

(1983) 04 MP CK 0008

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 650 of 1979

Erstwhile National Fitness Corps
Employees' Association, M. P.
and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision: April 12, 1983

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 39(d)

Citation: (1983) MPLJ 588

Hon'ble Judges: G.L. Oza, J

Bench: Single Bench

Advocate: A.K. Chitale, for the Appellant; K. Seth, For respondent No. 1-5 with K.K. Adhikari, For respondents Nos. 2 and 3, R. K. Verma, Deputy Advocate-General, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, J.

This is a petition filed by the petitioners claiming identical pay scales as those of the State cadre of Physical Training Instructors after the petitioners' services were merged with the State cadre.

The petitioner No. 1 is an Association of employees belonging to Erstwhile National Fitness Corps posted in Madhya Pradesh and is a registered Association under the Societies Registration Act. The petitioner No. 2 is the General Secretary of the said Association. Petitioner No. 3 is the Treasurer and petitioner No. 4 is the Joint Secretary. The petitioners Nos. 5 and 6 are two out of many members of the said Association who, at present, are posted at Government Nutan Subhash Higher

Secondary School, South T. T. Nagar, Bhopal; Maharajbada Higher Secondary School, Ujjain and other institutions. This petition is filed in a representative capacity and it is alleged that the National Fitness Corps (N. F. C.) was a successor organization of the National Discipline Scheme (N. D. S.) which was originally created in the Ministry of Rehabilitation at the instance of late General J. K. Bhonsie in the year 1954 as a programme for instilling discipline and imparting training in mass drill among the younger generation in the refugee camps and colonies. The scheme was later transferred to the Ministry of Education in 1958 and enlarged to cover a number of High Schools. The scheme was introduced at the school stage to introduce an integrated programme to give our educational system a graduated scheme of character development for a democratic way of life which could be woven into the fabric of educational system. This integrated programme at the school stage was to replace several programmes like Physical Training, the Auxiliary Cadet Corps and the National Discipline Scheme and in pursuance of the recommendations of a Committee headed by Dr. Kunzru, an integrated programme known as National Fitness Corps was evolved.

It is alleged by the petitioners that this integrated programme was approved for adoption in Schools in a meeting of the State Education Secretaries and the State Directors of Public Instruction held in February, 1965. It was also decided that as the N. D. S. Instructors were to function in the Schools under the administrative control of the State Governments, they should be transferred to the States and merged with the cadre of Physical Education Teachers of the States. The question of transfer of these Instructors was discussed in a further meeting of the State Education Secretaries and State Directors of Public Instruction in April, 1965 at which it was agreed that the transfer should be effected on the condition that the State Governments were to be re-imbursed in full the pay and allowances of these Instructors during the Fourth Plan period (i. e. till 1970-71 according to the then current plan period pattern).

It is also alleged by the petitioners that the terms and conditions of transfer drawn up by the Government of India envisaged that the existing salaries and the Central scales of pay should be protected after the transfer of the Instructors to the States. This was not acceptable to the States as according to them it was not possible to give Central scales of pay to these Instructors and ultimately, the Government of India, it is alleged, proposed revised terms making the following offer : -

(i) If an Instructor is not prepared to accept service under the State authorities, he may get the terminal benefits as admissible under the revised pay rules, and his services may be terminated.

OR

(ii) An Instructor may accept employment under the authorities in the State including local bodies or voluntary organisations concerned, on the scale of pay

prescribed there. The Government of India would then either pay terminal benefits as admissible under the revised pay rules on termination of his services with the Government of India or the Government of India may compensate the Instructor for a period of 5 years for the difference between his pay as fixed in a State and the pay being presently drawn by him; the Instructor may be allowed to exercise his option between the two benefits.

It is alleged that in order to resolve the controversy, the Central Government decided in November, 1969 to meet the full expenditure on pay and allowances and suggested to the State Governments the following conditions:-

- (a) The States should create the requisite number of vacancies and take over these Instructors in these vacancies; those sent to private schools being treated as on deputation from the State Government.
- (b) The service rendered under the Central Government should be counted for calculating the increment in the State scales of pay; and
- (c) Any shortfall in the pay and allowances drawn by any Instructor in the State scale of pay has as compared to the pay and allowance last drawn by him under the Central Government, was to be paid as personal pay during the Fourth Plan period.

As these conditions could not be implemented, they were again modified by the Central Government as under:-

- (a) to meet in full the expenditure on the pay and allowances of these Instructors till the 6th Finance Commission makes its award; and
- (b) to recommend to the 6th Finance Commission that the expenditure on pay and allowance of these staff should be treated as the committed expenditure of the States while assessing the future financial requirements of the States.
- (c) It has also been decided by the Government of India that if continued payment of salary and allowances of these Instructors cannot be assured in the above manner, the Central Government will bear direct responsibility for the same until their retirement.

It is alleged by the petitioners that in pursuance of these orders which were passed by the Central Government on 4-4-1972, the Government of Madhya Pradesh passed an order dated 18-1-1973 by which it agreed to take over the administrative control of the N. D. S. Instructors. By this order, the State Government also created 362 supernumerary posts of Instructors and 12 supernumerary posts of Supervisors for the N. D. S. Instructors/Supervisors and fixed them in their existing pay scales and other related matters.

It is alleged that these orders of 4-4-1972 of the Central Government were challenged in various High Courts and the Madhya Pradesh High Court at Jabalpur by its Judgment dated 1-3-1974 quashed the orders dated 4-4-1972 and it is alleged

that ultimately in November, 1975, the Central Government formulated yet another scheme for transfers of N. D. S. Instructors to the State Governments in the form of final decision to all the State Governments. This order of the Central Government dated 20-11-1975 has been annexed with the petition and it is alleged that this order provided that "the services of those Instructors who do not join the State Services latest by October, 1976 for any reason whatsoever, may be terminated by giving three months" notice. The notice for this purpose would be given on 1-8-1976." It is alleged that the Government of Madhya Pradesh accepted this decision of the Central Government and in pursuance thereof issued letters of appointments to all the former N. D. S. Instructors including the petitioners in cyclo-styled form which has been annexed with the petition. It is also alleged that before the appointment letters were issued in the standard form, all the N. D. S. Instructors were called upon to sign declaration forms and it is alleged by the petitioners that these declaration forms are illegal.

The appointment letters issued to the N. D. S. Instructors clearly show that they have been absorbed in the cadre of Physical Education Teachers. It is alleged by the petitioners that the pay scales of Physical Education Teachers depending on their qualifications were two in existence in the State; (i) Rs. 220-375 for those who held a certificate in Physical Education, and (ii) Rs. 280-480 and Rs. 350-600 for those who held a Diploma or Bachelor's Degree in Physical Education. It is alleged by the petitioners that the State Government has its Physical Education Training School at Shivpuri where the above mentioned Certificate, Diploma and Degree courses are conducted.

It is contended by the petitioners that so far as former N. D. S. Instructors are concerned the parity of their qualifications with that of the State Physical Education Teachers was recognised as early as in 1968 by both, the Central and the State Governments. The principles formulated by the Central Government with prior agreement of the State Governments for the parity were laid down and these principles were communicated by the Government of India to the various State Governments in a Circular letter, dated 2-11-1968 which provided: -

(1) That all the N. D. S. Instructors who are graduates and have received N. D. S. Training followed by re-orientation training prescribed for the purpose under the National Fitness Corps programme by the Central Government should be treated equivalent to the post graduate diploma holders in Physical Education for purpose of their appointment as teachers for the N. F. C. programme in schools and also for the Supervisory jobs in the field of Physical Education in so far as they relate to schools.

(2) That all those N. D. S. Instructors who have passed Matriculation or Higher Secondary Examination and have received N. D. S. Training followed by the prescribed re-orientation training under the N. D. S. Programme should be treated at par with the post matriculate certificate holders in Physical Education; and

(3) That only those N. D. S. Instructors, Graduates as well as under Graduates, who have put in at least three years of service will be entitled to claim the parity referred to above

It is also contended that the State Government laid down the principles of parity in their notification dated 26-4-1968, a copy of which has been annexed by the petitioners and it is also alleged that the State Government decided to recognise the diploma or certificate in Physical Education awarded by the Central Training Institute of the N.F.C. Directorate at Barwaha (Madhya Pradesh) and Sariska (Rajasthan) as equivalent to the diploma or certificate awarded by the State T. T. College of Physical Education, Shivpuri for purposes of recruitment to the post of Physical Education Teachers/Physical Instructors in the Schools/Colleges under the State Government. It is alleged that N. D. S. Instructors, without exception successfully undergone training in the aforesaid two institutes at Sariska or Barwaha and had obtained requisite certificate or diploma. A copy of the notification of State Government also has been attached by the petitioners. It is, therefore, alleged that in the State, there is only one cadre of Physical Education Teachers known as the State Physical Education Teachers' cadre and it is divided into 3 grades of pay scales depending on the qualifications of the teacher concerned.

It is also contended that the former N. D. S. Instructors were absorbed in the State service. But it is contended that while fixing the pay scales of the former N. D. S. Instructors, the State Government has failed to give effect to the parity in qualification which it had recognised and has not given to pay scales to the N. D. S. Instructors as is provided for the State Physical Instructors under the relevant rules. It is contended that most of the N. D. S. Instructors have been put in a special grade of Rs. 195-330 whereas the grades available to the Physical Instructors in the State services are Rs. 220-375; Rs. 280-480 and Rs. 350-600. It is, therefore, contended by the petitioners that in so doing the State has gone back on the principle of parity accepted by it and also on the principles on which the N. D. S. Instructors were taken in the State service. It was, therefore, contended on behalf of the petitioners that a direction be issued to the State Government to put the petitioners (N. D. S. Instructors) in the grades available to the Physical Instructors of the State services in accordance with their qualifications.

The learned counsel for the petitioners further contended that he is not pressing the reliefs as claimed in paragraph 27 (A) (i) and 27 (A) (ii) against the Central Government but is only seeking a direction against the State Government to give the pay scale on the basis of the parity as agreed by the State Government and put the N. D. S. Instructors in accordance with their qualifications in the pay scales available to the cadre of State Physical Instructors from the date of their appointment in the State cadre.

In the return filed by the State and in the contentions advanced by the learned Deputy Advocate General, most of the facts are not in dispute. The main justification

showed for having given a special grade to the N. D. S. Instructors on their absorption in the State services is said to be a declaration which they have signed before their appointments and it was, therefore, contended that as they had agreed to accept the pay scales in the declarations given by them, it is not open to them now to contend that they are entitled to the pay scale available to the State services. Whereas, the learned counsel appearing for the petitioners contended that apart from the acceptance of the parity by the State, and having agreed to absorb these petitioners, it could not be contended that as they, in the peculiar circumstances, signed some declaration they are not entitled to the same pay scale as is made available to the persons of the State cadre. It was also contended that it is not in dispute that a Physical Instructor, after merger of the Central N. D. S. Instructors into the State service, does the same work and there is no difference of work allotted to a former N. D. S. Instructor now acting as a Physical Instructor in the State or a Physical Instructor who had originally come from the State cadre and this according to the learned counsel is contrary to the directive principles of State policy, under Article 39(d) and, therefore, amounts to discrimination as contemplated under Articles 14 and 16. It was, therefore, contended that as laid down by their Lordships of the Supreme Court in *Randhir Singh v. Union of India* A I R 1982 SC 87, this could not be justified. Reliance was also placed on a decision of this Court in *T. G. M. Pillai and others v. Union of India* M. P. No. 693 of 1980 decided on 30th June 1982.

It was also contended on behalf of the petitioners that seniority for purposes of retirement benefits has been confirmed by the State by adding the services rendered under the Central Government but in fairness, the State Government also should give the original seniority to all these petitioners after adding their service under the Central Government.

As it is dear, there is not much dispute. The only dispute is that after the absorption of the petitioners (former N. D. S. Instructors under the Central Government) in the State services, in spite of the fact that parity for qualifications was agreed still all these petitioners (Former N. D. S. Instructors) have not been absorbed in the State cadre on the pay scales available to the persons of the State cadre but they have been absorbed in a special by scale which is admittedly lower than the pay-scale available to the persons (Physical Instructors of the State cadre). It is also not in dispute that the work the former N. D. S. Instructor (now the Physical Instructor) does is just the same as is done by the Physical Instructor who originally came from the State cadre. It is, therefore, dear that for the same work, the petitioners who are former N. D. S. Instructors are paid less than Physical Instructors who have been drawn from the State cadre and this, it could not be doubted, runs contrary to the provisions contained in Article 39 (d) of the Constitution. Article 39(d) reads :-

39 (d) that there is equal pay for equal work for both men and women.

And as to whether this could amount to discrimination has been dearly laid down in *Randhir Singh v. Union of India* (supra). In this decision it was held-

Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle "Equal pay for Equal work" is deducible from those Articles and may be properly applied . to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

It is, therefore, dear that giving of this lower pay scale to the petitioners dearly amounts to an infringement of Articles 14 and 16.

Learned Deputy Advocate General placed reliance on the declacations given by these persons at the time of their appointments. But it is plain that an agreement or acceptance of conditions in deprivation of fundamental rights available to the petitioners could not be enforced and, therefore, it could not be said that what the petitioners are entitled to in view of their right under the Constitution can be denied to them merely because, placed in a peculiar situation they have agreed to accept lower pay scale. The principles embodied in Article 39(d) have been discussed in detail by their Lordships in this judgment and it, therefore, could not be doubted that the pay scales given to the petitioners on the basis of their own declarations could not be maintained in view of what has been discussed above.

As regards seniority, it is not in dispute that the Government has agreed to consider their services rendered under the Central Government for some purpose and it could not be contended that there is any statutory right which could be enforced by direction that they shall be entitled to consideration of their services under the Central Government for all purposes of seniority and, therefore, it could only be said that the Government in fairness to the petitioners shall consider the case of seniority also.

The petition is, therefore, allowed and it is directed that the petitioners (former N. D. S. Instructors) shall be placed in the pay scales on the basis of their educational qualifications, on the basis of the agreed parity formula from the date of their appointments and their cases for purposes of seniority on the basis of their services under the Central Government shall be considered fairly and sympathetically. In the circumstances of the case, parties are directed to bear their own costs. The security amount deposited by the petitioners shall be refunded to the petitioners.