State of U.P. Vs D.K. Khare and Others

Court: Allahabad High Court

Date of Decision: July 31, 2006

Acts Referred: Constitution of India, 1950 â€" Article 14

Citation: (2006) 6 AWC 5525

Hon'ble Judges: Ajoy Nath Ray, C.J; Ashok Bhushan, J

Bench: Division Bench

Advocate: Ran Vijay Singh, Y.K. Srivastava and G.C. Upadhyaya and S.C, for the Appellant; Ashok Khare, P.N. Ojha and P.K. Khare, for the Respondent

Final Decision: Allowed

Judgement

Ajoy Nath Ray, C.J. and Ashok Bhushan, J.
This is an appeal from a judgment of an Hon"ble Single Judge which was passed on the 22nd

of November, 2004 on the writ petition of certain Workshop Instructors of the Allahabad College of Engineering and Technology.

2. The claim was that they were working at par with Assistant Lecturers and although the Assistant Lecturers were enjoying a pay scale of 1640-

2900 they had been given only the pay scale of 1400-2600.

3. The State-respondent contested by placing on record that the major difference between these two streams consisted in the difference in their

educational qualifications at the time of their recruitment. They pointed out that the qualification for being selected as an Assistant Lecturer would

require a diploma from an Engineering College with at least 65% marks whereas the educational qualification for Workshop Instructors was a

three years" certificate in the concerned trade from the Government Secondary Technical School.

4. The second distinction pointed out by the State was that the experience needed for Assistant Lecturers was only the one year whereas that for

the Workshop Instructors was three years industrial experience after obtaining the certificate.

5. Thirdly the State claimed that the nature of work performed by these two categories of workers was significantly different, in that the Assistant

Lecturers both deliver lectures and imparted instructions both with regard to theory and practice whereas the Workshop Instructors provided

practical training only to the students.

6. After affidavits were filed and the case was heard out before his Lordship, while delivering judgment his Lordship highlighted two of the three

above distinctions but did not in the set of final reasoning highlight the third aspect of difference in the nature of work also.

7. On the basis of the papers before us and the arguments made before us it seems that it is not very clear whether the Assistant Lecturers were

delivering theoretical training at all. All that is clear is that these Lecturers were delivering training, theory or practice whatever it might be, in the

laboratories whereas the Workshop Assistants were rendering their training in the workshops only. The distinction between a laboratory and a

workshop is certainly there but the appellants submit that this is, in the correct analysis, a difference only, without it being a distinction in the eye of

law.

8. A few facts, which were put forward by the appellants in their favour, must be set out here before the appeal can be disposed of in a proper and

just manner. The first point which they submit in their favour is the long history of pay equality which had existed between these two cadres. The

said Allahabad College was set up sometime in the year 1956, but as noted by his Lordship, through four successive pay commissions the pay

equality was maintained between the two cadres up to the second of June, 1992.

9. On that day the Government order which was issued categorised several Instructors including Workshop Instructors in one group being Group

No. 9 and thereafter categorised the Assistant Lecturers in Group No. 9A.

10. Although the groups were separated on 2.6.1992 the pay mentioned against the Assistant Lecturers was simply incorporated as ""the same as

above"".

11. The appellants submit that thereafter something inexplicable happened overnight and on the 3rd of June, 1992 the impugned Government order

was issued wherein pay hike was given to the Assistant Lecturers and the Assistant Lecturers alone.

12. It is not disputed that earlier representations had been made by the Assistant Lecturers to the Government for treating them in a better category

from the point of view of pay and emoluments. The case of the State Government is that there was a Pay Anomaly Committee in this regard also.

However, the State did not think it necessary to lay down all its cards in this respect before the Court. In the pleadings of the appellants before us

the stand seems to be that they did not so much want the disclosure of the Pay Anomaly Committee report as they do wanted the Court to infer

adversely from the withholding of it on the relevant points against the Government.

13. It is their submission that the Government might have, but clearly has not, made out any positive case that the Pay Anomaly Committee had

positively recommended a higher pay scale for the Assistant Lecturers, or that the mistake being suddenly detected by some efficient Government

official the change was effected overnight and the order of 3.6.1992 was issued for the purpose of bringing the pay at par with the Committee

reports.

14. This could have been the Government case, and the matter would have been much easier for us had it been so, but we most pointedly repeat

that this is not the Government case at all.

15. The State Government had been asked to consider the question of the pay difference by an earlier order of Court and they did furnish their

opinion and order on the 30th of March, 1995 maintaining the pay difference. In that order the difference in educational qualifications at the entry

point is not highlighted. The alleged difference in the imparting of theoretical cum practical as opposed to only the practical training was not

highlighted. All that was said was that this distinction is maintained in Central Government institutions and therefore the State Government thought it

fit to follow the same line. This is not very satisfactory as it is not a full and complete reason this way or the other as against the Article 14

challenge, although, centennially it is a favourable factor for the state.

16. It should also been mentioned then on the 8th of July, 1992, i.e., just about a month and a week after the impugned order of pay difference

had been passed by the Government, they constituted a Committee, which became ultimately the Dixit Committee, for the purpose of examining

the grievances which had been raised by the Workshop Instructors.

17. The terms of reference of the Dixit Committee did not include the issue which is before us, i.e., the issue of the pay difference. The reason for

this is easy to understand. The pay difference occurred only about a month before formation of the Dixit Committee. The grievance which was to

be looked into by the Committee was formulated by the government on the basis of representations made by the Workshop Instructors much

earlier; those did not contain any allegations as to pay difference because there was no pay difference between them and the Assistant Lecturers

before 3rd June, 1992.

18. We shall presently state what the Committee"s findings were but before that it should be mentioned that by the Government order of

30.3.1995, which rejected the claim of pay equalisation made by the Workshop Instructors with Assistant Lecturers, they did allow some benefit

to the Workshop Instructors in that they were separated from some 8 or 9 other types of Instructors and given a slightly higher pay. The pay of the

other categories of Instructors was maintained as 1400-2400 but the pay of the Workshop Instructors was made higher than those and they were

granted 1400-2600.

19. The Dixit Committee published a report much earlier than this decision of the Government and within some two months of their formation. The

report is dated 21st September, 1992 and the Committee was headed by Mr. Dixit who was then the Director of Technical Education.

20. The reports of the reference of that Committee were mainly concerned with the promotional avenue of the Workshop Instructors. The report

did, however mention at one place that the pay allocated to the Workshop Instructors did not appear to be just. However it did not go on to

stated that just pay would be an equal pay with the Assistant Lecturers. It could not do so because there was no pay difference issue be for it. The

Committee went on to recommend that there should be a 25% quota for promotion in the group of Workshop Superintendents commanding the

pay of Rs. 2200-4000 and that for filling up this promotional quota, the Workshop Instructors should be as much eligible as the Assistant

Lecturers.

21. the State Government accepted the Committee report and passed the necessary orders in this regard. This is another aspect highlighted by the

writ petitioners stating that essentially different cadres with different types of work cannot have the same promotional avenue to the same cadre

where they would get their promotions.

22. However, it become further clear on queries from the Court that the promotional avenue of Assistant Lecturers is not limited to Workshop

Superintendents: they have a different and separate promotional avenue, which is their second one, to the post of Lecturers.

23. The pay of Lecturers and Workshop Superintendents is however the same, i.e., both are 2200- 4000.

24. However, again the cadre of Workshop Superintendents appears to be a dead end cadre without any further promotional avenue being

offered. The cadre of Lecturers is not so and the immediately next higher post is of a Senior Lecturer with, naturally higher pay. Further

promotional posts are not necessary to consider for our propose.

25. The last chapter of the story is that as early as in 1989 the State Government has declared the posts of Assistant Lecturers as a dying cadre.

The proposal is that as and when Assistant Lecturers vacate their posts, after completion of their tenure of service or earlier determination, three

posts of Assistant Lecturers would be extinguished and in that place two new posts of Lecturers would be created.

26. More further, the Lecturers would deliver the training which the Assistant Lecturers are her on to delivering.

27. The respondent- State has relied on the case of State of U.P. and Anr. v. Raghvendra Singh, a decision of the Supreme Court (decided on

27.4.2002) which is set out at Page 230 of Special Appeal No. 179 of 2005. Since almost all judgments of the Supreme Court are reported either

in this series or that it must be reported by now also, but counsel appeared not to have laid their hands on it. That is a case where the educational

qualification of holding a diploma as apposed to not holding it, was held to be a material justification for the purpose of drawing a materially

different pay. Mr. Khare for the respondents never disputed, that difference in educational qualifications can sometimes be a criterion for creating a

different class of pay structure altogether. He submitted, however that in the instant case, as held by Hon''ble Judge in the first Court, the difference

was minimal and so minimal that such a small distinction could not reasonably support a pay difference and that too created overnight after a long

period of equality of 30 years.

28. He gave us the case of State of Haryana and Another Vs. Ram Chander and Another, and placed paragraphs 7 and 13 from the said

judgment. He said that different qualifications can nonetheless be similar in the eye of law when considering a distinction which is maintainable in an

Article 14 examination. In paragraph 13 of the said judgment a particular phrase has been used which has been reproduced by the Hon''ble Single

Judge and the relevant sentence runs as below:

...but for the difference in educational qualifications both these sets of employees are similarly circumscribed.

29. Highlighting the long history of pay equality enjoyed by these two cadres Mr. Khare relied on the case of State of Bihar and Others Vs. Bihar

State Workshop Superintendents Federation and Others, Om Prakash and Jagrup Singh, He placed paragraph 8 of the said judgment and showed

us from it that the Supreme Court upheld the order of the High Court allowing the respondents revised pay scale in view of the historical

background and the terms and conditions of the service and pay scale remaining applicable to the respondents for a ""considerable long period of

time"".

30. On these bases he invited us to uphold the judgment.

31. In our opinion, when considering pay equality, it is of the utmost importance for the Court to look at all the circumstances of the case. It has

been now laid down in numerous cases, many of which were cited on behalf of the State but which are not necessary to refer to, that the main and

primary distinction to focus one''s attention upon is the work rendered by the two different cadres or groups. That is the basic point since the claim

itself is for equal pay on account of rendering of equal or substantially identical service.

32. But it is not always easy just by looking at the services rendered to determine whether those are equal or substantially identical in the eye of

law. For example, in a college like this, students will face the necessity of both receiving theoretical instructions and practical instructions and it is

not easy to say, just because one teacher is teaching theory and another teacher is teaching practice, the person who is teaching theory should be

given higher pay. Similarly it could not always be said that wherever a teacher is imparting practical instructions, he is to be regarded ordinarily as

rendering a higher category of service than a teacher who is rendering theoretical instructions.

33. When the type of work has been examined, one has to look all of the other attending circumstances including educational qualification, history

of service and promotional avenue. So far as the work of the two categories, is concerned, let us set out here once for all what those are. The

Workshop Instructors rendering instructions in workshops only. The Assistant Lecturers render instructions in laboratories. What laboratories are

and what workshops are, are assumed by us to be well known to the reader; in any event if any instruction is sought in that regard the reader is

referred to other tents and references, as a judgment of a Court of law is not to be confused with a chapter in a science book.

34. In the Dixit Committee report there is a specific mention that theoretical training is rendered in the college by Principals, Heads of Department

and Lecturers. The Assistant Lecturers are not mentioned in that part of the report. Nor is it mentioned that Assistant Lecturers did not impart any

theoretical training. It has been nobody"s case that in a science laboratory no theoretical graining can be imparted. What has been admitted by the

parties is that Assistant Lecturers do not take theory classes in purely theoretical classrooms as do the Lecturers.

35. From the above, it is not possible to make out that there is a (sic)difference in the category of work rendered by these two classes of

employees. At this stage one falls back upon the attendant circumstances.

36. There are four of these which support the case of the State.

37. The first is that the educational qualification of the Assistant Lecturers is from a higher educational institute. They have to obtain a diploma in

engineering which is a higher course of study than obtaining a mere school certificate from a Government Secondary Technical School.

38. Connected with this is the marks cut off at 65% which is compulsory for Assistant Lecturers; there is such cut off in regard to Workshop

Instructors.

39. The second important point is that the Assistant Lecturers have two different promotional avenues one of which is not open to the Workshop

Instructors at all. This avenue leads to promotion as lecturers and thereafter to senior lecturers. Certainly if the stock of the Workshop Instructors

were substantially identical in training and ability to that of the as Assistant Lecturers, a similar promotional avenue would be open to them also. But

this is not so, the Workshop Instructors coming to a deal, end of their career with promotion as Workshop Superintendents.

40. The third point in favour of the Assistant Lecturers is that they are to be replaced by Lecturers. There is no Government order and no proposal

at all to do away with Workshop Instructors in any manner. If Lecturers are to take over the work of Assistant Lecturers, then and in that even the

type of work performed by the Assistant Lecturers appears to be of a higher category than that of the Workshop Instructors.

41. The fourth point in favour of the Assistant Lecturers is that in similar institutions in the Central Government, at least according to the State

authorities, they are treated as deserving a higher category of pay.

42. It is ultimately for those who challenge the difference in pay to show that the difference has been brought about by a wholly insupportible

distinction enforced by the Government without reason or just cause. Even if the balance is seen as hold more or less equally weighted between the

petitioners and the respondent, the clear law is that a Government order will be allowed to stand.

43. That many years had elapsed before 3.6.1992 with pay remaining similar is a factor which points towards a possibility of enforcing pay

equalisation by passing of a court''s order; but that is only one factor. In our opinion the factors more than weigh in favour of the appellants

44. We are of the respectful opinion that his Lordship erred In opining that the difference between the Assistant Lecturers and Workshop

Assistants is a minimal difference. The Court is not to substitute its opinion on a Government order in these matters without the most persuasive of

reasons and facts. These are not present.

45. As such the appeal is allowed. The order under appeal is set- aside. The writ petition is dismissed.