JAIPAL & OTHERS

v.

STATE OF HARYANA AND OTHERS

JUNE 2, 1988

[K.N. SINGH AND M.H. KANIA, JJ.]

Constitution of India: Articles 14 and 39(d)—'Equal pay for Equal Work'—Constitutional obligation of the State—Difference it mode of selection for posts not material—Similar functions and duties under the same employer—Relevancy of.

In the State of Haryana two identical schemes are simultaneously in operation with the object of imparting literacy (functional and awareness) to adult illiterates and to provide literacy to children keeping away from school. The first scheme, known as the Adult and Non-formal Education Scheme, is financed by the Central Government under its Rural Functional Literacy Programme/Project, but is administered by the State Government. Under this scheme, a number of Adult Education Centres have been opened to impart literacy to adult illiterates. The petitioners were appointed as Instructors at these centres on different dates. They are being paid a fixed salary of Rs.200 per month. The petitioners are given a deliberate break of one day in their service after the lapse of every six months and have thus been treated temporary in service. The second scheme, known as the State Social Education Scheme, has been framed by the State of Haryana. Under this scheme Social Education Centres have been opened in the State and teachers known as Squad Teachers appointed at these centres to impart literacy among the illiterates. The State regularised the services of the Squad Teachers working on ad-hoc basis with effect from 1.1.1980 and sanctioned them pay scale of Rs.420-700, the scale applicable to primary school teachers in the State.

The Petitioners' grievance is that although they are performing the same nature of functions and duties as performed by the Squad Teachers, they are denied the same scale of pay. The petitioners pray for the issuance of a writ, order or direction to the respondents (i) to treat them in continuous service irrespective of the deliberate breaks in their service, (ii) to grant them regular pay scales of the Primary School Teachers plus consequential benefits from the date of their initial appointment, and (iii) to treat the Department of Adult Education and Non-formal Education as a permanent department and to regularise the

A services of the petitioners in that Department.

The claim of the petitioners is based on the doctrine of 'equal work equal pay'. The petitioners contend that (i) the two schemes are similar and the nature of duties and functions performed by instructors are similar to those performed by squad teachers, (ii) the instructors as B well as the Squad Teachers are both appointed by the District Adult Education Officer and function under the supervision of the Directorate of Education, (iii) the instructors are full time employees and take regular classes of students in the age group of 5-15 years for two and a half hours and of adult illiterates in the age-group of 15-35 years for one and a half hours. In addition, they have to motivate the children and the C adults to join the Adult Education Centres. They are further required to submit regular survey reports.

The respondents, on the other hand, urge that the functions and duties of the instructors and the squad teachers are quite different. The main points of distinction relied upon are that (i) the instructors are D appointed part time while squad teachers are in full time employment, (ii) the squad teachers are transferable while instructors are not, (iii) the squad teachers are required to teach 7 hours daily while instructors are required to teach for four hours, (iv) the social education scheme is permanent and squad teachers are working under a permanent scheme while the instructors are working under a temporary scheme, and (v) E the qualifications and the mode of recruitment of instructors are different; while the instructors are appointed locally, the squad teachers are selected by the Subordinate Service Selection Board after competing with candidates from any part of the country. It is emphasized that if a regular selection was held, many of the Instructors may not have been appointed.

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Earlier, this court had in *Bhagwan Das* v. *State of Haryana*, [1987] 4 SCC 634 upheld the claim of the Supervisors appointed to supervise the centres at which instructors have been working under the Adult and Non-formal Education Scheme for the grant of the same scale of pay as has been sanctioned to the Head Squad Teachers of the Social G Education Scheme.

In partly allowing the writ petitions, this Court,

HELD: (1) There is no difference in the nature of duties of the instructors and squad teachers and both of them carry out similar work H under the same employer. The functions and duties of both classes of

persons are primarily directed to advance the cause of education to bring social awareness among the people in the rural areas and to create interest in various social, economic and educational activities. Bringing adults to centres for educating them is a difficult task and to impart education to dropout children is not an easy job. One of the main duties of the instructors is to motivate the adults and dropout children to participate in the activities and to motivate them for taking education. The instructors teach four hours a day and thereafter they have to do survey work and motivation work. In addition to that, the instructors are required to carry out additional duties which are assigned to them by the Department. Further, the instructors are required to organise sports like kho-kho, kabadi and athletics, and to participate in the local functions and to motivate affluent villagers to give donations for the adult education scheme. [420C-E; 421D-E]

(2) Having regard to their duties and functions, it is difficult to uphold the respondents' plea that the instructors are part-time employees as they work only for four hours. [421E]

(3) If the two class of persons do same work under the same employer, with similar responsibility, under similar working conditions, the doctrine of 'equal work equal pay' would apply and it would not be open to the State to discriminate one class with the other in paying salary. [421F-G]

(4) The State is under a constitutional obligation to ensure that equal pay is paid for equal work. Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing 'equal pay for equal work' for both men and women. Though Article 39 is included in the Chapter of Directive Principles of State Policy, but it is fundamental in nature. The purpose of the article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. [421G; 422B-C]

(5) The doctrine of 'equal work equal pay' would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. [421F]

(6) A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee. [422D]

(7) The plea that instructors are not transferable does not affect

the doctrine of equal pay for equal work. The instructors are appointed locally because they are in a better position to motivate the adults and dropout children for participating in the scheme, while an outsider may be handicapped in motivating the local residents. [423C-D]

(8) Minimum qualification for the Instructors as well as the Squad Teachers is Matric, though many among both are graduates and some of them are trained teachers. Though the Instructors belong to the locality where they have been posted, but they are appointed only after selection. The difference in mode of selection will not affect the application of the doctrine of 'equal work equal pay' if both the class of persons perform similar functions and duties under the same employer. [423D-E]

(9) The instructors are entitled to the same pay scale as sanctioned to squad teachers. The pay of each of the petitioners shall be fixed having regard to the length of service with effect from the date of his initial appointment by ignoring the break in service on account of six months fresh appointments. The petitioners will be entitled to increments in the pay scale in accordance with law notwithstanding the break in service that might have taken place. These directions shall be implemented with effect from September 1, 1985. [424A-C]

10. The petitioners' claim for regularising their services in the departments cannot be accepted as admittedly the project of Adult and Non-formal Education is temporary. [424C-D]

Bhagwan Dass **v.** *State of Haryana*, **[1987] 4 SCC 634;** *Ranjit Singh* **v.** *Union of India*, **[1982] 3 SCR 298;** *Dhiren Chamoli* **v.** *State of U.P.*, **[1986] 1 SCC 637 and** *Surinder Singh* **v.** *Engineer-in-Chief CPWD, & Ors.*, [1986] 1 SCC 639 **referred to.**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 455, 597, 635, 636, 777/1986, 1518, 1686/1987, 77, 78 and 395 of 1988.

(Under Article 32 of the Constitution of India).

Govinda Mukhoty and Mrs. Rekha Pandey for the Petitioners.

Madhusudan Rao, Mahabir Singh, M. Satya Narayan Rao and C.V.S. Rao for the Respondents.

The Judgment of the Court was delivered by

SINGH, J. The petitioners in all these ten writ petitions filed under Article 32 of the Constitution of India have raised grievance of discrimination against the State of Haryana in not following the doctrine of "equal work equal pay". A

The petitioners are working as instructors under the Adult and Non-formal Education Scheme under the Education Department of Haryana. The object of the Non-formal Education and Adult Education Scheme is to impart literacy (functional and awareness) to the adult illiterates in age group of 15-35 years and to provide literacy to the children in the age group of 5-15 years who are drop-outs from the primary and middle school level or who never joined any regular school. A number of Adult Education Centres have been opened in the State of Haryana, which are maintained under the Rural Functional Literacy Programme/Project (RELP) of the Central Government, administered by the State of Haryana although expenditure in respect of the project is borne by the Central Government. The petitioners were appointed instructors to impart literacy to adult illiterates at these Centres on different dates. The students who are taught by the petitioners are permitted to appear at the Vth standard (primary examinations) conducted by the Education Department of the State. On passing the examination the students are issued a certificate of having passed primary examination. On the basis of that certificate students are eligible for admission to 6th class in the regular schools maintained by the State Government. The petitioners were appointed instructors by the District Adult Education Officers of each district between 1978 to 1985 on the basis of selection held by a Selection Committee. Initially the petitioners were paid a fixed salary of Rs.150 per month but since April 1983 it has been increased to Rs.200 per month. Minimum qualifications for being appointed an instructor is matric, many of the instructors are graduates while some of them also hold junior basic training certificates. The petitioners are given a deliberate break of one day after the lapse of every six months and have thus been treated temporary in service notwithstanding the fact that they have been continuously working ever since the date of their appointment. There is another scheme known as Social Education scheme in the State of Haryana for imparting education to illiterates in the villages, the scheme is known as State Adult Education Programme also. Under that scheme a number of social education centres have been opened. The teachers employed under that scheme were known as squad teachers who run the centres. In 1981 the head squad teachers and squad teachers were regularised as head teachers and teachers, and granted the benefit of pay scale applicable to regular B C D E F G H

A head-masters and teachers of primary schools maintained by the State Government. The petitioners' grievance is that although they are performing the same nature of functions and duties as performed by the squad teachers but they are denied the same scale of pay instead they are being paid a fixed salary of Rs.200 per month. The relief claimed by the petitioners in all these petitions is identical in the following
B terms:

> (a) Issue a writ in the nature of mandamus or any appropriate writ, order or direction that the petitioners continue to be in the service of the respondents from the date of their initial appointment irrespective of their being a deliberate break in their services during the vacation
C period.
>
> (b) Issue an appropriate writ, order or direction to the respondents to put the petitioners on regular pay scales to that of primary school teachers in the Education Depart-
D ment of Haryana plus other consequential benefits from the date of their initial appointment and further direct the respondents to pay the petitioners the difference in arrears of salary accrued to them from the date of their initial appointment.
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> E (c) Issue by appropriate writ, order or direction that the Department of Adult Education and Non-formal Education is a permanent department of the State and the petitioners are regularised teachers in the Department appointed against sanctioned posts of instructors.

F There is no dispute that the State of Haryana has framed its own scheme for imparting education to Adult illiterates in the villages, this scheme is known as the State Social Education Scheme. Under this scheme the State of Haryana has opened social education centres in various Districts. These centres have been functioning under the Department of Education where teachers known as squad teachers
G have been imparting literacy, functional and awareness among the illiterates. The State of Haryana by its order dated 20.1.1981 regularised the services of the squad teachers working on ad-hoc basis with effect from 1.1.1980 and sanctioned them pay scale of Rs.420-700, the scale applicable to primary school teachers in the State of Haryana. The petitioners claim that the job and functions of the
H instructors are similar to squad teachers for running the social educa-

tion centres, therefore they are also entitled to the same pay scale as granted to squad teachers. At this stage it is necessary to note that supervisors are appointed to supervise the various centres at which instructors have been working under the Adult Education and Non-formal Education Scheme. A number of supervisors filed a writ petition in this Court under Article 32 of the Constitution claiming same scale of pay as granted to head squad teachers of the Social Education Scheme. Their claim was upheld by this Court in *Bhagwan Dass* v. *State of Haryana*, [1987] 4 SCC 634 and direction was issued sanctioning the same scale of pay to them as has been sanctioned to the head squad teachers of the Social Education Scheme. The petitioners' claim that as the supervisors who supervise their work have been granted pay scale applicable to head squad teachers the petitioners are also entitled to the pay scale applicable to squad teachers of the Social Education Scheme.

The main controversy raised on behalf of the respondents is that the instructors do not perform similar duties as performed by the squad teachers. It was urged that the nature of duties of instructors are quite different than those performed by the squad teachers. The petitioners have stated that the instructors are full time employees they take regular classes of students in the age group of 5-15 years for two and a half hours and they further take classes for adult illiterates in the age group of 15-35 years for one and a half hours. This is not disputed. The petitioners further contended that in addition to four hours teaching work they have to motivate the children and the adults to join the centres for getting free education. They are required to submit survey reports to the department every six months giving details as to how many children in the age group of 5-15 years are not going to the schools and how many adult persons are illiterate in their villages. The petitioners further assert that adult education and non-formal education programme which is implemented by the instructors is similar to social education programme. The instructors as well as squad teachers of social education scheme are appointed by the District Adult Education Officer and both these class of persons function under the control and supervision of the Joint Director, Adult Education under the Directorate of Education of the State of Haryana. The duties of instructors as contained in Chapter II of the Informal Education Instructors Guide published by the Haryana Government, Directorate of Education, are specified, a copy of the same has been annexed to the affidavit of Prem Chand one of the petitioners. The duties of the instructors as prescribed therein are as under:

"DUTIES OF THE INSTRUCTOR

(A) AS ORGANISER OF THE CENTRE

1. To contact the villagers and their children who can be given education at the centre;

2. To survey the villages to know who are the children who can be brought to the centre for teaching;

3. To tell the villages about the aims and objects of education programme; and

(4) To form local co-ordinating bodies.

(B) AS A TEACHER

1. To complete the syllabus in time and to create interest in the children by his teaching;

2. The instructor must be aware of multiple class and group teaching systems;

3. He should give examples of village life and to link it with education; and

4. To make cultural activities a part of education.

(C) AS ADMINISTRATOR OF THE CENTRE

1. To contact such students who are irregular or late comers to the centre and to encourage them/their parents to send their children regularly to the centre;

2. To keep records of the following:

(i) personal details of children and their progress charts;

(ii) Their timely evaluation;

(iii) The details of admission of children from Informal Education Centre (3rd, 4th and 5th class) to formal school;

(iv) Copy of the monthly progress and copies of reports sent to the Supervising and Planning Offices and copies of other reports."

The aforesaid publication issued by the Government further states that Haryana is the first State which has integrated the two schemes, namely, Informal Education Programme and Adult Education Programme.

In the counter-affidavit of J.K. Tandon, Assistant Director, Adult Education, it is stated that the instructors who are seeking equality with the squad teachers of Social Education Scheme are quite different. The social education squad teachers are mobile in nature and they move from one village to another, after completing their job in a village whereas in the case of instructors they are employed from the same village and are from the nearby villages, the squad teachers are full time employees and teaching work is carried out by them for full day. However, in his affidavit Shri Tandon could not dispute the duties as mentioned in the Informal Education Instructors Guide (extracted above). Another counter-affidavit has been filed by Sabira Khosla, Deputy Director, Adult Education, in that affidavit it is stated that the squad teachers are full time employees they work for 6—7 hours and besides working at night during 6 p.m. to 10 p.m. they do social work also. Another additional affidavit has been filed on behalf of the respondents by S.R. Kaushal, Assistant Director of School Education. In his affidavit he has stated that social education squad teachers perform various duties under the Social Education Programme which is divided into various divisions as under:

1. Education division.
2. Debate and discussion division.
3. Sports division.
4. Cultural activity division.
5. Social service division.

It is stated that the squad teachers undertake various functions to supplement the programme under the aforesaid divisions. He has pointed out the difference in the working of the instructors and the squad teachers. The main point of distinction relied upon by him is

A that the instructors are appointed part-time while squad teachers and JBT teachers are in full time employment. Social education squad teachers are transferable while instructors are not transferable. A social squad teacher is required to teach 7 hours daily while an instructor is required to teach for four hours. The social education scheme is permanent and squad teachers are working under a permaB nent scheme while the instructors are working under a temporary scheme.

We have given our anxious consideration to the material placed before us. On a careful analysis of the same we find that the nature of duties and functions performed by instructors are similar to those performed by squad teachers. The functions and duties of both classes C of persons are primarily directed to advance the cause of education to bring social awareness among the people in the rural areas and to create interest in various social economic and educational activities. Bringing adults to centre for educating them is a difficult task and to impart education to drop-outs children is not an easy job. One of the D main duties of the instructors is to motivate the adults and drop out children to participate in the activities and to motivate them for taking education. The instructors teach four hours a day and thereafter they have to do survey work and motivation work in addition to that the instructors are required to carry out additional duties which are assigned to them by the Department. This is evident from the circular E letter dated 4.3.1987 issued by the Joint Director, Adult Education (Annexure B) to the affidavit of Rajinder Singh petitioner. The letter was circulated to all the instructors of adult and informal education, it reads as under:

"Dear

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To bring adults in centres is a very difficult task. This is possible only when our centres are attractive and adults feel happy to come to the centres and forget all their worries after coming to the Centre. Instructors should behave with the adults in such a way that they think him their G friend and guide. The adults should be told that by hearing, reading the writing, they can know about the Government Scheme made for their benefit and progress. Every Instructor is supposed to know about all such schemes so that they can guide their students. The Adults should get the guidance from the instructors as to how they can get loans H from various banks and cooperative Societies. In the com-

ing year we must equip the instructors with training so that they can fulfil the responsibility given to them.

In a meeting held at Karnal you were told about the facilities being given to widows and old persons. You have to properly propagate the same.

I will be very grateful to you for circulating this letter to all the instructors and supervisors.

Office Dist. Adult Education Officer Karnal. Page No. A-d-4/3480-659, Karnal dated 13.3.1981.

One copy of the letter to be circulated to all instructors and supervisors of Adult and Informal Education for necessary action.

Dist Adult Education Officer Karnal 13.2.1987."

The aforesaid duties which are required to be performed by the instructors are in addition to their four hour teaching duty. Further the instructors are required to organise sports like kho-kho, kabadi and athletics, and to participate in the local functions and to motivate affluent villagers to give donations for the adult education scheme. This is evident from a circular letter issued by the District Adult Education Officer, Ambala on 12.11.1986 (Annexure C to the affidavit of Rajender Singh). Having regard to these facts and circumstances we are of the view that there is no difference in the nature of duties of the instructors and squad teachers and both of them carry out similar work under the same employer. The doctrine of equal work equal pay would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. If the two class of persons do same work under the same employer, with similar responsibility, under similar working conditions the doctrine of 'equal work equal pay' would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a Constitutional obligation to ensure that equal pay is paid for equal work.

The respondents' contention that the adult education scheme is temporary, as the posts are sanctioned on year to year basis and as such the instructors are not entitled to claim equality with the squad teachers as the scheme under which they work of a permanent nature is misconceived. This contention was rejected by this Court in the case

of *Bhagwan Dass* (supra) while considering the case of supervisors. There is no doubt that instructors and squad teachers are employees of the same employer doing work of similar nature in the same department therefore the appointment on a temporary basis or on regular basis does not affect the doctrine of equal pay for equal work. Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter of Directive Principles of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal pay for equal work has been implemented by this Court in *Ranjit Singh* v. *Union of India & Ors.*, [1982] 3 SCR 298; *Dhiren Chamoli and Ors.* v. *State of U.P.*, [1986] 1 SCC 637 and *Surinder Singh & Anr.* v. *Engineer-in-Chief, CPWD & Ors.*, [1986] 1 SCC 639. In view of these authorities it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of the employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee.

The respondents' contention that the mode of recruitment of petitioners is different from the mode of recruitment of squad teachers inasmuch as the petitioners are appointed locally while squad teachers were selected by the subordinate Service Selection Board after competing with candidates from any part of the country. Emphasis was laid during argument that if a regular selection was held many of the petitioners may not have been appointed they got the employment because outsiders did not compete. In our opinion, this submission has no merit. Admittedly the petitioners were appointed on the recommendation of a Selection Committee appointed by the Adult Education Department. It is true that the petitioners belong to the locality where they have been posted, but they were appointed only after selection, true that they have not been appointed after selection made by the Subordinate Service Selection Board but that is hardly relevant for the purposes of application of doctrine of "equal pay for equal work". The difference in mode of selection will not affect the application of the doctrine of "equal pay for equal work" if both the class of persons perform similar functions and duties under the same employer. Similar plea raised by the State of Haryana in opposing the case of supervisors in the case of *Bhagwan Dass* (supra) was rejected, where it was observed that if the State deliberately chose

to limit the selection of candidates from a cluster of a few villages it will not absolve the State for treating such candidates in a discriminatory manner to the disadvantage of the selectees once they are appointed provided the work done by the candidates so selected is similar in nature. The recruitment was confined to the locality as it was considered advantageous to make recruitment from the cluster of villages for the purposes of implementing the Adult Education Scheme because the instructors appointed from that area would know the people of that area more intimately and would be in a better position to persuade them to take advantage of the Adult Education Scheme in order to make it a success.

The respondents' plea that instructors are not transferable does not affect the doctrine of equal pay for equal work. The instructors are appointed locally to implement the Adult and Non-formal Education Scheme because they are in a better position to motivate the adults and drop-outs children for participating in the scheme. An outsider may be handicapped in motivating the local residents for participating in the scheme. As regards the difference in qualification is concerned it is true that the squad teachers possess JBT certificates and many of them are graduates but minimum qualification for squad teachers is also matric. Similarly minimum qualification for instructors is matric but many of the petitioners are graduates and some of them are trained teachers possessing JBT certificates. Great emphasis was laid on behalf of the respondent State that instructors are part-time employees while squad teachers are full time employees. Similar arguments were raised on behalf of the State in the case of *Bhagwan Dass* (supra) in resisting the claim of supervisor but the submission was rejected by this Court on the ground that having regard to the duties and functions which the supervisors are required to perform it was difficult to uphold the plea that he was a part-time employee. In the instant cases also we have already noticed the details of the duties and functions assigned to an instructor which normally say that the petitioners are required to teach at the centre for four hours and in addition to that they are required to motivate adults and drop-outs children of the locality and to prepare survey reports, in addition to that they are further required to implement various schemes initiated by the Government, they are further required to organise sports, athletics programme and to persuade local affluent people for making donations. They are required to educate the local residents with regard to the various welfare schemes initiated by the Government for the welfare of the residents of the rural areas. Having regard to their duties and functions it is difficult to uphold the respondent's plea that the instructors are

A part time employees as they work only for four hours.

In view of the above discussion, we hold that the instructors are entitled to the same pay scale as sanctioned to squad teachers. We, accordingly, direct that the petitioners' salary shall be fixed in the B same pay scale as that of squad teachers. The pay of each of the petitioners shall be fixed having regard to the length of service with effect from the date of his initial appointment by ignoring the break in service on account of six months fresh appointments. The petitioners will be entitled to increments in the pay scale in accordance with law notwithstanding the break in service that might have taken place. We further direct that these directions shall be implemented with effect C from September 1, 1985 as directed by this Court in the case of *Bhagwan Dass* (supra). The petitioners' claim for regularising their services in the department cannot be accepted as admittedly the project of Adult and Non-formal Education is temporary which is likely to last till 1990. We accordingly allow the writ petitions partly with costs D which we quantify at Rs.5,000.

R.S.S. Petitions allowed.