
Before Jawahar Lal Gupta & V.M. Jain, JJ

ANU LUMBA—*Petitioner*

versus

UNION OF INDIA & OTHERS—*Respondents*

C.W.P. No. 11275 of 1998

16th March, 2001

Constitution of India, 1950—Art. 226—Respondents paying only Rs. 2400.00 per month to an Assistant Computer Instructor holding Post—graduate Degree of M.A. & diploma in Computer Programming—Persons with much lesser qualifications than those of the petitioner drawing salary at a much higher rate—Violation of principle of 'Equal pay for equal work'—Action of the respondents in paying wages at such a lower rate not fair—Petitioner working on the post for the last 9 years—Post continues to exist—Writ allowed directing the respondents to consider the case of the petitioner for regularisation & pay emoluments not below Rs. 5500 P.M.

Held, that persons with much lesser qualifications than those of the petitioner are getting salary at a much higher rate. The petitioner who has not only a Post graduate Degree of M.A. but has also done Diploma in computer Programming is still being paid at the rate of Rs. 2400 per month. This is even less than the prevailing wages for an unskilled labourer. The action of the respondents in paying such low wages to the petitioner is totally arbitrary and unfair. The principle of equal pay for equal work has been violated. The petitioner has not been treated at par with the other Institutions.

(Para 6)

Further held, that the petitioner has been continuously working on the post for the last about 9 years. Her work and conduct have been found to be satisfactory. There is no complaint against her. Nothing has been brought on the record to point out that her performance is not up to the mark. In this situation, the respondents cannot take the plea that the petitioner is not qualified. Still further, no reference has been made to any rule or instructions to suggest that the petitioner does not fulfil the qualifications for the post of Instructor.

(Para 8)

Further held, that the post has continued to exist for a long time. The scheme itself was promulgated in the year 1979. The petitioner has been in position since the year 1992. The post is still needed. In this situation, we consider it appropriate to direct that the petitioner's case for regularisation on the post held by her shall be considered within three months. The respondents shall fix an appropriate scale of pay and place her in that scale. The emoluments shall not be below Rs. 5500 P.M.

(Para 11)

Ms. Raminder Gadhoke, *Advocate for the Petitioner.*

V.K. Sharma, *Advocate for Respondent No. 1.*

Ravi Kapoor, *Advocate for Respondent No. 2.*

JUDGMENT

Jawahar Lal Gupta, J (O)

(1) The petitioner is working as an Assistant Computer Instructor at the Mehar Chand Polytechnic, Jalandhar City. She possesses the qualifications of M.A. in Hindi and Postgraduate Diploma in Computer Programming. She was initially appointed on 5th August, 1992. Thereafter, she has been granted yearly extensions. After having worked for more than six years, the petitioner had approached this court through the present writ petition with a two-fold grievance. Firstly, she alleges that the salary as paid by the respondents viz. Rs. 2000 per month which has since been revised in pursuance to the Court's directions and raised to Rs. 2400 per month is grossly inadequate and totally arbitrary. Secondly, the petitioner alleges that there is enough work-load for a regular post of Computer Instructor. Despite that, she is being kept on yearly basis. No increment is granted. No avenue of promotion is provided. This is so despite the fact that the scheme under which she had been appointed has been in existence since the year 1979.

(2) A written statement has been filed on behalf of the Union of India. It has been averred that on the recommendation of the All India Council for Technical Education in the year 1978, a scheme for Community Polytechnics was introduced. A few selected Polytechnics were asked to act as focal points to promote "the transfer of technology to the rural community..." It was also provided that "these Polytechnics should be designated as Community Polytechnics and given adequate support to carry out their task". Under this scheme, 35 Polytechnics

were selected and charged with the responsibility of "accelerating the rural development on scientific lines". Under the scheme, "the financial assistance for the activities pertaining to the training, service technology transfer especially of the service centre, provisions of the technical and sports services, a recurring grant of 7 lacs per year was considered as adequate". Out of this amount, not more than 2/3rd is to be spent on the salary of the employees. Since the scheme is for "all practical purposes a project....the employees cannot be given the regular pay scales nor appointed on regular basis, especially in view of the financial constraints". The petitioner having accepted the offer, she is not entitled to claim anything beyond what has been granted to her.

(3) A separate reply has also been filed by the Additional Director Technical Education, Punjab. It is on similar lines. In the reply filed by Respondent No. 3 viz. the Principal of the Institute, it has been averred that the petitioner has not qualified the Postgraduate Diploma as claimed by her. She has only done one year course from a Private Coaching Centre.

(4) The petitioner has filed an affidavit, dated 18th September, 2000, in which it has been *inter alia* averred that various other Computer Instructor are getting wages of Rs. 5000 or more. Even facility of Contributory Provident Fund is given to them. By way of illustration, the salary bill for the month of September, 1998 in respect of the employees working in the Community Polytechnic, Plahi, district Kapurthala, has been produced as Annexure P. 14. A perusal of this document shows that an Instructor in Carpentry whose academic qualifications are far lower than those of a Computer Instructor is getting monthly wages of Rs. 6049. A driver who may not be educated beyond matriculation is getting monthly wages of Rs. 6743. They have also been afforded the other benefits like Provident Fund and medical aid etc. In the reply filed on behalf of the Union of India, it has been suggested that the employees who are getting higher wages have not been recruited under the scheme.

(5) Counsel for the parties have been heard.

(6) On a perusal of the pleadings of the parties and the evidence on record, it is clear that persons with much lesser qualifications than those of the petitioner are getting salary at a much higher rate. The petitioner who has not only a Post-graduate degree of M.A. but has also done Diploma in Computer Programming is still being paid at the rate of Rs. 2400 per month. This is even less than the prevailing wages for an unskilled labourer. The action of the respondents in

paying such low wages to the petitioner is totally arbitrary and unfair. The principle of equal pay for equal work has been violated. The petitioner has not been treated at par with the other Institutions.

(7) Mr. Ravi Kapoor, counsel for Respondnet No. 3 has contended that the diploma which the petitioner possesses is not form a recognised Institution.

(8) This factor should have been taken into considration by the respondents at the time they had selected and appointed the petitioner. It is not disputed that she has been continuously working on this post for the last about 9 years. Her work and conduct have been found to be satisfactory. There is no complaint against her. Nothing has been brought on the record to point out that her performance is not upto the mark. In this situation, the respondents cannot take the plea that the petitioner is not qualified. Still further, no reference has been made to any rule or instructions to suggest that the petitioner does not fulfil the qualifications for the post of Instructor.

(9) Taking all these factors into consideration, we find that the action of the respondents in paying wages to the petitioner at such a lower rate is wholly arbitrary and unfair. A Computer Instructor is being paid salary even less than that being given to an Instructor in Carpentry or in various other trades. No rationale for such differential treatment has been disclosed. Even a driver who holds a much lower status and a Peon who is a class IV employee are getting higher wages than the petitioner. Unfortunately, the Government of India is exploiting the situation and taking an undue advantage of the plight of the citizen.

(10) In view of the admitted position, the Court had directed the respondents to consider the matter and decide it. After prolonged efforts, they had only agreed to increase the wages from Rs.2000 to Rs. 2400 per month. their action is indicative of a totally unreasonable attitude. In such a situation, we cannot be helpless spectators and deny the petitioner her legitimate due. It is true that fixation of pay etc.is normally the prerogative of the employer. But in a case where the employer choose to be unreasonable and stubborn, the court has to intervene. Especially in the exercise of its equitable jursidiction. Thus, we have considered the matter. We feel constrained to direct that the petitioner shall be paid at the minimum rate of Rs. 5500 per month w.e.f. 1st August, 1998. She had approached the court in July, 1998.

(11) This brings us to the second question regarding the

regularisation of her services. Admittedly, the post has continued to exist for a long time. The scheme itself was promulgated in the year 1979. The petitioner has been in position since the year 1992. The post is still needed. In this situation, we consider it appropriate to direct that the petitioner's case for regularisation on the post held by her shall be considered within three months. The respondents shall fix an appropriate scale of pay and place her in that scale. The emoluments shall not be below Rs.5500 per month as mentioned above.

(12) Mr. V.K. Sharma, counsel for the respondent—Union of India points out that the posts are sanctioned under a scheme. Therefore, the benefit of regularisation should not be given. However, on being asked, the counsel has admitted that the number of Community Polytechnics was initially fixed at 35. It has now risen to about 400. This only proves the continuing need for the Community Polytechnics and the personnel to man the posts. In this situation, it is only fair that the respondents create a regular cadre and place them in a regular service.

(13) The writ petition is allowed in the above terms. The petitioner shall also be entitled to her costs which are assessed at Rs. 10,000.

R.N.R.

Before Jawahar Lal Gupta & N.K. Sud, JJ

M/S HINDUSTAN AUTOMOBILES INDUSTRIES..Petitioner

versus

STATE OF HARYANA AND OTHERS..Respondents

C.W.P. No. 10443 of 1999

2nd February, 2001

Land Acquisition Act, 1894— Ss. 4 and 6— Constitution of India, 1950— Art. 226— Petitioner's land sought to be acquired for the purpose of developing an industrial area— Allegations of mala fides against a Minister incharge of Urban Estates in the State of Haryana— Proposal to develop industrial area where the industrial colony existing— Govt. shifting site to the area where the land of the Minister located— Hearing to petitioner after the publication of the notification in the Govt. Gazette— Non-compliance of the provisions of law— Writ allowed, impugned notifications quashed while holding the acquisition not in public interest.