

State of U.P. and Others Vs. A.S.i. (M.) Ram Pratap Mishra and Others

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Court : Allahabad

Decided On : Jul-06-2001

Reported in : 2001(3)AWC2408; (2002)1UPLBEC275

Judge : S.H.A. Raza and ;R.D. Shukla, JJ.

Acts : [Constitution of India](#) - Articles 14, 16 and 39; [Police Act, 1861](#) - Sections 8

Appeal No. : Special Appeal No. 154 of 2000 with 14 other Special Appeals

Appellant : State of U.P. and Others

Respondent : A.S.i. (M.) Ram Pratap Mishra and Others

Advocate for Def. : I.D. Dwivedi, ;S. Dwivedi and ;S.P. Singh, Advs.

Advocate for Pet/Ap. : C.S.C.

Disposition : Appeals decided accordingly

Judgement :

S.H.A. Raza and R.D. Shukla, JJ.

1. The present special appeal has been filed by the State of U. P. against the orders passed by the Hon'ble single Judges in various writ petitions, which were filed by the police personnel who belong to Ministerial Cadre. Hon'ble the single Judges of this Court on all those writ petitions have given them the same benefits

which accrues to the police personnel who belong to the executive cadre.

2. More or less, a similar controversy was raised in Writ Petition No. 6700 of 1986 which was set at rest by one amongst us (Hon'ble S. H. A. Raza. J.) on 23.2.1991 wherein the following operative portion of the orders were passed :

'In view of what has been indicated hereinabove, the writ petition succeeds. A writ in the nature of certiorari is issued quashing the order dated 8.5.1985 contained in Annexure-19 to the writ petition. A writ in the nature of mandamus is issued commanding the opposite parties to grant special work allowance, special pay, fixed house rent allowances, motor subsidy and one month's extra pay to the petitioners who are working in the ministerial cadre of the U. P. Police Force in Intelligence Department at par with the equivalent category of the officers/officials belonging to the Executive cadre working in the Intelligence Department with effect from the date of the order.'

Annexure-19 to the writ petition was the order of the Home Secretary dated 8.5.1985 by means of which he dismissed the representations preferred by the police personnel on the ministerial side in the Intelligence Department as there existed no ground for grant of the aforesaid facilities to them.

In that writ petition, the cue was taken by the Court about the earlier decision of this Court in Writ Petition bearing No. 45 of 1984, which was decided on 19.12.1984 wherein the Division Bench observed :

'Considering the circumstances, it is (sic) desirable and in the public Interest that the Government takes an early decision on the various representations sent by the Directorate of Police. We accordingly, direct the Government by way of writ of mandamus to take a decision thereon at an early date, say within three months from today.'

It is really unfortunate that the Home Secretary passed a cryptic order indicating no reason for rejecting the representations. That order was challenged in the said Writ Petition bearing No. 6700 of 1986. The appeal preferred by the State against the judgment and order passed in Writ Petition bearing No. 6700 of 1986 was

withdrawn by the State Government and the Judgment attained finality.

3. It appears that on 6.9.1986, the Government of Uttar Pradesh issued a Government Order No.7252/VIII-3-24/66 by means of which a new cadre known as Police (Ministerial Rank) was created in the Police Force.

4. Sub-para (5) of para 1 of the said Government order provides that the revised scales of pay mentioned in column 5 of the said Government order would be admissible to those of the then incumbents who agreed in writing to be governed by the Police Act and the Regulations framed thereunder and they would come in the new cadre.

5. In view of the aforesaid reason, the police personnel working on the ministerial side, exercised their option to be known as police officers under Section 2 of the Police Act for their appointment to the ministerial cadre of U. P. Police Force which had been created by means of the Government order mentioned in the foregoing paragraph. Such officers were formerly appointed as members of the U. P. Police Force under the Act No. 5 of 1986 and they were vested with the same powers, functions and privileges of police officers and a certificate of appointment in terms of Section 8 of [Police Act, 1861](#), was issued to them.

6. The police officers belonging to the executive cadre of the Police Force under various Government orders, have been getting the special pay fixed house rent allowances, motor subsidy and one month's extra pay but the same were earlier denied to the police personnel working on the ministerial side. According to the Government orders, all members of Ministerial Staff who opted for the new cadre, would be enrolled under the Police Act and they would be given appropriate police rank who get privileges and functions which other members of the Police Force would be entitled to similar benefits. It was further provided that those who will not opt for the new cadre, would continue to remain in their existing scale of pay and would not be entitled to the benefits admissible to those police officers in the new cadre.

7. On February 9. 1976, another Government order 4907/aath-1-050(5)/74 was issued by the Director General of Police by means of which the new cadre i.e., the

police personnel (I) i.e.. the police personnel working on ministerial side in the Police Department were bifurcated into five categories : (1) Uttar Pradesh Police Headquarter Cadre, (2) Criminal Investigation Cadre, (3) Intelligence Cadre. (4) District Police Cadre and (5) G.R.P.F. Cadre was created.

8. In the Writ Petition bearing No. 6700 of 1986 decided on 23.9.1991, the Court referred to the various orders issued by Sri Qamrul Hasan, the then Deputy Inspector General of Police Headquarter, the letter written by Sri Shreesh Chandra Dixit, the then Inspector General of Police (Intelligence) addressed to Home Secretary Government of U. P. the letter dated 6.1.1979 written by Sri Naresh Kumar Verma, the then Inspector General of Police to the Home Secretary wherein, they submitted that the Ministerial Staff working in the Intelligence Department have been performing the same functions and duties which the police personnel working in the Intelligence Department on the executive side have been performing and they should be entitled to same benefits which are given to the police personnel working in the Intelligence Department on the executive side.

9. The contention of the respondents in a nutshell is that in the matter of discipline, control, maintenance of secrecy, etc., they are governed by the Police Act and the Regulations framed thereunder which are fully applicable to the respondents in all matters. They are treated alike with the executive staff with regard to benefits of funds, amenities, medical treatment, welfare centres and Prantiya Shiksha Sahayak Kosh. When they were asked to opt for their new cadre created by the Government Orders, they were given an assurance which is admitted by the high ranking police officers, that they will enjoy the same benefits which the executive staff working in the Police Department, have been getting but the State Government has not been getting the same benefits to the Ministerial Staff. Such an action on the part of the State Government is barred by principle of promissory estoppel and the legitimate expectations of the respondents cannot be circumvented by the State Government.

10. On behalf of the State, Sri Harsh Vardhan learned standing counsel, submitted that the Ministerial Staff is a Police Department belonging to a different cadre and cannot be treated alike with the executive cadre. The benefits given to the

executive cadre is only for the reason of the fact that they have to discharge onerous duties. They do not enjoy vacations. As soon as any offence is committed whether it is a holiday or not, the police officers rush on the spot. They have to perform several duties and functions like intelligence work where they have to report to the State Government about the happenings. The staff working in Intelligence Department and C.B., C.I.D. is often posted in important functions and meetings, they have to take note of happenings and submit the report to the State Government. Such persons are given one month's extra pay every year. The same benefits, which are given to the executive staff, cannot be given to the Ministerial Staff working in offices of the Dy. S.P., S.P., D.I.G., I.G. and Director General of Police as well as the staff working in Police Radio Station and the Ministerial Staff and the Police Physical Training School, etc. Most of the respondents perform their duties in offices and do not perform burdensome duties.

11. It was further argued by the learned standing counsel that the directions of this Court in Writ Petition bearing No. 45 of 1984 as well as the directions of this Court dated 23.9.199) in Writ Petition No. 6700 of 1986 and the observations of this Court in other cases where one month's extra pay and other benefits were granted to the Ministerial Staff working in Intelligence Department, the same benefit, cannot be made available to the other police personnel performing ministerial duties in various police office.

12. It was urged that although Articles 14 and 16 of the Constitution abhor discrimination but do not rule out reasonable and rational classification. The executive staff as well as the Ministerial Staff in Police Department are two different cadres and hence they do not perform similar duties. Hence the Ministerial Staff cannot be given the same duties, which the executive staff in the Police Department perform. Due to intervention of this Court, it was urged that the benefit was afforded to the Ministerial Staff working in the Intelligence Department but the Ministerial Staff working in other departments who do not perform arduous duties on holidays cannot stake a claim for the same benefit, which has accrued, to the executive staff.

13. The counsel for the respondents submitted that if between two cadres, the same provisions of the Act, Rules and Regulations are applicable, the eligibility qualification, the nature of recruitment and working conditions are similar and they perform similar duties and work during holidays, the State Government cannot deny to the Ministerial Staff the benefits which are given to the executive cadre.

14. The contention of the learned standing counsel that the respondents do not perform similar duties and do not work on holidays is totally incorrect. How it is possible that whenever, during vacations, a Deputy Superintendent of Police, Superintendent of Police, D.I.G., I.G., or the Director General of Police function on holidays, the Ministerial Staff will not be attending the offices and discharge their duties under the orders of high officers. They are duty bound to attend to their duties. Similarly, the officers who are working in G.R.P. and Police Radio Station and Wireless perform their duties under the specific directions of their superiors, even during holidays. Hence, the Ministerial Staff working in the Police Force are entitled for the same benefits.

15. Clause (d) of Article 39 of the [Constitution of India](#) provides that there is an 'equal pay for equal work' of both men and women. Articles 14 and 16 of the Constitution detest inequality and discrimination and whenever there exists inequality or discrimination, Articles 14 and 16 of the Constitution shall be attracted.

16. In *Randhir v. Union of India*, AIR 1982 SC 879, it was observed that though the directives cannot override the Fundamental Rights, but in determining the scope and ambit of the Fundamental Rights, the Court may not entirely ignore the Directive Principles and should adopt the principle of harmonious construction, so as to give effect to both as much as possible.

17. It is thus evident that 'equal pay for equal work' is not a Fundamental Right under the Indian Constitution. It is a constitutional goal which must colour the interpretation of Articles 14 and 16, so as to be elevated to the rank of a Fundamental Right, the denial of which must result in an 'irrational classification'. But there will be no discrimination where, though the functions may be the same, the responsibilities or the quality of work of two employees may be different. The

problem of 'equal pay for equal work' cannot be translated into a mathematical formula and a certain amount of value judgment must be left with the administrative authorities, with which the Court can interfere only if the differentiation is irrational, without any basis or mala fide. No question of denial of the right to equal pay arises where there is no other employment comparable to that of a person, or where differentiation between the two classes of employees is justified by the circumstances, such as, a change in their duties and functions.

18. In view of the aforesaid reason, we are of the view that the case of the respondents first should be inquired into, investigated and considered by the administrative authorities.

19. Considering the entire controversy which has been raised before this Court, we are of the view that all those aspects of the matter which have been mentioned in the foregoing paragraphs, should be examined by the highest authorities of the Police Force afresh taking into account the provisions of the Police Act and Regulations framed thereunder, the eligibility qualification, the nature of recruitment, the promises or the assurances which were given at the time of the options to the new cadre, the views expressed by the highest police officers which have been noted down in the judgments passed in Writ Petition No. 6700 of 1986 as well as the working conditions of the Ministerial Staff and thereafter to submit a report to the State Government, who after examining the same, may take an appropriate decision so the grievance of the Ministerial Staff working in various police offices, may be considered and remedied.

20. In view of what we have stated hereinabove, we direct the Principal Secretary, Home Department, Government of U. P., to appoint a Committee consisting of 3 or 5 police personnel not below the rank of Director General or Inspector General of Police who should examine all the aspects as indicated hereinabove, within one month and to submit a report to the State Government within three months from the date of the constitution of the Committee for which the State Government will pass appropriate orders within one month from the receipt of the said report.

21. All the special appeals are decided accordingly.

