

PETITIONER:
INDER SINGH & ORS.

Vs.

RESPONDENT:
VYAS MUNI MISHRA & ORS.

DATE OF JUDGMENT 14/08/1987

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
MISRA RANGNATH

CITATION:
1987 SCR (3) 972 1987 SCC Supl. 257
JT 1987 (3) 384 1987 SCALE (2) 306

ACT:

U.P. Cane Development (Fourth Class) Service Rules, 1972/U. P. Ganna Paryavekshak (111) Service Rules, 1972: Ganna Gram Sewaks/ Cane Supervisors--Posts carrying different duties, basic educational' qualifications--Merger of--Whether permissible and legal.

Constitution of India, Arts. 226, 136, 39(d): Principle of equal pay for equal work--Applicability of--Two different groups of persons performing different duties--Promotional post having higher qualifications than the feeder post--Jurisdiction of the court to order merger--Whether proper.

Service Law: Merger of two cadres into one or bifurcation of a cadre--Within jurisdiction and authority of executive government--Not of the court.

HEADNOTE:

The U.P. Cane Development (Fourth Class) Service Rules, 1972 prescribe minimum qualification of High School Examination for the post of Ganna Gram Sewak. The U.P. Ganna Paryavekshak (III) Services Rules, 1972 lay down the basic qualification of Intermediate (Agriculture) or equivalent or High School with two years' Diploma in Agriculture for the post of Cane Supervisor, and provide for filling 50 per cent of these posts by promotion from amongst permanent Ganna Gram Sewaks. The Cane Commissioner by his letter dated March 10, 1975 recommended to the State Government that the minimum educational qualification for Ganna Gram Sewaks should be Intermediate. No amendment, however, has been made to the said Rules.

The duties that are to be performed by the Ganna Gram Sewaks are preparation of progress report, survey of cane areas, and development programme. The Cane Supervisors are responsible for plant protection, inputs godown and nurseries in the areas of Ganna Gram Sewaks.

The respondent No. 1 filed a writ petition under Art. 226 of the Constitution praying for a writ of mandamus directing the State Government to merge the post of Ganna Gram Sewaks and the Cane Supervisors into one cadre.

The High Court took the view that although the minimum

educational qualifications required were High School for Ganna Gram Sewaks and Intermediate in Agriculture for Cane Supervisors, since 1975 the minimum qualification became Intermediate in Agriculture for both Ganna Gram Sewaks and Cane Supervisors, that the nature of duties performed by the members of these two categories of posts was the same, and relying upon the principle of equal pay for equal work, as contained in Art. 39(d) of the Constitution, allowed the writ petition and directed the State Government to merge the said posts into one cadre of Ganna Sahayak.

The State, and the Cane Supervisors preferred appeals to this Court.

Allowing the appeals,

HELD: 1.1 The High Court exceeded its jurisdiction in directing the merger of the posts of Ganna Gram Sewaks and Cane Supervisors. [977E]

1.2 The merger or bifurcation of a cadre is an executive act. It is for the State to consider whether two groups of persons working under two distinct posts perform the same kind of duties or not, and whether in implementing the directive principle, as contained in Art. 39(d) of the Constitution, it is necessary to merge the two posts into one cadre or post. [980AB]

1.3 The principle of equal pay for equal work requires on the face of it that the work to be performed by two groups of persons must be equal. The Court may in such cases direct equal pay by way of removing unreasonable discrimination and treating the two groups, similarly situated, equally. [977H; 980CD]

In the instant case, the nature of the duties that are performed by the members of the two categories of posts are different. The Ganna Gram Sewaks are responsible for preparation of progress report, survey of the cane areas and development programme. On the other hand Cane Supervisors are responsible for plant protection, inputs godown and nurseries in the areas of Ganna Gram Sewaks. The

974 minimum qualification required for each post is also different. Both of them function more or less independently. Furthermore, the post of Cane Supervisor is a promotional post vis-a-vis the post of Ganna Gram Sewak. It will, therefore, be beyond the jurisdiction of the court to implement the principle of equal pay for equal work inasmuch as such implementation will practically result in the amalgamation of the two posts. [978A, 979EF, 978B, 979G]

2. Under the Rules the minimum qualification required for the Ganna Gram Sewaks is High School or equivalent. So long as the Rules are amended and the minimum qualification is not enhanced to Intermediate in Agriculture, the Cane Development Department of the State cannot prescribe or insist on a minimum qualification of Intermediate in Agriculture. The High Court, therefore, was not justified in relying upon the letter of the Cane Commissioner dated March 10, 1975 in preference to the Rules framed' under Article 309 of the Constitution for taking the view that the minimum qualification for that post has been Intermediate in Agriculture since 1975. [879CE, 978H]

3. Article 39(d) of the Constitution lays down the directive principle of equal pay for equal work for both men and women. The directive principles contained in Part-IV of the Constitution are not enforceable in any court of law. It is a constitutional goal that has to be achieved at the instance of the State. [979H-980A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4115 and 4116 of 1985.

From the Judgment and Order dated 12.4.1985 of the Allahabad High Court in Civil Misc. Writ Petn. No. 3441 of 1984.

J.P. Goyal, Rajesh for the Appellants in C.A. No. 41 15 of 1985.

Anil Dev Singh, Mrs. S. Dikshit and Sudhir Kulshreshta for the Appellants in C.A. No. 4116 of 1985.

R. Ramachandran for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. These two appeals by special leave, one preferred by the State of U.P. and the other by the Cane Supervisors of the Cane Development Department, U.P., are directed against the judgment of

975 the Allahabad High Court directing the State Government to merge the posts of Ganna Gram Sewaks and Ganna Supervisors into the cadre of Ganna Sahayak in the pay scale of Rs.400-615 with effect from 1-7-1979.

In the hierarchy of field officers in the Cane Development Department, U.P., the post of Ganna Gram Sewak is at the bottom. The next higher post is the post of Cane Supervisor. Under the Cane Development (Fourth Class) Service Rules, 1972 framed under Article 309 of the Constitution of India, the posts of Ganna Gram Sewaks are filled by direct recruitment and the minimum qualification prescribed therefor by Rule 9(3) of the said Rules is that a candidate for recruitment in the post of Ganna Gram Sewak must have passed the High School Examination from the Board of High Schools and Intermediate Education, U.P. or an equivalent examination and he must know Hindi in Devnagri script. Under the Uttar Pradesh Ganna Paryavekshak (III) Service Rules, 1978, also framed under Article 309 of the Constitution of India, 50 per cent of the posts of Cane Supervisors are to be filled by direct recruitment and the remaining 50 per cent by promotion on the basis of seniority from amongst permanent Ganna Gram Sewaks of the concerned region. The basic qualification for the post of Cane Supervisor is Intermediate (Agriculture) or equivalent or High School with two years Diploma in Agriculture. The duties that are to be performed by the Ganna Gram Sewaks are preparation of progress report, survey of the cane areas and development programmes. The Cane Supervisors are responsible for plant protection, inputs godown and nurseries in the areas of Ganna Gram Sewaks.

The State of U.P. appointed a Second Pay Commission in the year 1979. The Ganna Gram Sewaks submitted a representation to the Commission demanding that since their qualifications were similar to those of Cane Supervisors and they performed the same kind of duties, they should get the same pay scale as that of the Cane Supervisors. It appears that on the suggestion of the Pay Commission, the State Government appointed a Task Force Committee. The Task Force Committee in its report recommended the merger of the posts of Ganna Gram Sewaks and Cane Supervisors into one group to be designated as Ganna Sahayaks and allotted an equal field of operation. It was observed that the merger being effected would satisfy the demand of the Ganna Gram Sewaks for the equalisation of their pay scale with that of the Cane Supervisors. The said recommendation was made by the Task Force Committee on the ground that there was no special difference between these two categories of posts in regard to

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the duties performed by the members of each category. The Second Pay Commission, however, did not accept the recommendation made by the Task Force Committee for the merger of these two categories of posts into one category, namely, Ganna Sahayak. After taking into consideration the minimum academic qualification and the nature of duties for each category, the Second Pay Commission, inter alia, recommended the revision of the pay scales as follows:-

CANE DEVELOPMENT DEPARTMENT

S. No.	Name of Post	Pay Scale	Proposed
		Existing	
46.	Cane Supervisor/ Seed Asstt.	230-385	400-615
		Ordinary	Ordinary
		Grade	Grade
		250-425	510-675
47.	Ganna Gram Sewak	(Selection	After
		Grade)	After 10 years
			of service
			Selection Grade
			(15% Selection
			Grade on the
			post of
			Supervisor)
		185-265	325-495
		Ordinary	Ordinary
		Grade	Grade
		200-320	400-540
		Selection	After 15 years
		Grade	of service
			Selection Grade
			on 15% posts.

The recommendation of the Second Pay Commission was considered by the Review Committee and, thereafter, by the Cabinet Sub-Committee. There is a dispute between the parties as to whether the Cabinet Sub-Committee had accepted the recommendation made by the Task Force Committee. Be that as it may, the State Govern-

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ment accepted the recommendations of the Second Pay Commission only with a slight modification that instead of a pay scale of Rs.325-495 for Ganna Gram Sewaks, it would be Rs.330-495.

One of the Ganna Gram Sewaks, Shri Vyas Muni Mishra, the respondent No. 1, filed a writ petition before the Allahabad High Court praying for a writ of mandamus directing the State Government to merge the posts of Ganna Gram Sewaks and Cane Supervisors into one cadre of 'Ganna Sahayak'. The High Court took the view that although the minimum educational qualifications required were High School for Ganna Gram Sewaks and Intermediate in Agriculture for Cane Supervisors, since 1975 the minimum qualification for both Ganna Gram Sewaks and Cane Supervisors became Intermediate in Agriculture. Further, the High Court was of the view that the nature of duties performed by the members of these two categories of posts was the same. Accordingly, relying upon the principle of equal pay for equal work, as contained in Article 39(d) of the Constitution, the High Court allowed the writ petition and directed the State Government to merge the posts of Ganna Gram Sewak and that of Cane Supervisor into one post as Ganna Sahayak in the pay scale of Rs.400-615 with effect from July 1, 1979. The State of U.P. and the Cane Supervisors being aggrieved by the judgment of the High Court have preferred the above appeals.

At the outset it may be said that the High Court exceed-

ed its jurisdiction in directing the merger of the two posts. It may be that the Task Force Committee and the Review Committee had recommended for the merger, but it was for the State Government to consider whether such merger should be made or not. The State Government after consideration of the relevant reports and recommendations accepted the recommendation of the Second Pay Commission only with regard to the revision of the pay scale of the Ganna Gram Sewaks with the slight modification by an increase of Rs. 5 at the initial stage of the recommended pay scale. The question whether two posts should be merged into one or not is absolutely within the jurisdiction and authority of the Executive Government. However much the High Court was influenced by the principle of equal pay for equal work for both men and women as contained in Article 39(d) of the Constitution, the High Court was not justified in exceeding its jurisdiction for giving effect to the said doctrine.

The principle of equal pay for equal work requires on the face of it that the work to be performed by two groups of persons must be
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equal. It has been already noticed that the duties that had to be performed by the Ganna Gram Sewaks are preparation of progress report, survey of the cane areas and development programmes. On the other hand, the Cane Supervisors are responsible for plant protection, inputs godown and nurseries in the areas of Ganna Gram Sewaks. Thus the nature of duties that are performed by the members of these two categories of posts is different. It has been observed by the Second Pay Commission that the Department has so fixed the duties of the two functionaries that both of them now function more or less independently. The High Court did not discuss in detail as to whether the Ganna Gram Sewaks and the Cane Supervisors perform the same duties. The High Court has only referred to an observation in the report of the Task Force Committee that there were not much differences in the duties performed by these two categories of officers. As has been stated already, the Second Pay Commission did not accept the recommendation of the Task Force Committee for the merger of the two posts into one. It is true that the Cane Supervisors are not doing any supervision of the work of the Ganna Gram Sewaks, but in view of the nature of duties performed by both, as mentioned above, it is difficult to hold that both perform the same kind of duties. We have also looked into the reports of the Task Force Committee and the Review Committee. In our opinion, these two Committees have not properly dealt with the nature of duties performed by the Ganna Gram Sewaks and Cane Supervisors, although both these Committees have recommended the merger of the two posts. As soon as, therefore, it is held that the two groups of persons do not perform the same kind of duties, the question of equal pay for equal work does not arise.

In directing merger of the two posts, the High Court has greatly relied upon the fact that although the minimum educational qualification for Ganna Gram Sewaks was High School, since 1975 the minimum educational qualification for the Ganna Gram Sewaks has been Intermediate in Agriculture. In other words, according to the High Court the minimum educational qualification required for both these posts is Intermediate in Agriculture. We have already referred to the Rules framed under Article 309 of the Constitution under which the minimum qualification for the posts of Ganna Gram Sewaks has been prescribed as High School or equivalent examination and for the Cane Supervisors as Intermediate

(Agriculture) or equivalent or High School with two years' Diploma in Agriculture. The minimum qualifications, as prescribed, have not yet been changed by the amendment of the said Rules. In entertaining the view that the minimum qualification for the Ganna Gram Sewaks has been since 1975 Intermediate in

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Agriculture, the High Court has placed reliance upon a letter dated March 10, 1975 addressed by the Cane Commissioner, U.P., to the Deputy Secretary, Cane Development Department, Government of U.P. In that letter, it was recommended that the minimum educational qualification for the Ganna Gram Sewaks should be Intermediate in accordance with the proposal of the Ganna Gram Sewaks' Union, U.P. It was, accordingly, requested by the Cane Commissioner in the said letter that the Government might consider the minimum qualification as recommended. It is the case of the State of U.P. that the said letter was issued in connection with 600 new posts of Ganna Gram Sewaks to be created under non-statutory bodies, namely, Sakkar Nidhi and Ganna Board. It is contended that these 600 posts have nothing to do with the posts of Ganna Gram Sewaks under the Cane Development Department of the State of U.P. In our opinion, the High Court should not have placed any reliance upon any such recommendation made by the Cane Commissioner, when, under the Rules framed under Article 309 of the Constitution, the minimum qualification required for the Ganna Gram Sewaks is High School or equivalent. So long as the Rules are amended and the minimum qualification is not enhanced to Intermediate in Agriculture, the Cane Development Department of the Government cannot prescribe or insist on a minimum qualification of Intermediate in Agriculture. The Second Pay Commission could not also equate the posts of Ganna Gram Sewaks with that of Cane Supervisors on the ground that the minimum qualification for the two posts are different. The High Court was, therefore, not justified in relying upon the said letter of the Cane Commissioner in preference to the Rules framed under Article 309 of the Constitution. In our view, therefore, not only the nature of duties attached to each post is different, but also the minimum qualification required for each post is also different.

As stated earlier, the posts of Ganna Gram Sewaks are filled by direct recruitment. So far as the posts of Cane Supervisors are concerned, 50 per cent of the same are filled by promotion from the posts of Ganna Gram Sewaks and the remaining 50 per cent are filled by direct recruitment. Thus, the post of Cane Supervisor is a promotional post vis-a-vis the post of Ganna Gram Sewak. In our view where, as in the instant case, of the two posts, one being the promotional post and the other being the feeder post, it will be beyond the jurisdiction of the Court to implement the principle of equal pay for equal work inasmuch as such implementation will practically result in the amalgamation of the two posts leading to great administrative difficulties. Article 39(d) of the Constitution lays down the Directive Principle of

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equal pay for equal work for both men and women. The directive principles contained in Part-IV of the Constitution are not enforceable in any court of law. It is a constitutional goal that has to be achieved at the instance of the State. Merger or bifurcation of a cadre is an executive act and normally the Court does not deal with it. It is for the State to consider whether two groups of persons working under two distinct posts perform the same kind of duties or

not and whether in implementing the directive principle, as contained in Article 39(d) of the Constitution, it is necessary to merge these two posts into one cadre or post. If the State Government is of the view that it is necessary that there should be a merger of the two posts into one post, the State Government has to take steps in that regard by framing proper rules with regard to seniority, promotions, etc. But, when two groups of persons are in the same or similar posts performing same kind of work, either in the same or in the different Government departments, the Court may in suitable cases direct equal pay by way of removing unreasonable discrimination and treating the two groups, similarly situated, equally. In the facts and circumstances of the instant case, we are of the view that the High Court was not justified in directing a merger of the two posts, namely, the posts of Ganna Gram Sewaks and Cane Supervisors.

For the reasons aforesaid, the impugned judgment of the High Court is set aside and the writ petition is dismissed. Both these appeals are allowed. There is, however, no order as to costs.

This judgment, however, will not prevent the State of U.P. from considering the merger of these two posts and the consequent equalisation of pay.

P.S.S,
allowed.
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Appeals