

A

UNION OF INDIA AND ANOTHER

v.

P. SATHIKUMARNA NAIR AND OTHERS

APRIL 29, 1997

B

[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

Service Law :

C

Pay Scale—Parity—Claim by Junior Lecturers of pre-degree college in Union Territory of Lakshadweep affiliated to Calicut University—High Court allowing parity—Held : junior Lecturers in pre-degree colleges in geographical area of kerala drawing scale of Lecturers in degree colleges—Claim sustainable.

D

The respondents were teaching classes XI and XII in a Senior Higher Secondary School in the Union Territory of Lakshadweep. These two classes were converted into a Junior College known as the Jawaharlal Nehru College w.e.f. 15th July 1972. Though these teachers were designated and appointed as lecturers, they were given the pay scale of post-graduate teachers in the Secondary High School. There is another such Junior College, the Mahatma Gandhi College, in the said Union Territory. Both these Colleges are affiliated to the Calicut University, Kerala. The Administrator of the Union Territory by its order dated 1st April 1976 sought to redesignate the Lecturers of these two colleges as Junior Lecturers, equating their pay scale to that of post-graduate teachers in the Secondary High School.

F

Respondents challenged the order of the Administrator before the High Court. Single Judge of the High Court held that they could not be equated with post-graduate teachers in the Secondary High School and that they were entitled to the scale applicable to Lecturers under the Union of India. He directed the Union of India to consider the claim of petitioners in accordance with law. A writ appeal against the said judgment was dismissed by the Division Bench. It directed the Union of India to take a decision within six months, in the light of the directions of the Single Judge. Hence this appeal by Union of India.

G

H

Meanwhile, the Union of India by its order dated 11th August 1986

rejected the claim of writ petitioners holding that their duties and responsibilities were comparable with those of teachers in classes XI and XII of Senior Secondary School, and that they could not be equated with the Lecturers working in degree colleges run by Union Government. However, pursuant to orders in a Contempt petition, the Union of India, by its subsequent order dated 24th December 1986 redesignated the respondent writ petitioners as Lecturers and granted them the Lecturer grade.

However, the Government did not designate the other junior lecturers as lecturers nor were they granted lecturer grade. The fourteen lecturers of the said two Junior Colleges, similarly placed, when the Union of India proposed to and sought to implement its order dated 11th August 1986 to them, applied to the Central Administrative Tribunal for similar relief as granted by the High Court to the above respondents. The Tribunal rejected the claim holding that the duties and responsibilities of those persons who were teaching pre-degree classes were not comparable with those of Lecturers in Degree Colleges, against which the teachers have preferred appeals before this Court. Six similarly situated teachers of the two colleges have approached this Court under Article 32 of the Constitution.

It was contended for the Union of India that the responsibilities of teachers teaching in pre-degree colleges were qualitatively different from those in degree colleges and as such, they were neither entitled to be designated as Lecturers nor to the same pay scale. On behalf of the Lecturers it was submitted that no such plea was taken before the High Court; that these two colleges being affiliated to the Calicut University, and in the said University there being no distinction between the pay scale applicable to junior Lecturers teaching pre-degree classes and Lecturer teaching degree classes, they were also entitled to same; that in the State of Kerala in government colleges and private colleges Junior lecturers teaching pre- degree classes are drawing the same pay scale as the Lecturers teaching degree classes.

Disposing of the matters, the Court

HELD : 1. It is not a fit case to exercise the Court's discretionary jurisdiction under Article 136 of the Constitution and to interfere with the findings given by the Single Judge of the High Court and affirmed by the

A Division Bench, that the pay scales of the junior lecturers in Union Territory of Lakshadweep are to be on par with the pay scales of lecturers in degree colleges under the Union of India. [1085-C; 1086-B]

B 2. It is stated in the judgments of the High Court that the Union of India in its counter affidavit did not take the stand that the nature, status or functions attributable to the post of Junior Lecturers in the pre-degree colleges were different from those of Lecturers in degree colleges. The High Court found that there was nothing on record to indicate that the lecturers in pre-degree colleges did not perform similar functions as compared to lecturers working in degree colleges in the Delhi area. That finding has become final. Further in the Calicut University to which the two colleges in the Union Territory are affiliated, the pay scale of Junior Lecturers teaching pre-degree classes is one and the same. Besides, the State of Kerala vide its order dated 21st November, 1970 had equalised the pay scales of Junior Lecturers in private aided colleges with those of Lecturers in government colleges. Therefore, geographically, the pay scales of Junior Lecturers and Lecturers are same in Kerala and in the Calicut University, with the sole exception of the colleges in the said Union Territory, which are also affiliated to the Calicut University. Then, there is the recommendation dated 3rd February, 1995 by the Administrator of that Union Territory, to the Government of India that the Junior Lecturers in the said two colleges be paid the same scale of pay as Lecturers in the degree colleges of the Union Territory. It is, therefore, not proper to interfere with the scale payable to these Junior lecturers with effect from July 15, 1972. [1085-D; E-F; 1086-C]

F *State of Madhya Pradesh v. G.C. Mandawar*, [1995] 1 SCR 599 and *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors.*, [1959] SCR 279, cited.

G 3. The pay scale attributable to the post of Lecturers in degree colleges under the Union of India will be applicable to these Junior Lecturers, now designated as Lecturers, from their respective dates of appointment, in respective junior colleges in the Union Territory of Lakshadweep. The petitioners who approached the Central Administrative Tribunal must also be treated likewise. They are also granted the same relief. The writ petitioners, who are in identical situation, are also entitled H to the same pay scale of Lecturers. [1086-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 913 of 1987 Etc. A

From the Judgment and Order dated 17.8.84 of the Kerala High Court in W.A. No. 736 of 1982.

P.A. Choudhary, S. Sukumaran, K. John Mathew, Y.P. Mahajan, Sushma Suri, C.V.S. Rao, Rajeev Sharma, Rakesh K. Sharma, N. Sudhakaran and Ms. Baby Krishnan for the appearing parties. B

The Judgment of the Court was delivered by C

JAGANNADHA RAO, J. The Civil Appeal No. 913 of 1987, Special Leave petitions Nos. 648 of 1990 & 6894 of 1994 and the Writ Petition No. 277 of 1994 are all connected and can be disposed of together. In the two Special Leave Petitions, we grant leave as the same questions arise which arise in the Civil Appeal. The Civil Appeal is filed by the Union of India represented by Secretary, Ministry of Education, Government of India and the Administrator, Union Territory of Lakshadweep, Kavaratti. There are four respondents in the said appeal and they were writ petitioners in O.P. No. 2062/80(A) filed before Kerala High Court. They claimed that the proceedings issued by the Administrator dated 1.4.1976 re-designating them as Junior Lecturers against their original designation as Lecturers in the Jawaharlal Nehru College at Kavaratti was illegal and that they were entitled to the scale of Rs. 400-800 applicable to Lecturers rather than the scale of Rs. 350-700 which was applicable to Junior Lecturers and which scale was applicable to the Post-graduate teachers in the Secondary High School. It may be noted that the scale of Rs. 350-700 was revised by the Third Pay Commission as Rs. 550-900 w.e.f. 1.1.1973 while the scale of Rs. 400-800 was revised as Rs. 700-1300 w.e.f. 1.1.1973. The said O.P. No. 2062/80(A) filed by the said four writ petitioners was allowed by the learned Single Judge of the Kerala High Court on 10.8.1982 holding that the petitioners therein could not be equated with Post-graduate teachers in the Secondary High School (who were to be re-designated as Junior lecturers) and that they were entitled to the scale of Rs. 400-800 applicable to lecturers. After holding so, the learned Single Judge, however, directed the Union of India to "consider" the claims of the four writ petitioners in regard to the pay scales in accordance with law. Against the said judgment D E F G H

- A of the learned Single Judge, Writ Appeal No. 736 of 1982 was preferred by the Union of India and the Administrator of the Union Territory of Lakshadweep. The said appeal was dismissed by a Division Bench of the Kerala High Court on 17.8.1984. It was directed that the Union of India should take a decision on a consideration of the material before it, in the light of the directions contained in the judgment in O.P. No. 2062/80(A) and that the said decision should be given within six months from the date of the receipt of the copy of the judgment. Against the said judgment of the Division Bench, Special Leave Petition was preferred by the Union of India and the Administrator, Union Territory of Lakshadweep. Leave was granted and the appeal has been registered as Civil Appeal No. 913 of 1987.

- Certain events took place subsequent to the disposal of the Writ Appeal above-mentioned. In compliance with the directions of the learned Single Judge of the Kerala High Court, the Union of India passed orders on 11.8.1986 rejecting the contentions of the said writ petitioners and holding that they were only entitled to the pay scale of Rs. 350-700 (which was revised as Rs. 550-900 w.e.f. 1.1.1973) applicable to Post-graduate teachers and not to pay scale of Rs. 400-800 applicable to lecturers (revised as Rs. 700-1300 w.e.f. 1.1.1973). The Union government held that the duties and responsibilities of the writ petitioners are comparable with those of counter-parts in Class XI & XII of the Senior Secondary School and that they could not be equated with the duties and responsibilities of lecturers working in the degree college run by the Union Government.

- On the ground that Union of India in its order dated 11.8.1986 could not have gone against the findings given by the learned single Judge of the Kerala High Court in O.P. No. 2062/80(A) and by the Division Bench in Writ Appeal No. 736 of 1982 as to the equation of the duties and responsibilities of the writ petitioners, namely, that they were similar to those of lecturers in degree colleges; Contempt Petition No. O.P. (Contempt) No. 3730 of 1986 was filed by the said Writ Petitioners in the Kerala High Court. By judgment dated 29.9.1986 a Division Bench of the Kerala High Court while noting that the Special Leave Petition was granted against the judgment of the Division Bench in Writ Appeal No. 736 of 1982 observed inasmuch as no stay was granted by the Supreme Court of India, it was incumbent on the Union of India to implement the judgment of the Kerala High Court in the light of the findings given by the learned Single Judge

and the Division Bench and that it was not open to the Union of India to pass the orders dated 11.8.1986 refusing to restore the designation of the Writ Petitioners as Lecturers and that it was also not open to Union of India to refuse to grant the scale of Rs. 400-800.

Consequent to the directions given in the above-said contempt petition by the Division Bench of the Kerala High Court, the Union of India passed a subsequent order dated 24.12.1986 re-designating the writ petitioners as lecturers and granting the scale of Rs. 400-800 w.e.f. 15.7.1972 (the date of establishment of the Junior College at Kavaratti) and the further revised scale of Rs. 700- 1300 w.e.f. 1.1.1973. A consequential order was issued by the Administrator on 10.2.1987. The four writ petitioners apprehended that in the event of the Civil Appeal being allowed by the Supreme Court, they might be compelled to refund the arrears as well as current salary that might be paid to them in the scale of Rs. 400-800 or the revised scale of Rs. 700-1300 (or such subsequent revised scale), as the case may be. They, therefore, moved this Court in the Civil Appeal for suitable orders. This Court passed an order on 2.4.1987 after hearing both sides that in the event of Civil Appeal going against writ petitioners, it would not be necessary for them to refund any salary paid to them in the scale of Rs. 400-800 or in the revised scale of Rs. 700- 1300 or any further revised scales.

We shall now mention how the two Special leave petitions and the Writ Petition have come to be filed. The Union of India and the Administrator, Union Territory of Lakshadweep proposed to apply the original order dated 11.8.1986 granting only the scale of Rs. 350-700 (or the revised scale of Rs. 550-900) to the remaining lecturers in the Jawaharlal Nehru College, Kavaratti and also to two lecturers in the Mahatma Gandhi College, Androth, rather than the scale of Rs. 400-800 (or the revised scale of Rs. 700-1300). In fact, these personnel continued to be treated as junior lecturers and not as lecturers. They, therefore, moved the Central Administrative Tribunal in O.A. No. K-274/87. The application was filed by 14 persons of whom two were from the Mahatma Gandhi College, Androth and remaining 12 were from the Jawaharlal Nehru college, Kavaratti, we have already noticed that the four other lecturers of the Jawaharlal Nehru college, Kavaratti succeeded before the High Court and were getting the higher scale of pay. But the Central Administrative

A Tribunal in its judgment dated 31.10.1989 came to a conclusion different from the one arrived by the Kerala High Court. It held that the duties and responsibilities of those 14 persons who were teaching pre-degree classes were not comparable to those of lecturers in degree colleges. Both the Jawaharlal Nehru college, Kavaratti and Mahatma Gandhi college, Androth were pre-degree colleges. The Tribunal, in fact, followed an earlier judgment rendered by it in O.A. No. K-335/87 filed by a lecturer of the Jawaharlal Nehru college by name Dr. Ramachandran (who we are informed is no more) wherein it had come to the conclusion that the duties and responsibilities of the lecturers in pre-degree colleges were different from the duties and responsibilities of those teaching degree classes particularly in the Union Territory of Delhi. The Tribunal noticed that there was no degree college in the Union Territory of Lakshadweep and that there was only a degree college and no junior college in the Union territory of Delhi. The attention of the Central Administrative Tribunal was invited to another judgment of the Kerala High Court in O.P. No. 497 of 1980 filed by certain other lecturers (which, we are told later went in Appeal - Writ Appeal No. 772 of 1982). In that case also, it was held by the Kerala High Court that the staff teaching 11th and 12th classes in the Senior Secondary School and who were employed in the junior college w.e.f. 15.7.1972 could not be treated as junior lecturers but should be treated as lecturers and be given the higher scale, applicable to lecturers. However, the Central Administrative Tribunal did not feel persuaded to follow the judgment of the Kerala High Court in the said O.P. No. 497/80. The result was that the application O.A. No. K- 274/87 filed by the 14 applicants, was dismissed. Petitioners 1 to 4 and 7 to 14 before the Central Administrative Tribunal then moved this Court in Special leave petition No. 648 of 1990 against the judgment of the said Tribunal dated 31.10.1989 while petitioners 5 & 6 before the said Tribunal filed S.L.P. No. 6894 of 1994 against the said judgment. We have already granted leave in these two special leave petitions.

G Writ Petition (C) No. 277 of 1994 has been filed in this Court by 6 other petitioners of whom 3 are working in the Jawaharlal Nehru College Kavaratti and 3 are working in the Mahatma Gandhi college Androth. They are aggrieved by the fact that so far they were concerned the Union of India and the Administrator were treating them as junior lecturers and not granting them the pay scale of Rs. 400-800 (revised scale of Rs. 700-1300 w.e.f. 1.1.1973 or the further revised scale of Rs. 2200-4000 w.e.f. 1.1.1986).

H

They approached this Court under Article 32 of the Constitution of India on the ground that in view of the judgment of the Tribunal dated 31.10.1989 rendered in the case of persons similarly situated, there was no point in approaching the said Tribunal once against particularly when notice had been issued in the Special leave petitions Nos. 648/90 and 6894/94 against the Judgment of the Tribunal. In view of the said Judgment, notice was ordered in the writ petition and it was tagged alongwith Civil appeal No. 913/87 and the two Special Leave Petitions.

Learned senior counsel for the Union of India and the Administrator, Union Territory of Lakshadweep Shri P.A. Choudhary submitted before us that the four petitioners filed O.P. No. 2062/80(A) and four others were initially working in the Senior Higher Secondary School, Kavaratti and were teaching classes 11 & 12 that later w.e.f. 15.7.1972 the said two classes were converted into a junior college at Kavaratti. Initially these teachers were no doubt designated and appointed as lecturers in the scale of Rs. 350-700 which was the scale of Post-graduate teachers in the school. Taking advantage of their designation as lecturers the said writ petitioners claimed the scale of lecturers namely Rs. 400-800 that was being paid to lecturers in degree colleges at Delhi. In order to rectify the position orders were passed on 1.4.1976 re-designating personnel as junior lecturers w.e.f. 20.5.1975 and reiterating that they were only entitled to the scale of Rs. 350-700 and not to the scale of Rs. 400-800. Rules were also issued in that behalf w.e.f. 1.4.1976. Learned senior counsel contended that while it was true that these eight teachers who were employed in the junior college satisfied the minimum requirement of 2nd Class M.A., applicable to lecturers in degree colleges of the Union Government, but that it could not be denied that the duties and responsibilities of the teaching staff who teach in pre-degree colleges were certainly different from the duties and responsibilities of teachers teaching in degree colleges whether at Delhi or at any other place. He contended that qualitatively the level of teaching was different and on that basis, there could be a valid difference in the scale of pay. He, therefore, contended that these personnel whether they were designated as lecturers or junior lecturers were not entitled to the scale of Rs. 400-800 which was applicable only to those teaching students in the degree classes.

- A On the other hand, it was contended by learned senior counsel Shri K. John Mathew & Sri K. Sukumaran that the judgment of the learned Single Judge in O.P. No. 2062/80-(A) and of the Division Bench in Writ Appeal No. 736/82 showed that it was not disputed by Union of India and the Administrator, Union Territory of Lakshadweep before the Kerala High Court that the duties and responsibilities of these personnel were the same as those of lecturers teaching in degree colleges. It is also pointed out that these two colleges Jawaharlal Nehru college, Kavaratti and Mahatma Gandhi College, Androth were both affiliated to Calicut University and that in the said university, there is no distinction between the pay-scales applicable to junior lecturers teaching pre-degree classes and junior lecturers teaching degree classes. Learned counsel also referred to the Government's order in the State of Kerala wherein junior lecturers teaching pre-degree classes and lecturers teaching degree classes were to draw the same pay scale. In fact, the Government of Kerala passed an order extending the said benefit to all the Junior Lecturers working in aided private junior colleges, thereby entitling the latter to draw the same pay scale of lecturers. From a geographical point of view the position was that in the entire State of Kerala in government colleges and private colleges and in particular under the Calicut University to which these two colleges were affiliated, junior lecturers teaching pre-degree classes were drawing the same scale of pay as lecturers teaching degree classes. Therefore, there was no justification in not extending the same benefit to those working as Junior Lecturers in these two colleges which were affiliated to the Calicut University. In reply, the learned senior counsel for the Union of India and the Administrator, Union territory of Lakshadweep Shri P.A. Choudhary contended that assuming that junior lecturers teaching pre-degree classes and lecturers teaching degree classes were being given the same scale of pay by the government of Kerala and by the aided private colleges in the State of Kerala and also in the Calicut University, it is not permissible to issue a direction to the Union Government and the Administrator, Union Territory of Lakshadweep to equate the pay scales of junior lecturers and lecturers so far as Union Territory was concerned. The reason was that the employers in the two situations were different, that is, the State of Kerala or Calicut University on the one hand and the Union Territory of Lakshadweep on the other. Learned counsel relied on the judgment of the Supreme Court in *The State of Madhya Pradesh v. G.C. Mandawar*, [1955] 1 SCR 599 to
- B
- C
- D
- E
- F
- G
- H

say that the Court would not direct equation of pay scales of personnel of different employers, namely those of the Central Government and those of a State Government. Learned senior counsel also invited our attention to certain general principles concerning Article 14 laid down in *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others*, [1959] SCR 279.

We have given our anxious consideration to the contentions raised by the learned senior counsel on both sides. We have come to the conclusion that in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India we would not interfere with the findings given in the judgment of the learned Single Judge of the Kerala High Court in O.P. No. 2062/80(A) dated 10.8.1982 as affirmed by the Division Bench in Writ Appeal No. 736/82 dated 17.8.1984. We note that in the said judgments it was stated that the Union of India in its counter affidavit filed in the Kerala High Court did not take the stand that the "nature, status or functions" attributable to the post of Junior Lecturer in the Pre-degree Colleges were different from those of Lecturer in a Degree College. We also note that against the other judgment of the Kerala High Court in O.P. No. 497/80 (referred to in the judgment of the Central Administrative Tribunal and which was affirmed in Writ Appeal NO. 772/82), no Special leave petition has been filed by the Union of India in this Court. In the said judgment of the Kerala High Court also there is a finding that there was nothing on record to indicate that these persons (Junior lecturers in pre-degree college) did not perform similar functions as compared to lecturers working in Degree Colleges in the Delhi area. That finding has become final. It is also not disputed before us that in the Calicut University to which these two colleges in the Union Territory of Lakshadweep are affiliated, the pay scales of Junior lecturers teaching pre-degree classes and the pay scale of lecturers teaching degree classes is one and the same. In this connection, we may also refer to the order of the Government of Kerala in G.O.Ms. 487/70/Edn. (F) Deptt. dated 21.11.1970 equalizing the pay scales of junior lecturers in private aided colleges with those of lecturers in government colleges. In Government Colleges in Kerala the pay scale of junior lecturers teaching pre-degree classes and lecturers teaching degree classes is again one and the same. In other words, speaking from a geographical angle the pay scale of junior lecturers and lecturers are the same in Kerala and in the Calicut University,

- A with the sole exception of these two colleges in Union Territory of Lakshadweep which are also affiliated to the Calicut University. In the light of the above factual position, we are of the view that, in exercise of our discretion, we would not interfere with the findings arrived at in O.P. No. 2062/80(A) by the Kerala High Court as affirmed in Writ Appeal No. 736 of 1982 holding that the pay scales of the junior lecturers in Union Territory of Lakshadweep are to be on par with the pay scales of lecturers in degree colleges under the Union of India.

- C In addition, our attention has been invited by the learned counsel for the writ petitioners to a recent communication of the Administrator of Union Territory of Lakshadweep dated 3.2.1995 wherein he has recommended to the Government of India that the junior lecturers in these two colleges in the Union Territory of Lakshadweep be paid the same scale of pay as lecturers in the colleges of the Union Territory and he has stated that the additional financial burden would be around thirty thousand per year which could be borne by the Union Territory. He has also stated that there are only 34 lecturers who have to be given this scale attributable to the post of lecturers in degree colleges, the present revised scale being Rs. 2200-4000 w.e.f. 1.1.1986. In view of these facts, we do not deem it proper to interfere with the scale of Rs. 400-800 as being payable to these junior lecturers w.e.f. 15.7.1972 and Rs. 700-1300 w.e.f. 1.1.1973 and Rs. 2200-4000 w.e.f. 1.1.1986. The said pay scale will be applicable to these junior lecturers now designated as lecturers from their respective dates of appointment in the respective junior colleges in the Union Territory of Lakshadweep. The Civil Appeal is dismissed.

- F In view of our decision in the Civil Appeal, the consequence must necessarily be that the 14 petitioners who have approached the Central Administrative Tribunal in O.A. No. K-274/87 must also be treated likewise as the writ petitioners-respondents in C.A. No. 913 of 1987. Therefore, Civil Appeals arising out of Special leave petition Nos. 648/90 & 6894/94 are also allowed granting the appellant therein the same relief, as to pay scales above-mentioned. Coming to Writ Petition (C) No. 277/94 the six writ petitioners therein are in identical situation and are also entitled to the same treatment as the writ petitioners whose cases have been decided in C.A. No. 913 of 1987. Otherwise, it would be discriminatory. We hold that they are also entitled to the same pay scale of lecturers above referred to.

In the result C.A. No. 913 of 1987 is dismissed. Civil Appeals arising out of Special Leave Petitions No. 648/1990 and 6864/1994 are allowed. Writ Petition No. 277/94 is also allowed in the manner mentioned above. There shall be no order as to costs. We should not be understood as having decided any of the issues of law raised by the learned senior counsel on both sides.

V.K.S.

C.A. No. 913/87 dismissed.
C.A. Nos. 3108 and 3109/97
with W.P. No. 277/94
are also allowed.