Binoy Kumar Mukerjee Vs. Union of India

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Court : Delhi

Decided On : Oct-27-1972

Reported in : ILR1973Delhi427

Judge : S.N. Andley and; T.P.S. Chawla, JJ.

Acts : Constitution of India - Article 14

Appeal No. : Letter Patent Appeal No. 94 of 1970

Appellant : Binoy Kumar Mukerjee

Respondent : Union of India

Advocate for Pet/Ap. : Urmila Kapoor,; Kamlesh Bansal,; R.K. Mehra and;

Judgement :

T.P.S. Chawla, J.

(1) In or about 1959 a number of presons were appointed as surveyors in the All India Soil and Land Use Survey Scheme, under the Ministry of Food and Agriculture, which we will call 'the Scheme'. The appellant was one such, and was appointed on 2nd November 1959. The scale of pay of these surveyors was Rs. 60-150. On 3rd February 1960, they sent a representation to the concerned authority requesting that as surveyors in other organisations of the Government of India were given a pay scale of Rs. 100-185 they ought to receive the same, as

their qualifications and duties were similar to those of the other surveyors. The higher scale was apparently paid to surveyors in the Oil and Natural Gas Commission, Geological Survey of India, Indian Bureau of Mines, Atomic Energy Commission, Ministry of Steel, Mines and Fuel and the Exploratory Tubewells Organisation. By a letter dated 30th June 1960, surveyors in the Scheme were informed that the scales of pay of Central Government Employees were under revision by the Second Pay Commission, and no further action could be taken until the revised scales of pay were announced by the Government,

(2) The President gave effect to the recommendations of the Second Pay Commission by promulgating the Central Civil Services (Revised Pay) Rules 1960 on 2nd August 1960. Rule l(ii) gave retrospective effect to the revised scales of pay, specified in the schedule to the Rules, as from 1st July 1959. Certain amendments were made in the schedule by a notification published on 26th October 1960. As a result of the Revised Pay Rules, as amended, the scale of pay of surveyors employed in the Scheme was raised to Rs. 110-200, whereas that of surveyors in the other organisations was raised to Rs. 150- 240. This difference existed because their respective previous scales were different, it seems, that in implementing the report of the Second Pay Commission, surveyors in the Scheme were treated on par with draftsmen and tracers, and not surveyors. Thus, notwithstanding the fact that their pay scale was raised by the Rules, the grievance of surveyors in the Scheme that they were not treated on par with surveyors in other governmental organisations survived.

(3) So, they continued to make representations, over a number of years, seeking redress. Their perseverance ultimately bore fruit. By a letter dated 15th June 1966 they were informed that the President had sanctioned the scale of Rs. 150-240 for them, to take effect from 1st July 1966, thus bringing them on par with other surveyors. But, they were still not entirely content. Having got thus far, they claimed that this revision in their scale of pay ought to have been made retrospective to take effect from 1st July 1959. To this end, a number of further representations followed which were ultimately rejected by the President; and by a letter dated 22nd August 1967, surveyors in the Scheme were informed accordingly. The appellant then filed a petition in this court seeking appropriate

orders, in the nature of certiorari and mandamus, as would secure that the revision in his scale of pay made by the order of 15th June 1966 would have retrospective effect from 1st July 1959. A learned Single Judge of this Court dismissed that petition, and the appellant has appealed.

(4) The case of the appellant is simple. He contends, that the qualifications, duties and responsibilities of surveyors in the Scheme were at all times the same or similar to those or surveyors in the other governmental organisations, and so their pay scales ought to have been the same from the beginning. The quality, he maintains, was recognised by the order of 15th June 1966, but it left a residue of discrimination because the revised pay scale of Rs. 150-240 was made effective for surveyors in the Scheme from 1st July 1966 and not 1st July 1959, the date from which surveyors in the other organisations were given that scale. This chronological discrimination, he urges, violates his rights under Articles 14 and 16 of the Constitution.

(5) From the affidavit filed by the respondents, it transpires that until 3rd October 1961 no qualifications were formally notified for the post of surveyor in the Scheme. The respondents say, that before that date recruitment to such posts was made on the basis of a 'certificate in Overseers Course or Training in Surveying'. Undoubtedly, the qualifications required for the post of surveyor in the other organisations were much more. Consequently before 3rd October 1961, the qualifications were not the same. On that date a notification was issued prescribing the qualifications for the post of surveyor in the Scheme. These, the respondents admit, were similar to those for the post of surveyor in the other organisations. That is one of the reasons, they say, why in 1966 surveyors in the Scheme were given the same pay scale as the other surveyors. Counsel for the appellant was unable to controvert that, before 3rd October 1961, the qualifications for a surveyor in the Scheme were not the same as those for a surveyor in the other organisations. We were told, in the course of the argument, that the appellant would be satisfied if the revised scale was made operative from 3rd October 1961, after which date the qualifications were the same.

(6) Implicit in the argument for the appellant are two premises: (a) that equal work must receive equal pay and (b) that surveyors in the Scheme belonged to the same class as the surveyors in the other organisations and were entitled to equal treatment. Neither of them is tenable. The suggestion that Article 14 of the Constitution requires that equal work must receive equal pay was given, shot shrift in Kishori Mohanlal Bakshi v. Union of India, : [1962]44ITR532(SC) , and the Supreme Court said:

'IFthis contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Article 14.'

(7) This view was reiterated in The State of Punjab v. Joginder Singh, : AIR 1963 SC913 . An absolute illustration of the rejection of this doctrine is found in Unikat Sankunni Menon v. The State of Rajasthan, : (1968)IILLJ129SC . In that case, under the relevant rules, persons appointed as Deputy Secretaries from one service were allowed Special pay, whilst those appointed to the same post from another service were not. Rejecting the plea of discrimination. the Supreme Court said:

'IT is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No. such equality is required either by Article 14 or Article 16 of the Constitution.'

(8) As regards the second premise, it is important to note that the appellant does not suggest that there has been any discrimination between him and other surveyors in the Scheme inter se. The discrimination of which he complains is between the class of surveyors in the Scheme, to which he belongs, and the classes of surveyors in the other organisations. It is now well settled that as between the members of such separate and independent classes there need not be equality, as Articles 14 and 16 of the Constitution do not require the same. In All India Station Masters' and Assistant Station Masters' Association, Delhi and others v. General Manager, Central Railway and others, : [1960]2SCR311 , the

Supreme Court explained, that, for its activities the State has many departments, and men are employed in each such department in many different classes. Each such class is to be considered a separate and independent entity. The Court then said:

'DOESthe concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State In our opinion, the answer must be in the negative.'

and, further:

'THEREis, in our opinion, no escape from the conclusion that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes.'

(9) The same principles were repeated in The State of Punjab v. Joginder Singh, : AIR 1963 SC913 and Sham Sunder v. Union of India and others, : (1970)ILLJ6SC . These cases show that the equality which the appellant claims is not warranted by law Cases on which counsel for the appellant relied are clearly distinguishable. In Union of India and another v. Shanti Swarup (1969) 2 L.I.C. 1265 the scale of pay of Number Takers employed by the Railways was increased by the Railway Services (Revision of Pay) Rules 1947. All Number Takers were given the benefit of the increase, except only (for no apparent reason) those employed in Delhi Division. A Division Bench of this Court held that Article 14 of the Constitution was violated. There, the aggrieved Number Takers of Delhi Division belonged to the same service, and, thereforee, the same class as the others, and so were entitled to equality. In D. Murthumjayam and others v. The Union of India represented by the Secretary, Railway Ministry, New Delhi and others (1969) 1 An. W.R. 333 there was a glaring anomaly. A scheme called 'The New Deal' worked in such a curious way that Station Masters, forming a superior cadre, received less pay than persons with equal length of service in the inferior cadre of commercial clerks; and it also prejudiced their opportunities for promotion. Nothing of that kind is established by the appellant.

(10) Since the premises on which it is founded are unsound, the appellants contention as to unconstitutional discrimination cannot be sustained. Bereft of this ground, the case of the appellant becomes legally rather awkward. It was not disputed by counsel for the appellant that, aside from violation of Constitutional provisions, the appellant had no legal right to obtain a revision of his scale of pay. Although there were presumably good other reasons for making a revision by the order of 15th June 1966, there was no legal compulsion to do so. That, in law, was mere executive munificence. The appellant now demands the munificence be made retrospective. He claims it as of right. We do not think that legal rights can be made to sprout from what was originally only munificence. Possibly. to meet this difficulty the appellant moved an application C.M. 737 of 1970 for leave to urge that the entry in the Schedule to the Revised Pay Rules 1960 fixing his scale of pay was also vocative of the Constitution. When it was realised that even if that point were to succeed, the appellant would be worse off than he is at present, the plea was abandoned.

(11) We agree with the conclusions of the learned Single Judge and dismiss the appeal. In the circumstances, we leave the parties to bear their own costs.