

STATE OF MYSORE
v.
B. BASAVALINGAPPA

DECEMBER 17, 1986

[G.L. OZA AND K.N. SINGH, JJ.]

Civil Service.

Workshop Mechanic and Workshop Instructor—Basis of recruitment—Diploma holder and certificate holder both eligible—Placed in same pay scale—Revision of pay scales—Different pay scales to Diploma holders and Certificate holders given—Whether permissible.

The respondent was appointed as a Workshop Mechanic. He was promoted to the post of Workshop Instructor on 7.8.1959 in the pay scale of Rs.100-120. The pay scales were revised w.e.f. 1.1.1961. Diploma holders were given the pay scale of Rs.150-320, and Certificate holders Rs.150-250 in the cadre of Workshop Instructor. The respondent, a Certificate holder, was given the pay scale of Rs.150-250. The pay scales were again revised in 1964 and Workshop Instructors with second class Diploma or equivalent qualifications with 10 years experience were given the pay scale of Rs.260-500, but the respondent did not get this scale in spite of repeated representations made to the State Government.

The respondent filed a Writ Petition alleging discrimination. The High Court allowed the petition holding: (1) that for recruitment to the post of Workshop Instructor no distinction is made between the holders of a Certificate and holders of a Diploma, (2) that at the time when the respondent was recruited there was no difference in the pay scales prescribed for holders of Diploma and holders of Certificate, and the basis for recruitment was that Diploma holder and Certificate holder both were entitled to be appointed to the same post in the same pay scale, and (3) that by subsequent revision of pay scale different pay scales could not be enforced for the same post merely on the basis of a holder of a Certificate or a Diploma because as an Instructor the person will perform the same duties and will do the same work in spite of the fact that he may be a Certificate holder or a Diploma holder, and directed that the respondent be placed in the pay scale not lower than that of the Diploma holders.

A In appeal to this Court on behalf of the Appellant-State it was contended: (1) that the different pay scales on the basis of difference in educational qualifications could be justified and will amount to reasonable classification and will not be hit by Article 14 of the Constitution, (2) that a Diploma is a higher qualification than a Certificate and (3) that the view taken by the High Court is not correct.

B Dismissing the Appeal,

C HELD: 1. Neither there is any curriculum on record nor any other material to draw the inference that Diploma is a higher qualification than a Certificate. At the time when respondent was recruited there was only one cadre and a Diploma holder or a Certificate holder both were entitled to be recruited as an Instructor on the same pay scale. This circumstance indicates that the two were considered to be alike. [582E-F]

D 2. There is no material on record to indicate that when the pay scales were revised and subsequently they were further revised it was done on the basis of some material indicating that the Diploma became a better qualification than the Certificate holder. It was because of this the High Court did not go into the general question as to whether on the basis of educational qualifications different pay scales can or could not be prescribed and in the absence of any material it will not be possible E for this Court to go into that question. [582F-H]

3. On the facts of the present case it could not be said that the High Court committed any error. [583A-B]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 110 of 1974.

From the Judgment and Order dated 6.3.1973 of the Mysore High Court in Writ Petition No. 2213 of 1970.

G R.B. Datar, Swaraj Kaushal, K.M. Muzamnil and N. Nettar for the Appellant.

S.S. Khanduja and Y.P. Dhingra for the Respondent.

The Judgment of the Court was delivered by

H OZA, J. This appeal arises out of Special Leave granted by this

Court against the Judgment of the High Court in Writ Petition No. 2213 of 1970 decided on 6.3.1973.

The facts necessary for the disposal of this appeal are that the respondent was appointed as a Workshop Mechanic in B.D.T. College of Engineering, Devangere in the year 1953. He was promoted to the post of Workshop Instructor by order dated 7.8.1959 in the pay scale of Rs.100-200. In 1961 the pay scales were revised with effect from 1.1.1961. Diploma holders were given the pay scale of Rs.150-320 and Certificate holders Rs.150-250 in the cadre of Workshop Instructor. The respondent who was a Certificate holder and not a Diploma holder was accordingly given the pay scale of Rs.150-250.

By a notification dated 5.5.1964 the Government of Mysore made rules known as Mysore Education Department (Technical Education Department) (Recruitment) Rules and it is alleged that at about the same time the Government of India after accepting recommendations of the All India Council for Technical Education suggested revised pay scales of pay of Workshop Instructors and in these recommendations also the Workshop Instructors with second class Diploma or equivalent qualifications with 10 years experience were given the pay scales of Rs.260-500 and it is alleged that as the respondent was not entitled to this pay scale he was not given. It is alleged that in 1969 the respondent made a representation to the State Government and when he did not succeed in spite of repeated representations he filed a Writ Petition in the High Court of Karnataka, Bangalore alleging that by not giving the pay scale to the respondent the Government of Karnataka had discriminated.

The High Court by its judgment dated 6.3.1973 allowed the Writ Petition filed by the respondent and directed that the petitioner to be placed in the proper pay scale and should not be placed in the pay scale lower than the Diploma holders. It is against this judgment that the State of Karnataka after obtaining leave from this Court preferred this appeal. Learned Counsel for the appellant contended that so far as the present respondent is concerned the State Government is not very keen not to give the advantage to him but it was contended that the matter is of general importance as according to the learned counsel different pay scales on the basis of difference in educational qualifications could be justified and will amount to reasonable classification and therefore and will not be hit by Article 14 of the Constitution. He by reference to certain observations in some of the judgments of this Court contended that the view taken by the High Court is not correct.

A It is very significant that Hon'ble the High Court did not indulge in the examination of the general question. It restricted its consideration to the facts of the present case as it stood. It is observed in the judgment that for recruitment to the post of Workshop Instructor no distinction is made between the holders of a Certificate and holders of a Diploma. It is also observed in the judgment that at the time when this respondent was recruited there was no difference in the pay scales prescribed for holders of Diploma and holders of Certificate and when at the time of recruitment they were recruited on the basis that diploma holder and certificate holder both were entitled to be appointed to the same post in the same pay scale. The High Court took in view that by subsequent revision of pay scale different pay scales could not be enforced for the same post merely on the basis of a holder of a certificate or a diploma as it was held that as an Instructor the person will perform the same duties and will do the same work in spite of the fact that he may be a certificate holder or a diploma holder.

D It is not disputed before us that so far as the facts stated in the judgment of the High Court are concerned they are not disputed. It is admitted that at the time when this respondent was recruited there was only one cadre and that was of Instructor and only one pay scale and the certificate holder or a diploma holder both were entitled to be recruited on that post. No material is in the record on the basis of which it could be contended that there was any substantial difference at that time between the two qualifications although they were described differently. It was argued that a diploma is a higher qualification than a certificate. But neither there is any curriculum on record nor any other material to draw that inference. On the contrary this circumstance that at the time when respondent was recruited a diploma holder or a certificate holder both were entitled to be recruited as an Instructor on the same pay scale and this indicates that in those days the two were considered to be alike.

G There is also no material to indicate that when the pay scales were revised and subsequently when they were further revised it was done on the basis of some material indicating that the diploma became a better qualification than the certificate. In fact we have no further material to examine the question in the broader aspect. It appears that it was because of this that the learned Judges of the High Court accordingly disposed of the matter on the facts of this case alone and therefore did not go into the general question as to whether on the basis of educational qualifications different pay scales can or cannot be prescribed and in absence of any material it will not be possible for us

to go into that question. Apart from it that question is not material for decision of the present appeal, it is not necessary for us to examine the matter which will merely be an academic exercise. On the facts of the present case it cannot be said that the High Court committed any error in allowing the Writ Petition filed by the respondent. The appeal is therefore dismissed with costs. The respondent shall be entitled to cost of the appeal.

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A.P.J.

Appeal dismissed.