ed. degree contended in their writ petitions that they were paid according to the pay scale of Rs. 220-500 and claimed that they were entitled to either of the higher grades set forth in paragraph 2 of the State Government Circular Letter dated July 29, 1967 viz. Rs. 300-25-450/25-600 for those with 1st and 2nd Division Master's Degree and Rs. 250-25-400/25-550 for those with 3rd Class Master's Degree. The High Court negatived their contentions and dismissed the writ petition, and this was affirmed by the Division Bench in appeal.

F *Dismissing the Appeal to this Court,*

G *HELD : 1. The grades specified in paragraph 2 of the Circular Letter dated July, 29, 1967 are applicable only to those who specifically hold the posts of lecturer. There are a limited number of such posts, and appointment to them is strictly subject to the conditions detailed in paragraph 2 of the Circular Letter. The contention on behalf of the appellants that on the principle of "equal pay for equal work"—*Randhir Singh v. Union of India and Ors.*, [1982] 3 SCR 298 they are entitled to the grades mentioned in para 2 of the Circular Letter dated July 29, 1967 has therefore to be negatived.* [888 D; C]

H *2. The appellants claim the benefit of paragraph 2 of the Circular Letter dated July 29, 1967 and therefore no reliance can be placed by them on the Circular Letters dated February, 19, 1979 and September, 20, 1979 which relate merely to the scheme embodied in the Circular Letter*

dated July 23, 1957. The Circular Letter dated July, 29, 1967 operates on a very different plane from the Circular Letter dated July 23, 1957. [888 B; 885 E]

3. The decision of this Court in *State of Punjab v. Kirpal Singh Bhatia*, [1976] 1 SCR 529 is of no assistance to the appellants. That was a case which was primarily concerned with Circular Letter dated July, 23, 1957. [885 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3452-54 and 4030-32 of 1982.

Appeals by Special leave from the Judgment and Order dated the 20th November, 1979 of the Punjab and Haryana High Court in L.P.A. Nos. 26, 62, 29, 38, 39, and 30 of 1978.

R.K. Garg and N.S. Das Bahl for the Appellants in CAs. Nos. 3452-54 of 1982.

M.K. Ramamurthi, and Mrs. Urmila Sirur for the Appellants in CAs. 4031/82 and CAs. 4030-32 of 1982.

P.P. Rao and D.D. Sharma for the Respondents.

The Judgment of the Court was delivered by

PATHAK, J. The appellants, in these appeals by special leave, are aggrieved by the judgment of a Division Bench of the High Court of Punjab and Haryana affirming the dismissal of their writ petitions by a learned Single Judge of that Court.

The appellants are teachers in the service of the State of Punjab. They claim the grades prescribed in paragraph 2 of the Government Circular letter No. 2036-ED. I-67/2167 dated July 29, 1967, and in that regard seek the benefit of the Circular letter No. 9/9/79-FR (2)/143 dated February 19, 1979 and its clarification by Circular letter No. 8937-5ED. 1179/2659 dated September 20, 1979.

The Circular letter dated July 29, 1967 gave effect to the recommendations of the Kothari Commission with effect from November 1, 1966 in respect of teachers in Government Schools. Paragraph 2 of the Circular letter provided :—

“2. Lecturers in Higher Secondary Schools, Punjab Institute of English and Masters/Mistresses with Post-

A graduate qualifications in High/Higher Secondary Schools will be placed in Rs. 300-25-450/25-600 grade provided they have 1st and 2nd Division Master's Degree. Those with 3rd Class Master's Degree will be placed in the grade of Rs. 250-25-400/25-550."

B It was specified that "the number of posts in Lecturer's grade will be 1571 i.e. 742 posts for the existing school Lecturers and 829 additional posts for other Masters/Mistresses with Post-graduate qualifications." It was clarified that "the Masters/Mistresses will be eligible to Lecturer's grade only if they have Post-graduate qualifications in the subject of their teaching. No one will be entitled to

C those 829 additional posts automatically. These posts will be allocated to various subjects keeping in view the requirements of the educational institutions and the appointments will be made keeping in view the rules/instructions as amended from time to time." Paragraph 3 stated that "all trained graduates and all other Masters with Post-graduate qualifications, who are not fitted in the scale of Lecturer, will be in the scale of Rs. 220-8-300-10-400/20-500."

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It is apparent that paragraph 2 of the Circular letter dated July 29, 1967 is concerned essentially with providing for a Lecturer's Grade :

E (1) It was intended to have 1571 posts in the Lecturer's grade, consisting of 742 posts for the existing Lecturers and another 829 posts for Masters or Mistresses. Masters or Mistresses were eligible for those posts in the Lecturer's grade only if they possessed Post-graduate qualifications in the subject of their teaching. Those who did not satisfy that criterion were not eligible for those posts. Moreover, no one was entitled to any of the 829 additional posts automatically. The additional posts were to be distributed with reference to different subjects, and the distribution would be made having regard to the requirements of the educational institutions and subject to the rules and instructions currently in force.

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G (2) Existing Lecturers and Masters or Mistresses with Post-graduate qualifications, who possessed a Master's degree in the first or second division, would be entitled to the grade of Rs. 300-25-450/25-600. Lecturers and

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Masters or Mistresses with Post-graduate qualifications who possessed a Master's degrees in the third division would be entitled to the grade of Rs. 250-25-400/ 25-550.

The appellants say that they are employed as Masters and Mistresses in High and Higher Secondary Schools run by the Pudjab Government and possess an M.A. or M.Sc. or B.T. or B. Ed. degree and some of them have even acquired an M.Ed. degree. They are presently paid according to the pay scale Rs. 220-500. They claim that they are entitled to either of the higher grades set forth in paragraph 2 of the Circular letter dated July 29, 1967. From what has gone before it is clear that they can legitimately claim the benefit of those grades only if they are appointed to the posts of Lecturer. And they do not dispute that they are not incumbents of those posts.

Much reliance has been placed on the decision of this Court in *State of Punjab v. Kirpal Singh Bhatia*⁽¹⁾. In our opinion, that case is of no assistance to the appellants. That was a case which was primarily concerned with Circular letter No. 5058 FR-II-57/5600 dated July 23, 1957.

The Circular letter dated July 29, 1967 operates on a very different plane from the Circular letter dated July 23, 1957. A brief reference to the historical background of the Circular letter dated July 23, 1957 will suffice.

Concerned at the low salaries granted to certain categories of Government servants, the Punjab Government issued Circular letter No. 5058.FR-II-57/5600 dated July 23, 1957 revising their scales of pay. Paragraph 3 classified all teachers in the Education Department according to their qualifications in two broad categories, category A being :—

“B.A./B.Sc./B.Com./B.Sc. (Agriculture) and B.T./Diploma in Physical Education/Diploma in Senior Basic Training”.

and they would now carry the scale of pay :—

1. [1976] 1 S.C.R. 529.

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A "Rs. 110-8-190-10-250 with a higher start for M.A. or M.Sc. as at present."

As is evident, the category was defined by reference to the possession of the specified graduate degree or Diploma. In the event such a teacher also held a Post-graduate degree he was entitled to a higher start in the grade. The grade, however, remained the same.

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C It appears that several teacher filed writ petitions in the High Court claiming revised scales of pay on the ground that they had taken graduate degrees and, therefore, were entitled to the benefit of the grade mentioned against Category 'A' in the Circular letter dated July 23, 1957. In opposition to the writ petitions, the State Government contended that the letter did not contemplate the grant of the grade to all teachers but only to teachers appointed as Masters. The High Court held the teachers entitled to the benefit of the revised grade, whether or not they had been appointed as masters, because, in the opinion of the High Court, the qualifying criterion was the possession of a graduate degree. The judgment of the High Court was affirmed by this Court in *Kirpal Singh Bhatia* (supra). The State Government found it difficult, having regard to the prevailing burden on its financial resources, to extend the benefit of the Circular letter dated July 23, 1957 to the much wider section of teachers covered in consequence of the Court's judgement. Accordingly, the State Government issued Circular letter No. 9/9/79-FR (2)/143 dated February 19, 1979, paragraph 3 of which stated that in order to ensure that "these unintended and large financial implications do not continue arising in future" the whole matter had been reconsidered by the State Government and as a result the Government ordered that henceforth the teachers of the Education Department would not automatically be entitled to placement in the higher scales of pay in terms of paragraph 3 of the Circular letter dated July 23, 1957 by the mere circumstance of their improving or acquiring higher qualifications in the course of their service. The rigour of the restriction was relaxed in some measure. Paragraph 3 said further :—

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H "However, in order to avoid discrimination between teachers who have already been allowed higher scales of pay on account of having improved their qualifications and those who have not yet been allowed this benefit even though they also possess higher qualifications it is decided that all teachers in the Education Department who have

improved their qualifications before the issue of this letter may be allowed the benefit of higher scale of on the basis of their qualifications.”

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The benefit was not extended to those who were appointed or who had improved their qualifications after the issue of that Circular letter. The teachers continued to agitate for a more generous dispensation. The State Government then issued Circular letter No. 8937—5ED.1179/2659 dated September 20, 1979, which declared :

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“The implementation of the decision contained in Finance Department Circular letter No. 9/9/79 FR (2)/143 dated February 19, 1979 to grant higher pay scales to the teachers on the basis of higher qualifications was kept pending for want of clarification on certain points from the Finance Department which has now become available and is reproduced below :—

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1. The higher scale may be allowed from the date of passing the respective higher examination by the concerned teacher where this has already been done. However, actual payment at enhanced rates should commence from 12.2.79 and the payment of arrears accruing from the date of passing the examination till 13.2.1979 be restricted to the maximum for 38 months.
2. The benefit of the higher scale may be allowed from the date a particular teacher is appointed on regular basis or the date of passing the higher examination, whichever is later, but the payment of arrears as a result of grant of such benefit should be restricted to a period of 38 months only, as already mentioned above.
3. The teachers placed in the higher scale can only be regularly adjusted when corresponding posts in the higher scale become available; in that case such teachers may continue to enjoy the higher scale as a personal measure till they are adjusted against regular posts as and when the same become available.”

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It was clarified that the contemplated benefit was confined to

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A the categories of teachers mentioned in the Circular letter No. 5058 FR II-57/5600 dated July 23, 1957.

The appellants claim the benefit of paragraph 2 of the Circular letter dated July 29, 1967, and therefore no reliance can be placed by them on the Circular letters dated February 19, 1979 and September 20, 1979, which relate merely to the scheme embodied in the Circular letter dated July 23, 1957.

C The appellants contend that on the principle of "equal pay for equal work", affirmed by this Court in *Randhir Singh v. Union of India & Ors.*⁽¹⁾ they are entitled to the grades mentioned in paragraph 2 of the Circular letter dated July 29, 1967. It is urged that like those Masters or Mistresses who have been given that benefit they have acquired Post-graduate qualifications and are doing the same kind of work. As has been explained earlier, the grades specified in paragraph 2 of the Circular letter dated July 29, 1967 are applicable only to those who specifically hold the posts of Lecturer. There are a limited number of such posts, and appointment to them is strictly subject to the conditions detailed in paragraph 2 of the Circular letter.

E In the result the appeals fail and are dismissed, but in the circumstances of the case there is no order as to costs.

N.V.K.

Appeals dismissed.

(1) [1982] 3 S.C.R. 298.