

(1998) 3 UPLBEC 2152

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Writ Petition No. 602 of 1996

Sudhir Kumar
Srivastava

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: July 23, 1998

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 39

Citation: (1998) 3 UPLBEC 2152

Hon'ble Judges: I.M. Quddusi, J

Bench: Single Bench

Advocate: S.K. Mehrotra, for the Appellant; CSC, for the Respondent

Final Decision: Allowed

Judgement

I.M. Quddusi, J.

By means of the present writ petition the petitioner has prayed for quashing of the order dated 1.11.1995 by which his representation has been rejected by the Director, Animal Husbandry, U.P. Lucknow which is contained in Annexure-11 to the writ petition and for issuance of a writ in the nature of mandamus commanding the opposite parties to fix his scale of pay Rs. 1400-2300 or scale higher to that to which the plant mechanics/ operator such as Kapendra Singh are considered to be entitled to by the concerned Government Department and further for a direction for fixing the pay of the petitioner having regard to the length of service with effect from the date of his initial employment and for payment of the difference in the pay scales from the date of his initial employment treating the petitioner to have been fitted in the pay scale of Rs. 515-860 at the time of the initial appointment. It is further prayed that the opposite parties be directed to fix the pay of petitioner keeping in view of the upward revision in pay scale of the persons initially fitted in the pay scale of Rs. 515-860.

2. At the very outset it is to be noticed that vide order dated 30.1.1996 the learned Chief Standing Counsel was granted four weeks" time for filing counter affidavit. Thereafter on 16.8.96 again the learned Standing Counsel prayed for further time to file counter affidavit and he was granted four weeks" time on that date as a last opportunity. But in spite of lapse of even one year from the date of the filing of the writ petition no counter affidavit has been filed. In such circumstances this Court has no option but to decide this writ petition in the absence of the counter affidavit.

3. Heard Sri S.K. Mehrotra learned Counsel for the petitioner and the learned Standing Counsel for the opposite parties.

4. The brief facts of the case are that a scheme was sponsored by the State of U.P. namely Deep Freezing Semen Scheme in the Department of Animal Husbandry, U.P. and in this regard several plants were set up in different districts of U.P. for liquification of Nitrogen. In connection with the above scheme the Government of Uttar Pradesh had sanctioned three posts of liquid nitrogen plant mechanic/operator in the scale of Rs. 470-735 for the said plant In the district of Rae Bareli vide D.O. letter dated 17.9.86. The requisite educational qualification fixed was that the candidate concerned must have qualified three years diploma course in mechanical engineering. The petitioner having been found to be suitable for the post in question as he had qualified three years diploma course from Hewett Polytechnic, Lucknow in the year 1983, was appointed vide order dated 17.2.1987 issued by the Pariyojna Adhikari (Project Officer), Rae Bareli. By the above order the petitioner was appointed as Liquid Nitrogen Plant Mechanic/Operator in the pay scale of Rs. 470-735 on temporary basis alongwith dearness and other allowances. Later on in pursuance of the recommendation of the Pay Commission the pay scale of Rs. 470-735 was revised to the scale of Rs. 1200-2040 by the Government of Uttar Pradesh In the year 1986. Again the pay scale of mechanic /operator appointed in the initial scale of Rs. 515-860 were revised to the pay scale of Rs. 1400-2300.

5. It has been argued by the learned Counsel for the petitioner that there is no distinction between the appointees appointed in the above post in the scale of Rs. 470-735 like the petitioner and those appointed in the initial pay scale of Rs. 515-860. There is a complete equation of educational qualifications and performance of duties of the person posted in either of above referred two scales of pay. He further contended that the discriminatory treatment being given to the petitioner will be highlighted by the fact that one Kapendra Singh who was appointed by order dated 11.8.1989 to work under the Project for the Deep Freezing Semen Scheme at Allahabad as plant mechanic under the Chief Veterinary Officer was given the pay scale of Rs. 1400-2300 although he is designated only as a plant mechanic and is only a diploma holder of three years and he is performing the same duties as are being performed by the petitioner. He is also Junior in service tenure as compared to the petitioner as he was appointed on 11.8.1989 while the petitioner was appointed on 17.2.1987. In this regard the petitioner made a representation which was not decided and thereafter he filed a writ petition (CM. Writ) Petition No. 2878 of 1995 (SS) which was decided vide order dated 17.8.1995 directing the opposite parties

to dispose of the representation of the petitioner within three months from the date of certified copy of this order alongwith the cop of representation is produced before the opposite parties Nos. 1 to 3. I have perused the decision made on the representation of the petitioner vide order dated 11.1.1995 in which the points on which the decision was to be made have been enumerated as under:

(I) the petitioner was working in the scale of Rs. 1200-2040 while in other place the employees of the said post are getting Rs. 1400- 2300.

(II) he has passed three years diploma mechanical engineering course.

(III) he has demanded the scale of pay of Rs. 1400-2300 on the basis of equal work and equal qualification.

The claim of the petitioner was dealt with by Indicating only that three posts of Plant Operator/ Mechanic were sanctioned at DFS, Rai Bareli vide order dated 17.9.86 and the petitioner's appointment was made on the basis of the interview held by the duly constituted Selection Committee and thereafter on the basis of the pay Rationalisation Committee the pay scale of Rs. 470-735 was revised to the scale of Rs. 1200-2040, hence the petitioner cannot get higher pay scale than Rs. 1200-2040. With regard to the third point it has been indicated that the same is not acceptable as the post of Plant Operator /Mechanic is ex cadre post and there is no seniority of the same and the Plant Operator/Mechanic at D.F.S., Rae Bareli is separate post hence the claim of the petitioner for the scale of pay of Rs. 1400-2300 is not made out.

6. The question for consideration before this Court is that when the duties, qualifications, nature of work and service condition of both posts i.e. the Plant Operator/Mechanic at D.F.S., Rae Bareli and at Allahabad and other place is the same while discrimination has been made between all these posts, the claim of the petitioner for the scale of Rs. 1400-2300/- is correct or not.

7. In the matter of [Randhir Singh Vs. Union of India \(UOI\) and Others](#), and [Union of India \(UOI\) and Another Vs. R.G. Kashikar and Another](#), it is held that the principle of equal pay for equal work is applicable when two sets of employees of the similar situation are getting different pay scales. In the Instant matter the nomenclature is the same. i.e. Plant Mechanic/Operator, the educational qualification is also the same, therefore, the mode of recruitment is also the same and their nature of duties are also the same. Both the Plant Mechanic/Operator working in the scale of Rs. 1200-2040 and 1400-2300 are discharging the similar function and duties. In the case of [V. Markendeya and Others Vs. State of Andhra Pradesh and Others](#), the observation made by the Hon"ble Supreme Court is that "the principle of equally pay for equal work is not an abstract one, it is open to the state to prescribe scales of pay for different cadres having regard to nature, duties, responsibilities and educational qualification. Different grades are laid down in service with varying qualifications for entry into particular grade. Higher qualification and

experience based on length of service are valid considerations for prescribing different pay scales for different cadres. Further it is observed that in view of the above discussion we are of the opinion that where two classes of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution and the Court will strike down the discrimination and grant relief to the aggrieved employees."

8. Learned Standing Counsel has submitted that it is duty of the Expert Bodies like the Pay Commission to grant scale of pay to particular class of employees and no one can Judge after better than the expert bodies the entitlement of the employees to get particular scale of pay, their nature, duties, educational qualifications and other considerations.

9. In the instant matter the Pay Commission has already fixed pay scale of Rs. 515-860 which has been granted to the Plant Mechanic/Operator working in the department of Animal Husbandry but unfortunately the other post having similar nature of duties, educational qualifications and Job performance have been denied the same pay scale and have been getting lower scale of pay i.e. Rs. 470-735/- without any valid reason. This discrimination in the pay scale has no nexus with the object. The post in both the pay scales carry the equal burden of work and similar nature of duties as already indicated above. In view of this, I see no ground to discriminate between the petitioner working as Plant Mechanic/ Operator and other persons like Kapendra Singh who was given appointment in the year 1989 i.e. much after the appointment of petitioner, in the scale of Rs. 1400-2300.

10. Considering the aforesaid facts and circumstances of the case the present writ petition is allowed. The order dated 1.11.1995 (Annexure-11 to the writ petition) rejecting the representation of the petitioner by the Director of the Animal Husbandry is set aside. Opposite parties 1 and 2 are directed to grant scale of pay of Rs. 515-850 in place of Rs. 470-735 prior to 1.1.1986 and go on giving the corresponding benefit of the pay scale as and when revised in future on the post of Plant Mechanic/Operator w.e.f. the date of his appointment. There shall be no order as to costs.

11. This order shall be complied with within 90 day from the date of the production of the copy of this order.